SUMMARY OF PART ONE OF PLAINTIFFS' *ALEGATO FINAL* (FINAL ARGUMENT) IN ENVIRONMENTAL DISASTER LITIGATION AGAINST CHEVRON

From 1964 to 1992, Chevron's predecessor Texaco owned an interest in the Napo Concession, an approximately 1,500 square-mile track of land in the rainforests of Ecuador. Chevron drilled oil wells and extracted oil on this land. Beginning in 1964 and continuing at least until June 30, 1990, Chevron deliberately dumped billions of gallons of highly toxic waste byproducts from its oil drilling operations directly into the rivers and streams of the Ecuadorian rainforest. They also dug over 900 unlined earthen pits and filled them with a toxic soup of waste products that continues to leak into the soil and groundwater to this very day. These pits have been tested extensively by Chevron, the plaintiffs, and court-appointed experts. The test results are undeniable—they show levels of hazardous petroleum hydrocarbons and heavy metals hundreds and sometimes thousands of times higher than permissible limits. This environmental disaster has had a devastating effect on Ecuador and the people who inhabit the region. Those people filed a lawsuit against Chevron's predecessor Texaco in 1993. Eight years later, Texaco merged with Chevron to become one Goliath petroleum company. After almost 20 years of Chevron's legal sideshows, delay tactics, false accusations, and intimidation, the time has come for Goliath to face David head-on.

The parties have given the court over 180,000 pages of documents that provide ample evidence of Chevron's misdeeds and firmly establish liability for the environmental disaster it created. On December 17, 2010, the Ecuadorian court issued the *autos para sentencia*, a procedural device that indicates it is ready to enter judgment. The parties are now able to submit *Alegato Final* (final written argument). As summarized below, Part One of Plaintiffs' Alegato Final provides a painstakingly detailed account of Chevron's environmental atrocities and shows Chevron's total disregard for Ecuador, its laws, its natural resources, and its people. Parts Two and Three will be filed with the Court in the coming weeks. Part Two will focus on damages and the appropriate economic valuation of those damages. Part Three will address Chevron's numerous and diverse attempts to sabotage this litigation from the outset, including Chevron's increasingly desperate and inflammatory filings accusing Plaintiffs—and indeed the Ecuadorian Court itself—of fraud and misconduct.

I. CHEVRON CREATED AN ENVIRONMENTAL DISASTER IN THE RAINFOREST

While operating the Napo Concession, Chevron treated the environment recklessly, without concern or anything or anyone in its drilling path. Chevron never prepared a single Environmental Impact Study for any of the exploratory drilling it conducted. This was true even after 1976, when such studies were required by law in Ecuador. Chevron deliberately disposed of untreated contaminated water from its drilling operations into rivers and streams, dug and filled hundreds of pits with petroleum byproducts, and adopted a careless attitude toward preventing and cleaning up spills. These lax operational practices have had a devastating impact on the rainforest ecosystem and its inhabitants. Although Chevron was well aware of the ill effects of its practices and had the expertise and technology to prevent them, it did nothing to monitor environmental conditions or reduce pollution. The Plaintiffs' Alegato provides detailed evidence that proves a litany of Chevron's environmental atrocities. Just a few examples of

these atrocities are provided below.

- **Chevron dumped chemical-laden "produced water" into steams and rivers.**
  - Chevron dumped approximately 16 billion gallons of "produced water"—water extracted from the ground during oil drilling that is loaded with toxic chemicals—into jungle soils and streams near its well sites. At each of its processing stations, Chevron built large pipes that drained directly into nearby streams and rivers
  - At the time it was dumping this toxic water into the rainforest, the evidence shows that Chevron was well aware of its dangerous effects and had developed technologies to minimize its risks. It refused to apply any of those technologies in Ecuador. In fact, Chevron was still dumping produced water directly into streams and rivers in Ecuador *over 70 years* after the industry had stopped the practice in the United States due to its damaging environmental effects.

- **Chevron filled unlined earthen pits with toxic chemicals that leaked into the soil.**
  - Chevron dug approximately 900 open, unlined, earthen pits and filled them with "drilling muds"—a toxic soup of oil drilling byproducts that includes barium, heavy metals (e.g., chromium, lead, and zinc), chloride, petroleum compounds, and acid. It dumped these chemical-laden byproducts despite knowing they were a source of pollution and had a disastrous environmental impact. In fact, the petroleum industry had generally stopped this practice in the 1940s. As one eyewitness to this practice recalled: "[W]hen the petroleum came out, part of it was scattered at the beginning of the platform, and another part went to the pits with sand; once in the pit it was set on fire, burning the surrounding woods; the petroleum on the platform went straight to rivers and estuaries."[1]
  - Although Chevron was well aware its pits filled with oil drilling byproducts were leaking into the soil and groundwater, it did nothing in order to save money. Letters discovered during the litigation clearly show that Chevron made a conscious choice not to fix its outdated and outmoded toxic pits that continued to dump chemicals into the rainforest. A 1980 letter between a Chevron (then Texaco) District Superintendant and an engineer states determines that the costs of more environmentally safer alternatives including installing steel pits or digging new pits and coating them would be too costly. The letter concludes that "[t]herefore, we recommend not to fence, coat or fill the pits and to continue using siphons."[2]

