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VIA ECF

Catherine O'Hagan Wolfe
Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: *Chevron Corp. v. Naranjo et al.*, Nos. 11-cv-1150(L), 11-cv-1264(CON)

Dear Ms. Wolfe:

I write pursuant to F.R.A.P. 28(j) to provide the merits panel (Judges Pooler, Wesley, and Lynch) with a certified translation of the Ecuadorian Appellate Court's January 13, 2012 decision on the Ecuadorian Plaintiffs' petition for clarification and amplification of that Court's January 3, 2012 ruling. I respectfully direct the merits panel to the Court's ruling on the Ecuadorian Plaintiffs' seventh clarification request, which begins at the top of page 3. The Court confirmed that it considered and rejected "as baseless" *all* of Chevron's fraud allegations, including its claim that the Ecuadorian Plaintiffs' provided "secret assistance" to the Ecuadorian Trial Court in drafting the Judgment. (Ex. A at 3-4.) The Court stated that Chevron's allegations of fraud by the Ecuadorian Plaintiffs "lead nowhere without a good dose of imaginative inventiveness, therefore no merit has been given to those allegations, and more space was not dedicated to answering them." (*Id.* at 3.) With respect to its statement in its January 3, 2012 ruling that the same accusations of fraud are pending resolution in the S.D.N.Y. and that it thus had "no jurisdiction to rule" on the allegations, the Court clarified that it was merely expressing its belief that, consistent with principles of international comity, "the parties retain their right . . . to continue with the legal actions filed in the United States of America . . . since obviously this Court has no authority to hear and resolve proceedings corresponding to other jurisdictions." (*Id.* at 4.) However, the Court "express[ed] its concern that [Chevron's] abuse of the legal process extends even to a foreign jurisdiction, with the

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same demonstrated attempt to deprive the plaintiffs of the rights to which they are entitled in this legal action." (*Id.*)

I also respectfully direct the panel to page 5 of the attached decision, wherein the Court addresses and rejects Chevron's claims of irregularity in the constitution of the appellate panel in Ecuador.

I thank the Court for its time and attention to this matter.

Respectfully Submitted,

/s/ James E. Tyrrell, Jr.

James E. Tyrrell, Jr.

EXHIBIT A

JUDGE WRITING THE OPINION: DR. MILTON TORAL ZEVALLOS
PROVINCIAL COURT OF JUSTICE OF SUCUMBIOS. – SOLE DIVISION OF THE PROVINCIAL COURT OF JUSTICE OF SUCUMBIOS. Nueva Loja, Friday, January 13, 2012 at 08:57. Add to the case file the pleading submitted by Adolfo Callejas Ribandeneira, Attorney of Record of Chevron Corporation, submitted on January 12, 2012 at 16:10, answering the service of the petitions for explanation and clarification submitted by the plaintiff, as well as the exhibits attached thereto. Also add to the case file the pleading submitted by Arturo Calva Preciado, Attorney at Law, and issue the certified copies he requests. All notices will be sent to judicial mailbox number 65 of this Provincial Court of Justice of Sucumbios. – HAVING REVIEWED AND CONSIDERED THE CONTENTS OF THE CASE FILE. – The petitions for clarification and explanation may now be answered by the Court, and these will be answered in the order in which they appear in the pleading submitted by the plaintiffs, as follows: ONE: 1. – The first petition for clarification refers to an obvious involuntary error in the numbering of the paragraphs of the initial legal and factual considerations which appear in the January 3, 2012 ruling. It is hereby clarified that the legal and factual considerations both numbered “THREE” are distinct and equally valid. 2. – Likewise, the second petition for clarification submitted by the plaintiff refers to a *lapsus calami* of the Court. It is hereby clarified that the reference to substantive standards is inaccurate, as is obvious from a simple reading of the text in the cited context and, as the plaintiff points out, this text logically refers to adjective or procedural standards. 3. – The third petition for clarification refers to a principle of law which requires no clarification of any type. The ruling is clear when it states “fifteen days following the date on which the ruling is declared to be final and binding with *res judicata* status” and in this portion of the petition for clarification the plaintiff does not refer to any lack of clarity regarding this provision. Ecuadorian law contains numerous references to this principle after the Supreme Court appeals law (1992) and this has been reiterated in jurisprudence in at least a dozen Supreme Court appeals which form mandatory legal precedent as specified in Article 2 of the Supreme Court Appeals Law which affirms that “this type of special appeal is only admissible if an order has been issued which dismisses a cause of action producing the effect of formal and substantial *res judicata*, in other words, a final and binding ruling, in such a way that the dispute may not be pursued again by the same parties (subjective identity) in which the same thing, quantity, or act is demanded, based on the same cause, reason or right (objective identity), and when this has been so ruled in a specific cause of action”. Since the January 3, 2012 ruling, together with this explanation and clarification, put an end to a cause of action, with a ruling on the merits of the litigation at the last instance, it is obvious that this produces material and formal *res judicata* with the second instance ruling, which is when a Supreme Court appeal would be appropriate, specifically because the process has concluded. The plaintiff clearly affirms the clarity of this principle of the ruling, and no further clarification is required regarding this point. 4. – With respect to the fourth petition for clarification referring to the contents of the public apologies the defendant has been ordered to make, this Court *sua sponte* would like to clarify and affirm that if the symbolic reparation for pain and suffering is offered, any such affirmations or declarations by Chevron Corporation may not be used or alleged in this instance or any other, either in Ecuador or any foreign jurisdiction, or interpreted as a confession or admission of any type of any culpability or misconduct, nor may it be used to establish new liability or obligations. The declaration in question will be issued in compliance with the provisions of the ruling, as a symbolic reparation measure, and nothing more. Having said that, and in response to the plaintiff’s petition, since it is believed that further clarification is needed with regard to the

