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

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In re:
APPLICATION OF CHEVRON

-----x

December 23, 2010
9:30 a.m.

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

1 DONZIGER

2 A. I do recall that, yes.

3 Q. Is it true that plaintiffs had
4 a concern that if the settling experts
5 continued, it would be demonstrated by the
6 settling experts that the TexPet
7 remediation had been completed in
8 compliance with the remedial action plan?

9 A. That was not our concern. We
10 felt like the settling experts had been
11 made biased in favor of Chevron and were
12 not really neutral and they were really
13 about sucking money out of both parties.

14 I think the report cost
15 \$200,000, and we felt it was not necessary
16 and justified under Ecuadorian law.

17 Q. What is the name of the
18 settling experts that you believe were
19 biased?

20 A. I don't remember their names.
21 I think one had the last name of Zambrano.
22 And I believe there were four other
23 individuals. In other words -- I believe
24 there were five people who worked on that
25 report.

1 DONZIGER

2 Q. What evidence do you have that
3 they were improperly biased, these
4 settling experts?

5 A. I think the content of the
6 report, and it was an assumption we had,
7 we don't believe that report was really
8 accurate and it seemed to us very biased
9 in favor of Chevron. As I said,
10 unnecessary under Ecuadorian law.

11 Q. Other than the fact that their
12 settling expert report reached conclusions
13 favorable to Chevron, did you have any
14 other basis for concluding that the
15 settling experts appointed by the court
16 were biased?

17 A. Well, the conclusions weren't
18 based on the evidence, in our opinion.
19 They seemed engineered to favor Chevron,
20 not based on the evidence.

21 Q. What conclusion of the settling
22 expert are you referring to as not being
23 based on the evidence?

24 A. I don't remember specifically,
25 but I remember they had found very

1 DONZIGER

2 significant amounts of toxic contamination
3 at the site and then they made some legal
4 conclusions about who did it or something
5 to that effect.

6 But I really remember it being
7 about a hundred-page report and I remember
8 having those opinions at the time.

9 Q. When you say "toxic
10 contaminants," are you referring to
11 contaminants above regulatory levels?

12 A. Yes.

13 Q. Any other reason for the claim
14 of bias of the settling experts?

15 A. We had various suspicions that
16 they were very close to Chevron's local
17 counsel.

18 Q. The settling experts?

19 A. Yes.

20 Q. What's the basis of that
21 suspicion?

22 A. Just watching how they
23 operated.

24 Q. Can you be more specific?

25 A. Well, it was a suspicion.

1 DONZIGER

2 Q. I thought you were indicating
3 the suspicion was based on personal
4 observation. Is that not right?

5 A. Yeah. But sort of just
6 watching how they operated, the nature --
7 the length of their report, how a lot of
8 it we felt was irrelevant, unnecessary,
9 and really ultimately how much they
10 charged the parties to do that report all
11 fed into that suspicion that we had.

12 Q. How much did Mr. Cabrera charge
13 for his report?

14 A. I believe I testified that it
15 was somewhere between 200 and \$300,000.
16 But I don't know the exact number as I sit
17 here today.

18 Q. Was his charge for that report
19 reduced in any way by the fact that he
20 primarily adopted plaintiffs' written
21 materials?

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

23 Q. Would Mr. Cabrera's
24 compensation for the report have been the
25 same had he had to write the whole thing

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CERTIFICATION

I, TODD DeSIMONE, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not related
to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 23rd day of December, 2010.

TODD DESIMONE

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

-----x

In re:
APPLICATION OF CHEVRON

-----x

December 29, 2010
8:51 a.m.

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

1 DONZIGER

2 No, there isn't.

3 Q. When you wrote "I keep thinking
4 we pay them so little," that refers to
5 Pinto and Reyes, correct?

6 A. Yes.

7 Q. And when you say "and they know
8 the court's peritos make so much," you are
9 referring to the judicial inspection
10 settling experts, correct?

11 A. Yes.

12 Q. When you say "this was my one
13 bargain with the devil," you are referring
14 to the independent monitorship agreement
15 you reached with Pinto and Reyes; is that
16 right?

