

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

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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. :

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HEARING ON PROVISIONAL MEASURES

Saturday, February 11, 2012

Fairmont Hotel  
2401 M Street, N.W.  
Roosevelt Room  
Washington, D.C.

The hearing in the above-entitled matter convened at

9:32 a.m. before:

MR. V.V. VEEDER, Q.C., President

DR. HORACIO GRIGERA NAÓN, Arbitrator

PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

12:04 1 the Republic has a continuing obligation to comply with the  
 2 Award and prevent enforcement of the Judgment; and to declare  
 3 that to allow recognition and enforcement of the Judgment  
 4 before the conclusion of this proceeding would be inconsistent  
 5 with the Republic's obligations under the Bilateral Investment  
 6 Treaty and international law; and to order that if Ecuador does  
 7 not take effective actions to prevent enforcement, that it may  
 8 be responsible for Chevron's costs and attorney's fees in  
 9 defending against enforcement actions because of the failure of  
 10 the Government and the Republic to take any effective measures.  
 11 And, finally, we ask that the Tribunal order Ecuador  
 12 to preserve all documents and computer records from the Lago  
 13 Agrio Court, Appellate Court, the Executive Branch, and other  
 14 Officials of the Republic that relate to the Lago Agrio  
 15 Litigation; and, of course, for any other and further relief to  
 16 which the Tribunal may find that we are entitled.  
 17 Those are the requests we make.  
 18 PRESIDENT VEEDER: What about the Lago Agrio  
 19 Plaintiffs? Supposing you're wrong on everything you told us  
 20 this morning, they will have had a judgment held up wrongly.  
 21 What the likely prejudice to them if we were to give any form  
 22 of this interim relief to the Claimants?  
 23 MR. BISHOP: I'm glad you asked that. The answer is  
 24 none whatsoever, and let me tell you why.  
 25 There's two reasons. As we told you at the outset of

12:08 1 Parties in Interest in this case. The Plaintiffs' lawyers have  
 2 no clients. It's hard to conceive as lawyers of that, but  
 3 that's exactly the situation we're in. They have no individual  
 4 clients. They have no individual damage. They have no  
 5 individual claims. There will be no prejudice to the  
 6 Plaintiffs or any individual by holding up the enforcement of  
 7 this Judgment.  
 8 PRESIDENT VEEDER: Let me press you for two possible  
 9 areas of prejudice. Let's call them the beneficiaries under  
 10 the Judgment, whoever they are, the Trust or otherwise. Is  
 11 there any risk that if we gave any part of this relief they  
 12 would be subject to time bars or limitation periods for the  
 13 enforcement of the Judgment which they otherwise wouldn't  
 14 suffer in the absence of an order from us?  
 15 MR. BISHOP: I'm not aware of any such time bars; and,  
 16 if there were, we could probably take care of that, but I don't  
 17 know of any such time bars. This is the first time the  
 18 question has arisen. I can't speak to that in any more detail  
 19 at this moment. I'm sorry.  
 20 PRESIDENT VEEDER: I'm afraid I don't have any in  
 21 mind, but it's an obvious concern.  
 22 MR. BISHOP: I can see that. As I said, that's  
 23 something that I suspect we could take care of if there were  
 24 any such thing, but I don't know of any.  
 25 PRESIDENT VEEDER: And the other more obvious area is

12:06 1 this case, there was not a single request made in the Complaint  
 2 in the Lago Agrio Case for damages for any harm to any  
 3 individual, either for their person or for their property. The  
 4 Judgment does not order or find that there has been any harm to  
 5 any single individual. It does not order damages for harm to  
 6 any single individual.  
 7 So, there is no harm to the Plaintiffs themselves by  
 8 holding up the Judgment. There is not a finding of personal  
 9 injury to Farmer A or for property damage for Farmer B. There  
 10 is no such thing. It wasn't asked for. It's not in the  
 11 Judgment. There are no individual damages, and the Judgment  
 12 says so expressly, and we have one of the slides that says  
 13 that.  
 14 Second point is that one of the Plaintiffs' lawyers,  
 15 speaking at the Second Circuit Court of Appeals, James Tyrrell,  
 16 told the Second Circuit recently, that the real Party in  
 17 Interest in this case is no longer the Plaintiffs in the Lago  
 18 Agrio Case. He said that the real Party in Interest is now the  
 19 Trust that was ordered to be set up by the Judgment in the case  
 20 and that that Trust to be administered by the Court and the  
 21 Amazon Defense Front will be the real Party in Interest.  
 22 Now, what we're asking is, let's take care of all of  
 23 them together, but again what that shows is there is no harm to  
 24 the Plaintiffs. The Plaintiffs are really irrelevant. They  
 25 always were irrelevant. There never were any real individual

12:09 1 that whoever the beneficiary is, there may be a delay in  
 2 receiving monies, and I suppose that would be measured in  
 3 interest, a loss of interest. Would you acknowledge that that  
 4 could be a possible prejudice to the beneficiaries of the Lago  
 5 Agrio Judgment, assuming that everything you told us this  
 6 morning is wrong?  
 7 MR. BISHOP: Well, I understand your point, but  
 8 interest would be running on the Judgment; and, at the end of  
 9 the day, interest would be enforceable, if, in fact, the  
 10 Judgment itself turns out to be enforceable, if I were wrong on  
 11 everything I've said, which I hope not, but so, I think that  
 12 the fact that interest would be running would effectively take  
 13 care of that situation through itself.  
 14 ARBITRATOR LOWE: Could I just ask what is the  
 15 definitive statement of the relief that you're asking? Is it  
 16 the statement in the January 12th letter, which is a little  
 17 different from the summary in the slides?  
 18 MR. BISHOP: I think that the definitive statement is  
 19 what we have put in our slides today.  
 20 MR. DOUGLAS: Actually the Respondent objects to that.  
 21 PRESIDENT VEEDER: We'll hear the objection of course  
 22 when it's the Respondent's turn, but we note that there is a  
 23 difference between the two.  
 24 MR. BISHOP: The difference I think is slight, but  
 25 there is a little difference, but I understand. If there were