UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. __ -Civ

CHEVRON CORPORATION,

Petitioner,

To Issue Subpoenas For The Taking Of Depositions And The Production Of Documents.

APPLICATION OF CHEVRON CORPORATION FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782 TO CONDUCT DISCOVERY FROM BANCO PICHINCHA FOR USE IN FOREIGN PROCEEDINGS

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Based upon the accompanying Memorandum of Law and the accompanying Declaration of Alexander H. Southwell, Chevron Corporation ("Chevron") respectfully applies to this Court for an Order, pursuant to 28 U.S.C. § 1782 ("Section 1782"), and Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, granting this application to serve respondent Banco Pichincha, a bank located in the Southern District of Florida, with the subpoena attached to this Application as Attachment A.

The requirements of Section 1782 are met by Chevron's Application. First, Respondents reside or may be found in the Southern District of Florida. Second, the discovery sought is for use in proceedings currently pending before two foreign tribunals, each of which is sufficient, alone, to satisfy the requirements of Section 1782: (1) *Maria Aguinda y Otros v. Chevron Corporation*, on appeal from the February 14, 2011 judgment of the Superior Court of Nueva Loja, in Lago Agrio, Ecuador (the "Lago Agrio Litigation"), and (2) *Chevron Corporation and Texaco Petroleum Company vs. The Republic Of Ecuador*, an arbitration claim under the Bilateral Investment Treaty between the United States and Ecuador pending in the Permanent Court of Arbitration in the Hague (the "Treaty Arbitration"). *See In re Veiga*, 746 F. Supp. 2d 8, 22–24 (D.D.C. 2010). Third, as a litigant in both of those proceedings, Chevron is an "interested person" within the meaning of Section 1782.

The discretionary factors set out by the United States Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264–65 (2004), also weigh in favor of granting this Application. Respondent is not a "participant" in either the Lago Agrio Litigation or the Treaty Arbitration. Both arbitral tribunals and Ecuadorian courts have historically been receptive to Section 1782 assistance from federal courts, as a number of United States District courts have recognized. *See* ; *In re Applic. of Oxus Gold PLC*, No. 06-82-GEB, 2007 WL 1037387, at *5 (D.N.J. Apr. 2, 2007); *Ukrnafta v. Carpatsky Petroleum Corp.*, No. 3:09-mc-265

(JBA), 2009 WL 2877156, at **4–5 (D. Conn. Aug. 27, 2009); *cf. In re Applic. of Noboa*, Nos. M18-302, M19-111, 1995 U.S. Dist. LEXIS 14402, at *4–6 (S.D.N.Y. Oct. 3, 1995).

An applicant under Section 1782 need not show that the evidence sought would be discoverable or admissible in the foreign jurisdiction. *Intel*, 542 U.S. at 261. Rather, in determining whether a petition is an effort to circumvent foreign proof-gathering restrictions, the consideration for a district court is whether the discovery is being sought in bad faith. *Minatec Fin. S.A.R.L. v. SI Group Inc*., No. 1:08-CV-269 (LEK/RFT), 2008 WL 3884374, at *8 (N.D.N.Y. Aug. 18, 2008). In this case, Chevron's request for discovery is a good faith effort to obtain probative evidence that is not unduly intrusive or burdensome. The discovery requested goes to central issues in both foreign proceedings and would be permitted under the Federal Rules of Civil Procedure which govern actions under Section 1782. *See, e.g., London v. Does 1-4*, 279 Fed. App'x 513, 515 (9th Cir. 2008) (discovery sought from non-participant in foreign proceeding appropriate where evidence sought may be unattainable by the foreign court while the evidence is within the district court's jurisdiction and accessible in the United States, is not an attempt to avoid foreign evidence rules, and is not unduly intrusive or burdensome). Courts have recognized that Chevron is not attempting to circumvent foreign proof-gathering restrictions in either of the foreign proceedings in requesting discovery under Section 1782. *See, e.g., In re Veiga*, 746 F. Supp. 2d, at 24–25.

Chevron has a pressing need for this discovery. On February 14, 2011, the Ecuador trial court issued a judgment against Chevron in the amount of $18.2 billion. Chevron appealed on March 9, 2011, and a decision on the appeal could come at any time. Thus Chevron must act promptly to obtain this critical evidence and expeditiously submit it to the appellate court before a decision is rendered. Accordingly, Chevron respectfully requests that this Court grant it leave to issue the subpoena attached hereto as Attachment A, taking notice that said subpoena has been

properly served, in accordance with Rule 45, on Banco Pichincha when served as an attachment to this Application.

New York, New York
Dated: December 22, 2011

Respectfully submitted,

By: /s/Carlos M. Sires

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