17 A. I'm referring to the fact we
18 had to pay them.

19 Q. For the independent
20 monitorship, correct?

21 A. For the work they were doing,
22 yes.

23 Q. Did Gustavo Pinto and Fernando
24 Reyes write a report for the plaintiffs
25 concerning the settling expert's Sacha 53

1 DONZIGER

2 report?

3 A. I don't remember. It is
4 possible.

5 Q. Did Gustavo Pinto and Fernando
6 Reyes provide you with a draft of such a
7 report?

8 A. I don't remember.

9 Q. Had you asked Pinto and Reyes
10 to try and discredit the Sacha 53 settling
11 expert's report?

12 A. I might have asked them to
13 comment on it because I felt like it was
14 deficient in a number of respects. But I
15 don't remember specifically.

16 Q. Did they provide you a draft
17 report that you -- let me withdraw that.

18 Did Fernando Reyes and Gustavo
19 Pinto provide you a draft report
20 commenting on the Sacha 53 settling expert
21 report that you found unsatisfactory?

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

23 Q. You don't have any recollection
24 of that?

25 A. As you are asking me these

1 DONZIGER

2 questions, I have not reviewed this before
3 this series of questions. As you ask me
4 these questions and I look at this, I have
5 a vague recollection that they prepared
6 some sort of document and gave it to me.
7 I don't remember when, what it was about,
8 other than it was related to something
9 related to the Lago Agrio fieldwork.

10 Q. You ended the independent
11 monitorship, correct, that project?

12 A. It did end. I don't know if I
13 ended it or it just ended.

14 Q. You don't recall whether you
15 had a lunch with Fernando Reyes in Quito
16 to end that monitorship?

17 A. No.

18 Q. After you ended the independent
19 monitorship with Fernando Reyes and
20 Gustavo Pinto, you entertained the idea of
21 having Fernando Reyes serve as the court's
22 global expert, correct?

23 A. Yes.

24 Q. Did you interview Mr. Reyes for
25 that position?

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DONZIGER

2006, Ann Maest, Approach for Conducting the Peritaje Global, Chevron Texaco Case, Ecuador."

Mr. Donziger, have you seen Exhibit 38 before?

A. I think I have. I don't remember specifically. I think I have.

Q. Did you ask Ms. Maest as early as June of '06 to develop an approach for conducting the global assessment part of the Ecuador case?

A. I believe I did.

Q. In Exhibit 38 there is a discussion of approaches for fieldwork, sampling and site selection. Do you see that?

A. Yes.

Q. Were the plaintiffs involved in selecting the sites that Mr. Cabrera decided to inspect?

A. To the best of my recollection, I believe somebody on our team suggested to him specific sites that we thought would be helpful for him to inspect.

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CERTIFICATION

I, TODD DeSIMONE, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not related
to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 29th day of December, 2010.

TODD DESIMONE

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

-----x

In re:
APPLICATION OF CHEVRON

-----x

January 29, 2011
9:09 a.m.

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

1 DONZIGER

2 because I'm not here to do whatever I can
3 to preserve it.

4 THE SPECIAL MASTER: You have
5 stated what you stated on the record. I
6 heard what you said. It carries whatever
7 weight and force it may have.

8 Mr. Kaplan, would you please
9 bring in the witness.

10 (Mr. Mitchell departs the
11 deposition.)

12 (Witness enters the room.)

13 * * *

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

17 CONTINUED EXAMINATION

18 BY MR. MASTRO:

19 Q. Good morning, Mr. Donziger.
20 You are still under oath. You understand
21 that, sir?

22 A. Yes.

23 Q. Sir, are you aware that
24 yesterday, January 28th, the BIT
25 arbitration panel issued a procedural

1 DONZIGER

2 Q. And what would the petition
3 have achieved? It would have permitted
4 you to file new expert reports, correct?

5 A. I think I haven't actually read
6 this part of the e-mail.

7 Q. But that was the cleansing
8 process you were referring to, the
9 authorization from the Ecuadorian court to
10 file new expert reports, correct?