manner in which this reparation measure is to be complied with, it is hereby clarified that the content of the publication should have the basic elements of a message, and should include the following criteria: a) The public apology message will be disseminated in the locations and in the manner described in the lower court ruling; b) The addressees of the public apology message will be "the indigenous communities, settlers and, in general, all parties affected by the damage" as referred to in the lower court ruling dated February 14, 2011, issued by the Provincial Court of Justice of Sucumbios; c) The sender or signer of the message may be an individual acting as the legal representative of the Chevron Corporation, and must be the legitimate representative of the Chevron Corporation both in Ecuador as well as in the United States of America; d) The party offering the message will offer its most sincere apologies to the message recipients; e) The party offering the message will declare that it apologizes for: 1. – The damage caused to the ecosystem; 2. – The detriment to the lives and health of the recipients; 3. – The negative impact on their culture; and e) The party offering the message will declare that it also acknowledges the existence of irreparable damages and regrets that they occurred; f) The party offering the message will acknowledge that the damages were caused by the use of inadequate technology and improper practices and that it failed to use available technology which would have prevented or at least mitigated the damages; g) The party offering the message may clarify that the publication is being made in response to a legal order and that it does not imply any acknowledgment of any ulterior obligation or liability under civil or criminal law. 5. – The fifth petition for clarification requires no further clarification. The petitioner has unquestionably misinterpreted the explanation in the ruling for which the clarification is requested, which is in no way unclear in the manner in which we have affirmed, nor may we agree that two different concepts have been confused, such as lack of jurisdiction and lack of legal standing. Neither the Court nor the lower court judge have confused these concepts, and what this Court has done is to observe that the obvious intention of the defendant is to create confusion of these concepts in the lower court, with an acknowledgment that the judge was able to discover the confusion and clarify it. 6. – The sixth petition for clarification again refers to a matter which needs no "clarification" as the petitioner requests, since the ruling is direct and obvious in omitting the inclusion of instructions for the creation of the trust to which the petitioner refers and simply states that the committee created to manage the trust will be composed of the members of the committee responsible for the trust created to handle the reparation measures, in order to preserve the identity with the cause, however the committee is free to manage these funds. However, the Court would like to clarify that since these amounts are the result of punitive indemnification, its purpose is not strictly reparatory or compensatory, and is therefore different from the reparation for pain and suffering which is symbolically made through the public apology; this is a punitive penalty delivered to a victim who may not have received an apology from the party who caused the damages; and the indemnification for damages is also the result of a finding that the party against whom the amounts were assessed was guilty of acting unreasonably and maliciously as a litigant in the lawsuit. With the addition of the above principles, the Court believes that, for all practical intents and purposes, it would be inappropriate to order that those funds be used for a specific purpose. As was previously explained, punitive damages are a substitute for indemnification for pain and suffering caused by environmental damages but which continue throughout the prolonged duration of this litigation, which is for the most part attributable to the conduct of the defendant. The Court is convinced that the prolonged internal suffering and the anguish experienced by the affected parties due to the damages caused by Texaco, and its continuation throughout the duration of this cause of action, are also worthy of a public apology for the final purpose of seeing justice served and that the damages do not go uncompensated.