- **Chevron spilled thousands of barrels of oil.**
  - Chevron failed to maintain or monitor its oil pipelines in the region, which resulted in many oil leaks and spills going undetected with no cleanup effort.
  - Chevron spilled at least 26,400 barrels of oil, most due to a lack of preventative maintenance on its equipment. Chevron did not have a spill prevention or response plan. Rather than clean up its spills, Chevron simply covered them with sand.

[1] Cuerpo 40, Both sides of Foja 3977: Testimony of Soto (Oct. 28, 2003).

[2] Cuerpo 67, Foja 7021: Letter from D.W. Archer (June 25, 1980).

- **Chevron Polluted the Air.**
  - In addition to contaminating the soil, groundwater, and streams in the rainforest, Chevron also polluted the air. Chevron disregarded accepted industry methods and technologies to reduce harmful air pollution and instead vented large quantities of gas directly into the atmosphere. Chevron used a practice called "horizontal flaring" which was a disfavored practice in the United Sates by the 1950s. This practice resulted in large plumes of black smoke that choked the life out of the region.

- **Chevron tried to cover up its hideous environmental practices.**
  - On July 17, 1972, a directive was sent on behalf of Chevron's Chairman of the Board entitled "Reporting of Environmental Incidents: New Instructions." The memo stated that: "Only major events . . . are to be reported. . . . A major event is further defined as one which attracts the attention of the press and/or regulatory authorities or in your judgment merits reporting."[3]
  - Chevron also instructed its employees to not keep records of environmental spills and to destroy records of any prior spills. The same July 1972 memo also instructed employees that: "No reports are to be kept on a routine basis and all previous reports are to be removed from Field and Division Offices and destroyed."

II. THERE IS IRREFUTABLE EVIDENCE OF CONTAMINATION AT EVERY CHEVRON SITE

Multiple studies found harmful levels of toxic chemicals and compounds that have well-established adverse health effects were found at all 45 sites operated by Chevron. A court-appointed expert, as well as experts retained by the plaintiffs and Chevron all have confirmed levels of contamination for chemicals well above accepted levels under Ecuadorian law at all 45 sites. The chemicals and compounds found at the Chevron sites include barium, benzene, cadmium, chromium, copper, etheylbenzene, polycyclic aromatic hydrocarbons (PAH), mercury, naphthalene, nickel, lead, toluene, total petroleum hydrocarbons (TPH), vanadium, xylene, and zinc. Plaintiffs' Alegato provides a detailed account—supported by volumes of evidence—of the chemicals found at each Chevron site.

- **Chevron's own environmental reports proves the Plaintiffs' case.**
  - In 1992, as Chevron was preparing to transfer its full ownership interest in the concession, two separate international consulting firms were retained to provide environmental audits of the facilities. Both audits found extensive evidence of Chevron's recklessness disregard for the environment in Ecuador from 1964 through 1990. In fact, the audits noted multiple violations of Ecuadorian environmental laws.
  - In October, 1992, Chevron hired a third independent expert to conduct an environmental audit. The report stated:
    - The audit identified hydrocarbon contamination requiring remediation at all production facilities and a majority of the drill

[3] Cuerpo 1037, Foja 140585: Shields Memo (July 17, 1972).

sites . . . . Various degrees of crude oil contamination existed on many of the well sites visited. . . . All produced water from the production facilities eventually discharged to creeks and streams except for one facility which used a percolation pit.

- "The produced water from TEXPET's operations have historically been discharged into surface waters"[4]
- "An oil spill prevention and control plan was not identified. The audit teams also did not observe any spill control or containment equipment."
- "In general, spills of hydrocarbons and chemicals were not cleaned up. Instead, they were covered with sand."[5]

➢ **5 Independent environmental studies found rampant contamination at Chevron sites.**

- No less than 5 independent reports have all reached the same conclusion: Chevron's horrifying environmental practices had a devastating effect on the rainforest in Ecuador. The reports include those from three different Court-appointed environmental experts, an investigation by the Ecuador General Controller's Office, and The Center for Economic and Social Rights. The Alegato provides summaries of each report and the undeniable evidence of contamination they found in the rainforest.

