

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHEVRON CORPORATION,

Plaintiff,

v.

STEVEN DONZIGER, THE LAW OFFICES  
OF STEVEN R. DONZIGER; et al.,

Defendants.

Case No. 11-CV-0691 (LAK)

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**STEVEN DONZIGER, THE LAW OFFICES OF STEVEN R.  
DONZIGER AND DONZIGER & ASSOCIATES, PLLC'S  
MOTION TO COMPEL CHEVRON CORPORATION TO  
PRODUCE DOCUMENTS**

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Despite extensive meet-and-confer efforts by Donziger (Exs. 10-16), Chevron refuses to produce relevant documents in response to many of Donziger's requests. Accordingly, Donziger respectfully requests that the Court order Chevron to respond fully to the following requests:

**Communications with the Lago Agrio Court (Ex. 1).** Chevron has refused to produce all documents relating to its communications with the Lago Agrio Court. Instead, Chevron has stated it will withhold "non-substantive documents related to logistics, scheduling, or other administrative matters." Because a key issue in this case is to what extent the parties had *ex parte* contacts with the court and whether such contacts were proper, Chevron's communications with the court—on any topic—are highly relevant. Moreover, Donziger is entitled to determine for himself which of Chevron's communications with the Lago Agrio court are "substantive" and which are "non-substantive." Accordingly, Chevron should produce all responsive documents.

**Contacts with the Ecuadorian Military (Ex. 2).** Chevron has limited its production of documents relating to the Ecuadorian military to actual "contracts between it and the ROE relating to the military bases concerning the Lago Agrio litigation" and documents relating to the judicial inspections. Yet all of Chevron's contacts with the Ecuadorian military are relevant to Donziger's claim that Chevron exploited its influence with the military to try to subvert the Lago Agrio case and intimidate the LAPs' legal team. Donziger is therefore entitled to discovery into the full scope of Chevron's relationship with the military—including all interactions relating to the Lago Agrio case and all payments or offers of payments relating to the litigation.

**Communications with the ROE (Ex. 3).** Donziger has alleged that after fighting for nine years to remove the *Aguinda* lawsuit to Ecuador, Chevron worked behind the scenes to use its political and economic influence to engineer a dismissal of the Lago Agrio case. Dkt. #567 ¶¶ 29-46. Yet Chevron has steadfastly refused to produce documents regarding its communications with the ROE. In response to a request asking for all communications between Chevron and the ROE regarding the *Aguinda* case, Chevron has refused to produce any documents. RFP 25. Chevron also has refused to produce any documents concerning any payments or offers of payments by Chevron to any Ecuadorian political party or candidate for elected office. RFP 39.

Chevron has further refused to produce documents about any bank accounts from which any monies were paid to any ROE official, *including any judge*. RFP 47. Because documents responsive to these requests are highly relevant to Donziger's claim that Chevron attempted to harness its influence with the ROE to stall and sabotage the Lago Agrio case, as well as to show that any lobbying efforts by the LAPs were intended not to "extort" Chevron, but rather to counter Chevron's improper attempts to influence the outcome of the Lago Agrio litigation, the court should order Chevron to produce all responsive documents.

**Diego Borja and Wayne Hansen (Ex. 4).**<sup>1</sup> Donziger has alleged that Chevron employed a variety of improper tactics to derail the Lago Agrio case, including obtaining from its operatives Diego Borja and Wayne Hansen video recordings, which Chevron publicly claimed showed Judge Juan Nuñez accepting a \$3 million bribe. Dkt. # 567; ¶¶ 62-75. However, in response to requests seeking all documents concerning any payments to Borja, Hansen, or Interintelg (Borja's company), Chevron has limited its production to documents *sufficient to show* such payments and has refused to produce documents relating to those payments or offers of payments. RFPs 112, 116. Chevron also has refused to produce its communications with the U.S. Government regarding Borja or his family. RFP 119. Documents responsive to these requests are highly relevant, and Chevron should be ordered to produce them.

**Locations of Relevant Documents (Ex. 5).** Chevron has refused to produce any documents in response to requests seeking documents "sufficient to show" the present locations of any repositories of relevant materials or the locations of persons who know of discoverable materials. Chevron's position is untenable. Pursuant to FRCP 26(b)(1), Donziger is entitled to information regarding "the existence, description, nature, custody, condition, and location of any documents ... and the identity and location of persons who know of any discoverable matter." The Court should order Chevron to produce all responsive materials.

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<sup>1</sup> Chevron has stated it intends to assert work product protection over certain documents at the "behest of counsel for Borja or Hansen," even though it does not have any joint defense agreement with them. Ex. 15 at 5. Chevron should not be allowed to assert work product protection if it has no joint defense agreement with Borja or Hansen.