If the defendant decides to deny this right to a symbolic measure to compensate this pain and suffering, the reparation will be made using the alternative measure, as stated above. 7. - With respect to petition for clarification number seven, regarding whether or not the accusations of the defendant related to irregularities in the preparation of the lower court ruling have been taken into consideration, this Court would like to clarify that those allegations were taken into consideration, however no concrete evidence was found that any crime had been committed. The Court concluded that the indications provided by Chevron Corporation lead nowhere without a good dose of imaginative inventiveness, therefore no merit has been given to those allegations, and more space was not dedicated to answering them. However, it is sufficient to state that, on this point, the Court rejects and definitively categories the affirmations of the defendant in chapter "C" of its legal brief as baseless, when the defendant alleges that the ruling was based on information not found in the case file, or that it was prepared with secret assistance since, as the Court reviewed and explained in the ruling issued on January 3, 2012, all valid evidence taken into consideration in preparing the ruling is in the case file, in other words, all samples, documents, reports, testimony, interviews, transcripts and documentation referred to in the ruling, and the defendant has not specifically identified any evidence for which this is not the case; therefore the pleadings submitted simply show that the defendant disagrees with the reasoning, interpretation and value given to the evidence, but they do not specifically identify any particular judicial evidence related to the process. The texts provided by Chevron Corporation as an example that the ruling was based on information not found in the case file are not considered to be and are not set forth as judicial evidence, not even by the defendant in its claim, therefore the Court holds that no allegation can be made that the ruling was based on evidence not found in the case file. Thus, based on the principle that only evidence which has been legally produced and included in the case file may be used as a basis for a ruling on the merits of a dispute, it can be concluded that the appealed ruling is based on legally produced evidence included in the case file, although certainly the basis and interpretation of the evidence is the product of the human characteristics and understanding of the judge, using his intellect as their source of origin, and are incorporated into the process through the rulings issued in the case. It is important to note that on at least one occasion of which this Court is aware, the defendant sent a considerable quantity of information to the President of the Court, related to an arbitration case between Chevron Corporation and the Government of Ecuador. This information was not entered into the case file for cause number 002-2003 and has not been taken into consideration by this Court since the defendant has not formally produced it in this case, but even so, this Court believes that the court at that instance was aware of the information and studied it. In this type of scenario, the plaintiff has denounced that, one day after the appealed ruling was issued on February 14, 2011, Chevron Corporation alleged in the United States of America that it suspected that Judge Zambrano had received "secret assistance" in preparing the ruling and thus it is now inappropriate and extemporaneous to make this allegation to this Court instead of to the court which issued the lower court ruling, requesting a clarification. Furthermore, it is inexplicable that these "suspicions" were reserved and are now posed to this Court, if we consider, as the plaintiff affirms, that the defendant was aware of this alleged fact on the day after the ruling was issued. As an aside to the above statements, this Court also believes that it is pertinent to reflect on the alleged "secret assistance" provided in preparing the lower court ruling, and it is logically difficult to conceive that, if any such secret channel had existed which was illegally used by the plaintiffs to supplement or modify the ruling, that this channel would have facilitated the introduction of arguments which would have been a determining factor in the ruling on the case. The Court cannot fail to observe that the arguments offered by the