➢ **Chevron's environmental testing conducted for the case is highly questionable.**

- Multiple environmental experts have concluded that that Chevron's environmental sampling and analysis methodologies used during this litigation are highly questionable. Those experts found that:
  - Chevron sampled only a thin lawyer of soil, which was deliberately placed there to cover up the toxic waste just below the surface;
  - Chevron selected sampling locations outside of expected contaminant flow pathways (*e.g.*, uphill from the contamination sites where contamination was unlikely);
  - Chevron inappropriately combined soil samples from multiple sites in an effort to minimize contaminant concentrations; and
  - Chevron misapplied and invented self-serving contaminant standards.

➢ **Chevron's alleged remediation was sham.**

- Plaintiffs' Alegato provides ample evidence to show that Chevron's remediation efforts were little more than smoke and mirrors. For example, Chevron hid many of the toxic pits so that they were excluded from the remediation negotiations.
- Chevron's sham remediation was carefully calculated as a quick-fix to undermine the Plaintiffs' class action lawsuit filed in the United States in 1993.
- The contracts regarding the remediation were unlawful because they used standards

[4] Cuerpo 97, Opposite side of Foja 10675: Fugro McClelland (1992).

[5] Cuerpo 97, Opposite side of Foja 10682, 2nd Para.: Fugro McClelland (1992).

for testing contaminants that were impossible to fail or not designed to measure oil-related contamination.

- The so-called remediation effort itself was effectively non-existent because no remediation investigation was conducted (a well-established requirement for any remediation).
- Chevron falsely certified that sites were "completely remediated" when they most certainly were not. Samples of the purportedly "cleaned" pits submitted during trial by all parties, including Chevron, showed that total petroleum hydrocarbon (TPH) concentrations still exceeded the Ecuadorian standard of 1,000 ppm in 83% of the pits that Chevron supposedly remediated. In fact, TPH concentrations were as high as 206,000 ppm in some of these "cleaned" pits. Even independent data collected by third parties confirmed that Chevron's purported remediation of the waste pits was completely ineffective. For example, samples collected in the late 1990s by the Ecuadorian Ministry of Energy and Mines at sites in the same area as those allegedly "cleaned" by Chevron registered TPH concentrations in excess of 5,000 ppm. In addition, 73% of the samples from the pits that Chevron declared "clean" that were collected in 2003 as part of an academic research project exceeded 1,000 ppm and 20% exceeded 5,000 ppm TPH.

III. THE LAW REQUIRES THAT JUDGMENT BE ENTERED IN PLAINTIFFS' FAVOR

The Alegato also provides clear and convincing legal arguments establishing why the Court must enter judgment in favor of the Plaintiffs under Ecuadorian law. Pursuant to Article 2229 of the Ecuadorian Civil Code (the former Article 2256), persons who engage in especially risky activities have a special obligation to redress damages arising from them, regardless of whether there was any malice or fault involved in the conduct that gave rise to injury.[6] The Supreme Court of Ecuador has held that oil-extraction operations are considered a high-risk activity.[7] Thus, the law does not require Plaintiffs to demonstrate that Chevron's predecessor, Texaco, acted with malice or neglect. However, given the innumerous facts showing the egregious environmental scars Chevron left behind, demonstrating that Chevron acted with malice or neglect would not be a challenge.

- **No one else is to blame for Chevron's environmental transgressions.**
  - Chevron has argued to the Court that another company, Petroecuador, is the party responsible for the devastating environmental damage to rainforest. There is no support in law or fact for this. Petroecuador took over Chevron's predecessor Texaco's operations in the early 1990's. The facts are clear that Chevron's predecessor Texaco dumped billions of gallons of contaminated and highly toxic chemicals directly into the soil, groundwater and surface water in Ecuador and caused an environmental disaster that continues to plague the region.
  - It is important to note that this case was originally filed in the United States in

[6] Ecuadorian Civil Code, Art. 2229 (former Art. 2256) (Book IV).

[7] Trial 31-2002, Official Registry, No.43.

1993, shortly after Petroecuador had taken over the Chevron sites. At that time, there is no possible way Chevron could have argued that anyone but Chevron and its predecessors were responsible for the environmental catastrophe in Ecuador. However, Chevron succeeded in challenging the jurisdiction of the U.S. courts, which caused substantial delays while the case was re-filed in Ecuador. Now, Chevron has used those delays as an excuse to blame Petroecuador.

- The facts do not support Chevron's argument that Petroecuador is to blame for several reasons:
  - Sites operated by Chevron and shut down before Petroecuador became operator are as contaminated as sites subsequently operated by Petroecuador.
  - The vast majority of contamination at well sites occurs during drilling and development (not once production starts), and this lawsuit incorporates only well sites and stations built by Chevron.
  - Petroecuador inherited Chevron's sub-standard and faulty infrastructure which was designed to release toxins into the environment. Chevron's subsequent abandonment of its facilities does not absolve it of liability.
  - Petroecuador made dramatic improvements in Chevron's prior environmental practices in virtually every respect.

