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 13

TRACK 2 HEARING

Friday, May 8, 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 8:45 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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C O N T E N T S

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P R O C E E D I N G S

PRESIDENT VEEDER: Good morning, ladies and gentlemen. We'll start Day 13 of this Hearing, the final day.

Before we give the floor to the Respondent for their closing oral submissions, there are a few housekeeping matters.

The first is to tell you that you should have received Procedural Order Number 37 of the 8th of May, amending Procedural Order 26 and Procedural Order Number 29 regarding confidentiality.

That is an order which has been made by consent of the Parties, and I want to confirm that there is such consent. It's made in the terms of the draft that the Parties gave us yesterday.

I ask the Claimants first.

MR. BISHOP: Yes. The Claimants consent.

PRESIDENT VEEDER: And the Respondent?

MR. BLOOM: And the Respondent consents.

PRESIDENT VEEDER: Now, we understand that the Site Visit Order is imminently about to be completed. What we'd like to make sure is if we can't do it by, as we thought, 8:45, it will be done by the end of the first coffee break this morning. I understand there's no difficulty about that? It's agreed, except for the

printing. Is that right?

MS. RENFROE: Mr. President, that is correct. Both the site visit and the security protocols are agreed, and I believe Mr. Ewing is printing the security protocol now.

PRESIDENT VEEDER: Mr. Ewing?

MR. EWING: Yes, I agree with Ms. Renfroe. We are having a little printer trouble, it seems, but the first break should be fine.

PRESIDENT VEEDER: Thank you very much.

And the other matter which is outstanding from yesterday, the new legal authorities which were introduced by the Claimants, have they gone over to the Respondent, and does the Respondent object to their introduction, or accept them?

MR. BLOOM: We have received them, and we have no objection to their admission.

PRESIDENT VEEDER: Let's let them into the record with the designations given to them by the Claimants, but we would like obviously copies and electronic copies in due course.

Anything else by way of housekeeping?

MR. BISHOP: Nothing else from the Claimants.

PRESIDENT VEEDER: And the Respondent?

MR. BLOOM: Nothing else.

PRESIDENT VEEDER: Then the Respondents have the floor for their closing oral submissions.

MR. BLOOM: If I may reintroduce the Attorney General of Ecuador.

PRESIDENT VEEDER: Of course.

CLOSING ARGUMENT BY COUNSEL FOR RESPONDENT

ATTORNEY GENERAL GARCIA CARRION: Thank you very much, Mr. President.

Mr. President, Members of the Tribunal, allow me to introduce the closing statements by the Republic of Ecuador. The lawyers defending the State are going to address the factual issues and the evidence submitted to this Tribunal, including the answers to the questions that you have posed throughout this Hearing.

Before doing that, we have to briefly remember the context in which this dispute has arisen when Chevron included in its strategy the participation of the Republic of Ecuador. From 2004 until 2009, the Republic of Ecuador defended itself in the courts of New York against the allegations by Chevron in the sense that the Republic had violated its contracts with TexPet in connection with the joint operation agreement dating back to 1965 that was entered into between TexPet and Gulf Oil, the two partners at the beginning of the Concession. Chevron alleged at the time that the Republic was a member of the joint operation

agreement once the State-owned company was involved in the Consortium in the 1970s. It is true that the Court ultimately dismissed every single one of the Claims by Chevron. This did not prevent Chevron for those years to publicly attack the Republic of Ecuador because of the alleged nonperformance of its contractual obligations.

The Republic litigated before the courts and not in the media.

Throughout the years, the Claimants changed their tactics. It is well documented that the Chevron strategy on October 14, did a 180-degree turn on October 14, 2008, when Sam Singer, the public relations adviser in a memo to the spokesperson of Chevron stated a very new strategy, completely new strategy. The memorandum said that Chevron had to create a new narrative, and I quote: "In order to avoid discussion of the environmental and legal matters in the case." And instead of that, he had to show and Ecuador and the left wing Government, newly elected, as a red Government and to describe the country as, "a new Cuban missile crisis country." This document is Claimants' Exhibit 1206.

Likewise, the Claimants staged a new legal strategy. While the Republic was not ready to pay its Witnesses and it was not ready to enter into indemnity clauses with them, Chevron decided to use its enormous

resources to exert pressures on the Witnesses that were adverse to their interest paying other witnesses enormous amounts of money to obtain their unconditional assistance.

The Tribunal may remember Diego Borja, the Contractor of Chevron's, that exchanged contaminated soil samples for clean soil samples, and he received millionaire payments by the Claimants. This is R-184 and R-109. This behavior boldly continues up to this day, with the financial assistance provided to buy the not-very-trustworthy testimony of Mr. Guerra.

I wonder how has the strategy by Chevron affected the Republic? Claimants had made it almost--had made it almost impossible for the Republic to obtain the cooperation of witnesses that were intimidated not to take a position against Claimants. In spite of the seriousness of the accusations submitted by the Claimants, Ecuador was prevented from having access to potential witnesses who were scared to provide their statements.

Secondly, the public relations campaign by Chevron has been designed to harm the State not only in the eyes of political leaders and the public opinion within and without Ecuador, but also in the eyes of investors from all over the world. For example, Chevron has spent enormous financial resources to put an end to the preferences, to the tariff preferences, given by the U.S. to Ecuador for

millions of dollars, and this impaired jobs as well.

Also, Chevron has said that Ecuador is a country that does not fulfill its international obligations. The State of Ecuador has characterized itself for fulfilling its operations under international law. Ecuador has met the payment of the awards in the very few international arbitrations where it was deemed liable. In the ICSID arbitration by Duke Energy, the State paid in an opportune manner the compensation ordered in that case. In the Occidental I case under the VAT tax under UNCITRAL, the State also paid the compensations ordered by the Tribunal.

The State also has won a number of cases that were staged against it, for example, in the ICSID arbitrations of M.C.I. and Murphy, both American companies, and one of the members of this panel was an arbitrator in that case.

Fourth, Chevron tries to paint a picture that is completely distorted of the position that I have had to assume in connection with the strategies that I had to adopt in this arbitration.

It is true that we have not always agreed with the decisions made by this Tribunal and that I have had to make decisions that were sensitive in nature. The request for the Members of the Tribunal to step down is an unprecedented decision that I have had to make in the scores of arbitrations that I had to lead in this field,

and Ecuador has very few times recused an arbitrator. And it hasn't been pleasant to use this kind of mechanism. Such a mechanism must be used responsibly so that it is not taken lightly or unfoundedly.

Notwithstanding the results obtained in this case and the reservation of rights that are going to be discussed in the annulment processes that have taken place and that you know of, Ecuador has acted and continues to act under the rules that govern these proceedings.

The qualifications that have been used by Professor Paulsson and other Chevron's lawyers in their allegations yesterday that were submitted in a defiant manner and in an irrespectful manner go beyond the margins of tolerance and the courtesy that one expects of these individuals, so these are to be rejected by the Arbitration Tribunal and also by the lawyers that I'm heading. I'm not going to deal with those qualifications because this has been an arbitration in which, apart from disagreements, we have been able to treat each other with respect in spite of the seriousness of the objections and the allegations put forth by both Parties.

In the distortion of context line of the Claimants, there were videos and statements attributed to the highest authorities of the Executive branch in Ecuador. This shows a false conspiracy theory that does not resist

any logical or time-related analysis. To seek that all the governments of Ecuador in the past 20 years have colluded against Chevron is something that is not believable, and it cannot be proven by simple conjectures.

The video, for example, that was shown yesterday that shows a number of statements by Ricardo Patiño, the Ministry of Foreign Residence of Ecuador, shows that this official is specifically making reference to the Chevron Case and not to the Lago Agrio Litigation. The Chevron Case for the authorities of the National Government is this arbitration and the other actions through which Chevron is persecuting the Republic. Claimants must be assured that the defense of the interests of Ecuador in this arbitration is a national priority matter, and it answers a State policy. We're going to continue to face their claims in every fora where we're being attacked.

We are not looking to involve ourselves in this controversy. Unlike what we've heard yesterday, this has not and has never been our dispute. The acts of the State are a response to the attacks by the company. Of course, the Government and the President of the Republic have stated their sympathies and their understanding of the victims of contamination. That is what the citizens expect. But Chevron has not acted as a great corporate citizen that it says it is. When a contractor is changing

contaminated samples for clean samples and it hides the evidence of contamination or when it uses its enormous resources to intimidate or keep witnesses. Throughout this arbitration, I have appeared in my capacity as legal representative of the State and as a lawyer. I don't have a political function. I'm here representing my country, and I am defending my country against the unfounded attacks by Claimants. That is the extent of my appearance here, and that must be respected by the opposing party.

To end, Members of the Tribunal, we expect with a lot of expectation your visit to see the enormous environmental damage caused by Chevron in the Amazon area, and we would like your decisions not based on rhetorics or discourse, but only on the evidence stemming out of these proceedings.

Now, with your permission, Mr. President and Members of the Tribunal, Mr. Bloom is going to continue presenting the Closing Statements by the Republic of Ecuador.

Thank you very much.

PRESIDENT VEEDER: Thank you very much.

Mr. Bloom.

MR. BLOOM: Thank you very much, Mr. President.

In about 15 minutes we will begin our response to the Claimants' fraud allegations, and it will be detailed,

it will be exhaustive, but before we get to that, a word about yesterday, about the closing offered by the Claimants. For those of us on this side of this room, it was reminiscent of the drive-by shootings that one sees occasionally in the news occasionally, but in this instance there were many drive-bys, quick, rapid-fire accusations, some even personal.

You were told that the only conclusion that could be drawn was that the Republic's presentation in this proceeding must constitute, "knowing falsehoods." That's at Transcript 1742. Really? And you were told at Transcript 2639, that I, "pushed to know where Mr. Guerra's children and grandchildren lived." Apparently I'm part of the conspiracy to punish Mr. Guerra by exacting some kind of punishment on his extended family.

Never mind that I was making the obvious point that Mr. Guerra's bargain with Chevron fulfilled his every hope of reuniting himself and his wife with his family in the United States, and never mind that his son's decision to move back to Ecuador, if that's what he did, belies Mr. Guerra's contention that his son cannot return.

At Transcript 2557, Claimants proclaim that Ecuador's Attorney General and we participate in these proceedings, "to give the appearance that Ecuador cares about international law," as cover of sorts while the State

actually seeks to go about to undermine international law. That's why the Attorney General's Office has expended the resources that it did on this case?

The drive-bys continued. Claimants again refer to Judge Núñez, who they say was caught in a bribery scandal all the while; and yet again, they deliberately failed to respond to the Republic's multiple submissions on this issue, most notably the finding of a U.S. judge who said that he reviewed the tapes, and there was no bribery.

Or Mr. Borja's admission of the same.

Drive-bys don't stop. Mr. Paulsson made reference to this nefarious, shady, underhanded quid pro quo between Plaintiffs and the Republic in these documents. Please look at these documents. They can be found at C-911 and R-203. When were they dated? Would you be surprised to learn it was 1996, more than a decade before President Correa became President? This was sure some amazing conspiracy; it lasted through several governments.

What was the quid for the pro? What was the quid for the quo? The Government agreed to intervene in the Aguinda action. That's all. That's it. Allow me to put the exclamation point on it.

The next year, a successor Government reversed course and chose not to intervene.

Note by the way that Texaco during the same time

period was lobbying successive governments of the Republic, and the Republic, in fact, in that same year in 1996, in fact, supported Texaco's position in Aguinda. Chevron, in fact, prepared a draft--shall we say ghostwrote--a letter for the then-Ambassador to the United States from Ecuador that was forwarded to the U.S. State Department, and he executed an affidavit supporting Texaco's position, "requesting that this Court"--that's the Aguinda Court--"decline to exercise jurisdiction," of the Aguinda Case. Please look at C-289, R-27, and C-20.

Isn't it amazing that the 1996 so-called, "quid pro quo agreement," is described as borderline criminal, but it's perfectly okay when Texaco successfully lobbies the Republic?

Facts matter. Context matter.

What else? As I predicted in opening, Claimants again deliberately conflate the Plaintiffs with the Republic, making repeated references to the Lago Agrio Plaintiffs' relationship with Mr. Cabrera as if they--as if we were they and referencing e-mails referring to the cook and the messenger, et cetera, as if the Plaintiffs' conduct is the Republic's conduct. It is not. I do not represent the Plaintiffs. I represent the Republic of Ecuador.

They refer to the, "conclusive forensic evidence," Transcript 2637, when, in fact, the forensic evidence

overwhelmingly comports with Judge Zambrano's testimony regarding the time he worked, the time he began working on the document, how he worked on the document, the 400 Saves of the document, and the eventual upload of the document. Rather than providing conclusive evidence on their behalf, it seems that the best that Claimants do is argue that Judge Zambrano had the Microsoft Word application open, in their view, not long enough for the Sentencia to be typed. And in so doing, they are ignoring Judge Zambrano's extensive testimony regarding all the advance work that he did in preparing his notes in such great detail specifically so he could prepare the Sentencia in short order. We will get to that in our presentation.

And in all candor, I seriously doubt I'm the only person who has ever used one of these, the Dictaphone machine that my Secretary despises, as I used last night and about three hours off and on and over the weekend, Saturday, last Saturday. She transcribed some 27 pages.

Who are the Claimants to say how Judge Zambrano should or should not draft the Judgment or how he writes?

If it is the position of the Claimants that the forensic evidence so conclusively establishes that the Plaintiffs ghostwrote the Decision, then may I ask the obvious question? Why are they fighting so hard to keep this Tribunal from expanding the mandate of Ms. Catherine

Owen?

Before Mr. Bishop even had an opportunity to present the Claimants' case on fraud in the afternoon, the counsel who preceded him and later those who followed chose to attack the President of Ecuador, State officials, and relied on every sound bite they have accumulated in the last several years. But again, can we just offer a little bit of context? And you may remember this from our April 2014 Hearing. I walked you through a series of the Republic's applications to this Tribunal for Interim Measures, asking you to impose Interim Measures to stop the public relations campaign against the Republic. All that time period, the State was sitting on its hands in terms of public relations.

And you may recall that for a long period of time it was reported--and I don't know what the situation is now--that the Claimants, in fact, had retained seven public relations firms as part of their public relations campaign against the State.

You may also remember that we have long ago submitted to this Tribunal an Interim Measures Request to stop Chevron's lobbying campaign to terminate the United States trade benefits costing many millions of dollars that were intended to benefit Ecuadorian citizens. Yes, this case has been politicized, but it became politicized

because Claimants determined it was in their best interests to politicize it.

You do not make friends by publicly attacking them. You do not make friends by bringing a lawsuit against the Republic in the United States in 2004, a frivolous lawsuit thrown out by the U.S. District Court and unanimously affirmed on appeal. You do not make friends when you seek to cut off financial benefits for ordinary people who need the help. That some of the State's officials should choose to react should not be surprising, but you do not penalize the State for exercising its right to respond, unless you at least first penalize the instigator.

But maybe Claimants got what they wanted. They got the sound bites after all, didn't they?

What is the alleged misconduct here beyond the alleged ghostwriting which we will address? Is it that Claimants are upset that the President and others have reacted publicly to their many attacks? Are they seeking to punish words rather than acts? Is it really a cognizable international claim for a president to comment on ongoing litigation against an oil company?

Let me remind you as I did last April 2014, as some of President Obama's where he declared, "BP is responsible for this leak. BP will be paying the bill."

That's at R-537, or consider R-621, where he referred to the BP oil spill flatly stating that he was talking to experts for the purpose of knowing, "whose ass to kick." That's the President of the United States. Are we to hold the State of Ecuador to a different standard than we're holding the United States accountable for?

We also hear so much about the President and the Foreign Minister "promoting" the Judgment abroad. There was a great big slide on this, 40-some States in which Ecuador is purportedly seeking to promote enforcement.

Of course, there are only three countries in which enforcement actions have actually been brought, but that's a little detail--let put that aside. Is it really Claimants' position that President Correa not only controls the Ecuadorian courts, but the courts across the globe including the domestic courts of Denmark, of Belgium, of the United States, of Canada?

There's a difference between offering political support, I submit, political support for its indigenous citizens and interfering with the legal proceedings, speaking of which, they had 6.5 hours yesterday--6.5 hours. And while they freely called the Government "co-conspirators," at every moment made the Government complicit in the alleged fraudulent scheme, they were stone silent in respect to their star Witness's admission that

the Government, in fact, never injected itself in the decision-making process of the Lago Agrio Litigation. Never. He said, "They never butted in. Never." The only alleged effort of any official at any time to inject himself in the process was three Attorneys General ago who called on Chevron's behalf, not Plaintiffs', to shut down the litigation. They never butted in. This is more than a little admission by Mr. Guerra.

What it says is that the Claimants' allegations of the last six years of this vast, incredible, pervasive governmental conspiracy has been a fiction from the start. Yes, both Parties can and should present evidence regarding the circumstances surrounding the issuance of the Lago Agrio Judgment, but I must say it really is time to discard Claimants' conspiracy theories.

We hear about recantations of a dozen or so people, recantations of the environmental science or of their participation in the case, and I submit to you that this speaks far more about Claimants' intimidation tactics than it does about the merits of the case.

As I advised you, when we were together, I think in this building on January 20, 2014, at Transcript 136 and 137, we had spoken to several of the Lago Agrio Environmental Experts who were only too happy to sign Witness Statements on our behalf reaffirming their Expert

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09:12 conclusions in the Lago Agrio Case, and agreeing to cross-examination by Chevron if requested. There was one caveat. They wanted us to indemnify them in the event of a retaliatory lawsuit by Chevron or in the event of a 1782 action by Chevron. They did not want to be paying lawyers' fees. They did not even want to be paying copying costs. We have to put our kids through college, we were told.

It is far, far cheaper, I must say, and easier to roll over than to spend the kind of money that is necessary to defend one's self against this juggernaut.

And I was surprised to see mention of the Gibraltar case and reference to the settlement with Russell De Leon, one of the funders of the Lago Agrio Litigation, at least without mention that Chevron chose to settle only after the Court there decided that it wanted to go to the Oriente and see the environment for itself. And, of course, Chevron got not one dollar in return.

And what of the U.S. cases finding fraud, these discovery cases where that isn't even a finding to reach? Well, what about all those that did not find it? And here I'm referencing RLA-381 to 386. My understanding, unfortunately, is that the others are not in the record.

And Claimants refer again to a 2005 e-mail from a lawyer in the Attorney General's Office, 2005, again before Mr. Correa assumed office. The Email notes that she was

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09:13 looking for ways, "to nullify the Settlement Agreement." Again, let's please provide just a wee bit of context. The lawyer, Marta Escobar, was one of the lawyers assigned to assist outside counsel in Chevron's litigation brought against Ecuador in New York. If outside counsel were to have had an e-mail or a memo discussing among other things our fraud in the inducement defense, which we did raise for a time in that litigation, does that mean that outside counsel was acting to breach the settlement?

Ms. Escobar is a lawyer considering legal positions on behalf of the Republic and, frankly, doing what lawyers are supposed to do. Please let's have a discussion of the facts, and let's present the facts in context, and let the issues please be joined on that level. We do not need more drive-bys.

We were going to go directly to our fraud discussion, but I believed it was necessary in light of yesterday to make those opening remarks, so please, let's turn to the presentation at this time. We include in our slide deck at the front, and you have seen it, a table of contents of sorts for you that I hope will guide you during the course of today. For this morning we will discuss and first confront Claimants' corruption claims for the better part of the next couple of hours, to be followed by discussion of the environmental and health case. And then

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09:15 we will close this morning's presentation with the discussion of the Track 1B issues.

One quick preview on the environmental case. This arbitration really is about a case--it really is a case within a case, and the underlying case, of course, is the Lago Agrio Case. That case is between the Plaintiffs and Chevron. This Tribunal has already held in its March 12 Track 1B Decision that the Plaintiffs brought individual claims and that those claims were not released under the 1995 Settlement Agreement. As such, the indigenous Plaintiffs had every right to seek to recover from any tortfeasor so long as, Number 1, they could show contamination; Number 2, that at least some of that contamination is attributable to the Defendant; and, three, if there was risk, risk of harm to the Plaintiffs. If proven, the tortfeasor is liable for the whole, subject to his right to seek contribution.

With all due respect to Claimants, the issue of apportionment, if at all, is not an issue for Track 2.

And note finally that we intend to ask for a morning break at about 10:45.

At this time, Mr. President, I wish to turn the floor over to my colleague, Mr. Goldstein, to start the discussion in response to the Claimants' fraud allegations.

PRESIDENT VEEDER: Thank you.

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09:17 Mr. Goldstein.

MR. GOLDSTEIN: Thank you, Mr. President.

Three weeks ago, we suggested to you and indeed for years we have maintained that the Claimants' case is simply not what it purports to be. They make allegation after allegation, running from one to the next before either you or we have a chance to evaluate the supposed supporting evidence. And once we are able to demonstrate that the supposed supporting evidence, in fact, does not support a particular allegation, such as the alleged bribery of Judge Núñez, Claimants drop the allegation, leaving it behind but for drive-bys as if they had never made it in the first place.

Over the next couple of hours we will recall the testimony given during this Hearing and contrast it with Claimants' ghostwriting allegations. When we are done, we respectful submit you will agree that what we predicted is true.

Claimants' evidence simply cannot bear the weight of their rhetoric, nor can this Tribunal rely on Guerra's testimony to fill the evidential gaps. Throughout the Republic's presentation, and, indeed, throughout your deliberations, keep in mind Claimants' Expert Dr. Juola. As Claimants tell it, they provided Dr. Juola with a certified copy of the entire official Lago Agrio Court

Record, which Dr. Juola scientifically reviewed, and concluded that none of the Plaintiffs' allegedly unfiled work product documents from which the Judgment contains text is in that record. Dr. Juola's work and his conclusion form the basis of the assumption made by Dr. Leonard and Mr. Lynch that these same documents are not in the record. Without that assumption, the mere fact that the Judgment and the Plaintiffs' work product contain overlapping text simply does not advance the Claimants' case. It was entirely proper for the Judgment to rely on and even to copy from documents lawfully submitted to it by the Parties.

So, take a close look at Dr. Juola's work because a significant portion of Claimants' ghostwriting case depends on it. I will leave it to Mr. Bloom to walk us through a discussion on Dr. Juola's methodology and his conclusion in a little while. Anticipating some of that discussion, however, I expect the Tribunal might have been surprised to learn, as we were, that optical character recognition or OCR software had been run on those pages before Dr. Juola even received them. He didn't do that himself, nor could he vouch for the quality control of that effort.

Moreover, despite what his Reports led one to understand, Dr. Juola's electronic scientific review of the

record actually was quite limited. In the end, he claims to have needed to review by hand essentially two-thirds of the 216,000 pages Claimants provided to him. Yet he did so not for all of the allegedly unfiled work product, nor even for one entire document. He tried to match four isolated word strings by looking for proper nouns like "TexPet y Texaco." Nor did Dr. Juola's Reports disclose the extent to which the OCR process resulted in blank or nearly blank pages. What's more, we learned that Dr. Juola did not include those blank pages as errors when concluding that the overall quality of the OCR was excellent.

I would ask the Tribunal also to consider the fact that 10,000 pages were missing from the hard drive of documents that Claimants and Dr. Juola provided to the Republic shortly before this Hearing. We did not receive those missing pages until well after Dr. Juola had been cross-examined. This is just the latest example of, in Dr. Juola's own words, the "human error" that pervades the record and any attempt to review it.

Briefly, on Guerra. I will not weigh down this introduction with the myriad ways Guerra contradicted himself and the evidence during his testimony. We will get to that later as well. As another guiding principle, however, I would ask the Tribunal each time it considers one of Guerra's representations to judge that

representation against at least the following questions: To what extent was his testimony here inconsistent with previous recorded statements made before Guerra began training with Chevron's counsel; to what extent was his testimony here inconsistent with previous sworn statements, including his testimony in the RICO action; and, of course, perhaps most importantly, to what extent was his testimony here and elsewhere inconsistent with the physical evidence?

Without Dr. Juola's analysis and conclusions regarding the Lago Agrio Record and without Guerra's narrative connecting the disparate dots of the Claimants' story, Claimants are left with precious little to support their ghostwriting charge. Yet Claimants bear a substantial burden here. I will defer to Professor Mayer to explore this in more detail later, but to prove their ghostwriting allegations and establish a violation of customary international law, Claimants must first overcome the presumption of judicial regularity and adduce clear and convincing proof of highly egregious conduct that can be imputed to the national judicial system as a whole. Moreover, because Claimants' case is based on circumstantial evidence, the Tribunal must, in the words of the Bayindir Tribunal, "assess whether or not the evidence produced by the Claimant is sufficient to exclude any reasonable doubt." That is CLA-81 at Paragraph 142.

Some additional representative citations to authority as well as to the Republic's pleadings are before you on Slide 4.

Having begun to sketch the outlines of our presentation, let's start coloring in the picture. To that end, I would invite the Tribunal to ask Mr. Ewing to continue our presentation beginning with a discussion of the forensic evidence.

PRESIDENT VEEDER: Thank you very much.

Mr. Ewing.

MR. EWING: Good morning, Members of the Tribunal.

I will start this morning with the contemporaneous evidence including the forensic evidence as we believe it is by far the most important piece of evidence relating to ghostwriting. This is why we think it is imperative that this Tribunal understand the forensics, that it understand what the forensics show and what is merely attorney argument or non-expert analysis and, therefore, why Ms. Owen's assistance would be immensely helpful to this Tribunal.

As Mr. Goldstein just said, clear and convincing evidence must be found to find the Republic liable.

As Mr. Lynch and Mr. White repeatedly asked and answered questions about possibilities, but that is not clear and convincing. So let's look first at what is clear

and convincing.

Throughout his cross-examination, Mr. Lynch agreed with me. The fundamental points of the forensics are clear. A file was created on October 11th, 2010, on Mr. Zambrano's computer, and that file became the Final Judgment. It was created by a person using Mr. Zambrano's computer. Between October 11th, 2010, and December 21 2010, the Providencias document was Saved at least 286 times. On December 21st, the first snapshot we have of that document, 42 percent of the text was included and available.

Between December 21st and December 28th, the document was Saved an additional 29 more times, increasing incrementally, so that on December 28th, the document now contained 66 percent of the Judgment.

We don't know how many times it was Saved between December 28th and December 21st, but we do know that from the 21st of January until March 4th, it was Saved an additional 124 times. And ultimately, we know that the only significant difference--the only difference--between the file in Mr. Zambrano's computer and the file that was submitted and issued as that judgment is the header and the signature. It is 100 percent substantively the same. Mr. Zambrano's habit of working in a single file on multiple Orders over time effectively removed historical

information about the file; and, as a result, when Mr. Zambrano Saved the Amplification Order on March 4th, he removed the file's earlier metadata that would have shown the earlier activity.

But as Mr. Lynch admitted, he has examined no other computer that contained a draft of the Lago Agrio Judgment. Only Mr. Zambrano's computers contained such a draft.

We also know what we do not see. Claimants allege that the Lago Agrio Plaintiffs wrote the Lago Agrio Judgment, but there is no evidence that this happened. If it had happened, as I will discuss in a moment, we would expect to see evidence of that. We do not.

Yesterday, Claimants said that we do not have a coherent story, but I would posit that we, in fact, do, and it is driven by the objective forensic evidence. The file that became the Final Judgment was created on Mr. Zambrano's computer in October. 42 percent was complete on December 21st. 66 percent was complete on December 28th, and 100 percent of it was complete on February 14th, when it was uploaded to the SATJE system and distributed to the Parties.

Our story fits perfectly with the forensics. It is Claimants' story that does not. As Mr. Guerra said, the Lago Agrio Plaintiffs, according to Claimants, worked in

the Judgment up until the last minute. The forensics do not support this story, where the Judgment appears only at the last minute on Mr. Zambrano's computer in a complete form like Mr. Guerra claims happened.

What else do we know? As we discussed in our opening, while the forensics show that Mr. Zambrano was working on the Judgment on his computer in his locked office in Lago Agrio, the Lago Agrio Plaintiffs were in the dark as to when that judgment would come, and I provided here copies of references for that various contemporaneous e-mails evidencing the lack of knowledge on behalf of the Plaintiffs.

And I take you to this last e-mail. Claimants allege that all of the other e-mails were just Lago Agrio Plaintiffs, keeping everyone else in the dark by reference to an e-mail by their intern Bryan. But this e-mail, one that Claimants have always ignored, is between only the inner circle. No U.S. counsel or junior members were included, only individuals who would have been a part of the conspiracy if it existed. The contemporaneous e-mails also support our story of judicial regularity.

So, how do Claimants attempt to avoid the import of the forensic evidence? First, they point to the metadata that confirms that the Judgment was written on Zambrano's computer and say that Author name does not

actually indicate who created the document. The Tribunal will remember that Claimants pointed to an Excel document with my Author name in the Last Modified and the Author fields. It is not surprising that Mr. Racich's exhibits have my name in them, as I was the attorney responsible for taking Mr. Racich's exhibits and preparing them for submission to this Tribunal. But to Claimants, this indicates that Author name alone does not indicate who created the document.

First, we have never said that Author name alone is the only metadata confirming Authorship. The Author name in this case does indicate that the content was created on Mr. Zambrano's computer, and then it was edited on Mr. Zambrano's computer, and it was uploaded from Mr. Zambrano's computer. Claimants allege, though, that the Lago Agrio Plaintiffs must have provided the content to Judge Zambrano intermittently.

And this leads to the second and maybe more important point. The metadata on Mr. Racich's exhibit demonstrates our point. If someone else had been involved in the contents' creation, even if only to intermittently provide or copy files for Mr. Zambrano, their metadata, like mine in Mr. Racich's exhibit, would be evident on Mr. Zambrano's computer, but there is no metadata on Mr. Zambrano's computer, even hinting at any of the Lago

Agrio Plaintiffs' lawyers.

Second, Claimants allege that Microsoft Word was not used enough. And as Mr. Bloom pointed out, the issue is not whether it wasn't used long enough to have typed the Judgment--Claimants admit that it was--but it is whether it was used as much as Claimants would have liked it to have been used. Mr. Lynch admitted that his analysis of Microsoft Word usage did not include any time Mr. Zambrano spent working from paper notes or drafting on paper.

Mr. Lynch also admitted that Mr. Zambrano may have cut and pasted documents, numerous sections of text from his own computer, thus increasing the volume of text almost instantaneously. But let's take a look at how Microsoft Word was actually used. I have taken the OSessions logs that Mr. Lynch relies on, and I've graphed them here, so you can see how many hours per day Mr. Zambrano's computers were used over the relevant time period. According to the Claimants, Lago Agrio Plaintiffs may have provided Mr. Zambrano the entire piece of the Judgment at various times, and he then typed those into his computer. If this happened, we would expect to see either one large spike at the end or maybe intermittent spikes followed by very little activity. But instead, what we can see is that Mr. Zambrano's computers were used consistently from March--or October 2010 until March 2011.

Claimants also point to the fact that Mr. Zambrano is not here. I would like to walk through some of his testimony that supports and continues to support our story, for he consistently described his authoring process. What we see from Mr. Zambrano is that he primarily worked from paper notes and only once his ideas were complete on paper would he dictate the Judgment.

As he said, "I had my notes, and once I had everything started working on what's already advanced as far as the Judgment. I already had studied the process." His work-gathering notes started in his first term. And by the time he started dictating, he had already advanced very far with the Judgment.

Ms. Calva's testimony also supports Mr. Zambrano's testimony. I won't go through it all, but I've collected here references for you in these slides.

I want to briefly discuss the environment in which Mr. Zambrano provided his testimony during RICO. Claimants have made much of seeming inconsistencies or incorrect statements, and I think some background may be helpful. First, he only met with the Plaintiffs' lawyers once before he was deposed and he only met his personal attorney the night before his deposition started. And as far as we know, Mr. Zambrano does not speak English, but Mr. Zambrano was kept in the dark without a translator. Specifically,

none of the attorney argument or objections were translated so that Mr. Zambrano had no idea what was going on.

The proceeding was highly contentious and aggressive, to the point where Chevron's counsel had to be told to calm down repeatedly.

Let's not forget that Mr. Zambrano--Claimants make much of Mr. Zambrano's faulty memory about TPH, but let's not forget that he recalled that it related to hydrocarbons, but it is true he did not remember that the individual letters in English what they stood for when he was asked about them in a foreign language. I would bet many attorneys in this room would have a hard time remembering what C-I-A-D-I stands for under these circumstances.

Moving away from Zambrano, Claimants--one moment--Claimants much make of Mr. Zambrano's testimony, but even the Special Master who was present recognized the little value that Chevron's memory test provided.