defendant in support of the accusations are based on points which, in reality, do not contribute further information which would impact the defended position, which calls any alleged secret conspiracy into serious question. It is therefore illogical to think that the defendant could so easily state that the allegation is only an indication of a greater problem, since it is public knowledge that the legal processes involving production of the documents proposed by the defendant in the United States of America allowed the defendant to access the vast majority of the internal documents prepared by the legal representatives of the plaintiffs. If any type of "secret assistance" had existed, the alleged concordance between the internal documentation of the plaintiffs and the text of the ruling would not be limited to a simple interpretation of the evidence produced in the process. This is a civil proceeding in which the Court finds no evidence of "fraud" on the part of either the plaintiffs or their representatives; therefore, as stated above, these accusations are being disregarded, with the understanding that the parties retain their right to submit a formal accusation to the Ecuadorian criminal authorities or to continue with the legal actions filed in the United States of America. This was a determining factor in the considerations of the Court in the ruling being clarified, since obviously this Court has no authority to hear and resolve proceedings corresponding to other jurisdictions, and neither would it be admissible to suspend the processing of this primary legal action – or even worse, to annul it – for the purpose of discussing and ruling on the interminable and reciprocal accusations of the misconduct of some attorneys, experts or contractors of the parties, since these cannot affect the final outcome of the case. However, this Court would like to express its concern that the abuse of the legal process extends even to a foreign jurisdiction, with the same demonstrated attempt to deprive the plaintiffs of the rights to which they are entitled in this legal action. This Court would like to clarify that the interests in play in this legal action go beyond the interests of the parties or their representatives who, if they feel they have been prejudiced, are entitled to exercise their rights independently. 8. – With respect to petition for clarification number eight, regarding the professional fees established for the plaintiff's defense, the following clarification is provided: a) "Judgment" should be understood to mean a final ruling with *res judicata* status. With regard to letter "b" of this petition, it is clarified that the legal basis for establishing fees for a plaintiff's defense is found in Article 284 of the Code of Civil Procedure, which stipulates: "In situations where a judgment includes an order to pay costs, in the same ruling, the judge or court imposing the obligation will determine the amount which the debtor is required to pay to the creditor for fees incurred by the defender or defenders of the creditor". In accordance with Article 43 of the Ecuador Bar Association Law. The establishment of the 0.10% corresponds to the provisions of Article 42 of that Law, with the understanding that these costs have been regulated taking into consideration the specific circumstances of each case, as the Law provides. Thus, although 5% would have been appropriate for professional fees in judgment amounts in excess of twenty minimum wage amounts, due to the high total of the reparation measures, this amount has been considerably reduced in an attempt to complement the "fee proportion" reality with the importance and time required for the work performed. Lastly, with regard to letter "c" of the petition for clarification, the Court states that the fees have been established for both the first as well as the second instance. TWO. – With regard to the petitions for explanation, the Court states the following: 1. The first petition again returns to the issue of the evidence which the defendant claims is proof of an alleged fraud, and we therefore refer to the preceding text in which the Court clarifies the ruling, indicating that it

has considered the allegations of Chevron Corporation and finds that they do not provide any proof of improper conduct. Based on the above, there is no reason to provide any explanation of this section of the ruling. The petitioner is reminded that petitions for explanation are admissible only when any of the disputed points have not been fully resolved, as stipulated by Art. 282 of the Code of Civil Procedure; therefore this petition is denied: to the Court's knowledge, all issues in dispute have been resolved. 2. Regarding the second petition for explanation, no explanation of the ruling is justified regarding that point, since this issue does not pertain to this litigation and actually falls under the exclusive jurisdiction of the Judicial Branch; however, and to resolve this question, the Court herewith states, *sua sponte,* that the establishment of this Court for purposes of hearing this case is based on the legal background which prevented two lower court judges from participating in the legal action, who were prevented from participating due to the excusal of one of the judges, Dr. Juan Núñez Sanabria, and in the case of Nicolás Zambrano Lozada, because he had already ruled on the case. The procedural basis for these decisions are stated in the case file and were qualified in a timely manner, as was also the case with the internal administrative acts of the Judiciary Council of Sucumbios in appointing the members of the Court. Based on this background information, which is clear and defined, the associate judges of the Court were appointed to hear and rule on this case, in the number and manner provided by Law. Notification ordered.

Signature) Dr. Milton Toral Zevallos, Presiding Provincial Judge, Dr. Luis Legña Zambrano, Permanent Associate Judge and Dr. Juan Encarnación Sanchez, Permanent Associate Judge, certified by Dr. Mariela Salazar Jaramillo, presiding Court Clerk.

[seal: Provincial Court of Justice, Sole Division, Sucumbios]

[signature]
Dr. Mariela Salazar Jaramillo
COURT CLERK (E)

LANGUAGE SOLUTIONS

THE STATE OF TEXAS }
}
COUNTY OF HARRIS }

AFFIDAVIT OF ACCURACY

Harriet Bosley
Translator

Signature of Project Manager
Oubono Corréa

BEFORE ME, the undersigned Notary Public, appeared Oubono Corréa, having first been placed under oath, he stated that he is the person whose signature appears affixed to the foregoing statement, and he further stated under oath, that the contents of said statement are of his personal knowledge, true and correct.

Sworn to before me this 16th day of January, 2012.

Notary Public

My commission expires: October 13, 2015

PHUONG THUY T. TRAN NOTARY PUBLIC STATE OF TEXAS EXPIRES 10-13-2015

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