11 A. The purpose was to put in new
12 expert reports, yes.

13 Q. To cleanse the perceived
14 impropriety of the Cabrera report,
15 correct, sir?

16 A. Well, that's one way to
17 characterize it. I will note that the
18 word "cleanse" is in quotes in this
19 e-mail.

20 Q. Well, sir, it is a word you
21 used, didn't you?

22 A. I might have.

23 Q. We are going to show you that
24 you did. Let's go to the next exhibit.
25 This is 1637.

1 DONZIGER

2 and I will read them. And Mr. Ormand will
3 read them.

4 Mr. Ormand, unlike me, was
5 raised to read from a screen and therefore
6 you can send him his missive by e-mail and
7 e-mail attachment, but I ask that,
8 particularly if you are going to have
9 cases attached, to deliver it to my
10 apartment. You all have my address by
11 now.

12 MR. NARWOLD: This relates just
13 to the Lefcourt issue?

14 THE SPECIAL MASTER: Yes.
15 Let's call the witness in and resume
16 testimony, please. Oh, I should have
17 added, and I will make a ruling on Monday
18 morning.

19 (Witness returns to the room.)

20 CONTINUED EXAMINATION

21 BY MR. MASTRO:

22 Q. Mr. Donziger, am I correct that
23 in the Crude outtakes you permitted the
24 filmmakers to film a scene of you entering
25 and then presenting ex parte before a

1 DONZIGER

2 judge about a lab inspection order that
3 you were trying to get overturned?

4 A. If you are talking about the
5 film, in the movie itself, I think the
6 answer would be yes.

7 MR. MASTRO: Can we show that
8 scene, please. We will mark this as
9 Exhibit 1639. We will mark the transcript
10 and show the clip. I will identify it for
11 the record as a March 30, 2006 clip from
12 the movie Crude that actually appeared in
13 the movie.

14 (Exhibit 1639 marked for
15 identification.)

16 MS. HENDRICKS: The clip will
17 be marked as Exhibit 1639 and the
18 transcript will be Exhibit 1640.

19 (Exhibit 1640 marked for
20 identification.)

21 (A portion of Exhibit 1639 was
22 played at this time.)

23 Q. Mr. Donziger, am I correct that
24 the "independent laboratory that does the
25 analysis of our water and soil samples"

1 DONZIGER

2 that was the subject of this court session
3 was the HAVOC lab?

4 A. Yes.

5 Q. And it wasn't common for you to
6 actually go to court and argue cases in
7 connection with the Lago Agrio case,
8 correct?

9 A. That's correct.

10 Q. In connection with the Lago
11 Agrio case, had you ever argued before an
12 Ecuadorian judge before this?

13 A. I don't believe so.

14 Q. So this is a pretty important
15 issue to you, not having the HAVOC lab
16 inspected, correct, sir?

17 A. It was an important issue.

18 Q. And you previously testified
19 that the reason why it was so important to
20 you to prevent Chevron from inspecting the
21 HAVOC labs was because you feared that,
22 your words, "Chevron was trying to
23 intimidate HAVOC into not working with
24 us." Do you recall that testimony, sir?

25 A. Yes.

1 DONZIGER

2 an extent. Looking at this, I have a
3 recollection.

4 Q. And in fact plaintiffs' team
5 did purchase insurance for Mr. Cabrera,
6 didn't it, sir?

7 A. I don't know.

8 Q. Am I correct, Mr. Donziger,
9 that the plaintiffs' team had a nickname
10 for Mr. Cabrera? He was called Wao,
11 correct?

12 A. Yes.

13 Q. And you developed that nickname
14 so that in your communications you could
15 communicate about Mr. Cabrera without
16 people knowing you were necessarily
17 talking about Cabrera, correct?