Moving away from Zambrano, though, Claimants also allege that Mr. Zambrano did not use Microsoft Excel enough, but here are the facts: The calculations that Claimants point to in the record were based on data that was in the record since November 2006; and, as Mr. Lynch admitted, he doesn't know who calculated the percentages. It could very well have been a previous judge.

The Selva Viva Database had been produced by Stratus Consulting, the Lago Agrio Plaintiffs' Environmental Experts, at least as early as October 5th 2010. As with the remainder of the allegedly unfiled work product, it defies imagination to believe that the Lago Agrio Plaintiffs simultaneously handed Chevron documents, such as the Selva Viva Database, and then used those same documents to draft the Judgment.

But interestingly, Mr. Lynch was not provided a copy of Chevron's own database of Lago Agrio Records. As you heard yesterday, Claimants have repeatedly said that the percentages in the Judgment were necessarily calculated using the Lago Agrio Plaintiff's Selva Viva Database. According to Claimants, they cannot be explained any other way and that it took Mr. Lynch hours to calculate the percentages even after he knew how to do it. Not only is this not a forensic expert exercise, but in only a few minutes this week I was able to calculate the same or similar percentages using Chevron's database. For instance, using Chevron's database, I calculated the same 10 percent of TPH results greater than 5,000 PPM TPH. Or, as another example, I calculated the number of Plaintiff samples below 1,000 TPH as 160. Unsurprisingly, the rest of the percentages can likely be calculated as they're simply based on the data submitted to the Lago Agrio Court

during the Judicial Inspections.

Does this mean that Chevron ghostwrote the Judgment? I don't think so, but it shows what should be an obvious fact: The percentages can be calculated from the data that both Parties believe was a part of the record.

Claimants allege that the Final Judgment relied on the Cabrera Report's compilation of Concession Area pits. Annex H-1 or the Stratus compilation, as Mr. Lynch calls it. But as I demonstrated during the cross-examination of Mr. Lynch, Mr. Lynch and Mr. Younger attempted to calculate 880 pits using the same database, but arbitrarily selected to include and exclude pits in a different manner so that they could both reach the same number.

Claimants have also placed significant emphasis on the fact that Mr. Zambrano said he used the New Computer to draft the Judgment, not the Old Computer. And in contrast with his testimony, the Judgment was found on the Old Computer.

But as this slide seeks to demonstrate, this is not dispositive. We know the two computers were networked, and we know that the Judgment was shared between them. We know that the Judgment was Saved and not just revised like Mr. Bishop mentioned yesterday. And what happens when one shares a file like this between network computers is that whichever computer Saves it last completely overwrites the

other computer's fingerprints. We have four snapshots out of hundreds of the Lago Agrio Judgment's drafts. We just happened to get the Old Computer snapshots.

Claimants also point to the fact that text was copied and pasted from documents. Mr. Lynch can't confirm where the text was copied from because that block of text doesn't appear in any other document. But Mr. Lynch admitted that his evidence points to as well that someone just selected a different font. He also recognized that any number of documents on Mr. Zambrano's computer could have been the source for the cut and pasted documents.

I have one point before I close. Claimants have pointed to the Lago Agrio Orders that were on Mr. Guerra's computer as proof that Mr. Guerra drafted Orders in the Lago Agrio action, but those Orders do not appear on Mr. Guerra's computer until July 23rd, 2010. We have no forensic evidence where there were, other than the fact that they were on Mr. Zambrano's computer before that date.

And here is why this is important. Mr. Guerra was left alone in Mr. Zambrano's office repeatedly, and in 2010 specifically. We don't know what he did. We don't know what he did. And as Mr. Lynch recognized during his cross-examination, we don't know who plugged the USB drives in to whose computers. We don't know whether Mr. Guerra plugged it in. At the end of the day, all that we know

from the forensics is that Mr. Guerra had these drafts on July 23rd, 2010, months after they were issued by Mr. Zambrano.

And with that, I would hand the floor to Ms. Hooshmandnia to continue with our presentation.

PRESIDENT VEEDER: Thank you.

Please.

MS. HOOSHMANDNIA: Thank you.

Mr. President, Members of the Tribunal, as Claimants stated in their Opening Argument with regard to Mr. Guerra, the specific question for you to decide is simply whether he's telling the truth about specific matters related to this case. In our view, the cash incentives by themselves render him inherently unreliable. Simply, Mr. Guerra's paid for claims cannot and should not serve as a predicate for any factual findings from this Tribunal.

Today I will spend 15 minutes evaluating Mr. Guerra's testimony and illustrating why none of his narrative can be credited by this Tribunal. And when reflecting on this, I ask this Tribunal to remember what Mr. Guerra shared regarding his views on human instinct and truth telling: "Perhaps it's a genetic thing in human beings or perhaps amongst Ecuadorians to try to present a better image than what we really are vis-à-vis individuals

that we're just meeting for the first time, and all the more so if they have the possibility of helping us at some point in time or benefit us in some way."

By now you're familiar with the profits Mr. Guerra has obtained from Chevron, and I have listed them on Slide 49 for the Tribunal's convenience. Certainly, aiding Chevron with a multi-billion dollar liability has its perks.

We know that Mr. Guerra was admittedly struggling financially. He had a $20,000 construction debt. He needed another 20 to $30,000 to complete a half renovated home, and he could not afford to visit two of his children in the United States.

For a man who didn't have more than a couple hundred dollars to his name, this was the lifeboat he was looking for and the boat was big enough for his entire family.

Somehow Chevron managed to buy Mr. Guerra what money typically cannot buy, the opportunity to reunite with the children he had not seen for years, the chance to be present in the lives of his grandchildren, and the peace of mind that capable attorneys would ensure that his son will not face deportation in light of his illegal status in the U.S.

These benefits, which Chevron calls a corporate

witness protection program did not come as a surprise to Mr. Guerra. No, he knew that Chevron doles out these packages. When Mr. Bloom asked him whether he read about Mr. Diego Borja's financial benefits from Chevron, Mr. Guerra stated, "it was said that the individual who filmed these videos was taken out of Ecuador and got asylum in the U.S., and, just like me, he lives in the U.S. and his expenses are somehow covered by Chevron." To Mr. Guerra's credit, these benefits were not easy to come by. He had to hold his own with Chevron's investigators and attorneys who sat at one side of the negotiating table and Mr. Guerra on the other side. This was not someone coming clean. This was a high stakes game of chess, and Mr. Guerra had to make something out of nothing.

In the summer of 2012, the negotiations began. For its part, Chevron knew how to leverage its position: the brute motivation of money. Before Chevron's representatives even fully understood Mr. Guerra's story, they had wads of cash in their briefcases. Indeed, as Mr. Guerra confirmed, the Chevron representatives made it clear to him that they hoped that they could get his cooperation for money.

Mr. Guerra, with not much else to offer, got Chevron's attention by promising that he could serve Judge Zambrano on a silver platter. And in between the

chit-chat, jokes and laughter, Chevron made its Agenda clear. Mr. Guerra testified that "the representatives of Chevron expressly told me that once I was able to arrange a meeting between them and Zambrano, then there was going to be a little bit of money, additional money for me, some additional financial benefit."

After a couple months and no signs of Judge Zambrano, Chevron began fearing the worst. Was Mr. Guerra playing them? Mr. Rivero, Chevron's Miami-based American lawyer, warns Mr. Guerra that Chevron is losing patience and confidence. He said "so then Chevron starts thinking, wrongly, that it's a ruse. Do you understand? And so then Chevron asked, listen, could Alberto Guerra be in on some ruse? They ask because they're sensible, too. Andres, you have talked to Guerra face to face? What do you think? What is he like? What are your thoughts? Is it a ruse? No, not me, but I don't know."

And then they took a hard line. Chevron told Mr. Guerra that he will be "left with nothing" if he could not deliver Judge Zambrano to Chevron.

What was Mr. Guerra to do? Vying to stay relevant and get some benefit, Mr. Guerra began mentioning the various pieces of evidence that he had, most of which we found out never existed, and Chevron was willing to take what it could get, so the bidding began.

Mr. Rivero told Mr. Guerra, "I'm an attorney. I don't mind setting a starting figure; right? Starting. Understand?" And with that, Chevron put its first offer on the table.

Mr. Rivero led Mr. Guerra by the arm to an open safe filled with cash. "Look, look, look what's down there. We have $20,000 there".

Mr. Guerra asked for 50,000 and a few more zeros.

Starting figure, offer, counteroffer. Both sides knew how it worked. Mr. Rivero said "The Americans have a saying that I believe is good. They says money talks." Mr. Guerra retorted, quote, "there is a saying here, and I think it's worldwide. It says money talk, gold screams."

And of course, the more evidence Mr. Guerra could provide, the more cash he would get. When Chevron didn't find the Judgment on Mr. Guerra's computer or flash drives, Mr. Rivero told Mr. Guerra, "had we been able to find it, we would have been able to offer you a larger amount." But "we have 18,000 for you, and we are going to take the computer with us."

Does that sound like a witness protection program as Chevron claims in its opening or does it sound more like an illicit smoky backroom deal? In all of this, Mr. Guerra claims he's not a greedy man. He testified that he "wasn't hoping to become a millionaire or anything like that." He

was just, "hoping to receive something, like a good set of fees."

But he did admit that after his 2010 and 2011 Chevron bribe solicitations, that he believed that Chevron had more money that it could pay, and that he could get paid more quickly than the Plaintiffs. Indeed, he wanted to get as much money as he could. He never cared who actually won the case in Lago Agrio; "the final outcome was not something that concerned me."

And as to his 2012 dealings with Chevron, Mr. Guerra sought to maximize his negotiating position. He admits "the only thing I thought was to improve my position vis-à-vis further benefits that I could receive down the line." He did this by exaggerating or put more accurately, by lying.

Mr. Guerra has no problem lying. He told us that. During his testimony before you, he stated it was perfectly appropriate to lie. He said it was like saying in a job interview that you have ten years of experience when, in fact, you have none. He saw nothing wrong with that. And Mr. Bloom will go into the details of Mr. Guerra's purported evidence, but let me remind you about the lies that we know Mr. Guerra has told. He told Chevron's attorney in Quito that he was receiving $1,500 to $2,000 a month from Plaintiffs to move the case along during

Judge Zambrano's first term. We know that wasn't true. He said the Plaintiffs had offered him $300,000 for his role in the alleged ghostwriting of the Judgment. They did not.

He said that he had an e-mail from Mr. Fajardo in the weeks before the Judgment's issuance attaching the Memory Aid. He lied. Mr. Guerra promised a copy of the Judgment in draft form on his computer and flash drives. He lied again.

As Claimants stated, the question for you, Members of the Tribunal, is whether he's telling the truth about specific matters related to this case. Let's keep that in mind as we take a closer look at new contradictions and lies in Mr. Guerra's testimony in this Hearing.

We revisited with Mr. Guerra his many inconsistencies, exaggerations and lies. Mr. Guerra's first line of defense was to draw a sharp distinction between the recorded conversations and his written and oral testimony produced under oath: "Certainly, the recorded conversations that I had initially with Chevron representatives include some inconsistencies, but in the sworn statements that I signed myself or ratified myself with my signature, those statements do not include in it any inconsistencies."

And to justify making a false assertion, he said: "You also need to remember that, or take into account that

those assertions were not said under oath. I did not swear over the life of my mother that that was going to be the case."

But two weeks ago, Mr. Guerra told you that he lied under oath in the RICO proceeding. Mr. Bloom began by asking Mr. Guerra about his testimony that Judge Zambrano "assured" Mr. Guerra that he would receive 20 percent of the $500,000 that the Plaintiffs allegedly promised Judge Zambrano. Mr. Guerra responded in this room: "I mentioned 20 percent when it wasn't true, and I think that, as a gentlemen, I should say the truth, and we did not discuss 20 percent with Mr. Zambrano. He just said that he would give me a share of what he would receive." Mr. Guerra admitted that the very last time he was put under oath he perjured himself.

Mr. Guerra has historically used two excuses for his inconsistencies. The first is that he misremembered, and second that he was merely exaggerating to get more money. But when Mr. Guerra sat in this hearing room, he misremembered his exaggerations and exaggerated his mis-remembrances. These produced more lies.

Mr. Guerra's testimony has provided more examples than we have time to go over today, so I will just mention three.

First, we know Mr. Guerra lied when he initially

stated he was offered $300,000 by Plaintiffs. He admitted this in the RICO proceeding and he admitted it again in this proceeding. When asked how he lied, specifically how it improved his negotiating position, suddenly, it seemed he hadn't lied at all. He had just spoken "carelessly," "lightly" and "without thinking". This was a lie.

Here is a second example: We also explored with Mr. Guerra his representation that he had a draft of the Judgment on flash drives. Before you, he ratified his testimony in his May 2013 deposition that he had lied when he told Chevron he possessed a draft Judgment. Yet, minutes later, what he had twice admitted was a lie became instead a mis-remembrance. Again, another lie.

And here is the third example. Mr. Guerra had previously said that he had "exaggerated" when he told the Chevron representatives that he had day planners. In other words, he knew he did not have such day planners, but he said it--but he said he did. Yet, at this Hearing, Mr. Guerra testified that he thought he had them at the time, that he had misremembered.

In the wake of this testimony, it is impossible to know which representations are mere mis-remembrances, which are calculated exaggerations and which are outright lies. With the lines between these so blurred, I submit respectfully that this Tribunal cannot credit his testimony

when it's aligned with the interests of his benefactor, which is also in every instance in his own financial best interest.

And here is how Mr. Guerra further blurred those lines. At this Hearing, Mr. Guerra equivocated on parts of the story that he managed to keep consistent before. When asked about exaggerations more generally, Mr. Guerra gave an example of an exaggeration that he has never given before. He said: "Exaggeration was like when I said I received a thousand dollars from the Plaintiffs and Mr. Zambrano." In so doing, Mr. Guerra provided yet another example of a previous sworn statement that was not true.

Further, Mr. Bloom also asked Mr. Guerra about two TAME airline tickets from August 2010 referenced in Mr. Guerra's RICO Witness Statement, C-2358. The Tribunal will recall that up until two weeks ago it was Mr. Guerra's story that those trips were "specifically for the Chevron Case." When Mr. Bloom asked again, he confirmed his contention. Yet, seemingly in the stream of consciousness of testifying before you, Mr. Guerra realized that Mr. Zambrano was not even presiding over the Lago Agrio Case in August 2010. And, of course, if Mr. Guerra is unable to admit that his son-in-law is named Nicolas, what else is he willing to hide?

09:56 Before I conclude my presentation, I'm going to show you one final lie from Mr. Guerra's testimony. With that, I give the floor to Mr. Bloom, who will discuss Mr. Guerra's physical evidence.

PRESIDENT VEEDER: Thank you.

Mr. Bloom.

MR. BLOOM: Thank you, Mr. President.

The Claimants recognize the difficulties underlying Mr. Guerra's testimony, and they, therefore, rely on what they characterize as an "ever-growing mountain" of corroborative evidence. In their view, this Tribunal can reach its findings without ever relying on Mr. Guerra. But the evidence on which Claimants rely do not make out Claimants' case. To the contrary.

And for the next 35 minutes or so I would like to take you through the physical evidence on which Claimants rely, discuss the relevance of each in light of the testimony you heard, determine with you which evidence can be disregarded and which evidence may be properly considered, and then ask you to consider what the relevant evidence actually proves.

Now, on this single slide, we have sought to identify the so-called "mountain" of physical evidence offered by Claimants in support of their allegations. This slide also includes evidence that had been promised by

09:57 Mr. Guerra, but which was never produced.

Among the evidence actually offered by Claimants are e-mails, TAME shipping records, evidence of travel for Mr. Guerra to and from Quito and Lago Agrio, deposit slips, the nine alleged Draft Orders found on Mr. Guerra's hard drives and more. Taken together, the Claimants tell us the physical evidence is mutually reinforcing and categorically proves that Judge Zambrano accepted a bribe.

But before we rush to judgment, let's actually analyze and consider the evidence before us and the evidence not before us, and gain an understanding of their import, taken both separately and together.

According to Mr. Guerra, he does not have cellphone records to confirm his alleged communications with Mr. Fajardo: "My phone did not maintain those records." That evidence does not exist.

After Mr. Guerra promised Chevron that he had and he would produce to them calendars showing notes of meetings with Mr. Fajardo, Chevron's Miami attorney Andres Rivero and Chevron's investigator affirmed to him that Chevron would consider the calendars "very valuable for us," very valuable. And you may remember my colloquy with Mr. Guerra. Notwithstanding Mr. Guerra's promises and the reward that was being offered, Mr. Guerra did not produce any such calendar showing notes of any such meetings with

09:59 Mr. Fajardo. That evidence does not exist.

Mr. Guerra promised Chevron's representatives in June of 2012 that he had calendars showing notes of meetings with Steven Donziger, but he never produced those either. Simply he offered no notes referencing meetings with Donziger at all. So, this evidence, too, does not exist and goes away.

Mr. Guerra promised that he had day planners evidencing meetings with Mr. Fajardo and with Mr. Donziger. He testified in this proceeding, however, that "when I was trying to look for them, I had lost them. I wasn't able to find them." Of course, during the New York RICO trial he said something else. He didn't claim to have lost the day planners. What was his answer under oath that day? "I said many things to the gentlemen, to the representatives from Chevron. On many of those, I was exaggerating. I wanted to improve my position." But in this Hearing he says he lost them. In either event, the day planners don't exist, and they go away.

We also know, because Mr. Guerra told us, that he has no correspondence whether by e-mail or written correspondence with Mr. Zambrano. To be sure, Mr. Guerra provided Chevron's representatives access to his e-mail account, including providing them with his e-mail password. While Mr. Guerra purportedly had frequent e-mail contact

10:01 with Mr. Fajardo, no e-mail from Mr. Fajardo was ever found in Mr. Guerra's e-mail account. According to Mr. Guerra, any such e-mails have been lost. That evidence goes away.

Claimants, as you will recall from the cross-examination I had with Mr. Guerra, have also relied on the TAME shipping records which they claim corroborate Mr. Guerra's testimony that he shipped Draft Orders to Mr. Zambrano, and in this respect Claimants have pointed to 23 shipments from Mr. Guerra to the Oriente.

Let's evaluate the relevancy of these 23 shipments. Mr. Guerra provided evidence of exactly 11 shipments directly to Mr. Zambrano. While he never before acknowledged this in all of his statements, notwithstanding I think we had 19 tabs of his statements, Mr. Guerra in cross-examination conceded that not one of these 11 shipments had anything to do with the Lago Agrio Case:

> "QUESTION: You have confirmed that nine of them were made after the Sentencia was issued and had nothing to do with the Lago Agrio Case; isn't that correct?
>
> "ANSWER: Yes, sir.
>
> "QUESTION: And you testified that the July 22, 2010, shipment had nothing to do with the Lago Agrio Case and that Judge Zambrano was not even Presiding Judge at that time?

"ANSWER: Yes, that's correct.

"QUESTION: And that the February 11 shipment of 2011 also had nothing to do with the Lago Agrio Case?

"ANSWER: Yes, sir."

Evidence of these 11 shipments all go away.

Claimants have identified 12 additional packages from Mr. Guerra to people other than Judge Zambrano through TAME. Mr. Guerra, however, confirmed that the three packages sent to Coca, about a two hour car ride from Lago Agrio, had nothing to do with the Lago Agrio Case, and he specifically affirmed that the packages sent to Pedro Moreira Colorado, Juan Jurado, and to Orlando Daza, had nothing to do with the Lago Agrio Case either. Evidence of these shipments, therefore, also go away.

So, that leaves us with seven packages to Fernando Albán and two to Narcisa Leon. The record makes clear, and Mr. Guerra concedes, that the shipments to Fernando Albán had nothing to do with the nine Orders found on his hard drive. Nor could they, because the nine Orders had been issued or were issued by Judge Zambrano at least nine months before the first TAME shipment to Mr. Albán.

Now, I will note parenthetically that Mr. Guerra contends that the shipments to Mr. Albán must have related to other Orders other than these nine. Well, we know that

the two gentlemen have had a friendship at least extending years. We have some testimony that they were, indeed, relatives, although he denied it.

And we also know that they have published together, and these shipments also could just as well have been Court filings Mr. Guerra made in Lago Agrio on behalf of his own clients since he was still representing clients at that time.

And, of course, Mr. Albán is not here. He elected not to stand behind his good friend Mr. Guerra. In fact, no one has stepped forward to offer a witness statement to corroborate Mr. Guerra's testimony. And there is quite literally no physical evidence to support Mr. Guerra's contention.

So, that brings me to the two final shipments to Narcisa Leon. And in this respect I want to take you back to one of Claimants' opening slides, it was Slide 45 in their opening, they reintroduced it yesterday, and in the far two right columns you will see here two examples where Chevron identifies alleged Draft Orders saved on Guerra's computer both followed by TAME shipments. One of these is November 18, 2009, the other Draft Order was November 29, 2009, again, each followed by a TAME shipment, each followed by Judge Zambrano's issuance of a Final Order.

At Page 59 of our Day 1 Transcripts, Claimants

walk through this slide and the sequences, and then represented, and I quote, "this pattern plays out nine times."

To be clear, however, it does not play out nine times. There is evidence of 23 TAME shipments in all. These are but two--there are but two instances in which this pattern shows itself, and these are the two. Even a broken clock is right twice a day.

So, in our analysis of the so-called "corroborative" evidence, let's leave these two shipments to Narcisa Leon in, as they at least fit into Chevron's allegations. To be sure, however, we don't know the contents of these packages, whether Mr. Guerra was returning Court documents or books to Ms. Leon or whether they were Court papers relating to cases he said that he was handling as counsel. Nor has Ms. Leon ever offered a witness statement corroborating Mr. Guerra's claim. But for purposes of the physical evidence, let's leave them in. The 21 other shipments go away.

In his Declaration of November 2012, Mr. Guerra identified travel to and from Lago Agrio as evidence that he traveled back--between Lago Agrio and Quito. When pointed out that his first cited travel occurred on August 4 through August 6, 2010, while Judge Ordoñez was the Presiding Judge, he agreed and conceded for the first time

since he executed his Declaration some two-and-a-half years ago that this travel had nothing to do with the Chevron Case. He admitted, "if I traveled during these dates, it wasn't for me to provide assistance to the Chevron Case."

And similarly, when pointed out that his second cited travel about a week later also occurred during Judge Ordoñez's tenure, he again agreed, and again for the first time, that the travel had nothing to do with the Lago Agrio Case. Evidence of this travel is therefore not relevant to the question here, and this evidence also goes away.

What other evidence is there?

Claimants cite to six alleged payments by Judge Zambrano to Mr. Guerra: Three journal entries, two bank statements and a deposit slip. Let's put aside the question of whether the name Nicolas, referred a couple of Mr. Guerra's notations, referred to Nicolas Zambrano, or instead to his son-in-law, Nicolas, who Mr. Guerra now says he calls Nick. Let's put aside that we don't know whether Mr. Guerra actually wrote these notations or when he wrote these notations. Let's put aside that there was no evidence identifying what these payments were for.

Let's also put aside the fact that Mr. Guerra produced no example of any payment at all of $1,000 or even anything close to $1,000, and that he now admits that he lied about the amount he said he was being paid.

Put all that aside, and let's instead focus on a single sentence from Mr. Guerra's testimony, and I'll quote: "The payments that I received from Mr. Zambrano starting in April 2011 to February 2012," which all six of those payments were, "had no connection with the Chevron Case." In this one sentence, Mr. Guerra admits something he had never admitted before: That each of the six payments from Mr. Zambrano had nothing to do with this case. And he, in fact, has no evidence of any payments from Mr. Zambrano during the relevant time.

Claimants' reliance on Mr. Guerra's notations and in other instances deposit slips for proof of payment from Mr. Zambrano therefore go away.

What other evidence do Claimants rely on? Well, there are two deposit slips purportedly signed by a woman named Ximena Centeno, who was allegedly affiliated with the Plaintiffs, and while I included two here, Mr. Bishop identified other deposit slips not signed by Ms. Ximena, so we want to be accurate--there are deposit slips we could put in there.

We, of course, in her case, don't know who put her name on the deposit slips, nor do we know what the payments were for, whether it could be for a presentation on the environmental case, lobbying in the public domain, but we should and do include this evidence on the list of

surviving evidence, at least potentially relevant to the issue before this Tribunal.

Let's also leave in as potentially relevant evidence the nine purported Draft Orders on Mr. Guerra's hard drive, notwithstanding that both Mr. Lynch and Mr. Racich have both testified that they were created on Mr. Guerra's hard drive after the respective Orders were issued and notwithstanding the fact that Mr. Guerra had the opportunity and access to copy drafts from Mr. Zambrano's computer, but we'll leave them in there.

And let's also include in this list the three e-mails relied upon by Claimants in support of their case, e-mails dated October 27, 2009, November 27, 2009, September 5, 2010. I will address these shortly.

And, finally, let's also include the so-called "Memory Aid," even though Mr. Guerra said that it contained absolutely no useful information in respect of the Sentencia.

So, what evidence remains before this Tribunal?

Well, the Parties disagree about the import of these individual pieces of evidence before you, and I will not belabor our respective points here. In fact, for purposes of this next exercise, I actually want to do something that I don't do very often. I want to actually assume arguendo the worst case from the defense point of

view. Let's actually assume that each of these pieces of evidence actually stands for the proposition for which they are offered by Claimants, and let's see how far that gets the Claimants.

There are effectively three sets of tasks that were before Judge Zambrano in his two terms as Presiding Judge of the Lago Agrio Court:

First, he served as the Presiding Judge from October 2009 to February of 2010 and issued during this time a number of Orders or Providencias.

Second, Judge Zambrano served a second term from October 2010 to March 2011, during which time he again issued a number of Orders and Providencias.

And, third, and most importantly, he drafted and issued on February 14, 2011, the Sentencia or Judgment in this case.

With this in mind and taking a look at what used to be the mountain of evidence and seeing what remains, let's actually identify which pieces of evidence relate to which of these three categories of responsibilities that Judge Zambrano had before him.

Most all of them drop in the first bucket.

Now, maybe this is where the rubber meets the road, where both sides need to take a step back and need to reassess. Might we, on this side, have overstated our case

by suggesting that there is no probative physical evidence that would be consistent with at least one of Claimants' allegations? Physical evidence regarding the first time period of a possible agreement between Mr. Guerra and the Plaintiffs in 2009?

But have the Claimants overstated their case when they claim that the evidence conclusively proves that Judge Zambrano was bribed and that he let the Plaintiffs ghostwrite the Judgment?

When one looks at the evidence through the prism of this exercise, it is clear that at least as a general matter, the potentially relevant evidence is fairly well congregated during that first term and focused more particularly on Mr. Guerra rather than Judge Zambrano. So, is it possible that Judge Zambrano may have, in fact, relied on Mr. Guerra to help him draft certain Orders during his first term? But if he did, not as part of a criminal enterprise to do harm to Chevron or as part of a bribery scheme, but instead to act in effect as a law clerk to Mr. Zambrano? Orders that Mr. Zambrano would review, edit and bless? If we were to accept that the nine Orders found on Mr. Guerra's hard drive, even though created on his computer well after they were issued, but if they were drafts, we know for a certainty that they were at least reviewed and blessed by Judge Zambrano because of what was

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found--because what was found on Mr. Guerra's computers were not final Orders.

Is it possible that Mr. Guerra, acting on his own and without knowledge of Judge Zambrano was pitching his wares to both Chevron and Plaintiffs? We know he was desperate for cash, he was in financial trouble. He was confronting another 20 to $30,000 of construction debt. He was terminated as a judge and he was making 10 to 30 percent of his previous salary. And according to Chevron, he twice solicited bribes from Chevron after which Chevron decided to sit on its hands and do nothing.

Look at the nine Orders. They are overwhelmingly procedural in nature and, by our analysis, Chevron won the majority of those issues that were decided. The exhibit numbers are provided on Slide 144, and I encourage you to look at these at your convenience.

Most importantly, Chevron has made no claim in this arbitration that those nine Orders were incorrectly decided. Even if we were to accept Mr. Guerra's allegations with respect to this allegedly first agreement, which we do not, his role would have been merely to "move the case along." His words. Most of the time, the Claimants have used the identical language in their written submissions.

In other words, this hypothetical first agreement,

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according to both Mr. Guerra and Claimants, had nothing to do with the merits of the case. Nothing. And for his part, Mr. Guerra never claims to have drafted a Providencia inconsistent with Ecuadorian law, which is, if his testimony were to be credited, why Mr. Zambrano would have blessed them.

On his redirect of Mr. Guerra, my friend Mr. Kehoe asked Mr. Guerra why, in Paragraph 10 of the December 7, 2009 Order, which is Attachment R- to his November 17 Declaration, he allegedly wrote, "it is provided that ordinary time frames may not exceed those given under Article 288 of the Code of Civil Procedure. This is done in accordance with the provisions of Articles 303 to 319 ibidem."

And how did Mr. Guerra respond? Well, three times he was asked and three times he explained the legal reasoning, and at no time did he suggest or hint that the Decision, the Order of the Providencias, was incorrectly decided.

Mr. Kehoe kept pressing the issue, fishing for the needed answer, with the same leading question, asking time and again whether he made this ruling, "at least in part because of your agreement with the Lago Agrio Plaintiffs to move the case along quickly".

Mr. Kehoe again did not get the answer that he

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wanted. Instead, Mr. Guerra gave a very long answer explaining the law. I think it was Mr. Kehoe's fourth try that Mr. Guerra finally gave in and offered the demanded-for response that yes, it was in part because of his agreement with the Plaintiffs to move the case along.

To be clear, if the Plaintiffs in fact paid Mr. Guerra any money during Mr. Zambrano's first term, that's all it was for. It had nothing to do with the merits, and it was without any intent to prejudice either Party's rights on the merits. Not even Mr. Guerra says otherwise. Nor could it have been.

On Claimants' case, Mr. Guerra solicited Chevron one year later, in October of 2011, and offered to fix the Judgment in their favor. Not only is there no hint in any of these nine Procedural Orders that they were incorrectly decided or otherwise tainted the Sentencia, there is no physical evidence--in fact, no evidence at all other than Mr. Guerra's word--suggesting that Judge Zambrano would have been aware or was aware of any such agreement between Plaintiffs and Mr. Guerra. None. Indeed, when I asked Mr. Guerra who was receiving the $1,000 a month, he replied that he was, and that Judge Zambrano was not receiving anything to the best of his knowledge. Of course he wasn't. It wasn't his deal, if there ever was a deal.

Let's address the October 27 and November 27, 2009

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e-mails. And, again, we are focused here on the alleged communications with Mr. Guerra during Mr. Zambrano's first term. The first e-mail from Mr. Fajardo references the puppeteer and the puppet. The second makes a reference to the puppeteer.

Now, let's again assume for argument's sake the Claimants' allegation is correct and that Mr. Guerra is the puppeteer. How far does that get the Claimants? In that event, what are these e-mails saying? Only that Mr. Guerra is representing that he will move the case along until he gets paid. And then as to Mr. Guerra's implication as to who the puppet is, well, that again is all coming from whom? From Mr. Guerra.

It was always in his interest for years to portray himself as influential, to show himself as close to Mr. Zambrano, just as he would say that he had ten years' experience as a job applicant even if he had none.

The bottom line is there is no physical evidence to support the proposition that Judge Zambrano ever acted complicitly with Mr. Guerra. And isn't it strange that there is nothing tying in Judge Zambrano to this alleged agreement? No evidence by the way that he even received a dollar, ever.

But now let's turn to the physical evidence relevant to Mr. Zambrano's second term. Where is the

evidence that Mr. Guerra prepared even a single Providencia during this time period, much less that he got paid for it by Mr. Zambrano? Where is the evidence that the Plaintiffs paid him even a dollar during this second tenure? There are no Draft Orders in his possession. None found on his hard drive. There is, instead, a total vacuum.

And again, where is the evidence that, even if there had been a hypothetical deal, that Judge Zambrano knew about it? There are no exchanges between Mr. Zambrano and Mr. Guerra.

What you saw in Claimants' Slide 45 that I previewed with you a moment ago connecting certain Providencias with the TAME shipments are totally absent during Judge Zambrano's second term. How on this record could it be concluded that this evidence supports a finding that Mr. Guerra prepared even one Providencia for Mr. Zambrano's review during his second term, much less that he was acting on behalf of the Plaintiffs, much less with Judge Zambrano's knowledge and complicity? Again, there is nothing but Guerra's word.

And, finally, let's turn to the physical evidence purporting to relate to the actual writing of the Sentencia. Now, putting aside all that doesn't make sense--and there is a lot: That Judge Zambrano should literally throw Plaintiffs' representatives out of his

office, as Mr. Guerra testified, only to later negotiate a bribe with them.

