

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
CHEVRON CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	Case No. 11 Civ. 0691 (LAK)
	:	
STEVEN R. DONZIGER, et al.,	:	
	:	
Defendants.	:	
	:	
-----	X	

**CHEVRON CORPORATION’S NOTICE OF MOTIONS IN LIMINE**

PLEASE TAKE NOTICE that upon the memoranda of law submitted herewith; all prior pleadings and proceedings in this and related actions; and such argument as may be received by this Court at the time of a hearing, plaintiff Chevron Corporation, by and through its undersigned counsel, moves this Court for orders *in limine* on the following issues:

**1. Irrelevant and prejudicial statements regarding alleged environmental issues in Ecuador**

Chevron requests that this Court enter an order:

- precluding Defendants from offering at trial evidence, arguments, or questioning in support of the proposition that the findings of the Cabrera report, the Ecuadorian judgment, or Defendants’ allegations in the Ecuadorian proceeding were accurate or supported by evidence and sound scientific analysis, including but not limited to a prohibition on the submission of evidence, arguments, or questioning regarding the following topics, except insofar as the evidence is otherwise relevant:

- alleged environmental and human conditions in the Oriente region of Ecuador, including scientific or other studies, testing or sampling results, video or still images, or personal testimonies; and
- the procedures employed in the TexPet Remediation, the efficacy of those procedures, or their compliance with agreements and with Ecuadorian law.

**2. Irrelevant and prejudicial statements regarding Chevron’s purported litigation conduct**

Chevron requests that this Court enter an order:

- striking and precluding the introduction during a jury trial of the documents identified on the Appendix A attached to the accompanying memorandum of law #2 as irrelevant; and
- precluding Defendants from offering at trial evidence, arguments, or questions regarding:
  - Chevron’s purported conduct in the Lago Agrio Litigation, including contacts with Ecuadorian government officials, arguments made by Chevron to the Lago Agrio Court, the cancellation and subsequent rescheduling of the Guanta inspection, Chevron’s purported “sting” operation against an Ecuadorian judge, Chevron’s use of a purported “sham laboratory”, Chevron’s purported “procedural misconduct” in filing motions in the Lago Agrio Litigation, Chevron’s purported *ex parte* contacts with Ecuadorian judges and court experts, any “harassment” supposedly suffered by Defendants or their co-conspirators, and any argument that their actions were justified by virtue of Chevron’s alleged misconduct;

- Chevron's conduct in this and other litigation in the United States, including Chevron's purported misuse of Section 1782 to obtain discovery for use in the Lago Agrio Litigation, Chevron's subpoenas to email providers seeking information about Defendants and their co-conspirators, and Chevron's surveillance of Defendants and their co-conspirators; and
- alleged promises and representations made by Texaco and/or TexPet in the *Aguinda* litigation.

**3. References or evidence related to Chevron's size, financial status, and size of legal team and litigation costs, Chevron's public relations and lobbying conduct, and the general energy industry, other misconduct, and mass tort defenses**

Chevron requests that this Court enter an order:

- striking and precluding the introduction during a jury trial of the documents identified on the Appendix A attached to the accompanying memorandum of law #3 as irrelevant; and
- precluding Defendants from referencing or introducing evidence related to:
  - Chevron's size, financial resources, and the size of its legal team and purported litigation costs;
  - Chevron's public relations and lobbying efforts in connection with the Ecuadorian litigation; and
  - comparisons between the Ecuadorian litigation and other environmental events and mass tort defenses.

**4. Reliance on the Ecuadorian judgment for the truth of any matter asserted therein, including any argument that it resolved Chevron's claims, rejected Chevron's**

**evidence, or exonerated the Defendants**

Chevron requests that this Court enter an order precluding Defendants from relying on the Ecuadorian judgment as evidence for the truth of any matter asserted, or allegedly asserted, therein.

**5. Irrelevant and prejudicial arguments made by Defendants**

Chevron requests that this Court enter an order:

- striking and precluding the introduction during a jury trial of the documents identified on the Appendix A attached to the accompanying memorandum of law #5 as irrelevant;
- precluding Defendants from offering at trial evidence, arguments, or references based on Defendants' purported lack of financial means;
- prohibiting Defendants from using the names "Chevron," "Texaco," and "TexPet" interchangeably and inaccurately; and
- precluding Defendants from arguing or implying that the lack of criminal charges arising out of the events giving rise to this litigation indicates they should not be held liable.

**6. The advice-of-counsel defense**

Chevron requests that this Court enter an order:

- precluding Defendants from asserting an advice of counsel defense at trial; and
- precluding Defendants from putting forward Donziger's purported belief that his conduct was lawful under Ecuadorian law.

**7. Testimony inconsistent with that offered in the Donziger & Associates, PLLC Rule 30(b)(6) deposition**

Chevron requests that this Court enter an order:

- precluding Donziger from testifying at trial inconsistently with his testimony at the 30(b)(6) deposition of his law firm; and
- limiting Donziger's proof at trial to the non-answers he gave during his deposition.