18 A. Yes.

19 Q. And Wao is a reference to one
20 of the indigenous tribes in the Oriente,
21 correct?

22 A. Yes.

23 Q. And also loosely translated as
24 "free man," correct?

25 A. I don't know.

1 DONZIGER

2 Q. Kind of ironic in this context,
3 don't you think? I'll withdraw that
4 question.

5 Sir, I would like to show you
6 another document to try to refresh your
7 recollection whether you actually
8 purchased the insurance. I'm going to ask
9 you one more time, don't you recall that
10 the plaintiffs' team in fact purchased
11 insurance for Mr. Cabrera?

12 A. No, I don't recall.

13 Q. You don't recall one way or the
14 other?

15 A. No.

16 Q. Here is Exhibit 1647.

17 (Exhibit 1647 marked for
18 identification.)

19 (Witness perusing document.)

20 Q. Mr. Donziger, am I correct that
21 this is an e-mail exchange on July 4, 7
22 and 11 among yourself, Pablo Fajardo and
23 Julio Prieto, in 2007, correct?

24 A. Yes.

25 Q. And these are documents that

1 DONZIGER

2 came out of -- this is a document that
3 came out of your files, correct, that you
4 produced in this litigation?

5 A. I don't know. I assume. I
6 don't know.

7 Q. It is a document that was only
8 produced to us in the last two weeks,
9 correct, sir?

10 A. I don't know. I defer to
11 Mr. Haggerty.

12 MR. MASTRO: Mr. Haggerty?

13 MR. HAGGERTY: I believe that
14 is correct based on the Bates numbers.

15 Q. Do you know of any reason why
16 this document wasn't produced to us
17 sooner?

18 A. No.

19 Q. And here, talking about the
20 subject of purchasing insurance for
21 Mr. Cabrera, the plaintiffs' team now
22 reverts to the Wao designation for
23 Cabrera, so it wouldn't be clear on the
24 face of the document you are referring to
25 Cabrera, correct?

1 DONZIGER

2 A. Yes.

3 Q. And here you are having a very
4 detailed exchange about the insurance to
5 be purchased for Cabrera, the dollar
6 values, and how much it is going to cost,
7 correct, sir?

8 A. Yes.

9 Q. Does that refresh your
10 recollection, sir, about the plaintiffs'
11 team purchasing insurance for Cabrera?

12 A. I don't know. I don't think it
13 does. But based on this, you know --
14 based on this e-mail, it looks to me like
15 insurance for Cabrera was purchased, if
16 that's your question.

17 Q. Thank you, sir.

18 Now, you continued to use the
19 Wao name for Mr. Cabrera in subsequent
20 sensitive e-mails about Cabrera so it
21 wouldn't be clear you were referring to
22 him after this date, correct, sir?

23 A. I believe so.

24 Q. Did there come a time in --
25 strike that.

1 DONZIGER

2 this number that I can't with certainty
3 say that, but could confirm that.

4 MR. MASTRO: We will represent
5 that this was a document that was produced
6 for the first time in the last two weeks.

7 Q. Do you know of any reason why
8 this document would not have been produced
9 previously, sir?

10 A. I know possible reasons, but I
11 defer to counsel.

12 Q. Now, Mr. Donziger, let's start
13 with Mr. Fajardo's e-mail towards the
14 bottom of the page. He writes "Today the
15 cook met with the waiter to coordinate the
16 menu." Do you see that, sir?

17 A. Yes.

18 Q. Am I correct that Mr. Fajardo
19 was referring to the judge when he used
20 the name "the cook"?

21 A. I believe he was.

22 Q. And am I also correct that
23 Mr. Fajardo was referring to Cabrera when
24 he used the term "the waiter"?

25 A. I think. I think. I'm not 100

1 DONZIGER

2 percent sure.

3 Q. You think he was referring to
4 Cabrera, correct?

5 A. I think that's true.

6 Q. Now, the next sentence, he
7 writes "What is new is that in view of the
8 other restaurant's challenge, the cook has
9 the idea of putting another waiter to be
10 on the other side."

11 Do you see that, sir?

12 A. Yes.

13 Q. And you understood that the
14 cook to whom Mr. Fajardo was referring was
15 the judge, correct?

16 A. Yes.

17 Q. And you understood that putting
18 in another waiter -- strike that.

19 You understood that the phrase
20 "putting in another waiter" that
21 Mr. Fajardo used was referring to
22 appointing a second court expert to work
23 with Cabrera on the global damages
24 assessment, correct, sir?