Two, that Judge Zambrano should be so paranoid about being watched and yet engage in illegal acts in the Quito airport and invite Mr. Fajardo and Mr. Guerra into his apartment to help revise the Judgment, knowing that Chevron's out there with cameras.

Three, that Judge Zambrano should allow Mr. Guerra to be the only person to receive any payments from the Plaintiffs while he would have to wait one day, some day in the future, maybe after the appeals and after the enforcement actions, to receive even one dollar--of course, with no ability of enforcing on such a deal if the Plaintiffs should back out of such an alleged deal.

Four, that Mr. Guerra would be paid a hundred thousand dollars, even though he contributed nothing of value to the Sentencia since all of his suggestions were rejected.

Five, that after making statements for three years, Mr. Guerra for the first time in this proceeding said his electronic exchanges were lost. That was a new one.

But let's put all of this to the side. There is no exchange of money, none to Mr. Zambrano, none to Guerra. We don't have any e-mails between Zambrano and Guerra. We

don't have a draft Judgment on Mr. Guerra's hard drive. We don't have TAME shipments linked in any way to the Sentencia. We don't have diary notes, calendars, daily planners. We have no witness corroboration. And the forensics don't support it.

Claimants point to a September 5, 2010, e-mail. There, Mr. Guerra in a single sentence of a longer e-mail says he would quote-unquote "support the matter" of Pablo Fajardo. We don't know what that matter was. Might this have been in relation to a presentation he might give, an article he might write on the case? Or is this a reference to Mr. Guerra again puffing himself, trying to connect himself with Mr. Zambrano?

And importantly, this was at a time before Mr. Zambrano resumed as Presiding Judge. Whatever it was about, there is nothing in here that shows this is anything more than Mr. Guerra again promoting himself.

And finally, there is the so-called--

PRESIDENT VEEDER: I'm sorry to interrupt.

MR. BLOOM: Please.

PRESIDENT VEEDER: Is that the right exhibit for the heading, Slide 156?

MR. BLOOM: I think this is one of the articles that was written, but I'll check on that at the break.

PRESIDENT VEEDER: Okay, thank you.

MR. BLOOM: And finally, there was a so-called "Memory Aid." As you will recall, however, we took Mr. Guerra through that Memory Aid. It contains a chronology that cuts off nearly two years before issuance of the Sentencia. It does not make reference to the controversies that arose in 2009 or more importantly to the controversies that surrounded Mr. Cabrera in 2010 or the decision of the Court to consider supplemental experts in the fall of 2010.

Nor was this so-called Memory Aid usable for the purpose for which Mr. Guerra allegedly solicited it. Nor does the Memory Aid address any of the allegations made by Chevron in light of the evidence it accumulated in the 1782 actions in the United States during this time period, evidence that was provided to the Court.

Mr. Guerra conceded, as he had to, that he had written articles and made presentations related to the environmental conditions in Ecuador, and that he had written several essays on the subject.

The problem we submit is that this Memory Aid has relevance only if we were to credit Mr. Guerra's testimony. On its face, the Memory Aid is not relevant to anything. Not one sentence of the Memory Aid appears in the Sentencia, and the nature and content of the Memory Aid, frankly, contradict Guerra's claim that it was created and

produced to him for the purpose of preparing or revising the Sentencia.

Now, Members of the Tribunal, I have taken you through this lengthy exercise and I have sought to organize the physical evidence one by one in a manner that I thought was fair and made the most sense in part based on temporal considerations.

This Tribunal may look at the evidence and organize it differently, as it should. But the point of this exercise is actually to take some care to review the so-called "mountain" of evidence, and in the context of the very specific and various and different allegations. We do that because it's possible to find the evidence probative as to one allegation but not others.

We submit that Claimants have been prone, generously stated, to overstatement, and we have said many times Claimants' cited evidence simply does not stand for the propositions for which they are offered. And just like Claimants cobbled together a large volume of document excerpts to try and portray the Government as a co-conspirator in a scheme to defraud Chevron, something Mr. Guerra himself has conceded is untrue, so too Claimants throw into your lap a lot of evidence and say that the sheer volume of evidence overwhelmingly and conclusively proves their ghostwriting allegations.

Let me close my part of the discussion with this. Notwithstanding his early promises of being able to produce quote-unquote "everything necessary to prove a bribery scheme," and notwithstanding his every incentive to provide the Claimants the abundance of evidence they were so happy to pay for, starting price of 20,000, grabbing him by the arm, look, look, at that cash. Money talks. He got the message. And yet even Mr. Guerra eventually had to concede to Chevron at Slide 163 that what he had was "very weak." This amounts to a very weak case.

Claimants cannot plausibly tell you now that the case that Guerra himself conceded was very weak is, in fact, now clear and convincing or conclusive or overwhelming. It is not now, and it never was.

Members of the Tribunal, this would be a good time for our morning break.

PRESIDENT VEEDER: Thank you very much.

We will take a break. We'll come back at quarter to 11:00.

(Brief recess.)

PRESIDENT VEEDER: Let's resume.

We won't delay the proceedings further in regard to the signing of the Procedural Order for the site visit, but there are two matters. One, we just noticed that Annex B, the security protocol, is called the Draft Security

Protocol, and I'd like your permission to cross out draft.

Claimants?

MR. BISHOP: Yes, you have our permission.

PRESIDENT VEEDER: Respondent?

MR. BLOOM: Please.

PRESIDENT VEEDER: In light of that, we're going to ask you to initial the Draft Security Protocol, which is now called the Security Protocol, just to make sure there's no misunderstanding, but I think we can assume that we're there, subject to making further original copies of this site order. So, thank you all very much.

So, Procedural Order Number 36 will be now signed by the Tribunal.

Sorry to hold you up, but let's continue.

MR. BLOOM: To finish our morning session, we will begin with Mr. Goldstein and myself as we will conclude our discussion relating and responding to the allegations of fraud. We will then turn the floor over to Mr. Ewing and to Ms. Silver to discuss the environmental and health issues, and then we will close this morning's session with Mr. Leonard's discussion regarding Track 1B.

MR. GOLDSTEIN: Thank you.

At this point, it may be helpful to ask what remains of the Claimants' case in light of what you've heard thus far from my colleagues. The forensic evidence

does not support that case. The contemporaneous e-mails among the Lago Agrio Plaintiffs' counsel in December 2010, in January 2011, contradict that case. Guerra's testimony is inherently unreliable, and the limited so-called "corroborative physical evidence," does not support a finding of ghostwriting. It is certainly not clear and convincing evidence of it.

So, we come again to Claimants' allegation that the Judgment copies text from the Claimants' allegedly unfiled work product. This allegation, in turn, hinges on the documents in question never having been filed. If those documents were lawfully before the Court, as I said earlier, then their presence in the Judgment is entirely proper, if not even expected.

Mr. Bloom and I have divided this discussion as follows.

First, and primarily by reference to contemporaneous evidence, I will show you that many of the documents in question were almost definitely submitted lawfully to the Court during judicial site inspections. It's obvious that a small Court in the middle of the rainforest simply was not prepared or capable of dealing with a record of this size. That, however, cannot be a denial of justice. Mr. Bloom will then address Claimants' assertion that the official Lago Agrio Record is

searchable. We believe that Dr. Juola demonstrated during his testimony that it is anything but.

Let's begin with the Fusión Memo.

The Tribunal will recall that the Plaintiffs presented oral argument at the Aguarico 2 Judicial Inspection in June 2008 that precisely tracked the structure of the Fusión Memo and that the Memo's exhibits appear in the Court Record for the same day.

The photos on this and the next four slides are screen shots from a video recording of that Judicial Inspection, and they capture the Fusión discussion.

During our Opening Statement, and again during Dr. Juola's cross-examination, we also reviewed a number of errors in the Lago Agrio Record for that specific day, including unnumbered pages and pages dramatically out of order. Although errors such as this prevent determining with certainty what other documents may have been filed that day, it is logical to infer that the memo accompanied its exhibits into the record.

But that is not the full extent of the evidence here. In November of 2007, Mr. Sáenz e-mailed his co-counsel explaining, "colleagues, here's the first version of the famous merger memo." In response to Mr. Donziger's question, "the idea is that this is the only document we file?" Mr. Sáenz replies, "this document along

with all of the attached documents that it mentions."

In other words, the Fusión Memo and its exhibits.

As to the Plaintiffs' specific intent to file the Fusión Memo and its exhibits at Aguarico 2, on June 9, three days before the inspection, Mr. Sáenz sent Mr. Donziger a list of the Fusión Memo exhibits for "Thursday's inspection." Less than 15 minutes later, an intern followed up by sending Mr. Donziger the Fusión Memo itself, referred to here as Mr. Sáenz's "memo on the fusion/merger."

That same intern then e-mailed Mr. Donziger after the inspection confirming that, "Julio presented a PowerPoint presentation about the merger to the Judge." I.e., that the fusion discussion had occurred as planned. At that point, having submitted the memo and its exhibits to the Court, the Plaintiffs' legal team stopped discussing it.

Next, let's consider the evidence with respect to the Clapp Report. In 2006, the Plaintiffs asked Boston University Professor Richard Clapp and his team of researchers in the United States to draft a report exploring the link between the release of oil contaminants and adverse health effects. They did so for the express purpose of submitting it to the Lago Agrio Court as a health annex. On November 10, 2006, the Clapp Report was

substantively complete; and, as this e-mail demonstrates, Mr. Donziger was intent on having Professor Clapp read and sign it so the Plaintiffs could file it with the Court "on Tuesday." The process of getting signatures caused a delay, as evidenced by e-mails available at R-1010.

On November 28, 2006, one the authors e-mailed his signature pages to Mr. Donziger, who then asked an intern whether it might be possible to coordinate having all of the authors signing on the same page. As the intern's response on this slide indicates, at that point the Plaintiffs, "were in no rush since the translation hasn't been finished and inspections"--that is, judicial inspections--"won't be back on until next year."

Accordingly, that next year in early January 2007, Mr. Donziger wrote to Mr. Clapp that, "For logistical reasons, we still have not turned in the health annex to the Court. There were some last-minute changes that changed our certified translated copy which caused a SNAFU with the translator. We will turn it in at the next inspection, which might be in a few weeks."

Accordingly, the Plaintiffs most likely submitted the Clapp Report at one of the two next Judicial Inspections. Indeed, why ask for and obtain the signatures of the three authors if the Report were not to be used as a court submission?

Also, no e-mails countermand the Plaintiffs' express intent to file the Clapp Report, yet Claimants contend that the Plaintiffs changed their mind, and decided instead of filing the report to copy part of it into Annex K to the Cabrera Report. But the evidence doesn't support that supposition. For one thing, in October 2007, Mr. Donziger sent the Clapp Report to Doug Beltman and Ann Maest at Stratus with the subject, FYI, health annex in case, reflecting his understanding that the Clapp Report was in the case, that it had been filed with the Court.

And the next month, in November, the Plaintiffs included the Clapp Report with a mediation statement they submitted in their effort to settle the case. This is significant because as the mediators' agenda indicates, "Each side should assume that all others present and I are familiar with the details of the Parties' litigation, as well as with the mediation submissions that have been submitted."

It makes no sense that the Plaintiffs would have cited to the Clapp Report and materials with which Chevron was presumed to be familiar if, in fact, they had decided not to file it, but instead to hold on to it for purposes of ghostwriting a Cabrera Report annex that itself would not be filed for another several months.

PRESIDENT VEEDER: Sorry to interrupt you, if it's

10:59 a convenient moment. Could you just take us back to Slide 168, and that's the film, R-530 on the Fusión Memo exhibits. Do you have that in front of you?

MR. GOLDSTEIN: I will shortly, yes.

PRESIDENT VEEDER: The document on the right, what is that document, and what is the reference to that in our evidential file?

MR. GOLDSTEIN: The document on the right is one of the exhibits to the Fusión Memo, and I can come back to the exact--it is also in R-530.

PRESIDENT VEEDER: The Fusión Memo itself we have is C-2118. Is that in this film at R-530, or does this film simply show, according to your case, the exhibits to the memo?

MR. GOLDSTEIN: The film obviously shows only the exhibits.

PRESIDENT VEEDER: Thank you.

MR. GOLDSTEIN: When considering, if we could return to the 176.

When considering this contemporaneous evidence with respect to documents such as Fusión and Clapp, we must reiterate that during the Lago Agrio Litigation, documents were properly filed with the Court, but inadvertently not logged into the official record including, and perhaps particularly, at Judicial Inspections. As Mr. Guerra

11:00 confirmed, however, submitting evidence at Judicial Inspections was entirely proper. He was asked, "and when the Court is conducting a legal proceeding outside the courthouse, may Parties submit documents to the Court at that time?"

He responded, "If it is, for example, a Judicial Inspection, it is acceptable to submit and receive by the Judge of the case."

Yesterday, Claimants mocked as, "an opportunistic any port in the storm defense," the Republic's explanation that docketing errors and lost filings render it impossible to know with certainty what documents were or were not filed. That's at Transcript Page 2492. Claimants wondered, "why Ecuador could possibly believe that's a defense." Well, it happens to be the absolute defense of truth. We know it, and Claimants know it.

For example, one of Chevron's experts, Dr. Kelsh, had to rerecord his Lago Agrio testimony because Chevron discovered that the Court had lost the first version after it was submitted at a Judicial Inspection. As you can see from Dr. Kelsh's deposition in his own words explaining why he had to rerecord his testimony, he says, "It was my understanding, I was informed by Chevron, that the Court lost the first version."

And there is also evidence of legitimate sources

11:02 for other documents that Claimants label as unfiled Plaintiff work product. Consider the index summaries. Claimants still have not demonstrated that the Plaintiffs even created the index summaries in the first place. It's undisputed that the Court maintained its own summaries of documents in the record--here is a court employee pointing to one such index on the Court computer.

Moreover, as is evident from this comparison of the so-called "January Index Summary" to the indexes found on Zambrano's hard drive, the documents are substantively identical; simply, one is printed with grid lines, the other is not. Not only that, but the forensic evidence indicates that the index summaries were Court documents.

Table 2 of Mr. Lynch's August 2014 Report demonstrates that the index summaries found on Mr. Zambrano's computer have a create, date and time of January 6, 2011, at 11:38 a.m., and Table 23 tells us that a USB drive was connected to Mr. Zambrano's computer one minute before the index summaries were saved on to his hard drive.

Additionally, we know that the USB drive with the indexes, the serial number of which ends 16E3, has a volume name of Mariela. That is most likely the Court Secretary, Mariela Salazar, who quite properly would have been providing Judge Zambrano with the Court's own docket

11:03 indexes. Mr. Lynch agreed that there is a strong inference that she did so.

Even if the index summaries were not originally Court documents, there is evidence that they were lawfully submitted to the Court. In his initial Declaration, Dr. Juola concluded, "To a reasonable degree of scientific probability," that there was no evidence of the index summaries in the record. Yet when he later searched CDs that were part of the record, he, in fact, found, "ten instances of overlap." He missed this evidence at first; and as Mr. Bloom will explain later, his analysis suffered from many additional flaws.

Let's turn next to the Selva Viva Database. There are several explanations as to whether or how the data reflected in that database may have formed the basis for calculations in the Judgment. For one thing, a number of filings in the record contained data denoted with the infamous "sv" suffix. Here are some examples, and I will represent to you that there are many more.

The Plaintiffs also provided data to Ecuador's Ministry of the Environment as evidenced by this letter at R-1526. And both the Parties and the Court requested and received publicly available information from the Government during the Lago Agrio Litigation.

R-1527, the document on the left, is a letter from

court-appointed expert Barros to then-Judge Núñez requesting that an official letter seeking data be sent to the National Hydrocarbons Directorate and to Petroproducción. R-1528, the document on the right, reflects the Ministry of the Environment providing data to Judge Zambrano. Both of these documents were filed in Lago Agrio.

Additionally, Claimants submitted evidence suggesting that Mr. Connor submitted data to the Lago Agrio Court on CDs at Judicial Inspections, CDs that were later damaged or otherwise rendered unreadable. We cannot know whether the Plaintiffs also made similar submissions that were lost or damaged.

Finally, as you heard not long ago, Mr. Ewing, an internet cookie in his former life, successfully replicated calculations made in the Judgment using Chevron's own data. Mr. Lynch never attempted to do that. In light of these various possible sources, Claimants cannot be credited with having proven that the Lago Agrio Court relied on an unfiled data compilation from the Plaintiffs.

And I would also point out that we don't know how many of Chevron's pleadings may have been copied into the Judgment. Dr. Leonard did not perform any analysis to determine whether the Sentencia included submissions or excerpts of Chevron's filings, and thus does not know

whether the Judgment also copies from them.

Similarly, unlike Chevron's success with Section 1782 discovery actions aimed at Mr. Donziger and others, the Republic does not have Chevron's internal documents so we cannot, for example, check those against Judge Zambrano's RICO testimony that he received documents labeled, "courtesy of Chevron," nor can we check them against the Judgment itself.

This is certainly not to suggest that Chevron ghostwrote the Judgment, but rather to point out that both Parties made voluminous submissions to the Court any of which may well be incorporated into the Judgment but cannot be located now in the record.

It's also worth returning to the fact that Mr. Donziger was forced to turn over all of his electronic media to Chevron well before the Judgment issued.

He provided two external hard drives, two laptop computers, and a desktop computer which were forensically imaged in September of 2010. He then provided additional media which were imaged in January 2011, all of which is to say that Chevron had Mr. Donziger's electronic media at least one month and in large measure five months before the Judgment issued. And, in fact, Claimants found the very documents they claim were unfiled yet appear in the Judgment on the Donziger media, which means the Plaintiffs

would have ghostwritten the Judgment using documents they knew were unfiled but that Chevron then possessed.

On the first day of this Hearing, at Page 156 of the Transcript, Professor Paulsson stated that, "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."

Had the Plaintiffs indeed ghostwritten the Judgment using documents they had already turned over to Chevron, then, in fact, their fraudulent judgment would be yelling from the rooftops. Anything but secret. Doing so would have made no sense.

I raised this same disconnect in our Opening Statement. Why would the Plaintiffs risk billions by engaging in such self-defeating behavior? Claimants have provided no answer. You did hear yesterday about Claimants' expert Gerald McMenamin, who purported to conclude that the Judgment had multiple authors, of which Judge Zambrano was not a significant one, based on an analysis of so-called "style markers." As applied in this case, however, Professor McMenamin's analysis is more probative of multiple typists than of multiple content generators. The style markers he chose to analyze,

including spacing and punctuation placement, would rest with the discretion of a typist and would not have been conveyed in dictation.

Mr. Guerra himself provided an illustration of the problem of the Lago Agrio Court being subjected to such a huge record in his discussion of the stamps placed on official copies of filed documents.

He says: "In the Oriente Region, different from in the capital, we are talking about places that are not very sophisticated."

Eventually, with enough time, we may well find the filed copies of each document Claimants contend was not filed. At this point we can say with moral certainty that some of them were, but the fact that we have not yet found the rest is not evidence that they were not. With each document we source, Claimants' hypothesis becomes less plausible. And with your permission I will now return the floor to Mr. Bloom to explain why the Tribunal cannot rely on Dr. Juola.

ARBITRATOR GRIGERA NAÓN: Excuse me, Mr. Goldstein.

MR. GOLDSTEIN: Yes.

ARBITRATOR GRIGERA NAÓN: Could you go back, please, to your Slide 165. You are there? On the right-hand side there is this document, apparently it's a

notarized document concerning the submission of a certain number of documents. I was looking at the document, according to the reference R-530. I don't see anything behind it. I only see the cover. And when I look at the cover, English translation, it says, "Attachment 01 copies." So, could you explain us what does this document mean?

MR. GOLDSTEIN: I'm told that this is the notarized copy, but we have since updated the exhibit to include--updated the R-530 exhibit to include the underlying Fusión Memo exhibits that were also filed.

ARBITRATOR GRIGERA NAÓN: Apparently I have just been told that if you slide it sideways, you'll find some content, but I was doing it the other way, so this is a notarized copy; there is a stamp and there is a numbering on it. What does it mean? There is a stamp saying Corto de la Superior de Justicia, and there is a numbering that seems to be a pagination.

MR. GOLDSTEIN: Sure. The stamp is, as we discussed with Dr. Juola, among others, essentially, the certification that the document was filed in the Lago Agrio Litigation and received officially by the Court, and I presume you were referring to the handwritten numbers in the upper right?

ARBITRATOR GRIGERA NAÓN: Yes.

MR. GOLDSTEIN: Those are the Foja numbers, the page numbers of the Lago Agrio Record.

ARBITRATOR GRIGERA NAÓN: Thank you.

PRESIDENT VEEDER: Sorry to belabor this point, but just to confirm, that that's the updated Spanish version of R-530, which was submitted in this arbitration, it seems, on the 10th of April, 2015?

MR. GOLDSTEIN: That sounds right. We can double-check, but that sounds correct, yes.

PRESIDENT VEEDER: But these are the Fusión Memo exhibits?

MR. GOLDSTEIN: Yes, sir.

PRESIDENT VEEDER: They still don't include the Fusión Memo itself that we have at C-2118?

MR. GOLDSTEIN: That is correct.

ARBITRATOR GRIGERA NAÓN: I understand from what Mr. Doe is telling me that you found those exhibits, or whatever exhibits there are in the Spanish original but not in the English version; is that correct? Or vice versa?

So the cover are both in English and Spanish, but the rest of the documents that would be attached to this are only in the Spanish version. That's what I understand.

MR. GOLDSTEIN: That may well be correct. Yes.

PRESIDENT VEEDER: Sorry for interrupting you, but we can sort this out in a few minutes, but if we left it

after tomorrow, it would take us a week.

MR. GOLDSTEIN: I'm at your disposal, Mr. President. That's not a problem, and obviously neither Dr. Naón nor I were cookies in our former lives.

PRESIDENT VEEDER: Another non-cookie.

MR. BLOOM: While Mr. Goldstein focused on the available contemporaneous evidence to show that the Plaintiffs almost certainly filed openly and transparently certain of their internal work product, including the Fusión Memo, we believe, and the Clapp Memo, regardless of whether they ever got logged into the official Court Record, I want to spend the next few minutes addressing Claimants' contention that the hard copy Lago Agrio Record is searchable in the first instance. It is not.

Putting aside all of the data on CDs and DVDs, we are still talking about 217,000 pages that would stretch miles and miles and miles from here to almost Baltimore, and if the pages were merely stacked one on top of one other another, it would be close to seven stories high. In clear recognition of what is truly the impossible human task to search the record, Claimants elected to retain the services of Dr. Juola and asked him to analyze and electronically search the OCR version of the record.

Now, his Report suggests that his was a systematic scientific approach not only capable of finding any passage

in the record, but that it could do so with scientific certainty. His words. And if you have as little technological background as I do, you would have presumed the correctness of his opinions upon reading them, but the reality has proven far different.

Mr. Juola's opinion and the opinions of Mr. Lynch and of Mr. Leonard, because they both relied on Mr. Juola, are dependent on the OCR process and more particularly on the quality of the OCR images.

Claimants represented that the OCR quality of the record was excellent. That's their word from Dr. Juola's opening presentation. And in his direct examination, Mr. Juola testified that, "the OCR was extremely high quality overall." He added that, "about 98.5 percent of those documents contained what we considered to be high quality Spanish."

In fact, you will recall that I showed him many, many documents where the OCR was gibberish or as he called them gobbledygook. We also found just as many documents that turned out blank, only a subset of which did we offer during his testimony, though the Tribunal can review R-1545 to see more.

More importantly, Dr. Juola is not--not--in a position to say that these were aberrations, and let me explain why.

While Dr. Juola and Claimants fall back on Dr. Juola's statistical analysis, and we heard this from Ms. Mouawad referring to these localized errors, for the conclusion that the OCR was of high quality, it is precisely his statistical analysis that I want to focus on because it proves that his analysis is, in fact, inherently unreliable and that the record is not searchable. I encourage you to read his Appendix A to his 2013 report. It makes clear what he did and what he did not do.

Most importantly, he did not compare the OCR version with the original Lago Agrio Record:

"QUESTION: You never determined the error rate by directly comparing the OCR version to the original version; correct?

"ANSWER: I did not.

"QUESTION: You, instead, compared the OCR version to the Spanish corpus; correct?

"ANSWER: That is correct."

What did he do instead?

"QUESTION: You're looking to see whether the letters follow one another in the same approximate percentage as the Spanish corpus?

"ANSWER: That is correct.

"QUESTION: So, this exercise is premised on the assumption that statistically significant

differences between character strings in the OCR version of the Lago Agrio Record and the Spanish corpus might indicate a problem?

"ANSWER: That is correct."

In light of this, and to achieve utter clarity on this point I asked him:

"When you referred to error rate right now, are you referring or including text that's missing entirely?"

"No, I was not," was his answer.

Now, at Paragraph 88 of his 2013 Report, which is part of his Appendix A, he readily concedes that 10 percent of the documents contained in the Court Record were unusually difficult to analyze and are not reliable. But that is only the starting point. We begin with 10 percent, and if we do this in pages, and if the law of averages work, he's referring to more than 21,000 pages. And again, that's the starting point because the error rate was entirely dependent on how well the non-missing OCR text matched up to the Spanish corpus in terms of what letters followed what letters.

He ignores for purposes of determining error rate all of the blank documents. In his own words, he conducted a "frequency analysis," and that frequency analysis simply did not take into consideration the missing pages.

He tells us, though, that he also conducted a hand-review. Yes, his scientific OCR review was so perfect that he chose to hand-review some 150,000 pages of the record.

Now, to be clear, he owned up to a hand-review of 100,000 pages in his testimony. His Appendix B shows that he actually tried to hand-review about 150,000 pages. Let's discuss this hand-review.

By the way, I found out, it was interesting that there was only one paragraph in his Report making allusion to the hand-review because the very purpose of his Report was to say we can scientifically determine that these documents are not in the record. They recognized that this is not truly searchable by a person by hand.

Mr. Juola did not hand-review the originals of most all of the blank documents. Why not? Because his statistical analysis did not consider the missing text that constitute errors for his purposes, as he conceded. The primary candidates for hand-review were not based on the extent of missing text, but instead it was based on a statistical analysis comparing documents to the Spanish corpus.

So, he reviewed those with the high volume of character errors, but did not generally review the originals of documents that did not come out at all in his

OCR analysis.

Now, keep in mind that we received his hard drive only one week before his cross-examination. We didn't come close to reviewing with the care we would have liked to most of the OCR versions that he allegedly relied on. In a quick scan of the last 10,000 pages that were provided to us after he testified seems to show more of the same. When pressed at the conclusion of his cross-examination, he conceded he would not be surprised to learn that there were many additional blank documents resulting from the OCR process. Indeed, there are.

As to his hand-review and putting aside how accurate any hand-review could be, he did not conduct a hand-review for all of the so-called "plaintiffs' internal documents." In cross-examination he testified that he reviewed only four, all from the Fusión Memo, a document we believe was filed at a judicial site visit. But Dr. Juola did not look for any other passage or for any other document.

What makes matters even worse is the lack of clarity or reliability of how the process was even conducted. He concedes that he's not an expert in OCR. He has no idea what controls, if any, were placed before he retained the documents, and he could only guess as to the reasons for some of the errors that we all observed. He

attributed the blank documents, the gibberish, to low quality copies. It doesn't matter that the Fusión Memo, for example, was machine-printed. The question was what kind of copy? Or what he refers to as salt and pepper on the page or where the text was too light or too dark or where there were Court Seals or handwriting. Some of the copies that turned out blank were, at least to my naked eye, fairly to moderate to high quality, and I refer you only to his binder and assess for yourselves. And I will, in fact, try to get glasses after this Hearing. But at times he also referred to human error, perhaps in the scanning process.

He also hypothesized in another instance that it could also simply have been printed on a bad or old model printer that did not print very well.

Interestingly, he also acknowledged that storage conditions can affect the OCR quality. Perhaps not comprehending that the non-air-conditioned Lago Agrio Courthouse where these documents were stored was in the middle and sits in the middle of a rainforest, he offered, if you're keeping it in an unair-conditioned room in a humid climate," he says that will be better than maintaining the documents in a shower. So, we are now one step up from leaving documents in a shower.

Mr. Juola's bottom line is that "bad OCR will have

an error rate of about 5 to 10 percent," and yet in the short time we had together he acknowledged that there were many, many documents with a substantially higher error rate than his 5 to 10 percent.

And because his statistical analysis did not consider missing pages as errors, and because he never calculated the number of missing pages resulting from the OCR process, we are left with no scientific or factual basis on which to draw reliable conclusions from his work. And again, I simply refer you to his Appendix A to draw your own conclusions.

The fact that we received just last week nine, 10,000 additional pages that he purportedly reviewed is more troubling. Each of these pages is a one-page TIFF image. While that comports with what he said in his Report, the other 200,000 or so pages from his original hard drive were not, and that's inconsistent with his Report. Let me just give you one example, I think it's a very important example, of exactly how unreliable the OCR process and hand-review have been in this case.

You will recall that the Republic represented a number of times that we did not believe that four of Chevron's 39 motions filed on October 2010 were in the record, clearly both Parties had been looking for them for a very long time. You will recall that Chevron found these

four motions, albeit grossly misplaced, at the start of this Hearing. That it took them two and a half years with their resources, notwithstanding the OCR capabilities, notwithstanding hand-reviewers. I submit establishes that the process of trying to locate documents is not possible and is not reliable.

Now, before we close this discussion, I wanted to address one of the Tribunal's questions, namely that of adverse inferences resulting from the Republic's alleged failure to produce at this Hearing certain witnesses, including Judge Zambrano, Ms. Calva, Mr. Donziger and Mr. Fajardo, presumably among others over whom the State has no control.

Now, to be clear, Claimants cited to no BIT case, and we have not discovered any, that has ever imposed adverse inferences on a party for failing to produce a witness at an evidentiary Hearing. But, second, with respect to those common law jurisdictions that have applied the doctrine of adverse inferences, in each case, the Court or Tribunal or the Party through the Court or Tribunal, had subpoena power to compel the Witness to attend. This Tribunal does not have subpoena power. The Republic did not have subpoena power. That is absent here. Ecuador had no ability to subpoena or otherwise compel any witness to participate against his or her wishes.

Third, in those same jurisdictions, an Applicant seeking adverse inferences, not only had to have the power to compel the Witness to attend, but also had the burden of showing substantial prejudice, something absent here because the Claimants had the opportunity to depose Judge Zambrano for a couple of days in New York and call him for cross-examination for several days in New York, and I think they deposed, lest I remember, Mr. Donziger at least 17 days.

We have--it is the Republic, I would submit, that has been ultimately denied the opportunity to obtain evidence in response and will I also remind the Tribunal of what I said earlier, that we had brought to this Tribunal's attention last year that we were reaching out to the Plaintiffs' Expert Witnesses who were willing to provide Witness Statements, and they would not provide Witness Statements only because we would not in return give them an indemnification agreements. Would anyone in his right mind want to risk making itself an enemy of Chevron's war machine? They squeezed Stratus writing letters seeking debarment so that they might lose Government contracts. They wrote letters to its clients. They helped put Patton Boggs out of business. Who wants to take that on. Trust me when I say we made efforts to reach out to people during the course of the last couple of years, and too many times

we were shut down, and too many times it was attributable to the conduct of the Plaintiffs.

Inferences made adverse to the Republic in circumstances where the lack of cooperation is due to the conduct of the other Party, I would suggest, would do no equity. It would not be appropriate.

A few comments about Mr. Zambrano in particular, Claimants suggest that we were ordered to produce him. Of course, that's false. We agreed to convey the Tribunal's invitation only, and Mr. President, you repeatedly confirmed my understanding every time I corrected the Claimants. Further, Claimants cite to no law for their assertion that the Government somehow controls Mr. Zambrano or any person merely because he works for a company in which Petroecuador has a majority ownership interest.

And finally, not only did we not have the power to compel his presence, but frankly it would have been inappropriate for the Government or any party to actually bring pressure on any judge to appear or discuss his decision-making process. He chose to do so in New York. He chose not to do so here. But, frankly, it is not up to the State to be twisting arms, most especially where, as here, Claimants' principal allegation for years has been that "Ecuador controls the judiciary."

Here is the reality that we find ourselves. We,

like you, are playing detective. We have used the rights under Section 1782 to try to discover evidence. We put together timelines, we've conducted our own investigation. But the idea of placing burdens on the State's representatives, that are neither practical nor consistent with the fundamental proposition of both judicial independence and the independence of the State's citizens to make their own choices, would itself constitute grave error.

