

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