25 A. I think it was to use the

1 DONZIGER

2 A. I don't know.

3 Q. So you even had -- you on the
4 plaintiffs' team even had to think of
5 something that Richard might be able to do
6 that might be independent of the
7 plaintiffs, correct, sir?

8 A. It was an idea, yes.

9 Q. And you went on to say that
10 another thing that the plaintiffs' team
11 needed to do was to "try to find ways to
12 keep Texaco from finding out much about
13 his plan and his work." Do you see that,
14 sir?

15 A. Yes.

16 Q. And the "his plan and his work"
17 you are referring to there is Cabrera,
18 correct?

19 A. Yes.

20 Q. And the "keeping Texaco from
21 finding out much about his plan and his
22 work" was keeping Texaco from finding out
23 that plaintiffs were preparing Cabrera's
24 work plan, the sites he would inspect, and
25 drafting his report, correct, sir?

1 DONZIGER

2 judicial inspections model and have two,
3 maybe, two experts.

4 Q. Did you have an understanding
5 of what Mr. Fajardo meant by "the other
6 restaurant"?

7 A. I believe based on my best
8 recollection he was referring to Chevron.

9 Q. And Mr. Fajardo then writes
10 "This is troublesome. I suggest we
11 activate alarms, contacts, strategies,
12 pressures, in order to avoid this
13 happening. It is necessary to do it
14 urgently."

15 Do you see that, sir?

16 A. Yes.

17 Q. You understood that the
18 pressures that Mr. Fajardo was referring
19 to in that sentence were to put pressures
20 on the court to only appoint Cabrera as
21 the court expert to do a global damages
22 assessment, correct, sir?

23 A. I think that's correct.

24 Q. Now, sir, you respond to
25 Mr. Fajardo and copy your Ecuadorian

1 DONZIGER

2 A. Involved --

3 Q. All of those things, correct?

4 A. Not having Texaco know about
5 what we were doing with Cabrera, yes, and
6 Stratus.

7 Q. And, sir, you said that these
8 things that the plaintiffs' team needed to
9 do were "vital," your word, correct?

10 A. Yes.

11 Q. And, sir, am I correct that
12 Mr. Fajardo responds several days later
13 that he met with the boss; do you see
14 that, sir?

15 A. In this e-mail chain?

16 Q. Yes. On May 17th, '07 --
17 THE SPECIAL MASTER: May 10th,
18 '07?

19 THE WITNESS: I don't think it
20 is in this one.

21 Q. It is the e-mail immediately
22 below the one that you wrote,
23 Mr. Donziger.

24 A. It is May 10th. I think it
25 preceded my e-mail.

1 DONZIGER

2 Q. Whenever it was written,
3 Mr. Fajardo wrote to you also in May '07
4 that "today I met with the boss." Do you
5 see that, sir?

6 A. Yes.

7 Q. And you understood that "the
8 boss" to whom Mr. Fajardo was referring
9 was the judge, correct?

10 A. Yes.

11 Q. And Mr. Fajardo had met with
12 the judge, correct?

13 A. Yes.

14 Q. Texaco wasn't there meeting
15 with the judge, was it, sir?

16 A. I don't know.

17 Q. Mr. Fajardo doesn't say Texaco
18 was there meeting with the judge, does he,
19 sir?

20 A. No.

21 Q. There were many times when
22 Mr. Fajardo met with the judge alone and
23 Texaco wasn't present, correct, sir?

24 A. That was how it worked in
25 Ecuador, sir.

1 DONZIGER

2 Q. So I'm right, correct?

3 A. Yes.

4 Q. Now, sir, Mr. Fajardo writes
5 here that "the judge calmed down about
6 being upset with me."

7 Do you know what that was a
8 reference to?

9 A. No.

10 Q. But he goes on to say "There is
11 no turning back. He will ratify Richard
12 and everything that's been ordered."

13 Do you see that, sir?

14 A. Yes.

15 Q. And turning the page,
16 Mr. Fajardo then goes on to say that there
17 is "another point of concern." Do you see
18 that, sir?