So, let me conclude this part of the presentation with this: We all recognize the Claimants' high burden of proof, however it is articulated. This is not a case that can or ought to be decided on people's testimony years after the operative events. It really needs to be decided on the physical and contemporaneous records. The forensics evidence, we submit, is powerful evidence that Judge Zambrano, in fact, wrote the Judgment. The December 2010 and January 2011 contemporaneous e-mails constitute powerful evidence that the Plaintiffs had no involvement in the writing of the Sentencia. The Plaintiffs' contemporaneous e-mails during the site visits constitute critical evidence demonstrating their absolute intent to submit much of the so-called "Plaintiffs' internal work product."

Members of the Tribunal, the most probative

evidence in this record tends to show that the Judgment was written by Judge Zambrano without the involvement of Plaintiffs.

And just for a moment, I want to return to Mr. Guerra's testimony, and I wonder if anyone else caught this in what surely appears to be the classical Freudian slip. He says at Transcript 775, "Judge Zambrano, at a given point in time has stated that in the reasoning that he provided." Mr. Guerra at Transcript 775.

I will now turn the microphone over to Mr. Ewing and then Ms. Silver, they're going to discuss the propriety of the Judgment on the merits, which belies Claimants' claims that the Court's conclusions of fact could have only been the result of fraud. To the contrary, the record evidence makes clear that the Lago Agrio Court properly found Chevron liable for the contamination and the risk to human health from that contamination.

PRESIDENT VEEDER: Could you wait one minute.

(Tribunal conferring.)

PRESIDENT VEEDER: There is one question we've raised now but you can come back to it later. You've dealt very thoroughly with Dr. Juola's written and oral evidence. It would be useful if we could hear the Respondent's submissions on the statement, I suppose, of Mr. Hernandez of Morningside Translations. That was not developed, I

think, earlier at this Hearing, but it was referred to yesterday by the Claimants as to what the effect of that evidence would be on the submissions you made in regard to Dr. Juola's testimony.

MR. BLOOM: I could give you a very quick response now. The very reason, we submit, why Claimants brought in Mr. Juola is that they understood that you could not do a thorough hand-review at all. So, that's Number 1.

And Number 2, even Morningside, even in their review, if you read it, they did look at a number and found a number of overlapping sentences, but I think that the primary point is that, I think we all--we certainly recognize and we believe the retention of Dr. Juola recognizes that you absolutely cannot do a hand-review and expect to do it with any level of confidence.

PRESIDENT VEEDER: So, why do you say it is so difficult, from your side? Because human beings can miss text or misunderstand text, or something more?

MR. BLOOM: Well, I think, if you're talking a 20-page document but not when you're talking a 217,000-page document.

The other thing I think is interesting is the reviewers were bilingual reviewers, and Mr. Juola, you may recall, testified it's harder when you speak that language. So, it even made it more difficult for those reviewers to

accomplish such a task, at least with any level of confidence.

At the end of the day, we really have two different issues. The first issue, Mr. President, is, we believe that sloppiness by the Court is not a denial of justice. We believe that there is substantial evidence, especially at the site visit, that documents, CDs, taped videos were provided to the Court openly and transparently but never made part of the record. So, that's half of this. I mean, you lose one CD, you don't know how many documents you're losing on that one CD.

But the other part of it--and I am now referring back to the four Chevron motions filed in October 2010: Surely, they looked for it, we looked for them, they looked for them. We looked for them by hand. We obviously didn't find them in two-and-a-half years, and they certainly didn't find them, whether by hand or by OCR.

Yeah, humans have a lot of difficulty, I think, especially--by the way, when you look at the number of passages. We tried this exercise internally, try to look for X number of passages in the course of 217,000 documents, and I submit it's not very reliable at all.

So, there are two sides here, and we don't believe that either of one of them is reliable.

PRESIDENT VEEDER: Thank you very much.

Mr. Ewing.

MR. EWING: I want to start from this Tribunal's question which boils down to: Why is the environmental case relevant at all? First, for easy reference, I would refer you to our several explanations of this question in our submissions.

PRESIDENT VEEDER: It wasn't quite as blunt as that, please. You're simplifying.

MR. EWING: I recognize I'm definitely simplifying.

But let me take a few minutes to provide some broader context, especially insofar as this may assist the Tribunal as we prepare for the site visit in June and to help you better understand the presentations that both Parties have put on these last three weeks.

Yesterday, Professor Paulsson said that the single purpose for the environmental case is to vindicate Claimants' denial-of-justice claims. But I believe that is not correct, and there are at least four primary reasons why the environmental case is relevant. And I would like to direct you to the first sentence of Claimants' first Merits Memorial to show you why Professor Paulsson is wrong.

According to Claimants: "This singular investment dispute arises from an unprecedented, fraudulent, and

corrupt campaign of legally and factually baseless civil litigation and bad faith criminal prosecution." Claimants have based both their Treaty and denial-of-justice claims on the conclusion that the Lago Agrio Judgment is "factually baseless" or, in their latest formulation, "a factual absurdity." This is the first point of relevance. We have undertaken to show you that the Lago Agrio Judgment is not a factual absurdity.

To the contrary, it is well-founded and reasonable and thus is not a basis for breach of the Treaty or of customary international law.

Second, Claimants have accused the Republic of launching a bad faith criminal investigation of nine individuals, including two Chevron attorneys. However, there is more than ample evidence suggesting that material misrepresentations to the Government had been made in respect to the 1995 to 1998 remediation. While the criminal investigations were eventually dismissed, the Republic had the right in this proceeding to prove that those investigations were not initiated in bad faith or by collusion, but instead were based on information that the representations regarding remediation compliance may have been falsified.

Third, the environmental case is relevant because it allows the Tribunal insight into Chevron's litigation

practices and unclean hands. Chevron went to great lengths to hide contamination from the Lago Agrio Court and the world, and now they've extended that effort to this Tribunal.

Fourth, even in the event that the Respondent were responsible for an international wrong, no party can obtain relief that would put it in a better position than it would have been in the absence of that wrong. In this regard, Chevron cannot obtain a declaration of non-liability if it is actually liable.

My colleague, Mr. Bravin, will discuss this more this afternoon, but the bottom line is that any remedy for any international wrong must take into consideration the extent of Chevron's actual liability.

Our case is very simple: Is there pollution in the Oriente? Is some of that pollution attributable to TexPet? And is the RAP a defense? And having found after that discussion that there is undoubtedly pollution in the Oriente and that at least some of it is attributable to TexPet, I will touch on the fact that TexPet can be held liable for the whole subject to a right of contribution under the principles of joint and several liability.

Next, Ms. Silver will address the health risks faced by the people of the Oriente.

And, finally, I will address the reasonableness of

the categories of damages awarded in the Judgment.

As you've heard over the course of these proceedings, TexPet operated in the Oriente from 1972 to 1990, and continued as part of the Concession until 1992. Yesterday, Claimants stated that it is "impossible to go back and reconstruct what the conditions were in the Oriente." I beg to differ. Immediately after TexPet's departure, two audits were conducted. These audits, by HBT Agra and Fugro-McClelland, mere months after TexPet's departure from Ecuador, paint a stark picture of oil seeping out of pits into streams, and oil overtopping pit walls and migrating into the surrounding environment and otherwise significantly impacting the environment.

You have heard from LBG this week of how they still find TexPet-caused contamination, but we will address that aspect of this case more during the site visits.

As a historical note, it was while these audits were being conducted and completed that the Aguinda Plaintiffs first filed their complaint in the U.S. Courts.

So, the question is: Does this contamination still exist? Mr. Connor would like you to think no. Mr. Connor visited Sacha 18 in 2004 and declared that proper remediation by TexPet of Pit 2 was confirmed. But Mr. Connor's superficial review then of the site was far from accurate. When Chevron's secret sampling team came

back a year later to conduct more in-depth sampling, they found liquid crude oil at depth in this RAP-remediated pit. Let me show you this video.

(Video played.)

MR. EWING: We have Chevron's representative, Rene Bernier, noting that they were looking for clean samples and surprised at how deep the oil was found. The results from this sampling showed that this allegedly remediated pit was definitely not remediated.

There are hundreds of other examples where we can show you that TexPet-era contamination is still present in the Oriente, and we will show you more of this during the site visits in four weeks.

You heard Dr. Garvey explain that the data shows the contamination in the Oriente is massive. In reply, Claimants point to samples taken at Sacha 13 and claim they're from a recent Petroecuador spill and, therefore, that Dr. Garvey's analysis must be wrong. As Dr. Garvey tried to explain, that isn't how statistics work. But if we engage the argument, we see that it suffers from factual errors.

First, the samples Chevron points to are from at least a meter below the surface, not surface samples evidencing a recent spill.

Moreover, as this list of spills from TexPet-era

shows, any recent spill by Petroecuador is just adding insult to injury. Claimants' criticism are like many of their criticisms. No scientist, except those who have worked for Chevron for 30 plus years can ever get anything right, but Dr. Garvey's estimate of the amount of oil in and around TexPet pits is the same analysis that Dr. Garvey has routinely performed for multiple U.S. agencies and courts. As Dr. Garvey explained, he estimated the inventory of toxic chemicals and sediment along 200 miles of the Hudson River in New York, 16 years after his estimate and more than a billion dollars later, remediation is just about to finish. His estimate, using the same techniques as brought to bear here, was off by only 10 percent.

So, if we give Claimants the benefit of the doubt that they are right, we don't have the equivalent of six Exxon Valdezes, we have 5.4.

So, the next question: Is the RAP a defense? The simple answer is no. This Tribunal has already decided in its Track 1B Decision that the RAP does not apply to individual claims brought by the Plaintiffs as one tortfeasor against the other. Despite the fact that this question has already been answered, Claimants continue to rely on the RAP. But the RAP did not address Plaintiffs' injuries for at least three reasons:

First, the analytical results used during the RAP to test remediation were fatally flawed. As Mr. Connor testified, the weathered Crude tested during the RAP was incapable of violating the TCLP standard. We know that the TCLP test was not measuring actual conditions because TPH tests conducted simultaneously showed significant exceedances of any possible standard, the Judgment standard, current Ecuadorian standards, the later revised RAP TPH standard, and even Chevron's "international standard" they used during the Judicial Inspections.

Second, the RAP only included a small portion of the impacts caused by TexPet's operations. As I've already addressed, and Claimants have pointed out, numerous open pits, including the open oilfield pit at Shushufindi 55, were left unaddressed by the RAP.

Additionally, there are numerous undocumented pits, like the ones shown here at Lago Agrio 6, which was a RAP site. While the pits were evident in 1985 in the picture on the left, as you can see in this 1990 photo, the pits are gone and were left undocumented by TexPet. And only one pit was found and remediated during the RAP. Therefore, because no one even knew that they were there, the rest of the pits were left unremediated. Examples like this abound.

Third, the determination for when a closed pit

needed remediation was inadequate to address the pit's condition. Dr. Hinchee testified that oil contamination is not always visually observable at the surface, yet he explained that RAP cleanup was required only if there is visually observable contamination. This is the definition of a superficial cleanup. And even in cases where more than just visual observations were made, the analytical data was often merely one sample in the pit with no additional samples down-gradient to account for seepage out of the pit. Therefore, it is clear that the RAP is not a defense.

All of this evidence of contamination exists despite Chevron's attempts to conceal it from the Lago Agrio Court. Mr. Connor testified in this proceeding that he and the other Chevron Judicial Inspection Experts were, "not assistants to the Judge" and "did not feel within a directive of the Court or ethically an obligation to report non-risk conditions."

However, Mr. Connor testified the opposite in a different matter. Under oath, he described himself as a "special assistant to the judge," even though he got paid by the Parties.

Similarly, in another proceeding, Mr. Connor testified under oath that the JI objectives were to collect samples to answer certain questions, and those questions

involved a complete characterization of the site from an environmental perspective.

Mr. Connor described this complete characterization as "investigating all components of the site, which included whatever pits might be there."

But what we know now from the 1782 discovery actions is that Chevron's Judicial Inspection Experts intentionally omitted known TexPet features in their Reports to the Court.

On the left in this slide, you can see Chevron's Pre-Inspection map of the pits at Sacha 13. On the right, you see the map they presented to the Lago Agrio Court. They failed to disclose three of the pits that they knew were there. This is not the complete characterization Mr. Connor described. This also happened repeatedly, and we will also discuss it more during the site visit.

The Lago Agrio Court had before it years of visual, testimonial, and analytical evidence. Using that evidence, the Lago Agrio Court sought to calculate the costs of remediation. As it asked the Settling Experts at Sacha 53, the Court sought to know "the net benefit that the persons possibly affected can gain from carrying out any mitigation matters."

The Court asked this question to determine whether, as the Plaintiffs requested, there could be

individual benefit from the "performance of all such works needed to restore the natural characteristics and features of the soil and surrounding lands prior to the damage in the crude oil pits opened by Texaco."

In these proceedings, you have heard Claimants' Experts and counsel opine on the regulation they believe should apply to this case, yet Mr. Connor at least admitted that he was not aware of what the laws were that surrounded the Concession activities at that time. Instead, he made his own determination of standard the Judge should have applied and did not evaluate the law existing at the time of the Concession.

For its part, the Court very reasonably addressed this issue, noting that the standards such as Decreto 1215 which Claimants point to now were not present at the time of the Concession. However, the Court made clear that lack of parameters would not exempt Texaco from its obligation to comply with the law requiring Texaco to avoid harm to the flora and fauna. The Court then applied the Plaintiffs' request in their complaint for the "removal of all the elements that can affect their health and their lives," and specified a 100-milligram per kilogram Cleanup Standard.

One point of clarification that should be made on this question of background in light of the Tribunal's

questions to LBG regarding the reasonableness of the 100-milligram per kilogram standard. It is the Republic's position that 100 milligrams per kilogram is reasonable based on two primary grounds:

First, the standard is certainly within the realm of the juridically possible. Several U.S. states had set a similar 100-milligram per kilogram standard for cleanup in the 1990s.

But this is not just an historical fact. Chevron's headquarters in San Ramon currently enjoys the protections of the same 100-milligram per kilogram standard, and the Trecate cleanup achieved an even lower 50-milligram per kilogram standard.

Second, this standard is reasonable because it is approximately five times background. As Dr. Garvey explained, at 100 milligrams per kilogram, you can be sure that values above this are clearly impacted and clearly contaminated. Claimants pointed to Dr. Short's Report stating that the natural background of soil is 160 milligrams per kilogram. But as Dr. Short makes clear and Dr. Garvey explained to this Tribunal, this was just one of three background measurements that Dr. Short reported, and this one was done with the TEM method. Using Chevron's preferred method, which LBG was referring to when assessing the Judgment's reasonableness, Dr. Short agrees the

11:58 background is well below 100 milligrams per kilogram.

But LBG is not alone. Mr. Connor calculated using Chevron's data that background TPH is approximately 12 milligrams per kilogram. What is important to remember is that all of the Experts--LBG, Dr. Short, and Chevron's Experts--agree that 100 milligrams per kilogram is at least five to ten times above background, and where exceeded, therefore, reflects petroleum contamination.

To combat the overwhelming evidence of contamination, Claimants and their Experts parade out images and tales of alleged Petroecuador contamination as though the Republic has denied all Petroecuador impacts. This is simply not the case.

Neither did the Judgment, though, ignore the activities of Petroecuador. Instead, the Court specifically excluded, where possible, alleged harm caused exclusively by TexPet or by Petroecuador but found that, "the obligation of reparation imposed on the perpetrator of a harm is not extinguished by existence of new harm attributable to third parties."

In other words, even if Petroecuador had a recent spill at Sacha 13, that injury is on top of the 25 years of TexPet's insult. This basic principle of joint and several liability applies here.

This was aptly demonstrated by Claimants' counsel

12:00 with the presentation of evidence of the Sacha 86 well site stream remediation. LBG showed the massive scale of a stream remediation, and Claimants' response was to point to a Petroecuador spill supposedly upstream. But what the evidence shows and the Judgment understood is that "contamination is undoubtedly a combination of impacts because there is 25 or 30 years of legacy operations by TexPet in this system. Successive tortfeasors polluting the same stream, one after the other, are jointly and severally liable."

If Chevron wishes to concede contribution from Petroecuador, it may do so in a separate contribution action allowed for under Ecuadorian law, as Dr. Andrade explained.

Before I hand the floor to Ms. Silver, I want to briefly address Chevron's litigation tactics during the Lago Agrio trial. LBG showed you on Monday how Chevron used its Pre-Inspections to skew the Judicial Inspections, and we will also talk about that more during the site visits. But today I would like to focus back on the Sacha 6 Judicial Inspection.

Last week, you heard me ask Mr. Connor a series of questions about the Pre-Inspections. According to Mr. Connor, the Pre-Inspections were a part of the Judicial Inspections, according to his definition of Judicial

12:02 Inspections.

But as Mr. Connor admitted, the Lago Agrio Court did not share that definition.

We also walked through with Mr. Connor how at Sacha 6 Judicial Inspection, Chevron's counsel complained that the Plaintiffs were performing soil drilling, using drills or other mechanical means, and Mr. Connor agreed with me, as he had to, that Chevron had done the same.

But there may be two more significant points.

First, despite the fact that Chevron had drilled for samples at the site at least twice before the Sacha 6 Judicial Inspection, during the Judicial Inspection, Chevron's counsel told the Court, "I categorically state that no technical team from Chevron Texaco Corporation has performed any secret tests here or used drills."

Second, when asked how Chevron proceeded from that point forward, Mr. Connor assured this Tribunal that Chevron followed the Court's instruction "not to alter the sites," which, according to Chevron's counsel, included using drills or other mechanical means. But what really happened is that Chevron continued drilling at sites before the Judicial Inspections for over two years, taking 1,493 Pre-Inspection samples at 78 different sites after the Sacha 6 Judicial Inspection where this instruction was allegedly given.

12:03 With that, I would like to hand the floor to Ms. Silver to address the health risks faced by the people of the Oriente and the health-related categories in the Judgment.

PRESIDENT VEEDER: Please.

MS. SILVER: You have just heard about the widespread contamination that TexPet left in the Concession Area, contamination that remains today and which places those exposed to it at risk. Yet Claimants' counsel told you yesterday that there was no basis for the health-related damages awarded in the Judgment.

I will spend the next 15 minutes recalling and putting into context the health-related evidence put before the Lago Agrio Court as well as that adduced in this arbitration. The latter reinforces the former and confirms that the Judgment's health-related damages are, in fact, well supported.

Let us begin with my first topic, the Lago Agrio Court's Decision, which is Exhibit C-931, where the Court at Page 170 expressly found that scientific studies and testimonial evidence from affected citizens "satisfactorily demonstrated that there are scientific bases for reasonably linking the Claims concerning health made by the inhabitants of the region with the oil contamination that derives from TexPet's activities as the Consortium

Operator."

Before I address some of that record evidence, I would note here that the Judgment states--and I am again quoting from Pages 170 and 171 of the Judgment--that "even though none of these factors can be attributed with either direct causation or exclusive responsibility, the evidence shows a sufficient causal link for this Court to order reparation of the harm caused."

The Court then goes on to state that the Plaintiffs have "reasonably and sufficiently proven both that an impact of public health exists and the fact that this impact has a reasonable medical probability of being caused by the exposure of the people living in the Concession Area to the substances discharged by TexPet into the ecosystem."

As you can see on these next slides, the Judgment cites numerous health studies that discuss the toxicity of crude oil and the association between risks of disease and exposure to oil. For example, the Judgment relies on the Yana Curi Report, which evaluated the impact of oil on human and animal health. It also relies on a study called Cancer in the Ecuadorian Amazon. That study found that there are significantly higher incidences of cancer in oil provinces as compared to non-oil provinces.

The Judgment also relied on witness testimony

presented during the JIs. The Court accepted the testimony of residents and considered significant their similar medical diagnoses and symptoms. For example, at Yuca-2B, the Court heard both from Mr. Albarracín, who lost his wife from cancer allegedly caused by exposure to TexPet oil. And from Mrs. Guarnan, who had recently been diagnosed with leukemia allegedly due to pollution.

At Cononaco 6, the Court heard from Ms. Armijos, who lost her husband from cancer, allegedly due to oil exposure.

At the Sacha Sur Station, Mr. Ureña advised the Court that his father, aunt and nephew all died from various forms of cancer. His nephew died from leukemia at age 17.

And at Lago Agrio Norte, the Court heard from Mr. Celso, who testified that, after drinking the contaminated water, his pigs grew sick, and that when they gave birth, their uteruses were ejected along with their piglets.

These, of course, are just a few examples of the tragic stories that were echoed time and again by the affected residents.

Claimants have argued that the evidence I've just described and more like it cannot defeat the contrary expert testimony and scientific data that people like

Dr. McHugh put into the Lago Agrio Record. As a preliminary matter, this Tribunal, as the Parties seem to agree, is not a supra-national Court of Appeals.

But in any event, just how accurate is Claimants' so-called "scientific evidence"?

Over the past week, we've learned at least five important lessons:

First, Dr. McHugh's sample set was predominantly composed of clean data. In his risk assessments, Dr. McHugh used delineation samples, meaning that instead of using samples from source areas, as EPA and ASTM guidance requires, he assessed risk based on known clean samples from areas outside the contaminated source. Dr. McHugh's failure to use samples impacted by the source of contamination is compounded by the fact that he made no attempt to verify the location of his samples. Indeed, Dr. McHugh did not map out, use a Conceptual Site Model, or even visit the Concession Area to evaluate the specific sites he was investigating. Ultimately, he failed to take into account whether the specific pathways he was evaluating were even plausible.

In the case of Guanta 6, for example, the specific pathway he was evaluating was separated by the pit--separated from the pit by a stream.

Second, Dr. McHugh's lack of knowledge of the way

people used the affected land caused him to make unsupported assumptions about exposure pathways and future land use. Contrary to regulatory guidance, he failed to take into account future land use in assessing health risks. For example, he assumed that people would not live at sites where there were open pits. This might not be an obvious error if made from the comfort of the United States, but it does not reflect the ground-truth in the Oriente. Many residents there do, in fact, live near open pits.

And Dr. McHugh should have known this, given that Chevron's own videos show it clearly.

Similarly, Dr. McHugh improperly ignored exposure pathways that residents have abandoned due to contamination. Actual current use is not a proper measurement for cleanup determinations under HHRAs, so Dr. McHugh cannot say that people face no risk from such sources.

That people are not currently using a source like the stream at Lago Agrio 2, a stream that runs right past their home, does not mean that it is fine to exclude it for purposes of assessing risk or that remediation or cleanup is not required to alleviate that risk.

Third, Dr. McHugh ignored important exposure pathways assessing risks only from ingestion. The Reports

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12:11 he submitted to the Lago Agrio Court ignored dermal exposure, even though the regulations require considering it, and even though it is clearly an actual exposure route given the lifestyle of the Oriente residents.

Fourth, Dr. McHugh did not measure or take into account TPH as a possible contaminant in his risk calculations, even though he had the data available to him and could have done so. Instead, he measured only about 30 individual components that are found in crude oil. What he evaluated and based his risk assessments on was, in fact, less than 1 percent of the toxic components in crude oil.

Fifth and finally, to the extent that Dr. McHugh evaluated drinking water samples that were not from municipal water supply systems, he was not able to find any health risks because he rejected key criteria in evaluating the samples. Dr. McHugh determined that there could be no risks associated with a drinking water sample if it did not exceed the World Health Organization's numerical criteria for the few chemicals and metals of concern he evaluated.

But this method does not protect health, nor does it mean that the drinking water is not contaminated. As the WHO explained, numerical criteria were never developed for TPH because odor and taste were meant to deter people from drinking water contaminated with oil. Odor and taste were meant to be the canaries in the coal mine protecting

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12:12 people from the health risks associated with drinking crude oil. These criteria should not have been ignored by Dr. McHugh.

So, let me pause here to recount just how scientifically unsound Dr. McHugh's risk assessments actually are. Given the five major omissions I just discussed, Dr. McHugh's human health-risk assessments submitted to the Lago Agrio Court failed to properly evaluate or assess potential risks to humans. Indeed, in the end, Claimants' supposed evidence of no human health risks in the Lago Agrio Record is no evidence at all. There are health risks from exposure to crude oil in the Oriente, and had Claimants actually applied the regulatory standards they purported to follow, they would have found them.

Based on the five omissions I walked you through, Claimants were never going to find health risks sufficient to warrant remediation. The deck was stacked. Claimants were always going to win. Claimants should not be rewarded for deliberately failing to find risk.

Thus, the evidence in the Lago Agrio Record demonstrates the damages awarded in respect of health were reasonable and well-founded. Again, it is important to remember that Claimants have not suggested that the damages awarded in the Judgment were simply too high. They submit

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12:14 any award for healthcare-related damages would have been excessive. This is not the case.

This brings me to my second topic which is that the Republic's health Experts in this arbitration have confirmed the reasonableness of the healthcare-related damages awarded in the Judgment, including excess cancer. Nothing that you have heard yesterday or during this Hearing has changed this fact.

First, Claimants have not challenged the well-established data and numerous epidemiological studies that show that exposure to oil is associated with increased risks of serious health problems. Nor does anything you have heard during these proceedings call into question the conclusions of the Republic's health Experts, Drs. Grandjean and Laffon. Claimants did not want this Tribunal to hear from them.

But in their Reports, both Experts demonstrated that the conclusions reached by Claimants' epidemiology Expert Dr. Moolgavkar are wrong. Exposure to oil in fact increases a person's risk of developing cancer and given the intensity, duration and circumstances of the residents' exposure, the studies performed to date likely significantly underestimate the risks facing the Oriente residents.

Second, Dr. Strauss found elevated risk of cancer

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12:15 at seven of the nine sites at which she performed a human health-risk assessment. Next month, you will visit two sites, Lago Agrio 2 and Aguarico 6, where Dr. Strauss has concluded that immediate action is required to alleviate the cancer risk.

Third, Dr. Strauss's risk assessments quantified the minimum health risks that the Oriente residents face. She did not calculate the worst-case scenario or use artificially inflated exposure factors, and she has not asked this Tribunal to consider pathways that she did not evaluate due to time constraints such as ingesting contaminated crops or livestock.

The point is simple. Her conclusions almost certainly underestimate risk.

Finally, nothing that Claimants or their Experts have said over the course of this Hearing has changed much less refuted Dr. Strauss's conclusions. Yesterday, Claimants argued that the whole-mixtures approach, one of the methods on which Dr. Strauss relies to evaluate non-cancer health risks, is not an accepted method to measure toxicity. But this is simply not the case. Where, as here, there are adequate toxicity data for crude oil, the whole-mixtures approach is the preferred method, according to EPA and ASTM guidance.

If Dr. Strauss's methodology is not widely used,

it is because adequate toxicity data are generally lacking.

But even if this Tribunal were to discount the whole-mixtures method, Dr. Strauss's HHRAs still show sufficient non-cancer health risks to warrant further investigation or cleanup at five of the nine sites. Rather than rely on counsel's representations, we invite you to review the data for yourselves.

Before I turn the floor back over to Mr. Ewing to continue our discussion of the reasonableness of the various categories of damages, a few words on the RAP. As you have heard, the RAP is irrelevant here. Regardless of whether the site or source was part of the RAP, individuals were placed at risk and this Tribunal has found that they had every right to bring claims to remedy the harms that affect them.

My colleague, Mr. Leonard, will be addressing this topic in detail, but it's important to note that even though the Lago Agrio Judgment did not seek to address or vindicate personal injury claims or harms specific to any one person, the Claims at issue here do not fall under the scope of the 1995 Settlement Agreement.

As the Republic has discussed in its prior Track 1 Memorials, nothing is more individual than the right to health. That the Judgment frames its damages Award in terms of public health does not morph the individual rights

at issue here into the diffuse rights that Claimants allege were settled under the 1995 Settlement Agreement. The rights at issue stem from the subject harmed, not the Award meant to cure it.

For the Tribunal's convenience, this last slide contains citations to our previous Track 1 pleadings on this subject.

Thank you.

PRESIDENT VEEDER: Thank you.

Mr. Ewing.

MR. EWING: I would like now to turn to the final four categories of damages in the Judgment. And I've put on here the slide that Claimants have used throughout this proceeding to represent the categories of the Judgment. Ms. Silver has addressed the bottom three.

I would like to start with groundwater remediation.

Mr. Connor claims that there is no basis for groundwater remediation in the Judgment. This is not true. First, Judge Zambrano includes in groundwater damages both underground water as well as sediments of the rivers, estuaries and wetlands.

But more importantly, the Judgment cites to the Lago Agrio Plaintiffs' Expert Report by Douglas Allen as support for its determination of costs, and Mr. Allen's

Report provides extensive support for its cost figures. Moreover, in the Court's analysis of groundwater, it considered Judicial Inspection Reports by at least six different experts, four of whom are Chevron's--at least five different sites where groundwater was extensively discussed.

And I've added a citation to the chart.

Also during his presentation, Mr. Connor told you that the Judgment has stated that TexPet is to pay $150 million to replace all of the potable water systems. These systems do not need to be replaced, according to Mr. Connor. And in his presentation, he told you that there is no basis provided for this damage in the Judgment. But neither of these statements is true.

Having found that the local people, their water supplies are contaminated, the Court recognized that the people needed an alternative. Relying on the neutral court-appointed Expert Barros's Report, which itself cited to UNICEF, USAID and European agency estimations of the cost of a water supply in the Oriente, the Court found that Chevron should pay for a potable water system for the percent of the population not covered by the already existing or planned projects.

The Judgment, as Claimants recognized in their opening presentation, also provided for $10 million per

year for 20 years for the recovery of native species flora and fauna. Dr. Theriot, the Republic's ecology Expert, whom Claimants did not call, conducted extensive analysis of the data and Expert Reports in the Lago Agrio Record and found that the Record showed extensive loss of diversity due to TexPet's operations, and that in his opinion, the Court's Judgment understates the magnitude of this direct impact. And I've added a reference there.

Finally, the soil damages awarded by the Judgment were reasonable and proper and based in fact. Dr. Hinchee used a calculation in his testimony which I have put on the screen now. Dr. Hinchee claimed that each piece of that calculation fails the reasonableness test. The first supposedly flawed element in the Judgment's soil damages analysis is the cost per cubic meter. Dr. Hinchee states that such an amount is unreasonable. And yet the amount he compares it to in order to make that determination is the unrealistically low PEPDA estimate. PEPDA is a non-profit project, and Dr. Hinchee acknowledges that it is able to do things far cheaper than other contractors in Ecuador.

Indeed, Mr. Connor, when estimating costs for another oil company for a mediation in the Oriente immediately next to the Concession Area came up with a $295-per-cubic-meter cost, four times that which Dr. Hinchee says the Judgment should have relied on. And that

12:23 is for a different standard than was applied in the Judgment.

In determining the costs, the Court had a range of estimates from experts from Chevron's 0-dollar estimate to the Plaintiffs' $1,000-per-cubic-meter estimate. The Court's determination is eminently reasonable when those various options were placed in front of it.

The second element that fails according to Dr. Hinchee is the soil volume per pit, but Dr. Hinchee admits that the Court "relied on two TexPet documents for the soil volumes." Based on Dr. Hinchee's own admission, the Judgment reasonably assessed soil volume by looking to TexPet historical documents.

And the final aspect is the number of pits. But Dr. Hinchee admitted that he did not know the entire universe of pits that TexPet created, nor was this information in any of the documents he reviewed.

And Mr. Connor conceded that at least three pits are necessary for the drilling of a well in the Oriente and that TexPet drilled 322 wells. Putting aside the Production Stations and all of the pits there, based on Mr. Connor's estimate alone, there were, at a minimum, 966 TexPet pits in the Concession.

It is clear that the Judgment's assessment of soil damages falls well within the juridically possible.

12:25 And with that, I'll leave you this slide with the references for the bases in the Judgment for the various categories of damages, and we will conclude our presentation on the relevance and the import of the environmental case.

Thank you.

PRESIDENT VEEDER: Thank you.

MR. BLOOM: Some people seem to be lobbying for lunch. And if that's the consensus, we can break now.

PRESIDENT VEEDER: I think it's probably the consensus. We will come back at half past 1:00, and in the meantime, I hope all the other versions of the Site Visit Order can be signed and initialed.

(Whereupon, at 12:26 p.m., the Hearing was adjourned until 1:30 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT VEEDER: Let's resume.

MR. BLOOM: Thank you, Mr. President.

We will now turn to Mr. Leonard, who will have two parts. He will first address the Track 1B issues and then will provide a response to parts of Claimants' legal absurdities argument.

We will then address the issues of jurisdiction, followed by exhaustion, and at that point we will ask for the afternoon break.

MR. LEONARD: Thank you, Mr. Bloom.