**Severn Trent Laboratories (“STL”), NewFields, and GSI Environmental (Ex. 6).**

Chevron has refused to produce its communications with STL, NewFields, and GSI, the companies that it hired to test soil samples for the Lago Agrio case. Instead, Chevron has limited its production to documents “sufficient to show the results” of tests that were actually “submitted to the [] Court.” Because the gravamen of Chevron’s complaint is that Defendants conspired to obtain a fraudulent judgment against it, and the judgment is fraudulent in part because the evidence does not support the LAPs’ claim of contamination and environmental harm, the results of any testing by STL, NewFields and GSI—and in particular the results of testing that were not submitted to the court—will confirm the findings of the LAPs’ experts, the Court-appointed experts, and the Lago Agrio Court regarding the scope of the contamination Texaco left behind. Additionally, Donziger has alleged that Chevron, through STL and NewFields, improperly manipulated the testing of soil samples and hid dirty samples from the Lago Agrio Court; *i.e.*, that Chevron itself tried to obtain a fraudulent judgment based upon manipulated evidence.

**The Judicial Inspection Playbook (“JIP”) (Ex. 7).** Donziger believes that the JIP document was created by Chevron as part of a scheme to manipulate the selection of soil and water samples during judicial inspections of contaminated waste pits. In response to requests on this topic, however, Chevron has limited its production to a copy of the JIP itself, and documents “*sufficient to show the distribution and implementation*” of the JIP (emphasis added). Because documents relating to any scheme by Chevron to defraud the Lago Agrio Court are relevant to Donziger’s proposed counterclaims and his unclean hands defense, Chevron should be ordered to produce all responsive documents.

**Communications with Experts (Ex. 8).**<sup>2</sup> In response to requests seeking information about Chevron’s contacts with court-appointed experts, Chevron has limited its production to only (1) communications between it and court-appointed experts “*concerning the subject matter*

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<sup>2</sup> To the extent Chevron wishes to assert privilege over any documents responsive to these requests, it should log those documents so that the parties and the Court can determine whether Chevron’s privilege assertions are proper.

of their testimony”; and (2) “documents *sufficient to show* payments by Chevron to any court-appointed experts.” (emphasis added). These self-limitations are improper and should not be sustained. Chevron’s communications with and payments to court-appointed experts are highly relevant to Donziger’s claim that the LAPs’ interactions with Cabrera were consistent with Ecuadorian law and the practices of the case, including Chevron’s practices.<sup>3</sup>

**Remediation and Release (Ex. 9).** Chevron has refused to make a complete production of materials regarding the contamination of the Napo Concession, and its purported remediation of that contamination. Instead, Chevron has limited its production to documents *sufficient to show* “the named companies’ [*i.e.*, its remediation contractors’] scope of work or the steps taken by TexPet to comply with its obligations regarding the Remediation and Release,” and only for the time period from 6/7/92 to 5/31/00. Chevron also has refused to produce all documents concerning its inspection, testing and analysis of the contamination in the Napo Concession, and has limited its production to documents created after 2003. Chevron’s limitations are improper. Because documents relating to any remediation conducted by Chevron or any investigation into the efficacy of such remediation are relevant to Chevron’s claims that the LAPs manipulated the evidence of contamination, as well as to Donziger’s proposed counterclaims and affirmative defenses, Chevron must produce all responsive documents. In particular, it is improper for Chevron to limit its production to post-2003 documents because contemporaneous documents relating to whether TexPet’s remediation was effective are relevant to Donziger’s claim that Chevron has fraudulently represented the nature and extent of contamination in the Napo Concession. Accordingly, Chevron must produce all relevant documents.

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<sup>3</sup> Similarly, in response to requests seeking communications between Chevron and any experts in the Lago Agrio case, Chevron has limited its production to documents “concerning the subject matter of the[] [experts’] testimony,” and documents sufficient to show payments “concerning their testimony.” RFPs 35-36. Chevron’s limitations are improper. Chevron’s communications with any experts and the materials and test results generated by these experts (whether or not they were submitted to the Lago Agrio court) are highly relevant to several key issues in this case, including whether the Lago Agrio Court’s decision holding Chevron liable for the contamination in the Napo Concession is proper, whether Chevron’s own expert analyses confirm and support the Cabrera report and the conclusions of the Lago Agrio Court, and whether Chevron itself sought to manipulate the scientific evidence regarding contamination. Accordingly, this Court should order Chevron to produce all responsive documents.

Dated: November 19, 2012

Respectfully submitted,

By: /s/ John W. Kecker

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