19 A. Yes.

20 Q. And Mr. Fajardo tells you "the
21 work plan," correct?

22 A. Yes.

23 Q. And that's the work plan that
24 the plaintiffs' team prepared for
25 Mr. Cabrera, right?

1 DONZIGER

2 A. Yes.

3 Q. And the Fernando you are
4 referring to there is Fernando Reyes,
5 correct?

6 A. Yes.

7 Q. And they are together preparing
8 a report, correct?

9 A. Yes.

10 Q. But you have asked Alejandro
11 Ponce Villacis, who is part of the
12 plaintiffs' legal team, to redo a draft
13 and turn it into a final version with
14 their voice, Pinto and Reyes' voice,
15 correct?

16 A. Yes.

17 Q. And Gustavo Pinto and Fernando
18 Reyes are two people that you collectively
19 referred to as GF, correct?

20 A. I think I've seen that.

21 Q. And that's G for Gustavo and F
22 for Fernando, correct?

23 A. I think so.

24 Q. And the report that the
25 plaintiffs' lawyers were preparing for GF

1 DONZIGER

2 was a report that the plaintiffs wanted
3 Pinto and Reyes to take to the judge in
4 the Lago Agrio case, correct?

5 A. I believe so.

6 Q. And isn't it a fact, sir, that
7 you cut a deal with Mr. Pinto and
8 Mr. Reyes to work secretly for the
9 plaintiffs back in November 2005?

10 A. Work confidentially is how I
11 would describe it.

12 Q. In fact, when you cut that deal
13 with Mr. Pinto and Mr. Reyes, it was your
14 intention that they keep confidential that
15 they were working for the plaintiffs,
16 correct?

17 A. Yes.

18 Q. And being paid by the
19 plaintiffs, correct?

20 A. Yes.

21 Q. Now, Mr. Pinto was the head of
22 the Ecuadorian Professional Association of
23 Engineers, correct?

24 A. I believe so.

25 Q. And Mr. Reyes was also a

1 DONZIGER

2 respected member of that organization,
3 correct?

4 A. I believe so.

5 Q. And your aim in cutting this
6 deal with Mr. Pinto and Mr. Reyes to pay
7 them to work confidentially for the
8 plaintiffs was for them to speak to the
9 court as supposedly independent engineers
10 about the work that was being done by the
11 dirimentes, correct?

12 A. I don't remember if that was
13 the precise topic.

14 Q. But it was for them to
15 communicate with the judge about the joint
16 inspections that were being conducted at
17 the time in 2005 and 2006, correct?

18 A. I believe so.

19 Q. And they were not to tell the
20 judge that they were working for the
21 plaintiffs when they communicated with the
22 judge about their views as engineers on
23 the joint inspections that were being
24 conducted in 2005 and 2006, correct?

25 A. I think that's correct.

1 DONZIGER

2 Q. In fact, at the time you
3 confidentially hired Pinto and Reyes on
4 behalf of the plaintiffs, you wrote to
5 yourself at the time that "I feel like I
6 have gone over to the dark side," correct?

7 A. Yes.

8 Q. And you also wrote to yourself
9 that "this was my one bargain with the
10 devil," correct?

11 A. Yes.

12 Q. You even met with them on a
13 rooftop so that your meeting would remain
14 clandestine, correct?

15 A. I don't know. I don't know if
16 that's true.

17 Q. When you first paid Mr. Pinto
18 and Mr. Reyes in January 2006, isn't it a
19 fact that you arranged to rendezvous with
20 them on the roof of a building so you
21 wouldn't be seen together?

22 A. I don't know. We had a roof
23 deck in our office.

24 Q. Was it common for you to meet
25 on the roof to pay off the consultants you

1 DONZIGER

2 were working with, sir?