So, this, Mr. President, Members of the Tribunal, this begins Part 4 of our presentation of today dealing with the legal predicates of the Judgment, and as Mr. Bloom indicated, my presentation is divided in three parts. The first part will address the alleged legal absurdities as they relate to the Track 1 issues. Parts 2 and 3 will respond to the Tribunal's question concerning, number one, the Court's decision to disregard the corporate separateness between Chevron and Texaco, and Part 3 will include just a few brief remarks addressing a question regarding causation.

So, I'm going to begin the first segment of the presentation with the following proposition: The Lago Agrio Litigation is a continuation of Aguinda. This is a

01:34 matter of fact; the Lago Agrio Litigation is a continuation of Aguinda, and this has been judicially determined between the Parties by the Court with the regional jurisdiction over this matter. I will be coming back to this notion at different points during my submissions of today.

So, let me take you to the Aguinda Case first.

In 1993, about a year after Texaco had left Ecuador, residents of Ecuador's Oriente Region sued Texaco in the Southern District of New York, seeking extensive relief for the vast devastation to that region caused by decades of oil exploration and extraction activities. I'm going to be quoting from Exhibit C-14--this is the Aguinda Complaint. The Aguinda Plaintiffs, and I quote, alleged that, "between 1964 and 1992, Texaco's oil operation activities polluted the rainforests and rivers in Ecuador."

The complaint alleged, for example, that approximately eight groups of indigenous people lived in the Oriente. These people had lived for centuries in the rainforest and depended on them on their livelihoods and their very existence. A general concern to everyone, Texaco's destruction of the rainforests already has caused physical injury to Plaintiffs and the class and continues to threaten their health, way of life, and very survival as a people. This is at Paragraph 38 of the Aguinda Complaint.

01:35 At Paragraph 44, the Complaint states: "The defiling of the Oriente has had grave consequences for Plaintiffs and the class. Again, the focus is on the individuals, and this is Aguinda New York. The waste products discharged in open pits typically contain such toxins as arsenic, lead, mercury, benzene, naphthalene, and other hydrocarbons. These substances are toxic to animals and humans and are known or suspected carcinogens.

There is more. Defendant's breach of duty was wanton, outrageous, reckless, and intentional. Defendant made the decision for its own economic gain to dump unprocessed oil into the environment, and thereby to expose Plaintiffs and the class to toxic crude oil and other elements I just mentioned, knowing that such substances were toxic to humans.

This is at Paragraph 57 of the Complaint.

The next paragraph explains that: "As a direct and proximate result of Defendant's breaches of duty, Plaintiffs and the class have suffered injuries to their persons and property."

Two paragraphs later, under Count Two, styled "Public Nuisance," the complaint states that: Defendant's conduct and the resulting contamination of the Oriente environment has created a public nuisance which endangers and will continue for many years to endanger the safety,

01:37 health, and comfort of a large number of persons.

I could go on. Under Count 5, for example, styled "Medical Monitoring," the Aguinda Plaintiffs assert that, as a result of the Defendant's negligent and reckless conduct, Plaintiffs and the class have been significantly exposed to known hazardous substances.

The next paragraph: "As a result of such exposure, Plaintiffs and the class are at an increased risk of contracting latent diseases, including cancers."

Count 9 of the Complaint styled, "Equitable Relief," includes the following language: "As a result of Defendant's conduct, Plaintiffs' properties and environment are highly contaminated with toxic substances. Plaintiffs' drinking water supplies have been contaminated with carcinogens, rendering them unsuitable for consumption."

The Aguinda Plaintiffs pled nine counts ranging from negligence to public nuisance to international law claims under the U.S. Alien Tort Claims Act for destruction costs for the environment. Their relief includes the following language.

"In addition to monetary damages, Plaintiffs demand extraordinary equitable relief in Ecuador including remediation of Ecuador's land and environment, modifications of Petroecuador's facilities, medical monitoring and relief for alleged harm to Plaintiffs'

01:38 culture, their diet, and other ancient traditions and way of life." This is from Exhibit R-21.

Texaco's own submissions before the New York Court acknowledged the broad nature of the Plaintiffs' claims and their Requests for Relief.

Texaco, for example, asked the New York Court to dismiss Aguinda in part because an Ecuadorian could would be better positioned to, and I quote, "evaluate Plaintiffs' sociocultural claims of damage to their ancient traditions, culture, and way of life in Ecuador." Texaco's counsel observed that, and I quote, "We're talking about 25 years of land contamination across hundreds, if not thousands, of square miles impacting different people in different lands in different ways and at different times.

In a 1998 brief to the Second Circuit, Texaco affirmed that the Plaintiffs' demand--and I quote--"Plaintiffs demand extraordinary equitable relief in Ecuador. In support, Texaco cited Plaintiffs' documents identifying the following types of equitable relief which they seek, including these two, Number 1, an environmental cleanup; Number 2, creation and maintenance of environmental and medical monitoring funds. In other District Court filings, Plaintiffs spelled out their equitable relief demands as including remediation and cleanup work at pools used for disposal of drilling mud,

01:40 providing drinking water through construction and distribution networks or deep wells with filtering system, and cleaning up oil spills.

That provides enough of an overview of the case in Aguinda.

PRESIDENT VEEDER: Can I stop you. The document that you have just read, the Second Circuit extract, is that R-247? What is the exhibit number?

Come back to it later.

MR. LEONARD: I will have to come back to you later.

I'm told that it's CLA-435.

PRESIDENT VEEDER: Thank you very much.

MR. LEONARD: So, that provides enough of an overview of the case in Aguinda, and, Mr. President and Members of the Tribunal, there is no dispute in these proceedings that the Claims and rights asserted in Aguinda were not covered by the 1995 Settlement Agreement.

The next document provides an account of what later transpired in that case.

(Pause.)

MR. LEONARD: And this is CLA-435.

What is displayed on the screen is Page 7 of that 2011 decision by the United States Court of Appeals for the Second Circuit in the matter Republic of Ecuador v. Chevron

Corporation, and again this is Exhibit CLA-435.

At the bottom of the first paragraph, Second Circuit provides some of the background, and I quote, "Texaco moved for dismissal on forum non conveniens and international comity grounds. This District Court granted Texaco's motion and dismissed Plaintiffs' action."

The Court goes on to explain, "On appeal, we held that the District Court erred by dismissing Plaintiffs' Complaint without first securing a commitment by Texaco to submit to the jurisdiction of the Ecuadorian courts and remanded for further proceedings."

The Court continues: On remand, Texaco provided that commitment by "unambiguously agreeing in writing to be sued in Ecuador, to accept service of process in Ecuador, to waive any statute of limitations-based defenses that may have matured since the filing of the Complaint. Texaco also offered to satisfy any Judgments in Plaintiffs' favor, reserving its right to contest their validity only in the limited circumstances permitted by New York's recognition of Foreign Country Money-Judgments Act."

Now, here is where I was getting. With those concessions in mind, the District Court again dismissed Plaintiffs' Complaint and the Second Circuit affirmed on August 16, 2002.

And finally, the Court concludes its account of

the history of the case by noting that Plaintiffs responded by refiling their claims in Lago Agrio, Ecuador, and the resulting Ecuadorian litigation continues to this day. I will come back to this last statement.

So, after nine years of litigation, the U.S. Court of Appeals for the Second Circuit affirmed the District Court's decision to dismiss Aguinda on the grounds that Ecuador offered a more convenient forum for the adjudication of the Claims asserted therein.

As the Second Circuit explains--and this is found in the next page of the Decision--Texaco had been trying to convince the District Court that Ecuador would serve as an adequate alternative forum for resolution of its dispute with Plaintiffs.

The Aguinda Plaintiffs refiled their claims in Lago Agrio May 7, 2003, almost nine months after the Second Circuit's affirmance of the District Circuit's dismissal of Aguinda. Let's take a quick look at the Lago Agrio Complaint. In the interest of time, I will walk you through some of the highlights so you can see that this Complaint contains allegations that are almost identical to those found in the Aguinda Complaint concerning the devastation of the environment and impacts of such devastation on the inhabitants of the former Concession.

For example, at Page 7 of the Complaint, and for

the Tribunal's reference this is Exhibit C-071--the Lago Agrio Plaintiffs alleged that, to date, there are still pollutants released into the environment as a result of the inappropriate and harmful practices employed by Texaco, which continue causing ecological, environmental, economic and personal damage.

At Page 10 of the Complaint, Plaintiffs state that: As a consequence of this brutal environmental deterioration, the health and life expectancy of the population was severely affected.

And further down in the same page, the Complaint explains that: "The procedures described above contaminated the soil, the natural water streams, and the air; destroyed aquatic life, natural vegetation, and crops."

And it goes on at Page 11, the Complaint alleges: "The consequences of the application of the methods and proceedings described above were particularly devastating for the five indigenous human groups of the area, who additionally suffered the violent destruction of their natural habitat and, consequently, of their subsistence means, their way of life and customs, and have even faced a serious threat to their future and identity entity as a people."

Mr. President, there can be no dispute that the

Lago Agrio Complaint is premised on the exact same factual allegations contained in the Aguinda Complaint. These allegations do, in fact, mirror those in the Aguinda Complaint.

Back to the Lago Agrio Complaint, Section VI, contains a Prayer for Relief, and it is organized in two general sections. The first one requesting the removal and adequate treatment of the contaminating substances that still threaten the environment and the health of the inhabitants. The second one requesting remediation of the environmental damage. The requested relief includes, for example, the cleanup of the rivers, estuaries, lakes, swamps, and the natural and artificial watercourses and the adequate disposal of all waste materials.

Also, the cleanup of lands, fields, crops, streets, roads, and buildings where there may still be contaminated waste generated by the operations directed by Texaco. Also, the retention at the Defendant's expense of qualified personnel or firms to design and implement a plan aimed at improving and monitoring the health of the inhabitants of the towns affected by the pollution.

Again, an almost identical parallel with the Aguinda Complaint and the relief requested therein.

And here I come back to the language in the Second Circuit's decision of 2011. The Court noted in that

decision that Plaintiffs responded by refiling their claims in Lago Agrio, Ecuador, and the resulting court litigation continues to this day.

The Second Circuit went on to reject Chevron's contention that the Lago Agrio Litigation is not the refiled Aguinda action, and the Court rejected that contention as meritless. As stated in the Decision, and I quote, "The Lago Agrio Plaintiffs are substantially the same as those who brought suit in the Southern District of New York, and the Claims now being asserted in Lago Agrio are the Ecuadorian equivalent of those dismissed on forum non conveniens grounds."

I just quoted from Exhibit R-247. The Tribunal noted this language in Paragraph 180 of its Track 1B Decision, albeit with the apparent view that the Second Circuit's determination may cover only certain of the Claims pleaded in the Lago Agrio Complaint, but perhaps not all of them. Assuming that I'm reading Paragraph 180 of the Tribunal's decision correctly, I respectively submit to you that there is no such qualification in the language of the Second Circuit decision, but I don't need to convince you that the Lago Agrio Litigation is a continuation of Aguinda. Instead I would simply call your attention to those elements of the requested relief in Lago Agrio that mirror those raised in Aguinda, and I will choose and refer

specifically to the following three categories of damages:

First, the remediation of Ecuador's land and the environment.

Second, the creation and maintenance of environmental and medical monitoring funds;

And, third, relief for alleged harm to Plaintiffs' culture, their diet, and other ancient traditions and way of life. I could also include a system for potable water.

Each of these three forms of relief were initially requested in Aguinda and later sought in Lago Agrio in substantially identical terms. And you probably see the predicament we find ourselves in by now. Chevron obtained dismissal of Aguinda on the grounds that Ecuador offered a more convenient forum for adjudication of those claims. And Chevron did so on the basis of the following promises and representations; first, a commitment to submit to the jurisdiction of Ecuadorian courts in respect of those claims; to accept service of process in Ecuador; and a promise to satisfy any Judgment issued by the Ecuadorian courts subject again to its rights under the New York's recognition of Foreign Country Money-Judgments Act.

However, as it turns out, claims that were otherwise viable in New York are barred in Ecuador because they are diffuse claims and, therefore, covered by a Release Agreement executed some seven years before Chevron

represented to the courts in New York that Ecuador was a more favorable forum to adjudicate those claims.

At the Hearing that took place in this same room, I believe if memory serves, almost exactly a year ago, Professor Douglas expressed a sentiment of all of us on this side of room when he congratulated Claimants' counsel for having injected the concept of diffuse rights into this arbitration. Professor Douglas called it ingenious, and, indeed, it is. There is no mention of it in the four corners of the 1995 Settlement Agreement or anywhere in the contemporaneous doctrine or jurisprudence of Ecuador. The notion of diffuse rights is simply not a concept that could have been in the minds of the American lawyers who drafted the Agreement. That, Mr. President, I submit to you, is a fact.

But Claimants' theory of diffuse rights is not just only ingenious. I also find it incredibly cynical. Claimants obtained dismissal of the Aguinda claims in New York on the basis of those multiple unqualified representations that Ecuador provided a more adequate forum to hear those claims, those exact claims--not just a subset of those claims, those exact same claims. And as Claimants represented to the United States courts, there was no bar for the Aguinda Plaintiffs to refile those claims in Ecuador.

But once refiled in Ecuador, those claims suddenly acquired all the elements of a diffuse claim and, therefore, become barred by the 1995 Settlement Agreement. The audacity of this argument is just remarkable. Professor Douglas called it a hoax, a cruel hoax on the Plaintiffs, who would see their claims remanded to a better forum only to find in that forum they really don't have a claim.

I prefer to use the term "fraud." This argument attempts to perpetrate a fraud on the United States courts, on the indigenous Plaintiffs, and a fraud on the system for the adjudication of international investment claims.

Mr. President and Members of the Tribunal, if Claimants, indeed, succeed with their diffuse claims argument, they will have succeeded also in turning these proceedings into their instrument to effect a historic and unprecedented fraud on the United States courts and against the most basic notions of fairness and justice. And they effectively would have used this Tribunal to deprive the indigenous Plaintiffs from their right to have their claims heard by a court of law. That, Mr. President, is not the purpose or the role of international system for adjudication of investment claims.

So, I will submit to you that the inquiry should stop here. Plaintiffs' request for remediation and other

equitable relief in the Lago Agrio action mirrors their claims in Aguinda. As a matter of U.S. law, the Second Circuit in New York would not and could not have granted the requested dismissal on forum non conveniens if the same claims could not be heard in adjudicated in Ecuador. That's a fact. Semantics aside, no matter how one calls them, those claims are not and could not be within the scope of the Release.

Now, if you choose to continue the analysis beyond this point, what you have before you is a simple question, and the question is not whether the Claims at issue in Lago Agrio are individual or diffuse, but rather whether these claims fall within the scope of the Release. And I would submit as my first point that it is beyond dispute in these proceedings that not one of the claims raised in Aguinda is covered by the 1995 Settlement Agreement. And again, I would like to focus specifically on the three forms of relief that I discussed just a few minutes ago: Remediation of the lands and water, medical monitoring, and relief for alleged harm to the Plaintiffs' culture and way of life.

None of these claims are said or could be said to have been settled in 1995, while the Aguinda Litigation had been pending for two years.

You may recall that in 2005, the United States

District Court for the Southern District of New York was hearing the same breach-of-contract claims now before you in the Track 1 phase of these proceedings. In commenting on those claims, the Court recognized that it would have been, and I quote, "highly unlikely that a settlement entered into while Aguinda was pending would have neglected to mention the third-party claims contemporaneously made in Aguinda, if it had been intended to release those claims." This is coming from Exhibit R-52.

My second point is that a release of these claims is nowhere to be found within the four corners of the Release. The Release covers claims by the Government and Petroecuador, and here I took the liberty to use Claimants' own slide, and took the further liberty to highlight in pink--that was not my liberty--someone else's--portions of this language that should have been highlighted. These are not general claims. These are claims that the Government or Petroecuador have or claims that the Government or Petroecuador may allege.

And while the Tribunal has determined that the Government was entitled to assert and dispose by settlement of the citizens' right to live in a clean environment, both the language of the Release and the Tribunal's determinations in these proceedings exclude claims by third parties asserting rights other than rights vested with the

State or State entities.

And this takes me to a third point: Both the Judgment and the Cassation Decision confirm that the substantive basis for the relief sought and obtained in Lago Agrio are long-standing Civil Code provisions governing tort law in Ecuador since 1861. There is no serious dispute that these rights are rights of third parties and are not of the State.

Critically, even if the Government or State entity could conceivably assert tort claims under either Articles 2214, 2229 or 2236, there is no authority anywhere in this record for the proposition that the State could have disposed of the citizens' rights under the Civil Code. In fact, if we could jump to Slide 29. Articles 2349, 2354 and 2336 express an unequivocal provisions in the Civil Code preclude any possibility that anyone, including the Government, may dispose by settlement of rights pertaining to third parties.

Article 2349 mandates that the only person who can settle is the person who is able to dispose of the objects covered by the settlement.

Article 2354, settlement over the rights of others or non-existent rights is invalid.

And 2336, the settlement shall only be effective as between the Parties, no ergo omnes effect.

Claimants have been blowing hot and cold for far too long. Their initial theory of the case was that the State, and only the State, could assert the fundamental right enshrined in Article 19.2 of the Constitution. This notion was predicated on the contention that as of 1995, no individual was entitled to assert a claim vindicating its right to live in a clean environment. The circumstances of the case changed following the National Court's Cassation Decision. Claimants now assert that Article 2236 enforced since, again, 1861 is in fact a mechanism designed for the vindication of diffuse claims.

And I do not intend to delve into the merits of this proposition. Instead, I will simply note that these two premises cancel each other out. They cannot coexist. Either the State had the monopoly of the citizens' right to protect themselves, or it did not. If the second premise on this slide, Article 2236 vindicates diffuse rights, if that premise were valid, that would render the First Partial Award a fallacy. If, however, we are to stand by the First Partial Award and consider the first premise a valid one, then Claimants' new contention that the Plaintiffs brought claims under Article 2236 to assert diffuse rights must be rejected.

But again, the question before you is not whether these claims are individual or diffuse. The question is

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whether these claims are covered by the scope of the Release.

To conclude, a final point: All roads lead to Rome. I will not engage in a debate with Professor Oquendo about the corpus iuris, one of my favorite topics during my days as a student of Roman law. I will simply suggest that my colleague and Professor Oquendo have misconstrued the context of that CODEX. If I can take you back to Slide 29, the protections enshrined in those provisions of the Civil Code--and again, Articles 2349, 2354, and 2336, admit no exception and impose an absolute bar to the settlement of rights of third parties. Any attempt to do so without a valid Power of Attorney is null and void.

Mr. President, I would like to turn to the second part of my presentation by addressing the following question. This is one of the questions that the Tribunal posed last week. Is it in evidence why Texaco and TexPet were not pursued by the Lago Agrio Plaintiffs as Defendant Parties as distinct from Chevron in the Lago Agrio Litigation? And then the Tribunal clarified, and we say that in particular because we know that Texaco was named as a Defendant, Texaco, Inc., in the Lago Agrio Complaint.

So, I should start by making a rather important clarification: Texaco, Inc. was not a named Defendant in the Lago Agrio Complaint. The complaint was filed against

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ChevronTexaco Corporation. I will take you to the Lago Agrio Complaint in just a few minutes but wanted to make this clarification at the outset.

In response to the question, it is in evidence and I intend to refer to that evidence while I take the opportunity to address Claimant's reproach of the Judgment's Decision to disregard the corporate separateness of Chevron and Texaco as a legal absurdity.

I would also take the opportunity to address the Tribunal's next question, and I quote: "Do we find in the Lago Agrio Judgment or, indeed, in any allegation made by the Parties before that Court, a statement that Chevron was guilty of fraud or abuse in merging with Texaco?"

And here, another clarification is in order. Under Ecuadorian law, the intent of a party at the time of a merger is irrelevant to a court's assessment of whether piercing of the corporate veil, separating two legal entities is warranted under the circumstances of a particular case, and I refer to a decision that is referenced by the Lago Agrio Judgment at Page 14 of the Decision, so that's Exhibit C-931 at Page 14. The reference to the case is the case that goes by the styled Moran v. Onofre.

What was relevant for purposes of the Court's analysis in the Lago Agrio Case was a conduct subsequent to

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the merger, so what I would like to do is to go over the timeline of the relevant events leading up to the Claimants' filing of the Lago Agrio Complaint against, again, ChevronTexaco Corporation.

As the Tribunal might recall, in the Year 2000, Chevron and Texaco reached an agreement to combine the two companies into an integrated global energy company, and this is from Exhibit R-1299. The merger was completed on October 9, 2001.

PRESIDENT VEEDER: I'm sorry to go back. You cited a case from Page 14 as the Lago Agrio Judgment. We can't find it. Can you just help us with the reference again and the name.

MR. LEONARD: I will provide you the exhibit number for that case.

PRESIDENT VEEDER: And is it the first such case about eight lines down on Page 14 or is it the later cases? Come back to it later, if you want to.

MR. LEONARD: Four lines from the top, I will come back to you with an exhibit number for that particular case which was referenced by Dr. Andrade in one of his Reports.

ARBITRATOR GRIGERA NAÓN: I'm sorry, since you are there, you refer to Article 2336 of the Civil Code. That would be related to settlements? I don't find--it seems to refer to mortgages, so I don't know--I know that the

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numbering has changed. I checked both numbers, and I do not know where we are. You may check that later and come back.

MR. LEONARD: Let me give you the exhibit number for the Civil Code version that provides that numbering.

ARBITRATOR GRIGERA NAÓN: Thank you.

MR. LEONARD: It's RLA-163.

So, I was saying the merger was completed on October 9, 2001, and on that date, the Shareholders of Chevron and Texaco voted to approve the merger, and ChevronTexaco Corporation began doing business that same day. From that point on, Chevron and Texaco professed to be one company.

In 2001, ChevronTexaco filed a brief before the Second Circuit in New York, instructing the Court that, and I quote, "as generally known, and thus this Court may take judicial notice, Texaco merged with Chevron, Inc. on October 9, 2001." Here is the language I am interested in, "the resulting corporation ChevronTexaco, Inc. is headquartered in San Francisco." In its brief, ChevronTexaco further rejected Plaintiffs' argument that the Aguinda lawsuit should proceed in New York because, and I quote, "it is the home of Texaco, Inc." ChevronTexaco rebuffed, "that is no longer true. ChevronTexaco is in the process of closing down what remains of Texaco's former

offices in White Plains, New York." And this is all coming from Exhibit R-1280.

Following dismissal of the Aguinda Complaint, ChevronTexaco issued a first release asserting the following: "ChevronTexaco is pleased with the ruling of the U.S. Court of Appeals affirming the lower court's dismissal. This ruling vindicates ChevronTexaco's long-standing position and arguments we have made to the Court at the appropriate forum for this litigation is Ecuador." This is from Exhibit R-41. It is manifest that Chevron and Texaco presented themselves to the world as a single company.

And so, the Aguinda Plaintiffs refiled their claims in Lago Agrio, less than nine months later. Their complaint was logged against, as I said, ChevronTexaco Corporation. At Page 7 of the complaint, Plaintiffs make the following statement: "On October 9, 2001, Texaco, Inc. and Chevron merged, giving rise to a new legal entity known as ChevronTexaco Corporation, which substituted the foregoing companies in all other rights and obligations."

At Page 15, the Plaintiffs again expressed their justified belief that ChevronTexaco was a new legal entity, and the surviving product of a merger between Chevron and Texaco. And I quote: "Since the acts and omissions described above are directly attributable to Texaco, Inc.'s

willful misconduct and negligence, Texaco, Inc. became liable for the damage caused and, therefore, it was under the obligation to remedy them. Such liability and subsequent obligation passed to ChevronTexaco Corporation by virtue of the merger mentioned in the background section of this claim."

Now, ChevronTexaco had obtained dismissal of the Aguinda Complaint on the basis of the promises and representations it made to the New York courts. And we talked about those. ChevronTexaco provided an unconditional promise to submit to the jurisdiction of Ecuador's courts to be sued on the basis of those same claims, and also promised to satisfy any Judgment that might issue from the Court in Ecuador.

Now, contrast those undertakings with Chevron's answer to the complaint in Lago Agrio. And this is coming from Exhibit C-072. This is a Conciliation Hearing at Page 3. In addition, ChevronTexaco Corporation was never an operator nor a party to the Concession Contract which had existed since 1973, nor replaced nor is a successor to Texaco, Inc. or Texaco Petroleum Company, TexPet.

Fast-forward a few sentences, therefore, I repeat that ChevronTexaco Corporation is not under your jurisdiction or competence, Mr. President, nor is a legitimate Defendant Party in this lawsuit. ChevronTexaco

even changed its name back to Chevron Corporation. It dropped Texaco from its corporate name.

That, Mr. President, is nothing but gamesmanship. It's against a principle of good faith and it's a blatant violation of the promises on the basis of which Chevron successfully obtained the removal of the Aguinda Case to Ecuador.

Now, let's pause for a moment and think about what could have been going through the Plaintiffs' lawyers minds. Gosh, we have been deceived, Alberto sued the wrong party, reference to Alberto Wray, but the Court would not hear it. The principle of good faith would not allow it. The Judgment devotes eight pages to the analysis of Chevron's about face, and I refer the Tribunal to Exhibit 931, Pages 8 through 16.

But Judge Zambrano was not alone. The Second Circuit, same court that relied on Chevron for presentations in granting a forum non conveniens dismissal--

PRESIDENT VEEDER: Can I interrupt you? Are you moving away from the complaint? The Lago Agrio Complaint document?

MR. LEONARD: I'm moving out of that document.

PRESIDENT VEEDER: Before you do that, just on the basic question, when you look at that complaint, who is the

Defendant?

MR. LEONARD: It's ChevronTexaco Corporation, and this is--this is from Page 17 what you have on the screen. It's Slide 28.

PRESIDENT VEEDER: I would like you to look at Page 1, the first page.

MR. LEONARD: The first page.

You mean the cover page?

PRESIDENT VEEDER: Yes.

MR. LEONARD: The cover page lists Texaco, Inc. as the Defendant Party.

PRESIDENT VEEDER: It does.

MR. LEONARD: There is no reference to Texaco, Inc. throughout the complaint. The complaint references ChevronTexaco Corporation, and the reason why I wanted to walk you through some of those statements, the relevant statements, precisely or especially the ones that referenced the merger and--as a result of the merger, the fact that in Plaintiffs' view, all liabilities and obligations of Texaco, Inc. had transferred to ChevronTexaco Corporation.

PRESIDENT VEEDER: But at the time of the complaint, obviously there was an argument that Texaco, Inc. had merged with Chevron, Inc. and the new legal entity ChevronTexaco, Inc. was the Party that assumed

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02:13 the liability for Texaco, Inc., but if we're looking at the title page, it says Texaco, Inc. rather than ChevronTexaco, Inc. is that the mistake attributable to Dr. Alberto Wray?

MR. LEONARD: No, and let me bifurcate the answer.

First of all, I have no explanation for the fact that the cover page of the record lists Texaco, Inc. as a Defendant party. It is not. All the Claims are asserted against, and if we can go back to that language on Page 17 against ChevronTexaco.

The statement about Mr. Alberto Wray suing the wrong party is because, after the fact, after filing the complaint against ChevronTexaco, on the belief that ChevronTexaco was a resulting surviving company of a merger of two previous companies, and let me remind you, one of the quotes that I referenced here, is ChevronTexaco's representation to the Court of The Second Circuit, you can take judicial notice of the merger, the resulting corporation is ChevronTexaco. It's not Chevron, it's not Texaco. There is no reference, no mention to the fact that Chevron survived and Texaco survived, and that there was something called a triangular, reverse triangular merger behind that transaction.

It is a merger, but it's not one that results in the extinguished--in the extinction of the two initial

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02:15 companies and the creation of one new surviving company. That's not the case. But nobody knew that. Not at that time. At least not at the time Alberto Wray drafted the complaint and filed it in Lago Agrio.

Now, the first time that ChevronTexaco comes forward and says I am not the right Defendant Party here, and neither is Chevron nor Texaco, those companies survived, and I'm not a successor for Texaco, Inc.'s liabilities. The first time that happens is in--at the Conciliation Hearing, the Conciliation Hearing just as a point of clarification is the way the Defendant answers the complaint in oral summary proceedings. There is no written submission. There is a Conciliation Hearing. There is oral argument, that oral argument is transcribed and that becomes parts of the record, and that contains the answer to the complaint.

That is the first time that this issue arises.

And the next question of the Tribunal is if whether there is any evidence in the Lago Agrio Record as to any allegations of fraud that the Plaintiffs make against Chevron, and there is, and I intend to get there in a few minutes.

Does that answer your question?

PRESIDENT VEEDER: Yes.

MR. LEONARD: May I proceed?

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02:16 PRESIDENT VEEDER: Yes.

MR. LEONARD: Thank you.

So, I was saying, Judge Zambrano was not alone in rejecting--dismissing Chevron's contentions. The Second Circuit is the same Court that relied on those representations in granting the forum non conveniens dismissal rejecting Chevron's new position in the follows terms: "Lawyers from ChevronTexaco appeared before it and reaffirmed the concessions that Texaco had made in order to secure dismissal of the Aguinda Plaintiffs' complaint. In so doing, ChevronTexaco bound itself to those Concessions. Chevron Corporation, therefore, remains accountable for the promises upon which the Court of Appeals and the District Court relied in dismissing Plaintiffs' action." I will come back to you with a reference to the exhibit number where this is coming from.

So, the Court went on to address Chevron's change of its corporate name, an important fact. The Court says "in 2005, ChevronTexaco dropped the name Texaco" and reverted to its original name, Chevron Corporation. There is no indication in the record before us that shortening its name had any effect on ChevronTexaco's legal obligations.

So, as I anticipated as to the question of whether Plaintiffs' alleged fraud or abuse of the corporate form by

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02:18 Chevron, the answer is yes. That occurred in several opportunities, different instances, the Lago Agrio Plaintiffs alleged that ChevronTexaco was abusing of the corporate form with the intention to avoid liability. The reference to those sources is, first of all, the Alegato. That's Exhibit R-195. The Alegatos are the final oral submissions in the case.

R-926, Judicial Inspection Acta for Sacha Norte 2 at 33. Exhibit C-2007, Judicial Inspection Acta for Guanta 06 at 2425; and finally Exhibit C-2008, Judicial Inspection Acta for Yuca-02-B at 22.

Now, Mr. President, I addressed this Tribunal three weeks ago on the merits of the Lago Agrio Court's determination to pierce the corporate veil or in other words disregard the corporate separateness between ChevronTexaco and between Texaco and TexPet. I am approaching dangerously the limits of my allotted time so, I will not delve into those details again. I will respectfully refer you to my submissions of last week.

But I would like to conclude this segment of my presentation with reiterating respectfully the plea that I made to you in opening, urging you to resist any temptation to revisit these issues de novo. That is not the province of investment tribunals. Investment tribunals are not empowered to substitute their judgment for that of a

municipal court, absent clear and convincing evidence of egregious procedural misconduct. And as I suggested to you three weeks ago, this Tribunal can take comfort from the fact that a Mississippi Court reached the same conclusion on the basis of the same facts concerning the same companies.

Just to conclude, some very brief remarks in response to the Tribunal's question concerning Dr. Barros' testimony on the issue of causation. Dr. Andrade dispelled any doubts during Day 1 of his examination, and I refer you to the Hearing Transcript of Day ten, Pages 2282 through 2283.

In a nutshell, as Dr. Andrade explained, Dr. Barros based his testimony on two theories of causation, necessary cost and proximate cost, that do not apply in Ecuador. And it's the Delfina Torres Decision, the Supreme Court rejected these theories and adopted, instead, the theory of adequate cost as a more appropriate one. And you will recall that the Judgment quotes extensively from the Delfina Torres Decision on causation.

So, before I hand the floor to my colleague, I would like to respectfully refer the Tribunal to the Republic's most comprehensive submission on the issue of causation, and this is the Respondent's Track 2 Supplemental Rejoinder, Paragraphs 107 through 114.

Thank you, Mr. President.

PRESIDENT VEEDER: Thank you.

Please.

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

I will address the issue of jurisdiction once more. In the end, this case, Members of the Tribunal, will stand for or against the proposition that investment tribunals have universal jurisdiction over claims by any foreigner that he or she was somehow mistreated in litigation. The Tribunal, we say, has the burden of not permitting an extraordinary expansion of the scope of arbitral jurisdiction in contravention of the limits of a State's consent. This is, to use Chevron's mantra, the first rule of law you have to look at and apply in this case.

As held in the Plama Decision, and you know this by heart, consent is the basic requirement for arbitration, and such a prerequisite is plainly missing in this case. In the interest of time, and to deal with the questions put by the Tribunal on the very issue of jurisdiction, I will address the Tribunal's lack of jurisdiction over Chevron's claims only, and once more I refer the Tribunal to Ecuador's written submissions for all other jurisdictional arguments.