**8. Ecuadorian documents, omnibus exhibits, and inadmissible hearsay from Defendants' exhibit list**

Chevron requests that this Court enter an order striking the following exhibits from Defendants' exhibit list:

- Ecuadorian documents improperly withheld in discovery (219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245 and 246)
- improperly designated omnibus documents (583, 584, 606, 608, 609, 610, 611, and 1092); and
- inadmissible hearsay documents (105, 422, 423, 425, 484, 477, 502, and 1008).

**9. Introduction or reference to wrongfully obtained pre-inspection videos and request for order of their return**

Chevron requests that this Court enter an order:

- precluding Defendants from introducing or referencing the improperly-obtained pre-inspection videos at trial; and

- requiring Defendants to return all copies of these videos in their possession, custody, or control.

**10. Witnesses improperly listed on Defendants' witness list**

- Chevron requests that this Court enter an order:
  - precluding Defendants from calling any of the following witnesses at trial, identified individually in the accompanying memorandum of law #10:
    - fifteen witnesses who Defendants never included in their Rule 26(a)(1) initial disclosures;
    - two foreign witnesses, Julio Prieto and Luis Francisco Yanza, who refused to appear at their scheduled depositions;
    - eighteen witnesses who do not appear to have any personal knowledge relevant in this action; and
    - one witness, Atossa Soltani, whom Defendants and their co-conspirator, Amazon Watch, prevented Chevron from deposing and receiving document discovery from.
- In the alternative, Chevron requests that this Court enter an order allowing Chevron to take depositions of and document discovery from these witnesses before they are allowed to testify at trial.

**11. Expert witnesses not properly designated under Rule 26**

Chevron requests that the Court enter an order precluding expert testimony from any witness not properly and fully disclosed as an expert, including Douglas Beltman, Ann Maest, Mark Quarles, David Chapman, Charles Champ, William Powers, Richard Kamp,

John Connor, GSI Environmental, Richard Cabrera, Lawrence Barnthouse, Jonathan Shefftz, Douglas Allen, Robert Scardina, and Carlos Emilio Picone.

**12. Expert testimony of Raúl Rosero Rivas, Farith Ricardo Simon Campaña, and Juan Pablo Alban Alencastro**

Chevron requests that the Court enter an order precluding Defendants from presenting at trial the testimony of Raúl Rosero Rivas, Farith Ricardo Simon Campana, and Juan Pablo Alban Alencastro as experts on Ecuadorian law.

**13. The protection of testifying witnesses Doe 3 and Doe 4**

Chevron requests that this Court enter an order providing that:

- Doe 3 and Doe 4 may provide testimony before trial, in a setting closed to all but the Court (or a Special Master), counsel of record for Defendants Camacho and Piaguaje (not Camacho or Piaguaje themselves), counsel of record for the Donziger Defendants, if any (not Donziger himself), Chevron's attorneys, a court reporter, and a translator, and the testimony shall not be disclosed to any other individuals;
- Chevron may submit the transcribed testimony of Doe 3 and Doe 4 to the trial jury after the Court closes the courtroom to all individuals except those listed above, and the transcripts corresponding to those portions of the testimony shall be sealed;
- Any trial exhibits describing or containing Doe 3 or Doe 4's identities or identifying information will be redacted to conceal the Doe witnesses' names, and may be displayed to the jury, the Court, and the individuals listed above, but not to others, and those exhibits will thereafter be maintained under seal;

- The courtroom shall be closed to all but those individuals listed above during any portion of witness testimony or attorney argument that addresses Doe 3 or Doe 4's identities or identifying information, and the transcripts corresponding to those portions of the testimony shall be sealed as well; and
- Doe 3 and Doe 4 will testify under pseudonyms, which will be used on all documents and in testimony.

**14. Evidence or arguments contrary to the Special Masters' orders**

Chevron requests that this Court enter an order:

- providing that the special masters' rulings are final and binding on the parties, including their rulings that certain privileges have been waived and/or are inapplicable due to the crime-fraud exception; and
- precluding argument or evidence offered in contravention of those rulings.

**15. Evidence pertaining to the *Cordova* action**

Chevron requests that this Court order providing that evidence regarding the *Cordova* action is not inadmissible on relevance grounds.

By moving *in limine* Chevron does not waive any objections or arguments regarding Defendants' witnesses, exhibits, arguments, or other submissions. Chevron's review of Defendants' pre-trial submissions is ongoing, and the inclusion or exclusion of witnesses, exhibits, or argument in these motions *in limine* does not waive any objections to other material, whether or not included in Defendants' pre-trial submissions.

Dated: September 8, 2013  
New York, New York

Respectfully submitted,

/s/ Randy M. Mastro

Randy M. Mastro  
Andrea E. Neuman  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
New York, New York 10166  
Telephone: 212.351.4000  
Facsimile: 212.351.4035

William E. Thomson  
333 South Grand Avenue  
Los Angeles, California 90071  
Telephone: 213.229.7000  
Facsimile: 213.229.7520

*Attorneys for Chevron Corporation*