3 A. No. But we would often have
4 meetings on the roof, on our roof deck.

5 Q. Sir, these are yes or no
6 questions.

7 A. I said no.

8 Q. Thank you.

9 And am I also correct that
10 Mr. Pinto and Mr. Reyes did in fact meet
11 with Judge Yanza about the joint
12 inspections that were going on in 2006?

13 A. I don't think there was a Judge
14 Yanza.

15 Q. Am I correct that Mr. Pinto and
16 Mr. Reyes did in fact meet with Judge
17 Yanez who was presiding over the Lago
18 Agrio case at the time about the joint
19 inspections that were going on in 2006?

20 A. I don't know. I have a vague
21 recollection they met with the judge.

22 Q. Well, we are going to refresh
23 your recollection, sir. But let me ask a
24 few more questions first.

25 Didn't, in February 2006,

1 DONZIGER

2 that he was working for the Frente; isn't
3 that so, sir?

4 A. I remember that, yeah.

5 Q. And you considered that a
6 mistake because you didn't want the judge
7 and the dirimentes to know that Bill
8 Powers was working for the Frente as
9 opposed to being an independent expert,
10 correct?

11 A. No.

12 Q. You nonetheless considered it a
13 mistake that Bill Powers identified
14 himself at that inspection in March of
15 2006 as working for the Frente, correct?

16 A. It was for a different reason.

17 Q. You considered it a mistake,
18 correct?

19 A. Yes.

20 Q. And when I'm referring to the
21 dirimentes, those are the court-appointed
22 experts conducting the joint inspections
23 for the court, correct, sir, during this
24 2006 time period?

25 A. They were court experts. They

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were not party-nominated experts.

Q. Correct. Reporting to the court?

A. That's correct.

Q. So they were supposed to be independent of the parties, correct?

A. Yes.

Q. And it was your plan that Pinto and Reyes offer themselves up to the court as dirimentes to help the judge throughout the process, correct, sir?

A. Yes.

Q. And in fact at some point in mid-2006 you became frustrated that Pinto and Reyes had not been able to sufficiently state their real opinions to the judge when they were supposed to be on your side, correct?

A. I don't know.

Q. Well, let's make sure that the record is clear. Just one second, please.

MR. MASTRO: Mr. Gitter, in this regard, since really only on the last answer did he say he didn't know, what I

1 DONZIGER

2 A. Yes.

3 Q. And here you are having a very
4 detailed exchange about the insurance to
5 be purchased for Cabrera, the dollar
6 values, and how much it is going to cost,
7 correct, sir?

8 A. Yes.

9 Q. Does that refresh your
10 recollection, sir, about the plaintiffs'
11 team purchasing insurance for Cabrera?

12 A. I don't know. I don't think it
13 does. But based on this, you know --
14 based on this e-mail, it looks to me like
15 insurance for Cabrera was purchased, if
16 that's your question.

17 Q. Thank you, sir.

18 Now, you continued to use the
19 Wao name for Mr. Cabrera in subsequent
20 sensitive e-mails about Cabrera so it
21 wouldn't be clear you were referring to
22 him after this date, correct, sir?

23 A. I believe so.

24 Q. Did there come a time in --
25 strike that.

1 DONZIGER

2 A. I don't know.

3 Q. So you even had -- you on the
4 plaintiffs' team even had to think of
5 something that Richard might be able to do
6 that might be independent of the
7 plaintiffs, correct, sir?

8 A. It was an idea, yes.

9 Q. And you went on to say that
10 another thing that the plaintiffs' team
11 needed to do was to "try to find ways to
12 keep Texaco from finding out much about
13 his plan and his work." Do you see that,
14 sir?

15 A. Yes.

16 Q. And the "his plan and his work"
17 you are referring to there is Cabrera,
18 correct?

19 A. Yes.

20 Q. And the "keeping Texaco from
21 finding out much about his plan and his
22 work" was keeping Texaco from finding out
23 that plaintiffs were preparing Cabrera's
24 work plan, the sites he would inspect, and
25 drafting his report, correct, sir?

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CERTIFICATION

I, TODD DeSIMONE, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not related
to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 29th day of January, 2011.

TODD DESIMONE