I will first explain once more why Chevron has no investment agreement that could possibly generate jurisdiction in the circumstances. Second, I will make it clear, again, why Chevron has no investment relevant to the Lago Agrio Litigation and to its related denial-of-justice claim.

Beforehand, however, I shall make four preliminary observations: First observation: Even though jurisdiction is not commonly declined at this stage of an arbitral proceeding, you expressly reserved, Members of the Tribunal, the possibility of doing so. The time that has lapsed due to Claimants' evolving case should be of no concern to you.

Indeed, you had, and we still believe you have serious doubts as to whether there is jurisdiction over Chevron's denial-of-justice claim. You decided to save, and I quote, those issues relating to the jurisdictional objections raised against Chevron for the merits stage of these proceedings when you suggested in your decisions you could make an assessment, in light, you said, of the relevant facts.

And we submit, Members of the Tribunal, that the relevant facts should lead you to now definitively recognize that the Lago Agrio Litigation was not related to any investment or Investment Agreement that Chevron had, so

there can be no jurisdiction over its denial-of-justice claims.

Second preliminary observation: Claimants have no response to the basic facts presented by Ecuador in relation to its jurisdictional pleading. My friend, Professor Paulsson's Opening Statement was very telling in this regard. He didn't address the issue that you deem relevant or relevant enough to be settled at this merits stage of the proceedings. He said absolutely nothing of substance in support of the extraordinary assertion that Chevron, which has never contributed any resources to Ecuador, may bring claims as a direct investor in the Lago Agrio oil concession. And as you know, contribution is the very first element of the definition of "investment."

He merely repeated arguments that the Tribunal already found insufficient to establish jurisdiction. He simply rephrased one expression by another. As summarized by the Tribunal, Chevron has said that Ecuador cannot have it both ways. Professor Paulsson simply said that Ecuador was blowing hot and cold. And as I am convinced Professor Paulsson would put it himself, these shortcuts cannot replace analysis and demonstration.

Third preliminary observation: Even more telling, Members of the Tribunal, it's Professor Paulsson's reliance on these purported considerations of fairness. We also

heard yesterday from my friend Mr. Weiss, a strong reliance on the fact that it would be "fundamentally unfair for your Tribunal not to exercise its jurisdiction in this case." Even though it could be a ground for declining jurisdiction, fairness cannot establish jurisdiction. Only a State consent, as you know, do so.

As put by the Tribunal in the case Bureau Veritas, it is not the function of arbitrators who are charged with interpreting and applying a treaty to go beyond the limits of what that Treaty allows them to do whether to do justice or for any other reasons.

Even admitting arguendo that Claimants' case had some merits, to paraphrase Professor Stern, there will be no unfairness here if jurisdiction is declined as this is purely a result of the limited jurisdiction of investment tribunals. International investment tribunals are not here to redress any torts worldwide. And as I will explain in a moment, fairness actually militates against a Tribunal accepting jurisdiction in this case.

My fourth and last preliminary observation pertains to my friend Mr. Weiss's extraordinary argument, which we heard yesterday, that the wording "related to" in Article VI--"related to" in Article VI--of the Treaty would somehow generate jurisdiction in this case. It obviously does not. The boilerplate "related to" phrase doesn't

magically generate an investment or an investment agreement.

First, the investor must be privy to an investment agreement or have an investment.

Second, disputes relating to an investment agreement or an investment may be submitted to arbitration. It is not the other way around.

And as you know, the first prong of this two-tiered test was left expressly unanswered in the Third Interim Award on Jurisdiction.

To review, the Third Interim Award on Jurisdiction explicitly excluded the Lago Agrio Litigation and related denial-of-justice claims from the scope of its conclusion about jurisdiction. However, this Award reserved for the future any decision in regard to the Respondent's jurisdictional objection to Chevron's own claims as a direct investor. This is Paragraph 4.27 of the Award.

Similarly, even though the Tribunal subsequently 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.

I will now clear away the remaining jurisdictional doubts of the Tribunal through the same two propositions, investment agreement and investment, that I described

during my opening submissions.

Turning to my first proposition, Chevron, we say, has no investment agreement. Yesterday, Chevron asserted once again its argument that the 1995 Settlement Agreement was somehow an investment agreement despite the Tribunal's explicit decision that on its own, it is not. At this point, Chevron stops talking about only itself and it starts talking about Chevron and TexPet to somehow leverage the fact that TexPet and TexPet alone had prior Concession Agreements in Ecuador.

As we say in Spanish, however, Claimants cannot hide the sun with their hands. Chevron was not a party to the prior Concession Agreements, and jurisdiction is limited to investment agreements between the investor and the State. There was no privity anywhere between Ecuador and Chevron; and, as a result, there was no investment agreement, point final.

In fact, Members of the Tribunal, Chevron shows again and again just how confused it is by these issues.

It supposes that a decision as to an investment agreement has some connection to Track 1 issues as we heard yesterday. It does not. There is no jurisdiction because Chevron is not a party to an investment agreement, whether or not Chevron has municipal law rights under the Settlement Agreement. In fact, Claimants here completely

ignore both the Tribunal's earlier finding and Ecuador's opening.

As I said at the beginning of this Hearing, the Tribunal expressly noted in its recent decision on Track 1B that, and I quote, "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." And the Tribunal added: "Those parts of the Parties' dispute cannot be decided even indirectly by the Tribunal in this Track 1B."

Aside from having no investment agreement--and I come here to my second proposition--Chevron has no relevant investment. Members of the Tribunal, you have already decided and, as my friend Mr. Weiss said it, this is res judicata, that, and I quote, "Chevron made no investment under any of TexPet's Concession Agreements; it was never a member of the Consortium; it was not a signatory or named party to the 1995 Settlement Agreement; and it first appears in this case chronology in 2001 following its 'merger' with Texaco."

Even though you also decided that Chevron had an indirect investment, which is TexPet, you also decided to postpone until now the most important question regarding jurisdiction, namely whether or not Chevron has a direct investment.

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02:35 Now, the only reason we say you didn't immediately decline jurisdiction of a Chevron direct investment was because of your preoccupation with the legal reasons why Chevron is to be treated in the Lago Agrio Litigation as a party succeeding to Texaco's liabilities. However, as I will explain later, if the issue of Chevron's lack of a direct investment in the Lago Agrio oil concession had been moot, as Claimants desperately argued during the first jurisdictional phase of this arbitration, the Tribunal wouldn't have explicitly left it opened.

Simply put, Chevron's indirect investment, TexPet, and TexPet's investment are not and cannot be the same thing. The distinction between direct investment and indirect investment made by the Tribunal in the Third Interim Award on Jurisdiction is res judicata. It was not reserved for this stage of the proceedings as Claimants tried to reargue yesterday.

And please allow me to make three points at this point. My first point is that bare legal rights are not investments and cannot confer jurisdiction. My second point is that any amalgamation that may have occurred in the Lago Agrio Litigation is entirely irrelevant to jurisdiction in this proceeding. And my third point is that, regarding an indirect investment, the Tribunal has jurisdiction only over those breaches of rights relating to

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02:36 the claiming Parties' existing investment and no more.

Let me explain these three propositions.

I will begin with my first point that bare legal rights are not investments.

Despite Chevron's propositions, there is no legal authority for the view that a bare legal right can confer jurisdiction of an investment tribunal. Quite the opposite is true. Liability releases, rights to limited liability and procedural rights are not investments, and investment treaty jurisdiction stands only to investments.

An investment treaty, Members of the Tribunal, is not an insurance policy, but instead protects an investor with an investment. Nor is it a property protection treaty for foreigners, but an investment protection treaty. A State consent to arbitration, again, extends only to investments.

Now, what is an investment? The GEA Group Award provides an important review of the decisions on point, and adopts the dominant definition which requires, among other things, an economic contribution of resources. In fact, contrary to what my friend Mr. Weiss implied yesterday, this decision indicates that investment treaties themselves require an economic contribution to the host State for there to be an investment, although it secondarily applies the ICSID Convention to the same effect.

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02:38 Likewise, my friend Mr. Weiss's reliance on Article I of the Treaty and the list of manifestations of investments therein is unavailing. Such list in Article I of the Treaty is not enough to define the notion of "investment". Investment, Members of the Tribunal, is above all the activity of investing.

Since Claimants pretend that this issue is controversial, let me add that other cases like Romak and authors like my friend Mr. Bishop provide more detail. An investment requires an economic contribution of resources to the host State in its territory held for a certain period of time that involves risk in anticipation of economic benefit and that contributes to the development of the host State. The fact that an investment requires as its first foundational element a contribution is not controversial. You perfectly know that, Members of the Tribunal, and my friend Mr. Weiss's observations about Salini are simply off point.

It is also telling that yesterday, when Claimants got to the point of explaining how Chevron had made a contribution to Ecuador, it has slipped once again from talking solidly about Chevron to talking about Chevron and TexPet. I quote, they said, "and TexPet and Chevron's investment contributed," they said, "23 billion to the Ecuadorian Treasury and billions and billions more to the

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02:40 Ecuadorian economy."

This statement about whether or not TexPet contributed to Ecuador is simply beside the point. Chevron--Chevron--did not contribute to Ecuador. As a matter of fact, you have already decided this point, Members of the Tribunal, implicitly when you rejected the proposition that the Settlement Agreement alone could be characterized as an investment agreement.

This brings me to my second point, which is that amalgamation in the Lago Agrio Litigation is irrelevant to jurisdiction in this arbitration.

PRESIDENT VEEDER: Can I stop you--

MR. SILVA ROMERO: Yes, sir.

PRESIDENT VEEDER: Just to bring you back to the GEA Group Case, in Slide 10. This is in our CLA-300, but for some reason we don't have this particular passage. If we could have a fuller copy of that, and indeed the other legal materials you have requested, we can go through that later.

MR. SILVA ROMERO: Absolutely.

PRESIDENT VEEDER: And secondly, if you look at the citation you have given us on Slide 10, it's slightly unusual, to my mind, because I had always been taught that the ICSID arbitration test was twofold: You had to satisfy the BIT and Article 25, and this citation, which I couldn't

check, says "or," not "and."

Now, in the light of the submissions yesterday, we heard that this and other cases may be rather special in that Article 25 of the Convention may be interpreted differently from an Article in a Bilateral Investment Treaty. But does that really "all"? Is that the right citation?

MR. SILVA ROMERO: I take this is the correct transcription.

If I may make a comment on the submission that was made yesterday, the idea is that the notion of "investment" will be different in ICSID cases. And it is Ecuador's submission in this case that there is no difference in the objective notion of "investment" depending on the procedural rules that the investor ends up choosing.

There is always an objective notion based on the activity of investing, and this objective notion I believe unanimously showed today is considered to be made at least of three elements: The first element, which is the one at stake here, contribution; the second, duration; and the third, risk. There is, indeed, some discussion about the fourth criterion in Salini, this development of the economy of the State, but regarding the three first criteria, there seems to be consensus.

I am corrected here. Paragraph 153 in the

original Award says "and" and not "or." Apologies.

PRESIDENT VEEDER: Thank you.

MR. SILVA ROMERO: The amalgamation point I mentioned is actually Claimants' sole argument to defend their untenable position that Chevron has a direct investment for the purposes of its denial-of-justice claims. Here, as my friend Mr. Leonard did a moment ago, it is worth reviewing the facts.

Following their so-called "merger" in 2001, Chevron and Texaco portrayed themselves as a combined legal entity. That supposedly combined entity promised the U.S. courts that it would submit to Ecuadorian jurisdiction and abide by any Judgment against it with only a reservation of rights under the New York enforcement statute.

It is undisputed that Texaco and TexPet left Ecuador in 1992 and that TexPet had been effectively Texaco's instrumentality in Ecuador. There is no evidence that TexPet operates anywhere and that it has any assets in Ecuador, nor is there any indication of separation between Texaco and Chevron. For such reasons, the Lago Agrio Court determined that it was a violation of the principle of good faith for Chevron to present itself as having merged with Texaco and to induce lawsuits against it and not directly against Texaco or TexPet.

Now, Chevron has the audacity to assert that the

principle somehow establishes the Tribunal's jurisdiction over Chevron's denial-of-justice claim.

This assertion begs for the application of a fundamental principle of justice which I mentioned at the beginning of the Hearings, nemo auditur propriam turpitudinem allegans: No one may benefit from his or her own wrongdoing.

This principle, as you know, is widely accepted in international law, such as by the Plama Tribunal, which applied it to reject a claim related to a fraudulently acquired investment. Similarly, Chevron acted wrongly when it abused corporate form in the Lago Agrio Litigation. Chevron's wrongdoing, the precise basis for piercing the corporate veil, cannot give rise to jurisdiction over its denial-of-justice claim. To paraphrase Professor Paulsson's Opening Argument, Chevron cannot be permitted to blow hot and cold.

But the analysis does not stop here. Even if nemo auditur didn't block jurisdiction, there is no jurisdiction to block on the basis of amalgamation. Jurisdiction exists to be blocked only on the basis of a State consent, which must be strictly construed on the basis of clear and unambiguous language.

Ecuador consented to arbitrate only those claims related to investments. The Tribunal must look only to the

facts about the investment Chevron has held, and the amalgamation didn't change or illuminate those facts.

The Lago Agrio Court's amalgamation for assigning liability under municipal law demonstrates absolutely nothing about whether Chevron ever had an investment of its own within the scope of Ecuador's consent to arbitrate. The veil-piercing of necessity regarded the corporate relationship of Chevron, Texaco and TexPet following the so-called "merger" in 2001. The Court concluded that it was fair in the present to collect compensation from Chevron for the conduct of TexPet, given that Chevron abused the corporate form to make TexPet judgment-proof in Ecuador.

This is not the relationship, Members of the Tribunal, pertinent to the jurisdiction analysis. For jurisdiction, what matters is whether Chevron and TexPet were in effect the same corporation during the existence of the Lago Agrio oil concession. Only then would Chevron have a collateral argument that it had a direct investment in the oil concession. But the fact is that the oil concession ended in 1992, and Chevron entered the picture only in 2001. There was no relationship at all between Chevron and TexPet at the relevant times.

In short, the municipal law on amalgamation is, as I said, entirely irrelevant to jurisdiction.

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02:49 My third and last point is that an indirect investment confers jurisdiction only over breaches of rights protecting that indirect investment. This proposition is not novel. You have already accepted it, Members of the Tribunal. In the Third Interim Award, you concluded that you have jurisdiction over claims for an alleged breach of any right conferred or created by the BIT with respect to its indirect investment. This conclusion is consistent with the approaches of tribunals which have allowed indirect investors to assert claims only in its own behalf; that is, for damages the investments suffered.

However, because TexPet was neither sued nor found liable in the Lago Agrio Litigation, Chevron's denial-of-justice claim has no relation to any treaty right regarding TexPet, the indirect investment. The Tribunal decided as much when it recognized its jurisdiction over indirect claims concerning TexPet's treaty rights but nevertheless held that no conclusion followed about its jurisdiction over Chevron's denial-of-justice claim.

Now, my friend Mr. Weiss argued yesterday that TexPet suffered harm as a result of the Lago Agrio Litigation because its bank accounts were seized. However, at best, this would confer jurisdiction to the Tribunal over TexPet's claims of denial of justice and solely to the extent of its harm. It is, however, of no assistance to

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02:51 Chevron's denial-of-justice claim.

These principles and conclusions, Members of the Tribunal, helped me provide answers to the Tribunal's questions on jurisdiction.

The first question was: If TexPet had been sued as a named Defendant in the Lago Agrio Litigation and had been held liable as was Chevron under the Lago Agrio Judgment, does the Respondent dispute that TexPet could bring, as a matter of jurisdiction, a claim for denial of justice or breach of the effective-means obligation under the BIT?

This question assumes facts contrary to what actually happened, since TexPet was not sued. However, it seems to follow from the Tribunal's Third Interim Award that if TexPet had been sued and held liable in the Lago Agrio Litigation as a direct investor in the Lago Agrio oil concession, always within the framework of the Award on Jurisdiction by the Tribunal, TexPet could bring a claim for denial of justice on its own behalf.

The Tribunal then added a second question: A related question, you said, is the effect of the Tribunal's Third Interim Award on Jurisdiction. We heard submissions in opening on the status of Chevron as an investor with or without a direct investment, but what is the effect of our Jurisdiction Award on Chevron for its status as an investor

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02:52 with an indirect investment--that is, TexPet--under the BIT?

Now, as an indirect investor, if--and I emphasize, "if"--TexPet had been sued and held liable in the Lago Agrio Litigation, Chevron could bring a claim but only for the harm its indirect investment suffered. As my friend Mr. Weiss conceded yesterday, the most that an indirect investor can claim is the loss of value of the company it controls. In other words, under the scenario of the Tribunal's questions, both TexPet and Chevron could bring as a matter of jurisdiction claims for treaty breaches against TexPet.

However, even assuming arguendo that the treaty breaches occurred, both TexPet and Chevron would be entitled to be compensated only to the extent of their own loss. No award would be payable to Chevron in the circumstances.

This doesn't mean, as the Duke Tribunal noted, and you can see it on the screen, that Chevron would be--wouldn't be compensated. Chevron would be made whole through its shareholding in TexPet, its indirect investment.

To conclude, Members of the Tribunal, I want to emphasize once again that this Tribunal's Award will stand for or against universal jurisdiction over claims by

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02:54 foreigners for denial of justice. On the one hand, the Tribunal can find that it has jurisdiction based on subjective fairness considerations, and despite the basic fact that Chevron has never contributed anything of value to Ecuador and has no direct investment. This conclusion, as you know, is contrary to fundamental principles of international law and international arbitration.

First, this conclusion would eliminate the essential limitation of investment arbitration to investments and expanded to include any alleged injury to a foreigner, even when the foreigner was never even in the country.

Second, this conclusion would reject the fundamental principle that the scope of jurisdiction is defined by State consent, not by Claimant's scheming.

Third, this conclusion would constitute a radical departure from the uniform decisions that base jurisdiction on an investment of the investor made in the territory of the host State.

And fourth, this conclusion would disregard the basic principle of fairness called nemo auditur.

On the other hand, Members of the Tribunal, this Tribunal can defend these principles, the rule of law, and find that it lacks jurisdiction over Chevron's denial-of-justice claims.

02:56 With that, Members of the Tribunal, I conclude my submissions and, with your permission, I hand over the floor to my former senior partner and however friend Professor Mayer.

MR. BLOOM: Before we do that, would the Tribunal--the next presentation, which will be done by three speakers, would be about 50 minutes in length. Would you rather take the afternoon break before or after this next presentation?

PRESIDENT VEEDER: We shall ask our lords and masters.

COURT REPORTER: Yes.

PRESIDENT VEEDER: I think the answer is always yes. We'll have a break now and come back at 3:15.

(Brief recess.)

PRESIDENT VEEDER: Let's resume.

We're sorry to keep you waiting a little bit longer, Professor Mayer, because I think we have two matters. First, we announce that we have now completed the signing of the Site Visit Order as regards the Parties. We have signed. Obviously there will have to be a signature at the PCA by the Secretary-General of the PCA, but that is a formality, so we can take it that that order is now in full force and effect, and thank you all very much for the enormous efforts that have been taken in producing that

03:15 document.

Secondly, you have the floor.

MR. LEONARD: Thank you, Mr. President.

Just two very quick corrections. As Professor Grigera Naón correctly noted, my reference in Slide 29 to Article 2336, is actually 2363. It's a problem of dyslexia.

The second correction is a problem of poor judgment. I was trying to operate out of memory right after lunch, and I gave you the wrong name for a case, the case cited at Page 14 of the Lago Agrio Judgment. The case that I actually should have referred to is Angel Puma, and that's Exhibit R-650.

Now, my colleague, Álvaro Galindo, would also like to make a brief clarification regarding the cover page of the Complaint.

MR. GALINDO: Mr. President, here in the back.

PRESIDENT VEEDER: Yes.

MR. GALINDO: Just by instruction of the Attorney General, the cover page of the Lago Agrio Complaint is made by the Law Clerk of the office of that Court. That's nothing in which the Plaintiffs have any say, and you will find the right party to as a Defendant on Page 17 of the Complaint. It is basically as if the PCA will submit in the cover page of this claim that Chevron is the Party who

03:17 brought its claim, that would be a clerical error that we sure know that could not--never happened at the PCA. Thank you.

PRESIDENT VEEDER: Go ahead.

ARBITRATOR GRIGERA NAÓN: I have a question for Mr. Silva Romero regarding his submission. You referred to enforcement proceedings of the Lago Agrio Award in respect of bank accounts of TexPet. My understanding is that there are other assets in Ecuador that are also being the subject to enforcement proceedings. I remember a reference to trademarks. I do not know if they are trademarks of Chevron or of TexPet. Could you clarify that, please.

MR. SILVA ROMERO: I believe my friend Mr. Tomás Leonard can explain better the question of this issue of the trademarks. I believe he already explained it before, so if I may defer that question, Professor Grigera Naón, to my friend Tomás Leonard.

MR. LEONARD: Thank you, my friend. You caught me off guard.

There is indeed an order of enforcement issued by the first-instance court in Lago Agrio, and that's a normal procedure when a judgment becomes enforceable; it goes back to the Court of First Instance for enforcement. There is an order of enforcement instructing the seizure of certain assets, including trademarks, a large number of trademarks.

03:19 We've addressed this issue in the show-cause proceedings, explaining that those trademarks are subject to two agreements with the company. If I recall correctly, it's Swiss Oil, a company who acquired the ability to produce lubricants under Chevron's trademarks in Ecuador. Those trademarks are subject to two agreements, one of which is royalty-free. This company doesn't pay royalties for the use of those trademarks. The second agreement, and I apologize, but I don't recall the technical names of the Agreements--it's been a while since we briefed these issues.

The second agreement is a licensing agreement, if I recall correctly, and that is subject to certain payments depending on the volume of sales of those products, and those payments are capped, if I recall correctly, at $1.1 million a year. So, other than that cash flow, there is no other economic impact or effect of that seizure. These trademarks have essentially no economic value being subject to a licensing agreement that is royalty-free.

One additional note is that, at least as we understand it today, the property of those trademarks has not been transferred to the Plaintiffs yet, and we don't know whether the Plaintiffs are seeking to have those trademarks transferred to them. We just know that no steps have been taken so far to effect the transfer of ownership

over those trademarks to the Plaintiffs.

PRESIDENT VEEDER: Professor Mayer.

PROFESSOR MAYER: Thank you, Mr. President. As I did in my part of the opening statement, I will answer essentially to Professor Paulsson on the issue of lack of exhaustion of local remedies by Chevron under international law.

My starting point will be a complete agreement with what Jan Paulsson wrote on this topic in his excellent book on denial of justice, which I had the pleasure of reviewing for the "Revue de l'arbitrage". Two brief quotations from that book:

First, "The obligation of the State is to establish and maintain a system which does not deny justice." That's at Page 108. And the consequence of that follows at Page 111. "The very definition of the delict of denial of justice encompasses the notion of exhaustion of local remedies. There can be no denial before exhaustion."

The Ecuadorian judicial system has not yet arrived at its decision on the Lago Agrio Litigation. It has not been given a chance to do so.

Chevron still had remedies available to it--has remedies available to it in Ecuador, and it had them when it filed its Request for Arbitration.

Now--and this is the core of the debate--are these

available remedies futile as Chevron contends?

As in my opening remarks, I feel no need to enter into the tedious debate between "obvious futility" or "no reasonable possibility of effective redress" as the appropriate standard for determining if an otherwise available recourse needs to be exercised prior to accusing a State of being guilty of denial of justice. I will consider the standard the Claimants themselves invoke: The "no reasonable possibility of effective redress" standard. It is a very high standard. And it implies that, if you have been ordered by a judgment to pay $19 billion or $9.5 billion, it would be unreasonable not to try even a small chance of success.

And in addition, you owe it to the State before accusing its whole judicial system of denial of justice.

As Professor Amerasinghe wrote, and I cannot resist the temptation of quoting him a second time because the sentence is both concise and profound, "The sovereignty of the Respondent State requires that it be given a fair opportunity of doing justice through its own system."

In the present case, are there good reasons to think that the still open recourses would still be futile? Professor Paulsson has made and considering both his Opening Statement and his Closing Argument--four arguments. Let me visit them.

In fact, I leave aside the first one. The first one was based on the non-vertical nature of a CPA action. I had answered in the opening, and Jan Paulsson did not insist in closing; therefore, I immediately come to the second argument.

The second argument is that once the Judgment is enforceable, no recourse is capable of redressing the harm. This is, in fact, a petitio principii without any basis in international law. There would be irreparable harm if the Judgment, supposing, of course, it had been obtained by fraud, had already been rn forced, and there would be no possibility of getting the money back; or, if it was certain or at least likely that it would be enforced before any remedy could prevent it, and there would be no possibility of getting the money back.

In our case, more than four years after the first-instance Judgment was rendered, it has not been enforced anywhere. An attempt in Argentina failed, and an attempt in Ecuador has just been mentioned. If Chevron had initiated a CPA action in the hope of obtaining a favorable decision, such decision would already have been rendered. And if it was in favor of Chevron, no possibility of enforcement abroad would exist in the future. The Judgment would have been nullified, and courts do not enforce foreign Judgments that have been nullified in their Country

of Origin.

Chevron cannot complain that there is now a risk of actual enforcement precisely because it did not try a recourse that was available to it.

Professor Paulsson said yesterday morning, and I quote: "The question of exhaustion must be answered objectively at the relevant time. It cannot rest on future possibilities and contingencies." But the relevant time is precisely now. There would be now no risk of enforcement if the recourse had been made and if it had proved successful. We know that it has not been made--one has not been made, one is still pending. We don't know if it would have proved successful, but it's simply because the recourse has not been made.

Ecuador is not, contrary to what Professor Paulsson argued, "asking Chevron to spend years pursuing relief and to come back in 2018 or 2019." Ecuador's position is to say you, Chevron, should have exhausted local remedies as soon as they were available, and we can see now that you have not done it and that the delict of denial of justice does not exist now, since the local remedies have not been exhausted.

To that, Jan Paulsson objected that there are two successive appeals possible against a CPA judgment of first instance, appeals which, first, would have taken years and,

second, would have ended before the National Court of Justice which allegedly has shown hostility towards Chevron.

This is wrong on three counts:

First, once a court of appeal would have rendered its decision supposedly in favor of Chevron, the impugned judgment would have ceased to be enforceable.

Second, even before that, if the CPA Court of First Instance had found in favor of Chevron--and that would have taken on average one year and a half--any possibility of enforcement abroad would, in practice, have immediately ceased, and the enforcement actions in the various countries would have been frozen everywhere.

Third, it is unfair to say that the National Court of Justice is systematically hostile to Chevron in the Lago Agrio Case. Let us remember that the National Court of Justice dismissed the criminal charges brought against two of Claimants' attorneys. There was, therefore, a fair chance, not a tiny chance. If a fraud, of course, was established, then the CPA would have succeeded, and it would have succeeded in time; that is, before any enforcement occurred. Which, by the way, dispenses me, also for the sake of time, to discuss the alternative argument that I had made in opening based on the obligation for the Trust to give back the money to Chevron if Chevron

had been forced to pay it.

In addition, Chevron had the possibility of obtaining a Stay of Enforcement by merely posting a bond with the Court of Appeal. Chevron did not even ask the Court to fix the amount of the Bond. But it has been established in these proceedings that, in the practice of Ecuadorian courts, bonds are fixed in the range of 1 percent to 5 percent of the amount of the Judgment under appeal, contrary to 1.9 billion U.S. dollars, which Professor Paulsson mentioned yesterday. I refer the Tribunal to Dr. Andrade's Second Report, RE-20, Paragraph 57, Note 84, which is extremely precise and documented. In the Loewen Case, bond was fixed at 125 percent of the judgment, and Loewen was not able to pay, and still the Tribunal found that Loewen had not exhausted the local remedies before accepting a settlement. That was, of course, an extreme case, and some commentators have criticized the Award, no one more strongly than Jan Paulsson yesterday. But in Chevron's case, the bond would have been of a relatively, of course relatively, modest amount, and Chevron would not have had any difficulty to pay.

I come to Professor Paulsson's third argument. It is that the denial of justice in this case is so egregious that it must be considered already consummated, and this

word "consummated" has been used several times, and it's a very practical word because it's extremely ambiguous. For Jan Paulsson, the denial of justice was consummated when the Court of Appeal affirmed the Zambrano Judgment and certified that Judgment as enforceable. And then it would "be preposterous" and "grotesque" for Ecuador to invoke the existence of a remedy which should have been exhausted by Chevron. And why? Because, I quote: "The refusal of the higher court to consider evidence of fraud is in itself a frustrating denial of justice."

There is clearly an error in the reasoning here. It is one thing to say that not only the Zambrano Judgment, but also the decisions of the Court of Appeal constitutes a denial of justice because the latter did not consider the alleged ghostwriting character of the former.

It is another thing to say that the State itself, not Judge Zambrano or the Court of Appeal, is guilty of an international delict of denial of justice which is the issue at stake here.

When Judgment has to be passed on the judicial system of the State, all possibilities of recourse offered by that system must be taken into consideration. International law requires that the self-styled victim of a denial of justice establishes two things: One, that a certain judge or possibly several judges have denied him

justice; two, that all available and effective remedies have been exhausted.

Even assuming, which we deny, that an extremely serious denial of justice had occurred, materialized in the Lago Agrio Judgment and in the decision of the courts of appeal and in the issuance of a certification of enforceability, to conclude from that, as Professor Paulsson does, that the requirement of exhaustion does not apply, constitutes an intermingling of two distinct conditions and, in fact, suppresses the requirement of exhaustion.

Professor Paulsson's fourth and last argument is that there is not even a tiny chance that an Ecuadorian Court redresses the harm. Why? Because the whole judiciary of Ecuador is, "weak, dependent, subjugated." But it does not suffice to say that, and to repeat it several times, one has to prove it, and the facts disprove it. There have been numerous instances in which in disputes between the Government and Texaco, Texaco won. I mentioned earlier the dismissal by the National Court of Justice of criminal charges against two of Chevron's lawyers. I mentioned other decisions in my opening remarks, Transcript Page 213.

So, why be so pessimistic? Of course, it's convenient for Claimants.

Professor Paulsson insisted at length on President Correa's alleged pressures on the judiciary, insisting that he himself--President Correa--claims that he is the judiciary. But the reality is different. Mr. Guerra, Chevron's star fact witness, disavowed Claimants' accusations. There was never any interference by the Executive or anyone else, for that matter, in the Lago Agrio Case.

There is also the accusation that President Correa demanded that all those involved in the execution of the 1995 Settlement Agreement and the Final Acta be prosecuted. There was, indeed, a preliminary investigation by the Prosecutor, but he concluded that the evidence did not warrant prosecution or even further investigation. Therefore, either President Correa did not make that demand and the accusation is slanderous, or he did, and that proves the independence of the judiciary. And that is what counts: the independence of the judiciary, not what the President of the State did or did not do.

Now, it is true that Professor Paulsson goes so far as to say that President Correa's actions constitute in themselves a denial of justice. Quotation from the opening: "Why is it not decisive that the Head of State disaffirms any intention to countenance reconsideration?", asked Professor Paulsson. It was, of course, a rhetorical

question, but, in fact, it is a good question. Why is it not decisive? It's not decisive because the head of the State is not the judiciary.

In his closing remarks yesterday, Professor Paulsson said even more explicitly that the Executive can be guilty of a denial of justice, and the only authority that Professor Paulsson cited was Professor Paulsson's book, excellent book, on denial of justice. But even assuming that his position corresponds to the state of international law today, that does not tell us which action by President Correa would constitute, in our case, a denial of justice. Professor Paulsson mentioned several actions which he criticized on the part of President Correa, but he did not pinpoint which of these actions would constitute a denial of justice.

And we were not told either why if a denial of justice had been made by the Executive, the requirement of exhaustion of local remedies would not also apply.

In conclusion, none of Claimants' attempts to establish futility presented yesterday by Professor Paulsson and more generally in the various presentations, written or oral, by Chevron or by the Claimants is convincing.

Convincing to the required level of conviction, and I seize this opportunity before closing to answer the

two questions asked by the Tribunal concerning the burden of proof. One can suppose that the interest of the Tribunal in these questions is related to the alleged ghostwriting of the Lago Agrio Judgment, but these questions are also relevant to the Claimants' accusation against the State that its whole judiciary is weak and dependent, and to the burden of proving that, which rests upon them, the Claimants. We can keep both aspects in mind.

The Arbitral Tribunal's first question is whether under the lex arbitri, which is Dutch law, the UNCITRAL Rules or public international law the evidential burden can shift backwards and forwards.

The second question is whether the balance-of-probabilities standard used in common law is also applied under Dutch law--lex arbitri,--the UNCITRAL Rules, international law, and if in these systems the standard changes when the allegations are, if not criminal, extremely serious. I take both questions together.

First, Dutch law. Dutch law on arbitration has no answer to any of these questions.

Second, the UNCITRAL Rules. Article 24 of the UNCITRAL Rules is the only provision in those Rules that addresses the issue of burden of proof, and all that it says is--you see it on the slide--"Each party shall have

the burden of proving the facts relied on to support his claim or defense." This provision does not distinguish the evidential burden from the legal burden, a distinction which is not made everywhere. Even if it maybe should be. And it does not address the issue of shifting of the burden. It does not make distinctions between extremely serious or less serious allegations. The burden of proof rests on the Party that makes the allegation, and that is all. And we know that on the issue of the alleged futility of a remedy, the burden of proving that futility rests on the alleged victim.

I come to international law. On these issues, it is not easy to describe. There are essentially issues--these are essentially issues of judicial practice from which a unanimous answer cannot easily emerge because a common law judge will have a different attitude from that of a civil law judge. For instance, the balance-of-probabilities standard does not exist in civil law countries. In those countries, the Party which has the burden of proof must establish reasonable certainty, which is a much higher standard.

In the Bayindir Award, the standard was taken from a famous decision of the International Court of Justice, the Corfu Channel decision. You can see it on the slide. The proof, says the Tribunal in Bayindir, but also the

Corfu Channel Case, "proof may be drawn from inferences of fact, provided that they leave no room for reasonable doubt." No room for reasonable doubt. The standard is very high. Of course, the issue was about inferences of fact, but why should evidence based on inferences of fact be subject to a higher standard than any other kind of evidence? That one must be particularly cautious because it is based on reasoning, yes, but that the standard be higher, no reason for that.

And also the standard applies independently of the more or less serious character of the allegation. But when we come to particularly serious allegations such as corruption, the standard is undoubtedly very high. Let us look at the EDF versus Romania Award at the top, and a Procedural Order in the same case. The Award reads: "There is a general consensus among international tribunals and commentators regarding the need for a high standard of proof of corruption. The evidence before the Tribunal in the instant case concerning the alleged solicitation of a bribe is far from being clear and convincing."

And in the Procedural Order, the Tribunal had said: "Proving corruption is a challenging task in the absence of admission of liability by the accused person. It is, therefore, required that every effort be made by the party raising a charge of corruption to substantiate its

claim." And in this sentence, we can guess that there is no shifting of the evidential burden since it's the person accusing that must make every effort to substantiate its claim.

With this, Mr. President and Members of the Tribunal, I close my part of our presentation, and I give the floor, with the Tribunal's permission, to Dra. Blanca Gómez de la Torre.

PRESIDENT VEEDER: Thank you.

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

I will now address the arguments regarding the exhaustion of local remedies with a special emphasis on the Collusion Prosecution Act. Therefore, I will divide my presentation in two parts: The Constitutional Court provides effective means to redress Chevron's allegations of due-process violations and other constitutional guarantees. Two, Chevron has chosen not to exhaust local remedies for the alleged judicial crime.

Regarding my first point, as mentioned in my Opening Argument and ratified by the Republic's Expert Dr. Andrade, it is undisputed that the extraordinary action for protection provides Chevron the effective remedies regarding violations of due process and other constitutional guarantees. According to Ecuador's

Constitution, an extraordinary action of protection is available against Judgments of Final Orders by which constitutional rights were violated by action or omission. This action shall be brought before the Constitutional Court.

If the Constitutional Court grants any of Chevron's allegations of due-process violation, it has the power to overturn, to invalidate the underlying decision on the grounds that it infringes Chevron's constitutional rights, and it may remand the case to the corresponding Court to continue from the point where the violation occurred.

As demonstrated in this slide, Chevron's accusations related to the violation of the constitutional rights are precisely the kind of allegations that the Constitutional Court is called to address and redress. However, I am urged to clarify that the Constitutional Court may not consider extrinsic evidence to prove the alleged violation of a constitutional right as established by judicial precedent where the Court ruled against the Plaintiff because the existing record did not contain any evidence of the alleged constitutional infirmity. As the Tribunal is well aware, the extraordinary action for protection filed by Chevron is still pending.

This takes me to the second point. Instead, the

CPA is the one that provides the exclusive mechanism to address and effectively redress Chevron's allegations of ghostwriting and fraud in the Lago Agrio Litigation. The CPA action could afford Chevron and the Parties accused by Chevron of fraud a full and actual opportunity to present its claims to properly put forth its alleged evidence of ghostwriting and fraud and to participate in a hearing on its claims. And, if finally proven, the full nullification of Judge Zambrano's Judgment as well as damages, imprisonment, and disciplinary proceedings. It is perfectly clear that the ultima ratio requirement is satisfied since the CPA is the only available means to address precisely the kind of infirmities that Chevron alleged have tainted the Lago Agrio Judgment.

This is also confirmed by the Judgment of the Constitutional Court cited by Chevron's Expert in his Expert Report, reference RLA-VI(6)(3). In this ruling it was established that the allegations arising out of Constitution wide violations, legal certainty right were filed by the affected party with the Constitutional Court while the allegations related to the procedural fraud were filed following a different proceeding under the CPA.

Dr. Andrade was correct when asserting that the action under the CPA is a parallel action, it is not of a vertical nature.

As to Mr. Paulsson's contention that an effective CPA action would require several layers of appeal, the following observations are in order. First, the Tribunal will recall that a judgment in a CPA action issues on average 17 months after the filing of the complaint. You may refer to R-1488, official letter of the Judicial Council cited in the Respondent's Track 2 Supplemental Rejoinder.

Claimants have wasted precious time, and continue to do so.

Second consideration, a CPA Judgment will become final and enforceable upon affirmance by the first instance Appellate Court. Mr. Paulsson's suggestion that several layers of appeal will be required is just wrong.

Moreover, we also note that Appellate Decisions on CPA actions have historically issued within approximately a year-and-a-half from the date of the appeal. In fact, a CPA first-instance Judgment declaring the underlying Judgment null and void because it was procured by fraud could effectively shut down and terminate any hope for recognition of the Judgment in a foreign jurisdiction. Any contention otherwise is simply fanciful.

As you know, Chevron ignored this last remedy and decided to bring an arbitration. Chevron's attorney for their National Court Cassation Appeal knew this remedy very

well. Santiago Andrade, one of its main counsels in Ecuador and a former judge of the Supreme Court of Ecuador, in one of his rulings recognized the effectiveness of the CPA in nullifying decisions based on fraud. Chevron cannot hide that.

Chevron's counsel should have known better. I assume they were well aware that, under the applicable law, the effective means to redress their claim was the CPA, but yet, they simply decided not to choose this remedy. In the same way they decided not to post a bond when they filed the cassation appeal of the National Court to a stay enforcement of the Judgment pursuant to Ecuadorian law.

In conclusion, it is actually quite simple. For constitutional violations, the extraordinary action of protection is the right course of action, and for the alleged collusion, the CPA is the adequate venue. In both cases, both means are effective and provide for an adequate remedy, and they had not been exhausted yet. This Tribunal is, therefore, under the duty to wait for these remedies to be exhausted, which is to say that the Tribunal must provide the Ecuadorian judiciary with an opportunity to correct any mistake that could have been committed in the administration of justice in the Lago Agrio Case.

Thank you.

PRESIDENT VEEDER: Thank you.

Please.

MR. UGARTE: Members of the Tribunal, I will address why the treaty and denial-of-justice claims founded on the purported ghostwriting scheme fail at outset due to international legal principles of exhaustion, in particular I will briefly respond to the excuses offered by Claimants during their Opening Statements for why they failed to invoke local remedies at the trial level concerning such allegations.

Claimants have been gaming the system with respect to the Aguinda claim since Day 1, to prevent adjudication of their responsibility to the Plaintiffs. They burn through nearly ten years of litigation proceedings in the United States just to decide the proper forum to adjudicate the Claims brought by Aguinda and now invoke a release that supposedly bars these same claims. And now Chevron is gaming the system once again, with respect to the so-called "ghostwriting allegations." And you can see that from the emphasis they placed on what they knew and when. And that emphasis is remarkably different, depending on the forum in which Claimants are in.

I want to run through a few slides that concern Chevron's pre-Judgment allegations of ghostwriting and show you the contrast of what Chevron told you during their opening submissions and what they told Judge Kaplan.

In the first slide, you see Chevron downplaying what Guerra allegedly told Chevron in 2009. They tell you that, in 2009, Guerra apparently told Chevron he was just out to fix a motion. But to Judge Kaplan, they said, it was a massive fraud about fixing the entire case.

Then, as you can see in the next slide, Chevron told you during opening that Chevron was not even aware that Zambrano had purportedly struck a deal with the Plaintiffs themselves but they told Judge Kaplan that they had received reports which allegedly led Chevron's attorneys to understand that Judge Zambrano was sure to strike a deal with Plaintiffs.

Finally, Chevron tells you, well, it's not that we didn't have a basis to invoke local remedies at the trial level. We just didn't have a videotape. We didn't have objective evidence. Well, as you can see from the slide, Claimants didn't have a videotape when they first told Judge Kaplan just one day after the Judgment was issued that Judge Zambrano had allegedly received secret assistance in drafting the Judgment.

Now, please recall that there is no reliable evidence that any of the statements I'm referencing in the slides during my presentation were made by Judge Zambrano. He did not make any of these statements. All these statements are supposedly coming to Chevron before the

issuance of the Judgment, either directly or indirectly from Mr. Guerra or others, but not a judge of the Court. As my colleagues have demonstrated, the contents of Mr. Guerra's statements are, indeed, bogus, but let me ask you, why are Claimants downplaying those allegations about the supposed statements made directly or indirectly to them by Judge Guerra before the Judgment was issued? Well, the answer is clear: Claimants know they cannot successfully bring a treaty or denial-of-justice claim based on the purported wrong-doings of a trial judge when they had a basis to object and recuse or remove that judge. I cited to all the relevant authority for this proposition during my opening.

Now, during closing, Professor Paulsson said well, you should not credit Chevron's own RICO affidavits about the pre-Judgment events, and he focused on an affidavit submitted by Mr. Carvajal. Chevron, according to Professor Paulsson could never have used this affidavit to recuse Zambrano. He called Mr. Carvajal's Affidavit double hearsay. Well, I couldn't agree more, it is double hearsay. The statements originating from Guerra and Mr. Carvajal's Affidavit about a purported ghostwriting scheme involving Judge Zambrano are, indeed, bogus and unreliable hearsay, much like the other lies that Guerra has made before this Tribunal. But that issue goes to the

lack of the factual merits, but I'm speaking here about the timing of these allegations, and the implications that this has under international law.

And the legal point is simple: Whether this Affidavit was based on double hearsay or not, if it was good enough in Chevron's view to provide it to Judge Kaplan and if it was good enough for Chevron to have a basis to run into Judge Kaplan's arms to make the ghostwriting allegations, a mere one day after the Judgment was issued, then these pre-Judgment allegations surely were good enough for Chevron to invoke local remedies at the trial level in Ecuador.

But, of course, the double hearsay point is irrelevant in any event for purposes of making out my argument on the doctrine of exhaustion. And why is that? Because Chevron claims that it had several direct pre-Judgment contacts in 2009 with Mr. Guerra, where Guerra boasts that he could influence the outcome of the Judgment. And you see that from the timeline on the next slide. Again, the red lines represent the fiction underlying the ghostwriting claims, and the blue lines represent actual events.

Now, Chevron cannot be so duplicitous as to say to Judge Kaplan that the RICO affidavits are persuasive evidence of ghostwriting and before this Tribunal say

forget about these affidavits, they can be ignored as double hearsay. That is gaming the system, pure and simple.

Yesterday it was--claimed that Chevron never would have sat on the information if it knew it would result in a multi-billion dollar Judgment. This proposition was insane. It's not insane from the perspective of RICO. A RICO Plaintiff very well may have no burden to exhaust local remedies to prevent a supposed pre-Judgment fraud before it can bring a RICO claim, but that is not the standard under international law, and Chevron has always said it has no intention of paying for any Judgment that comes out of the Ecuadorian courts.

So, it didn't matter what the Judgment said or didn't say. Indeed, if you look at the timeline, look at when they filed the RICO complaint. They filed it before the Lago Agrio Judgment was even issued, and yet in their RICO complaint, Chevron was already claiming that the Judgment was going to be fraudulent before the Judgment was even issued. Well, if they could claim that the Judgment was going to be fraudulent before the Judgment was issued, they clearly had grounds to invoke local remedies at the trial level to prevent the supposed fraud.

But let's put Chevron's motives aside. Chevron's motives and their deliberate strategic business and

litigation decisions are not Ecuador's responsibility under international law. All you have to do is review the timing of when the supposed ghostwriting allegations actually begin.

And, lastly, I simply want to leave you with the slides that detail the numerous remedies available to Chevron to remove a trial judge for bias. And these are on the next four slides, and I won't take you through all of the slides. I do want to draw your attention to one remedy in particular.

Beyond the simple recusal motion for bias, Chevron also could have invoked Article 109 of the Organic Code of the Judiciary which had a lower standard. All Chevron had to do was offer evidence of a solicitation that would cast doubt on the Court's impartiality to obtain effective disciplinary relief.

In sum, Ecuador has disproven the bogus claims of ghostwriting, but if you give credence to these allegations, you must buy into the whole story. If the evidence was good enough for three Chevron attorneys to swear under oath, under penalty of perjury before a United States Court, then the evidence was good enough to trigger Chevron's duty to report such allegations to Ecuador's judicial authorities, which have, indeed, acted swiftly to recuse judges as was the case with Judge Ordoñez.

Now, Chevron's strategy paid off handsomely for its RICO purposes, but the result under international law has to be different. International law places the burden of bringing such claims forward at the trial level. Under the doctrine of exhaustion, Chevron had to help itself by using the effective means it had at the domestic trial court level to address the supposed ghostwriting allegations. Their failure to do so is fatal as a matter of law to all the denial of justice and treaty claims that rely on these ghostwriting allegations.

Members of the Tribunal, with that, I will switch to a discussion of the Treaty, but I will pause for your questions, if you have any.

ARBITRATOR LOWE: Could I ask if you have anything to say about Article 113 on your last side, which says that the disciplinary action shall be exercised sua sponte or based on a complaint or claim. And does that indicate that even if they had not raised the claim themselves, it could have been raised by someone else?

MR. UGARTE: That would appear to be the case but I would have to reserve the right to come back to you to give you a definitive answer, if I could.

Thank you.

Members of the Tribunal, at this juncture of the proceedings, I wish to take a step back by providing a

roadmap of the basic elements that Claimants must satisfy to establish liability under the Treaty.

As a prefatory matter, this Treaty requires Ecuador to afford certain treatment towards investments, not investors. For example, as you see in the slide before you under Article II of the Treaty, Ecuador must afford fair and equitable treatment to investments. There is no reference to investors in the substantive provisions of the Treaty. Thus, for Chevron to allege that Chevron itself has suffered a purported violation of due process in the abstract or some other injury at the hands of Ecuador, is insufficient to establish liability under the Treaty. Chevron nevertheless intermingles the concept of an investment and an investor in its pleadings as if these terms were synonymous, for example, in the slide before you. Chevron alleges that the Treaty requires Ecuador to treat foreign investors fairly and equitably and that Ecuador must supposedly give investors full protection and security.

Similarly, in the next slide, Claimants also repeat this mistaken assumption elsewhere in their pleadings by stating that Article II of the U.S.-Ecuador Treaty contains substantive protections that Ecuador must provide to a foreign investor.

Now, I think we can all agree that no such

obligation exists under the Treaty. The terms "investor" and "investment" simply cannot be used synonymously for purposes of determining liability. Ecuador's treatment of an investor may or may not be relevant but the treatment afforded by Ecuador towards the investment at issue is inevitably the key issue in determining liability here.

With that as a preliminary comment, Ecuador submits that, to establish liability, Chevron must prove the following three elements.

First, Chevron must prove as a factual matter that Ecuador engaged in the conduct of which Ecuador is accused. Second, Chevron must prove that Ecuador's conduct fell below the Treaty's substantive standards of treatment and, third, Chevron must prove that Ecuador's conduct harmed an investment that is owned or controlled by Chevron. And these elements are derived from a plain reading of each of the substantive provisions of Article II of the Treaty that are at issue in this arbitration.

TexPet, for its part must also individually satisfy each of these three elements to establish Ecuador's liability vis-à-vis TexPet. Now, Claimants come nowhere close to establishing all three elements for any of their Treaty claims or denial-of-justice claims for that matter.

In that regard, I want to comment on one of the reasons why Claimants cannot establish the last element.

This is the element that requires Chevron to show some nexus between the purported misconduct and a harm to its investment, and this is a key issue because if the investment upon which Claimants' treaty claims are grounded does not exist or was not harmed in the Lago Agrio Litigation, then the Claimants' investment treaty claims necessarily fail.

So, what is that investment? There is only one investment that Claimants say was actually harmed by Ecuador. That investment is the bundle of contract rights contained in various Settlement Agreements, particularly the 1995 Settlement Agreement. Each and every treaty breach pled by Claimants is grounded upon their claim that Ecuador injured--somehow injured the Claimants' contractual rights under the Settlement Agreements. Take, for example, Paragraph 539 of their Merits Memorial, where Claimants refer to the very purpose of this arbitration as protecting the investment represented by the rights they say exist under the Settlement Agreements.

What you will not see anywhere in Claimants' Treaty breach discussion is a reference to the 1973 Agreement. Claimants discussed the 1973 Agreement in relation to this Tribunal's purported jurisdiction, but Claimants never discuss, much less establish, how their supposed rights under the 1973 Agreement were breached or

harmed by Ecuador in relation to the Lago Agrio Litigation. Indeed, not a single reference is made to the 1973 Agreement in Claimants' Request for Relief.

In sum, all of Claimants' treaty breaches are grounded solely upon the investment represented by the bundle of supposed contract rights that Claimants purport to have under the Settlement Agreements. So, let's identify the rights that actually exist under the 1995 Settlement Agreement based on the Tribunal's findings to date.

When this arbitration began, Claimants had asserted that the Settlement Agreements contained at least four contractual rights. They claimed that under the Settlement Agreements, Claimants had a contractual right to be defended, to be held harmless, to be indemnified and to be released by the Government of Ecuador in relation to the Lago Agrio Claims. The Tribunal has since stated that the first three of these contract rights simply do not exist. The Tribunal found that there is no express contractual provision in the '95 Settlement Agreement that obligated Ecuador to defend, indemnify or hold Claimants harmless from any liability or obligation, period. As you can see from Paragraph 79 of the First Partial Award.

Now, this finding is extremely significant. If the underlying contract rights that constitute the

foundation of Claimants investment treaty claims do not exist in the first place, the Treaty claims fall away on their own terms.

Furthermore, this finding means that the last remaining contract right whose purported breach or injury gives rise to all of Claimants' treaty claims is the Release contained in the Settlement Agreements. In other words, Claimants' treaty claims are entirely dependent on Claimants' showing that Ecuador somehow injured the investment represented by the Release rights contained in the Settlement Agreement. Whether the Release rights were undermined, of course, depends on the scope of the Release, and whether it is truly an ergo omnes supernatural release broad enough to cover every man, woman, and child who stands in harm's way as Claimants allege.

With that in mind, let me briefly comment on how the Tribunal should assess the issue of the scope of the Release. Before doing so, let me say that this Tribunal should readily discard any claim that there has been an actual breach of the '95 Settlement Agreement under domestic law, much less a breach of the umbrella clause, and this finding could be made irrespective of the scope of the Release. This is because no matter the scope of the Release, Claimants cannot establish that there has been any conduct of the State of Ecuador which breached the Release

that they obtained. The doctrine of good faith does not expand the actual rights contained in the Settlement Agreement.

Clearly, the Government of Ecuador has not breached the Release. The Government never sued Chevron nor TexPet, nor can it be seriously maintained that simply because an Ecuadorian court interprets the scope of the Release at the request of Chevron and makes findings in that regard, that this somehow constitutes a breach of contract giving rise to an umbrella clause claim. A local court's interpretation of a contract governed by domestic law cannot be said to be a breach of that contract, much less a violation of an umbrella clause.

Finally, and most importantly, what standard of review is this Tribunal to use to evaluate the scope of the Release with respect to the remaining treaty claims?

In reviewing the scope of the Release, of course, this Tribunal does not sit here as a court of appeal, as everyone in this room has conceded. The Tribunal cannot substitute its Judgment for that of the Ecuadorian courts on this local law issue. The issue before this Tribunal is not whether the Ecuadorian courts interpreted the scope of the Release correctly. Rather, this Tribunal must only determine whether the Court's interpretation of the scope and their finding that the Lago Agrio Claims and the Lago

Agrio Judgment were not barred thereby was an interpretation that can be considered within the juridically possible. Or, to use the words of the Mondev Tribunal, this Tribunal should only review the decision of the courts of Ecuador concerning the scope of the Release to determine if their decision was clearly improper and discreditable.

And, of course, the opinions of the higher courts of Ecuador, particularly that of the National Court, on the scope of the Release was well within the bounds of the juridically possible. It was far more than that. It was the only correct finding. Far from being outside the juridically possible, many of the findings of the National Court in this respect are in sync with the Tribunal's own decision in Track 1B of March 2015 insofar as the Tribunal decided that the Lago Agrio Complaint included individual claims resting upon individual rights, that simply did not fall within the scope of the '95 Settlement Agreement as invoked by Claimants.

Under these circumstances, the Ecuadorian court's decision on the scope of the Release was clearly a decision within the bounds of the juridically possible under principles of international law, and that finding alone should end this Tribunal's task.

A finding binding by this Tribunal that the ruling

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of the appellate or National Court on the scope of the Release was proper under international law necessarily means that the actual Release rights under the '95 Settlement Agreement were simply not implicated much less harmed by the Lago Agrio Litigation. This finding would remove the last pillar or the last investment propping up all of Claimants' treaty claims. Without an injury to an investment, there can be no breach of an investment treaty, and the Tribunal need not convert itself into a forensic task force to get to this conclusion.

Now, Ecuador has demonstrated that Claimants' factual allegations have failed. There was no ghostwriting. There was no due-process violations giving rise to an international breach. And for this reason Claimants' treaty claims also fail. But the Tribunal need not start there. It may get to the same conclusion by issuing a proper finding with respect to the scope of the Release.

And I leave you with a few passages from the National Court's decision that you can review at your leisure where the National Court finds that the Release could not have barred the Claims asserted by the Lago Agrio Plaintiffs. And many of these findings concerning the Release, of course, are also useful in debunking the analysis presented by Claimants on the Track 1 issues.

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You will see in these slides examples of the passages where the National Court drew a distinction between diffuse rights and collective rights, and where the National Court found that the object of and the Parties to the 1995 Settlement Agreement were different than those involved in the Lago Agrio Litigation.

Members of the Tribunal, I will now address the two questions raised by you at the end of last week that concerned the scope of Ecuador's obligations under the Treaty.

The first of the these questions is whether the Treaty's other standards of protection such as the fair-and-equitable-treatment provision bring any relevant additional protection to the Claimants' case on denial of justice or should you be primarily focused on effective means and denial-of-justice principles.

The first comment to make in addressing this question of the Tribunal is that Claimants' entire case is, in fact, inextricably predicated on the acts of the judiciary of Ecuador as we have established during our Opening Statement and in our written submissions. So, the context in which the Tribunal's question arises is clearly paramount.

Now, naturally, the Tribunal is bound to evaluate Claimants' case by application of the governing treaty

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provisions, and in relation to the specific treaty at issue there is simply no evidence that the U.S. and Ecuador intended to jettison well-established international principles that have long been held to apply when evaluating the conduct of a State's judicial system such as the doctrine of exhaustion.

Numerous investment tribunals have found that the denial of justice principles apply when evaluating investment treaty claims that hinge on the conduct of a State's judicial system, including Mondev, Loewen, Jan de Nul, Pantechniki and others. And, of course, the Duke Energy Award where the Tribunal interpreted the very Treaty at issue here.

I will not repeat the holdings in those cases, but will simply leave you with the pertinent passages from the Jan de Nul and Mondev Decisions, which address the Tribunal's questions here.

I will emphasize that the answer to the Tribunal's question should not be influenced by the fact that the terms "denial of justice" and "customary international law" are not expressly referenced in the present Treaty because investment treaties are not interpreted in a vacuum.

Indeed, both sides agree that the Vienna Convention applies to the interpretation of the present Treaty, and Article 31.3(c) of the Vienna Convention

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requires a tribunal to consider "any relevant rules of international law applicable in the relations between the parties," which includes relevant rules of customary international law as was found by the ICJ in the Oil Platforms Case.

That rules of customary international law are to be used to interpret the scope of Ecuador's treaty obligations should reinforce the conclusion that the Treaty's other standards do not afford broader protections than a claim for denial of justice in light of the specific claims pled here.

Indeed, the same essential view as expressed by Professor Paulsson in his treatise on denial of justice where he states: "The elements of the delict of denial of justice tend to reappear as treaty provisions, for example when they proscribe 'discrimination' or when they require 'fair and equitable treatment.' Thus, a complainant before an international tribunal may allege that a treaty has been breached by reference to its terms without invoking the doctrine of denial of justice by name. When the alleged breach has been committed by a judicial body, however, an assessment of discrimination or unfairness or protection immediately invites reference to the way such general notions have been understood in the context of denial of justice."

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04:21 Turning to the second question posed by the Tribunal last week, this question concerned whether the effective means provision provides broader protection for an investor than denial of justice. And you specifically asked Respondent whether it was common ground between the Parties that the requirement to exhaust local remedies is the same--excuse me, and you specifically asked Respondent whether it was common ground between the Parties that the requirement to exhaust local remedies is the same in light of the reference to the Commercial Cases Partial Award.

The short answer is that the protections afforded under the effective means obligation under the Treaty and denial of justice are the same. And this was the sum and substance of the findings made, for example, by the Tribunal in Duke Energy versus Ecuador with respect to the very same treaty at issue here.

Now, it is true that the Tribunal in the Commercial Cases Award interpreted the effective means provision in this Treaty, and it professed that the effective means provision may potentially offer slightly broader protection than the protection afforded under principles of denial of justice.

However, I would submit that the Commercial Cases Decision has to be assessed on two levels. The first level concerns the formulation of the effective means test as

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04:23 articulated by the Commercial Cases Tribunal. The Commercial Cases Tribunal found that Article II(7) constituted lex specialis. Ecuador disagrees that Article II(7) is lex specialis.

Furthermore, to the extent that the Commercial Cases Award intended to somehow suggest that the requirement of exhaustion under denial of justice and the effective means provision are different, Ecuador submits that that finding must be wrong. That decision cuts against many other decisions and authorities that hold that investment treaty provisions apply denial-of-justice principles when evaluating judicial conduct, and I refer you to the authorities I cited during my opening submissions and our discussion of Article II(7) in our pleadings.

The second level of analysis of the Commercial Cases Partial Award is what the Commercial Cases Tribunal, in fact, actually required by way of exhaustion, and that is all that matters here. Despite its unfounded articulation of a qualified exhaustion requirement, in practice, the Commercial Cases Tribunal nevertheless went on to hold that the investor still had a duty under the effective means provision to exhaust all available remedies.

So, in the end, the apparent distinction drawn by

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04:24 the Tribunal between Article II(7) and denial-of-justice principles appears to have been immaterial. Whatever space it intended to create between the two standards cannot be said to have been material. The investor still had to exhaust all remedies. And Ecuador certainly agrees with the Commercial Cases Award to the extent it held that the investor was required to exhaust all available remedies before a breach of Article II(7) could potentially arise.

Finally, I offer some observations on the comments made by Claimants yesterday in relation to the treaty claims.

Yesterday, we saw Professor Paulsson backpedaling to dissuade the Tribunal from relying on the highly pertinent Loewen Case. Professor Paulsson now says the Loewen Case is wrong and should be forgotten. But, Members of the Tribunal, this case was introduced into this arbitration by Claimants as legal authority CLA-44, and indeed Professor Paulsson himself referenced the Loewen opinion in his opening slides just two weeks ago at Slide 173.

Despite Professor Paulsson's disavowal yesterday, the Loewen Decision is still very pertinent and highly instructive in this case. Of course, in his book on denial of justice at Page 107, Professor Paulsson professed that the Loewen Tribunal was surely right insofar as exhaustion

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04:26 is required as an element to establish a breach of treaty claims that hinge on judicial conduct, and I showed you this quote in the slides displayed during our Opening Statement.

So, let's examine why Claimants suddenly say that Loewen belongs in the past and should be forgotten. Professor Paulsson asks you to imagine what the Loewen Tribunal would have done in the circumstances of this case. Would it have required Chevron to exhaust further remedies? And the answer is, of course, yes. Professor Paulsson draws distinctions between the Loewen Case and the case--or, should I say, the allegations of Chevron in this case--but those distinctions don't withstand scrutiny.

For example, first, Professor Paulsson claimed that the outrage at issue in Loewen was confined to the lower court, but that's not true. Paragraph 6 of the Loewen Decision indicates that after the trial court affirmed the jury's verdict and denied Loewen's petition to reduce the bond that would have stayed enforcement of that verdict, the highest court of Mississippi, the Mississippi Supreme Court, thereafter also refused to reduce the appeal bond. Indeed, the Supreme Court of Mississippi even dismissed Loewen's motion for stay of execution of the Judgment without offering even a single reason for doing so, as you can see from Paragraph 196 of the Loewen Award.

In contrast here, you have Ecuador's highest court reducing the Judgment and offering over 200 pages of reasoned analysis. The Loewen--that Loewen based its treaty claims on the conduct of both the trial court and the Mississippi Supreme Court is also apparent from Paragraph 52 of that award.

Indeed, the investor's situation in Loewen was far more precarious than what Chevron alleges here, because, in Loewen, the investor had significant in-State assets. Loewen had assets in Mississippi and enforcement was imminent in Mississippi unless it could find a way to prevent immediate execution of the Judgment, such as by filing for reorganization under the U.S. bankruptcy laws.

Now, Professor Paulsson likes to refer to the notion that Ecuador's courts are powerless to prevent international enforcement, but that is a red herring under the present circumstances of this case. Chevron is crying wolf because of foreign enforcement proceedings that are now forestalled. But imagine what Chevron would be saying if it had significant assets in Ecuador where the Judgment could be enforced immediately by the very courts that Chevron so readily denigrates and claims as corrupt.

Chevron is essentially Judgment-proof in Ecuador. It is hard to see how the vague risk that Chevron faces of an international enforcement helps Chevron here, when the

Loewen Tribunal found that even imminent in-State enforcement by the Mississippi courts did not excuse Loewen's duty to pursue other remedies. And I refer you to Paragraph 208 of that decision, where the Tribunal makes clear that Loewen had major concerns over the enforcement of its in-State assets. Indeed, Loewen's situation was far worse. So dire were the circumstances that Loewen was considering filing for reorganization to forestall immediate enforcement.

Chevron does not appear to be seeking bankruptcy protection due to the risk of foreign enforcement.

Nor by relying on Loewen does Ecuador accept Claimants' characterization of the Ecuadorian Judgment nor Claimants' characterization of the behavior of the higher courts of Ecuador nor Claimants' speculation that the courts of Ecuador engaged in some massive conspiracy, abiding by President Correa's every whims.

Despite the hyperbole offered by Claimants, in the end you will see that there is a large gap which exists between the speculation offered by Claimants and the lack of any evidence that Ecuador's judiciary actually received, much less heeded, the statements, the supposed statements, of President Correa.

Claimants yesterday also commented that a major reason you should ignore Loewen is that the arbitrators

were perhaps not qualified to comment on principles of international law. Well, perhaps the arbitrators could be excused for not realizing their own limitations because, after all, they relied upon the opinions of Professor Greenwood, whom they cited frequently in their Award. Nor is the issue of purported obiter dicta relevant here. Loewen is no more binding on this Tribunal than any other investment Award, but the Loewen Decision as well as Professor Greenwood's opinions are persuasive. Indeed, you will find Professor Greenwood's opinions support each of the points on exhaustion and denial of justice made by Claimants during our opening submissions.

And, finally, needless to say, I confirm that Ecuador has no objection to the Tribunal's request to review Professor Greenwood's opinion and the other authorities' reference last Friday by the Tribunal that are not presently in the record. And with that I close my submissions.

PRESIDENT VEEDER: We would like to chase you up on the last comment. There was Professor Greenwood who was--Sir Robert Jennings. What other Experts gave Expert evidence in Loewen?

MR. UGARTE: I believe there was another Expert but those were the two you referenced, I believe, in your Friday--and there was--

PRESIDENT VEEDER: Yeah, but it was dot-dot-dot question. Was there another one?

MR. UGARTE: A dot-dot-dot question. There are others, and I don't know them offhand, but I will--surely, I think, we are referring to all the expert opinions in Loewen. From Ecuador's perspective, those are certainly--

PRESIDENT VEEDER: This applies, really, to both sides. We are really asking you to check what other expert opinions were relevant to this issue generally. And we are also asking for copies, because we don't have a photocopying machine in our little room to my right.

MR. UGARTE: Yes.

PRESIDENT VEEDER: But it doesn't have to be done tonight.

MR. UGARTE: I'm sure we could coordinate with our colleagues.

PRESIDENT VEEDER: Also, do you remember you also, I think on the Respondent's side, introduced Professor Greenwood's article contribution, but we didn't have the whole article. We asked you for the full copy.

MR. UGARTE: Duly noted. We'll also follow up on that point as well.

PRESIDENT VEEDER: Again, it doesn't have to be tonight, but we do need it.

MR. UGARTE: Thank you.

PRESIDENT VEEDER: Thank you very much.

MR. UGARTE: Thank you.

ARBITRATOR LOWE: I've got another question which came out of your presentation, but is probably better addressed to Professor Mayer.

There is a constitutional right to due process, and we have been pointed to the CPA and Article 109 of the Organic Code of the judiciary which Respondent says offer the Claimants the opportunity of seeking a remedy.

My question is are there any circumstances in which there is a duty on the State to take positive steps to investigate allegations of fraud in the judiciary? And is there any circumstance in which there is that positive duty in addition to the availability or whatever legal consequences flow from the availability of the remedy which the Claimants could pursue?

PROFESSOR MAYER: Your question is not under Ecuadorian law but under international law?

ARBITRATOR LOWE: Yes.

I think it's a question of what is entailed by the denial of justice, whether it's always sufficient to provide the possibility of remedies that could be pursued by an individual company which considers itself to have been injured, or whether there are circumstances in which the State is under a positive duty to take steps on its own

initiative in order to maintain a fair system of justice.

PROFESSOR MAYER: Well, I'm not in a position to make an answer that I would be certain that corresponds to the truth in international law now. So, I suggest that we answer your question in the framework of the Post-Hearing Brief, if there are Post-Hearing Briefs.

PRESIDENT VEEDER: Who is next?

MR. BLOOM: We're done down to our last 45 minutes. Shall we go until conclusion?

PRESIDENT VEEDER: I think we need a 10-minute break.

MR. BLOOM: Okay.

(Brief recess.)

PRESIDENT VEEDER: Let's resume.

Mr. Bloom.

MR. BLOOM: I'm going to turn the floor over to Mr. Silva Romero first, who's got a response or a clarification for the Tribunal, and then I would ask him to turn the floor over to my partner Mark Bravin for a 20-minute presentation on remedies, and then we'll turn to the final tranche, which is answering the remaining questions that the Tribunal had.

MR. SILVA ROMERO: Thank you, Mr. President. The promotion was temporary, as you can see.

(Laughter.)

MR. SILVA ROMERO: Just to tell you that the full version of the GEA Award is on record, and the reference number is RLA-648.

Thank you. Thank you, Mr. Bloom.

MR. BRAVIN: Mr. President, Members of the Tribunal, we turn now to the Claimants' requested remedies. We have shown in our written and oral submissions that Claimants have failed to prove their allegations of the denial of justice in a treaty breach, and we have shown that the applicable international law, if correctly applied, will not sustain a decision that Ecuador is liable to the Claimants in any respect. But for this discussion let's assume arguendo that the Tribunal finds some basis for a finding of liability.

What then? Well, Claimants ask the Tribunal to grant three types of remedies. These include declaratory, injunctive and monetary relief. Specifically ten separate Declarations, a half dozen injunctive orders, and monetary compensation in an amount yet to be determined. Yesterday, Mr. Kehoe indicated that Chevron's claim for monetary compensation is an issue for Track 3, and we agree. Accordingly, I will limit my remarks to Claimants' requests for declaratory and injunctive relief.

As indicated in the next slide, Claimants have asked for ten different declarations, and there's

considerable overlap among the ten. I will just briefly summarize a few of them.

First, Chevron declares or asks for a declaration that Ecuador has committed a denial of justice under international law and has breached the provisions of the Treaty. If the Tribunal were to conclude that Claimants have proved these alleged breaches of international law, a declaration to that effect would be a logical and customary part of the Tribunal's Award.

The second proposed Declaration merely repeats the first, but only as to Treaty breach.

The third proposed Declaration is something altogether different. Claimants ask the Tribunal to declare that the Lago Agrio Court lacked jurisdiction to adjudicate the Claims of the Lago Agrio Plaintiffs. As we explained this morning, that proposal is evidence of Claimants' bad faith and, worse, of fraud on the courts of the United States. They procured the transfer of the case from New York to Ecuador based on their promise not to challenge jurisdiction, and yet here they are with a scandalous proposal that should be rejected out of hand.

The fourth declaration merely restates the first one, but this time as to denial of justice. And Items 5, 6, 7, and 9 on their list are different formulations of the same proposed Declaration, but this time that the Lago

Agrio Judgment is a nullity and may not be enforced in the courts of Ecuador or any nation. I'll come back to this nullification remedy in a few moments.

Item 8 on their list proposes that the Judgment be declared contrary to international public policy. It is subsumed in the first requested Declaration.

And then finally, Item 10 asks for a declaration that Ecuador must indemnify Claimants for any amount collected from them by the Lago Agrio Plaintiffs. And again, I will come back to that in a bit.

For three separate reasons, the Tribunal should reject Claimants' requests for the nullification remedy. First, awarding such remedies would constitute an unnecessary interference with Ecuador's sovereignty. It would have far-reaching consequences for the Republic, for its system of law, and for its national and international legal obligations to its citizens. It's a little bit like the Star Trek imperative not to interfere with a foreign civilization at the risk of making one small change and throwing the entire culture and system into havoc.

The Tribunal may declare that there has been a breach of international law, leaving others to work out the consequences of such a breach, and as the question from the Tribunal posed on Friday, that is within the scope of the Tribunal's mandate. It is within the scope of the Treaty,

but the same cannot be said for declarations of nullity and the injunctive relief that Claimants seek.

Indeed, in response to the Tribunal's invitation on Friday, Claimants provided no precedent whatsoever for the remedies in an investor-State arbitration that they seek here. We have found none.

State Parties to bilateral investment treaties consent to arbitrate claims of investors of the other State Party when they assert breaches of treaty obligations, but the consent is circumscribed. The jurisdiction conferred by those treaties on a duly constituted arbitral tribunal are similarly limited. The Tribunal should be wary of Claimants' request that it boldly go where no arbitral tribunal has gone before by granting remedies that improperly interfere with Ecuador's sovereignty.

There is on the next slide a quote from the decision in LG&E. Go back one, please. The Tribunal in LG&E versus Argentina, RLA-Slide 103, Paragraph 87, states, and I quote: "Likewise, if approached as restitution, the Tribunal cannot go beyond its fiat in the Decision on Liability. The judicial restitution required in this case would imply modification of the current legal situation by annulling or enacting legislative and administrative measures that make over the effect of the legislation in breach. The Tribunal cannot compel Argentina to do so

without a sentiment of undue interference with its sovereignty."

The principle in play in the LG&E Case applies equally here, where we're talking about a judicial system, and the Claimants request that this Tribunal go beyond its remit and impose obligations that have effects far beyond what Claimants assert to be their rights in connection with their alleged claims of a denial of justice and a breach of the Treaty.

Second, the requested remedies would overcompensate Claimants. Claimants cite the correct principle of international law as expressed in Chorzów Factory Case; and as we have in the next slide, the quote is, "Reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed." There really is no genuine dispute about what the Court was talking about. They were not talking about taking the Parties back to some time in history before the events occurred. They were talking about compensation, reparation, taking the situation as it was found, and making adjustments so that the effects of the illegal act are wiped out, but not the effects of the entire legal process.

The proposed nullification remedy simply goes too

far. It would overcompensate the Claimants. In his book on denial of justice, Professor Paulsson explained why that is so.

On the next slide, please.

And I'm quoting: "The Tribunal must recognize that if the Complainant's case had been given a completely fair hearing, its case may have been a one poor one in any event. Its defenses may have had little or no chance of complete success even in the absence of a denial of justice. That is a fair and accurate statement of the principle in play in this case."

But we heard from Professor Paulsson yesterday that his clients should get a better result than what his treatise explains is the appropriate remedy for a denial of justice. He asks this Tribunal to put aside the dictate of the Chorzów Factory Case and to revise the applicable principle of international law so that his client escapes the legal consequences of their wrongful conduct for which they are strictly liable under Ecuadorian law.

Mr. President, with due respect to Professor Paulsson, both as a scholar and as an advocate, that position is plainly wrong. If the Tribunal concludes that the Lago Agrio Court Judgment is tainted by illegal acts, it must not grant reparation that puts Chevron in a better position than it would have been if there had been no

illegal acts. It must reject Chevron's invitation to throw out the baby with the bath water.

Third, Claimants' unclean hands in this arbitration preclude or at least militates strongly against the equitable relief they sake. The maxim of Roman law cited by my colleague Eduardo Silva Romero is a ground for dismissing Chevron's claims for lack of jurisdiction, but that maxim also applies when the Tribunal is considering what remedies to award. The fact that the Claimants come before this Tribunal with unclean hands has been demonstrated without doubt.

My colleague Mr. Leonard described how Chevron perpetrated a fraud by procuring the transfer of the Aguinda Case to Ecuador after ten years of hard-fought and expensive litigation, based on a false promise to submit to the jurisdiction of the Ecuadorian courts. And as I noted a few moments ago, from Item 3 of the requested declaratory relief, Chevron even now is continuing to perpetrate that fraud by asking for a declaration by this Tribunal that the Lago Agrio Court had no jurisdiction to decide the case. I just wonder what Chevron would have to say to the Second Circuit if it were to take this argument back to the Court today, and I wonder what the Court would say in response.

Mr. Ewing outlined Chevron's frauds in the Lago Agrio Court by hiding evidence of environmental

contamination by misrepresenting evidence, by manipulating the assignment of judges, and by taking every opportunity to undermine the administration of justice by that Court. In fact, the record indicates that that was Chevron's strategy even before the case came to Ecuador. Literally from Day 1 and from before Day 1, Chevron was hard at work setting the stage for the arguments that are only now being played out in this arbitration.

I'd like to refer to slides from Claimants' Closing Argument which are directly on point in evaluating their requests for equitable relief.

Turning to Claimants' Slide 332, which is a citation from the treatise, General Principles of Law as Applied by International Courts and Tribunals, and I quote: "Fraud is the antithesis of good faith and, indeed, of law, and it would be self-contradictory to admit that the effects of fraud could be recognized by law." And yet that is what Chevron asks this Tribunal to do, to disregard its fraud, to disregard the effects of that fraud, and to make awards that are unjustified and unreasonable.

Turn next to Slide 345 from the Claimants' Closing Argument, which is a citation to the Umpire in the Montijo Case, where he says, no one can be allowed to take advantage of his own wrong, and yet that is precisely what Chevron is proposing to do here.

And on our next slide we quote from RLA-549, which is Professor Crawford's contribution, and Article 39 from the International Law Commission's Articles on State responsibility, and I quote: "In the determination of reparation, account shall be taken of the contribution to the injury by willful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought."

So the principles on which the Claimants would have this Tribunal impose sanctions and serious Awards on Ecuador actually apply to their own case. These are sources of applicable international law on which the Parties agree are applicable here.

As indicated in the next slide, taken from the Yukos Case: "In the view of the Tribunal, Claimants should pay a price for their abuse, which contributed in a material way to the prejudice which they subsequently suffered at the hands of the Russian Federation." The Yukos Claimants in that case sought compensation for the loss of their entire investment, and the Russian Government came back and said, well, you are a contributing factor to the loss of your investment. You manipulated the tax system, you committed abuses, and for that we are going to make a substantial reduction in the Award that you otherwise have shown you would be entitled. And that

result plays out time and time again as courts, modern Arbitration Tribunals and other bodies confront the question of what to do when the Claimant has committed a fraud or has contributed in an intentional or negligent way to the very harm that it complains about. It's what we ask of this Tribunal.

Now, the injunctive relief I won't go into in great detail, but I will simply ask that we turn to the slide which shows the extent to which Claimants have overreached in asking this Tribunal to do something that it cannot and should not as a matter of international law and practice do, which is to order a sovereign State to take acts within its own borders and around the world, not just today but for an indefinite period of time, in order to give effect to what Claimants believe or assert should be the result in the Final Award. It is simply too much. If arbitral tribunals were able to as a regular course or regular practice build into their Award a recipe for how the Award will be implemented in the future, we'd see very different Awards coming out of Treaty tribunals. It simply isn't done. The Tribunal's remit ends upon the issuance of its Award. The requests for injunctive relief are simply out of bounds and over-reaching and should be rejected.

At various times earlier in the proceedings, Chevron asked the Tribunal to order Court Clerks to take

action, to order the Lago Agrio Court not to allow its Judgment to be enforced against Chevron pending the outcome of this case, to prevent the Lago Agrio Plaintiffs from taking steps in the courts of other countries. They wanted this Tribunal to order that Chevron is exempt from bond requirements, similar to the bond requirements that were in play in the Loewen Case.

They wanted the Tribunal to order Ecuador to post a bond on Chevron's behalf.

These are the kinds of over-reaching requests that, even if there was some basis for finding liability, and, as we have very clearly outlined, we don't believe there are any reasons, these are the kinds of remedies that this Tribunal should reject out of hand. Whatever the result will be, it will be the administration of justice based on principles of fairness. And the Final Award after Track 3 will have to take into account not only whatever delict the Tribunal finds, if it finds, was committed in the course of the Lago Agrio Litigation, but it will have to take into account the wrongs of Ecuador.--I'm sorry, the wrongs of Chevron.

And so, in conclusion, I would like to say that, on the issue of remedies, there is nothing for this Tribunal to Award to the Claimants at the conclusion of this chapter in the arbitration. At the end of Track 3, we

will know much more than we do now about what Claimants assert to have been their damages, at this point we have no idea. And this idea of offset that the Tribunal asked about last Friday is really a mechanism for contrasting on the one hand the liability that Chevron should be held accountable for, assuming a fair process, something that this Tribunal can do, just as the Commercial Cases Tribunal did, and contrasting that against the wrongs committed by the Claimants in Ecuador.

So, with that, I will conclude my remarks and turn the table back to my colleagues.

PRESIDENT VEEDER: Thank you very much.

Mr. Bloom.

MR. BLOOM: And now we're going to have a few additional answers to the Tribunal's questions of last Friday. I'll first turn the floor over to Mr. Leonard.

MR. LEONARD: Thank you.

If I could just have one minute.

(Pause.)

MR. LEONARD: I apologize.

So, with your indulgence, I would like to address the Tribunal's question which reads as follows: What is the position as a matter of public international law as regards punitive or multiple damages amounting to a denial of justice per se?

The first clarification or comment in respect of this question is the interpretation of what the Tribunal means by denial of justice per se, and one possible interpretation could be kind of a strict liability standard for denial of justice. And we are not aware of any authority in public international law for that kind of standard.

Now, removing the reference to per se or interpreting the question as to whether the availability of punitive damages in a given system of law could conceivably serve as a basis for a finding of denial of justice, again we found no authority for that proposition, and we believe that would render, for example, the United States legal system, one very much prone for findings of denial of justice, given that it allows for punitive damages and even treble damages. So the answer to that aspect of the question is no.

In respect of punitive damages in this case, we would like to clarify that our position is that the punitive damages that were initially awarded by the Zambrano Judgment are no longer on the table and no longer relevant to this case because they were struck by the National Court on Cassation. And that decision is a product, a final product, of Ecuador system of justice, and that process remedied itself to the extent that the finding

of punitive damages could be considered an anomaly in Ecuadorian law.

Now, as to the interpretation of multiple damages, I read that as a reference to excessive damages, and I would like the--I would ask the Tribunal to correct me if I'm wrong, but the answer or the research that we conducted we conducted on the basis of interpreting the concept of multiple damages as excessive damages. Now, again, there is no authority for a strict liability standard. Excessive damages cannot amount to a denial of justice per se. Excessive damages understood as irrational damages, lacking any basis in law or in fact, could hypothetically conceivably under the circumstances of a given case, serve as a basis for a finding of denial of justice. We submit that that's not the case here.

Mr. Ewing, this morning, addressed the various bases for the Court's findings and determinations in terms of quantum of damages, in respect of each of the categories of damages requested and awarded in the Lago Agrio Judgment.

So, I'm afraid that I come empty-handed. Our research doesn't yield any results that, in my view, could assist the Tribunal in addressing this issue, and for that I apologize.

PRESIDENT VEEDER: Thank you nonetheless.

MR. BLOOM: And I'm now going to turn the floor over to one of my colleague from the Attorney General's Office, Ms. Daniela Palacios.

PRESIDENT VEEDER: Please.

MS. PALACIOS: Thank you, Mr. President. Members of the Tribunal, good afternoon.

I will be responding now to two of the Tribunal's questions raised last Friday.

First, regarding the timing of the outstanding action pending before the Constitutional Court and second, about the current statutes of the enforcement actions filed in Argentina, Brazil, and Canada.

Regarding the first question, in light of your request, we've made inquiries with the Constitutional Court to obtain official statistics regarding the average time for extraordinary actions of protection to be heard and decided. We are at this time still waiting for an answer. Nevertheless, to respond to the Tribunal's concerns, we have considered information available at the Constitutional Court's official Web site.

But before we get to the numbers, allow me to update the Tribunal on the current status of the action. Chevron filed its extraordinary action of protection based on alleged constitutional rights violations on December 23rd, 2013. The action was filed against the

National Court's Judgment and Clarification Order dated November 12th and 22nd, 2013 respectively.

According to the corresponding law, on January 2nd, 2014, the Court that issued the Judgment--this is the National Court--sent the file to the Constitutional Court on January 14, 2014. The Constitutional Court Secretariat confirmed that no other action based on the same legal or factual argument is pending resolution by the Constitutional Court.

Finally, on March 20th, 2014, the Constitutional Court admitted the claim, and it's currently being analyzed.

Now, back to the numbers.

We have looked at all the decisions issued by the Constitutional Court since March 2014--that is over the last 12 months--and calculated how long it took the Court to decide extraordinary actions of protection. Some actions have been decided in as few as five months. Several have taken as long as 59 months. In our review of the decided cases over the last year, we noted that many were for actions commenced in 2010, 2011, and 2012. Very few of the decisions were issued for cases commenced in 2013 and 2014. Of course, like many courts around the world, we would not know when the decisions are issued until it is actually issued.

Moving on to the Tribunal's second question related to the current status of the actions filed in Argentina, Brazil, and Canada. Simply the actions have not moved forward.

Now, Members of the Tribunal, one must keep in mind that the first step before enforcement is exequatur, in all three enforcement actions we are only at this preliminary stage.

Once a decision from the Ecuadorian court has been nationalized, only then the execution proceedings can commence.

But let's take each jurisdiction in turn.

First, Argentina. Our Expert haven't been able to access the record. Nevertheless, all we know is that the exequatur request has been filed.

Second, Brazil, according to the information available, the last development took place more than two years ago on April 4th, 2013. This is consistent with the information we provided to the Tribunal through our Brazilian Experts who found that the process of exequatur and enforcement can take more than a decade. For the record, this is Exhibit R-444, Paragraph 22.

As it was pointed out yesterday by Mr. Pate, according to the Superior Tribunal of Justice official Web site, the type of action is listed as Civil Liability and

Civil Law. What Mr. Pate didn't tell this Tribunal is that the request made by the Court to the Brazilian Public Ministry has been pending since 2013.

Last but not least, Canada. Our Expert, George Pollock, has observed, and I quote: "The entire recognition and enforcement process could take as many as six years or even longer before it is completed." For the record, this is Exhibit R-443 at Paragraph 23.

As Mr. Pate noted yesterday as well, the Canadian courts are grappling right now with the threshold question as to whether the Plaintiffs may even proceed in Canada. If they are permitted to do so, the proceedings will begin all over again at the first-instance court level.

Thank you.

PRESIDENT VEEDER: Thank you very much.

MR. BLOOM: And I'm now going to turn to another colleague from the Attorney General's office, Ms. Maria Teresa Borja.

PRESIDENT VEEDER: Please.

MS. BORJA: Thank you, Mr. President, Members of the Tribunal.

I would like to spend just a couple of minutes to clarify the applicable Ecuadorian law relating to the issues of whether Chevron could bring a third-party claim against Petroecuador within the Lago Agrio proceedings or,

in the alternative, whether Chevron could bring Petroecuador as an additional Defendant in the Lago Agrio proceedings.

Under Ecuadorian law, the Parties, as well as the Judges, can act only in accordance with what is expressly permitted and regulated by procedural provisions. As a general rule, in all Ecuadorian procedures, the Claimant, the Respondents, and the Judge are not allowed to assert or assign claims against a third party to an active process. There are exceptions, but such exceptions must be expressly provided by rule. Dr. Andrade has confirmed this in his Expert Reports--for the record, RE-20, Paragraph 25 and RE-27, Paragraphs 49 and 50.

Ecuadorian law does not regulate and therefore does not permit the joining of a third party in summary oral proceedings. Therefore, it is not possible to bring a third party into these type of proceedings. The Experts of both Parties have confirmed this. Even if one would assume that the Lago Agrio Case would have been treated as an ordinary proceeding rather than an oral summary proceeding, something that would have not been possible under that EMA, there is no legal provision under an ordinary proceeding that allows a Party to bring a third party into this type of process. Neither the Parties nor the Judge can make such a request.

At Paragraph 414 of Dr. Coronel's First Expert Report, he wrongly concluded that it's possible to bring a third party into an active ordinary proceeding based on Articles 108, 109, 492 and 494 of the Ecuadorian Court of Civil Procedure.

Dr. Coronel's affirmation is erroneous for three reasons. First, Article 108 and 109 of the Civil Procedure Code are applicable exclusively for cases in which two processes ought to be joined. This provision cannot be relied upon within a single case--that is, to bring a new Party into an existing action. Instead, these Articles could be invoked only if there were two parallel proceedings at the same time, in which case the two separate cases could be joined.

Here, Chevron never brought a separate action against Petroecuador. Absent a parallel action, the rule is inapplicable.

Second, Article 492 allows a third party to be heard as long as one of its interests has been affected. Nevertheless, this Article is applicable when the third party wishes and requests to be heard.

Petroecuador has not been injured in the Lago Agrio Case. Petroecuador may be held liable as a co-debtor if Claimants decide to pursue a separate action as provided by the Ecuadorian law. If that were to occur, the

proceedings commenced by Claimants against Petroecuador would not deal with Chevron and Petroecuador's liability for environmental damage. The corresponding court would instead assess the percentage of Petroecuador's liability as a co-debtor.

Finally, Article 494 was incorporated into the Ecuadorian legal system in order to allow third parties to join an action if they voluntarily wished to do so due to a direct injury to its interests.

Thank you.

PRESIDENT VEEDER: Thank you very much.

MR. BLOOM: Now, let me turn the floor over to yet another colleague from the Attorney General's Office, Mr. Luis Felipe Aguilar.

PRESIDENT VEEDER: Please.

MR. AGUILAR: Thank you, Mr. President.

In response to your question about the status of pending prosecutions, investigations and/or disciplinary actions against specific individuals involved in the Lago Agrio Litigation, the Office of the Attorney General has made inquiries in the hopes of obtaining information responsive to your request.

However, the Criminal Code imposes rules of confidentiality that prohibit the Prosecutor Office from disclosing the requested information, even to the Office of

the Attorney General. For this reason I cannot report on any details except to say that it has been confirmed to us that there are more than one investigations concerning the Lago Agrio Case that are currently pending.

The details and scope of these investigations are not known to the Attorney General's Office.

We're aware of the pending investigation involving Mr. Guerra, but we learned of it only through this proceeding. That is because Mr. Guerra, by law, had to be notified of the investigation, and he presumably disclosed it to the Claimants, who have, from time to time, updated it to the Tribunal and us.

Of course, as noted on Thursday, the Office of the Attorney General has not received a letter seeking information from this arbitration related to that investigation. But even with respect to this investigation, and even though we have reason to believe that multiple persons are being investigated, we do not know precisely whose conduct other than Mr. Guerra's is under investigation, what charges are being considered or when the investigation will come to an end.

Thank you, Mr. President.

PRESIDENT VEEDER: Thank you.

MR. BLOOM: And finally, that brings this oral submission back to me for the final two minutes.

As I noted earlier today, this is a case about a case. And at its heart that case is about contamination. There are real victims, real Plaintiffs, and real claims.

Recall that the Claimants did not want the United States courts to hear this case. They no longer accept the Judgment of Ecuador. And on April 20 of this year, the day before this Hearing commenced, when pressed by the Second Circuit Panel if they would agree to a retrial of the Plaintiffs' claims in the United States courts, they declined.

And they told you yesterday that, in their view, you do not even have the right to consider their actual liabilities, assuming, of course, there are actual liabilities. According to the Claimants, nobody--no court, no forum, no Tribunal--can or should give the indigenous Plaintiffs their day in court, and we are now at 22 years and counting.

To be clear, Claimants not only seek to avoid their liabilities to the indigenous Plaintiffs, but they seek to send a message to all those who would ever have the audacity to bring suit against them.

I refer you to the first 20 pages of our November 7, 2014, submission in which we identified the extraordinary lengths to which Claimants have gone in their efforts to avoid any liabilities in connection for the

pollution in the Oriente.

They've spent hundreds of millions of dollars on lawyers, public relations firms, and lobbyists.

They have placed scientific articles so their Experts could cite to them and lobbied editorial boards of newspapers so that they could cite to them as well.

They have used their war chest to scare off witnesses, and they have used that same war chest to line up witnesses.

We are asking that you see through all the noise and all the interference, and in all fairness, not only the noise generated by the Claimants. To be clear, it is not only Claimants who are seeking justice. We are seeking justice, justice for all the Parties before you, and justice for those who are not.

We very much appreciate the time that you've afforded the Parties over the last three weeks, and for your every courtesy. And with that, Mr. President and Members of the Tribunal, that concludes our oral submission.

PRESIDENT VEEDER: Thank you for that.

And we have a certain amount of housekeeping to do, which we would like to deal after a very short break, but can I list what they are from the Tribunal's perspective, and if you want to add to them, please do.

But we will deal with them after the break.

First of all, there are certain numbers of outstanding Legal Authorities, electronic and paper, with exhibit numbers. We would like those to be sorted out over the next few days, but that can be next week.

Secondly, we want to make sure there is a procedure in place for corrections to the Transcript, both questions as to stenography, which, of course, can never happen, and occasionally questions of interpretation, but that's not the fault of the interpreters.

But we need a timetable for when you can check through and, if we need to intervene as a Tribunal, for us to sort out any dispute between the Parties.

Next we talked briefly about Post-Hearing Briefs. I don't know if you've continued your discussions, but we're going to talk about the scope, the page limit and the timetable for any Post-Hearing Briefs or Post-Hearing Submissions.

We're leaving aside, as you've heard already, any question of revising or extending the terms of the technical expert to the Tribunal. We may come back to you after seeing the Transcript today. We may, in fact, come back here for a Post-Hearing Submissions--after the Post-Hearing Submissions--but we will be in touch with you about that.

Apart from all that, and apart from anything you may want say, we'd like to close the file as regard to new evidence from the Parties--you both closed your cases on Track 2--but we don't close the file to the Tribunal. We shall reserve the right to ask for further assistance from both sides, whether it's questions of law or issues of fact on which we need help.

But that is basically all that we had to raise by way of housekeeping.

Is there anything you want to list for the Agenda? But we will develop it after the break.

We ask the Claimants first.

MR. BISHOP: No. The Claimants have nothing further, Mr. President. Thank you.

PRESIDENT VEEDER: And the Respondent?

MR. BLOOM: Nor do we.

PRESIDENT VEEDER: Let's break for ten minutes and then we'll come back and conclude the Hearing.

(Brief recess.)

PRESIDENT VEEDER: Let's resume.

So, let's start with the first matter. You'll send in the missing Legal Authorities with the designations over the next week or so; is that acceptable to the Claimants?

MR. BISHOP: Yes, absolutely, and I think most of

them we have already distributed in the last day or so, but, yes, that's certainly acceptable.

PRESIDENT VEEDER: Thank you very much. And the Respondent?

MR. BLOOM: Yes, Mr. President.

PRESIDENT VEEDER: Thank you very much.

And corrections to the Transcript, if any? We're not in a mad rush for this, but obviously you need to do it fairly soon.

Have you talked about a timetable?

MR. BISHOP: Yes, we just talked about it, and we've agreed to a deadline of three weeks. We're going to do it quicker if we can, but we will get it done within three weeks.

PRESIDENT VEEDER: That's agreed by the Respondent?

MR. BLOOM: That is agreed.

PRESIDENT VEEDER: Okay. Within three weeks. If there's a problem let us know.

Post-Hearing Briefs, this was really something that was first raised by the Respondent. Do you want to go first?

MR. BLOOM: Sure, although we did consult, and I think we have an agreement that the Parties would submit simultaneous Post-Hearing Briefs limited to the issue of

Track 1B, not to exceed 25 pages and then, of course, both Parties would be happy to provide any further information or responses to any further questions that the Tribunal might have.

PRESIDENT VEEDER: Did you discuss the timing for that?

MR. BLOOM: Yes. I'm sorry.

July 15.

PRESIDENT VEEDER: That's agreed?

MR. BISHOP: Yes, that's agreed.

And as to the other matter that Mr. Bloom mentioned, any further Post-Hearing Briefs, I think we were agreed would be limited to what questions that the Tribunal might ask us to address.

(Tribunal conferring.)

PRESIDENT VEEDER: Well, that's comfortable to the Tribunal. Indeed, we're very happy with the way in which you covered so much ground yesterday and today. Some of us are not enthusiasts for post-hearing briefs, and I think you've scored on that front both of you.

(Laughter.)

PRESIDENT VEEDER: So, let's move on to the next item, which is simply that we close the evidential file to the Parties as regards Track 2, but not obviously to the Tribunal.

Is that agreeable to the Claimants?

MR. BISHOP: Yes, absolutely.

PRESIDENT VEEDER: And to the Respondents?

MR. BLOOM: That is agreeable.

PRESIDENT VEEDER: Of course, that's with the exceptions that we've mentioned already.

Now, the Tribunal has nothing else, and I think there was nothing else to be raised by the Claimants or the Respondents.

MR. BISHOP: That's correct, from the Claimants' standpoint, yes.

PRESIDENT VEEDER: Well, the next item on our Agenda is, of course, the site visit, so we'll see you there. I don't expect we'll see everybody, but I'm sure we'll see some.

So, thank you for all that. Can we thank, I think, on behalf of all of us in the room our stenographers and interpreters. They don't always complain, and they put up with a lot, but it's been a very smoothly run Hearing, and I think we thank them very much for all their hard work.

We should thank our host too because this room is a very useful room, and although I didn't have one, the cookies looked very good, the other cookies, so the World Bank and ICSID, I think, have done us proud. But from our

perspective up here, can we thank the parties for making this an extremely efficient Hearing. We know just how much hard work goes on behind the scenes. We simply see the tip of the iceberg, but we're thankful for the whole iceberg, so thank you both sides very much indeed, and we look forward to seeing some of you soon.

MR. BISHOP: Mr. President, could I simply say on behalf of the Claimants that we very much thank the Tribunal for the attention that you have paid over the past three weeks. We appreciate the hard work that has gone into this.

We also thank the translators and the court reporters for their around when work and also our colleagues on the other side of the table. And with that, we close for the Claimants.

MR. BLOOM: And before anything else, we would reciprocate that, and that includes, of course, the Members of the Tribunal, the Secretary, everyone in this room. It was a very smoothly run Hearing. I was in awe of how well the translation went the two days that I was cross-examining Mr. Guerra. I don't think that's an easy job. I will state that I have done this in a courtroom, too, as in these hearings. This had to have been the smoothest that I've ever experienced. And again, I thank the courtesies of my colleagues across the room.

05:50 PRESIDENT VEEDER: Well, thank you for all that, and with that we close this Hearing. Have safe journeys home.

(Whereupon, at 5:51 p.m., the Hearing was concluded.)

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