➢ **The Plaintiffs are entitled to damages resulting from Chevrons environmental misdeeds.**

- Under Ecuadorian law, Chevron is liable not only for damages that its acts and omissions have *already* caused, but also for "future" or "contingent" damage. Although the Plaintiffs will be providing the Court with a separate submission on damages, the Alegato Final summarizes the following damages caused by Chevron:
  - Ground and water contaminants continue to threaten the environment and health of the inhabitants, and these contaminants must be remediated.
  - Once contamination is remediated, Chevron must restore the rainforest ecosystem and repair the environmental damage it caused.
  - The rainforest restoration includes providing for the immediate healthcare needs of the inhabitants of the affected towns and monitoring the long-term effects of the contamination on their health.
  - The restoration also includes ensuring that the residents of the region have access to clean drinking water.
  - Chevron must account for and correct the impact its environmental contamination has caused on the cultural practices of the region's residents.
  - Chevron must be forced to return the excessive profits it earned while it was creating an environmental catastrophe in the rainforest. Chevron cut corners at every turn and laughed in the face of environmental standards all in an effort to maximize corporate profits. Chevron must not be permitted to reap the financial benefits of its devastating environmental practices.

➢ **Chevron's defenses are wholly without merit and should be disregarded by the Court.**

- Chevron has argued that the Ecuadorian court lacks jurisdiction, is not competent to hear the case, and that the case is barred by the statute of limitations. All three arguments are completely without merit because Chevron not only consented to the Court's jurisdiction, it also fought for years to get the case out of the U.S. and into Ecuador's courts. In fact, Chevron secured a dismissal of the U.S. litigation on grounds that it was an "inconvenient forum" grounds by promising that court that it would not challenge the jurisdiction of the courts of Ecuador. Chevron's statute of limitations argument is based on the premise that Chevron is not a successor of Texaco. As addressed below, this argument fails. And, similar to its jurisdictional defense, Chevron promised the original U.S. court that that it would not raise the same statute of limitations defense it has now raised in Ecuador.

➢ **Chevron is the proper defendant.**

- Chevron merged with Texaco in October, 2001. As part of that merger, Chevron assumed all the assets, obligations, and liabilities of Texaco and its subsidiaries. Chevron now denies that it merged with Texaco and instead claims that it acquired Texaco in a complicated corporate structure involving a shell company. Chevron argues, conveniently, that because of the complicated corporate structure, it is not responsible for the actions of its predecessor Texaco or Texaco's subsidiary Texaco Petroleum Company. Chevron makes these arguments despite an explicit promise to the plaintiffs and to the U.S. court where the lawsuit was originally filed that it would submit to litigation of these claims in Ecuador and abide by any judgment rendered by the Ecuadorian courts. It also makes these arguments notwithstanding the fact that name of the new company formed in October 2001 says it all: "ChevronTexaco."
- The facts are clear that there was never a practical distinction between Texaco and Chevron. Nor was there any meaningful distinction between Texaco and Texaco Petroleum when the companies were generating massive profits exploiting oil and contaminating the rainforest. In both cases, the parent company wholly owns, finances, and controls the subsidiary; they share executives and board members; and generally reaped the benefits of such unification. In fact, Chevron recently won an arbitration award of $700 million against the Ecuadorian government to compensate *Chevron* for unrelated claims supposedly suffered *by Texaco and/or Texaco Petroleum* in Ecuador.
- Chevron also repeatedly and consistently referred to the Texaco deal as a merger in all of its press releases, communications to its own shareholders, and in securities filings in both the U.S and Europe.
- The law of Ecuador is clear that a corporation's liabilities cannot be extinguished by a merger. This makes good sense. Any alternative would encourage rampant environmental violations by companies who could just merge with another company to avoid any responsibility. The Alegato provides many examples of Ecuadorian court cases in which a parent company was held liable for the misdeeds of its subsidiary.

➢ **Chevron is accountable for its environmental destruction under the laws of Ecuador.**

- Chevron has also argued that it cannot be held liable under Ecuador's Environmental Management Law that was enacted after the time Chevron was dumping massive amounts of toxins into the soil and water. As the Alegato explains, Plaintiffs' claims are based on a number of laws that Chevron violated, all of which existed long before the environmental disaster it caused. In addition, the Environmental Management Law merely creates a private right of action to denounce violations of the environmental laws and regulations that existed while Chevron operated in the region. Thus, Chevron cannot claim it is improperly being held accountable for laws that did not exist.

➢ **The Government of Ecuador did not release Chevron from its liabilities.**

- Finally, Chevron argues that it was absolved from all liability by an agreement it reached with the government of Ecuador. In the agreement, Chevron purportedly agreed to "remediate" a small portion of the contaminated sites in exchange for a release from the Ecuadorian government's legal claims against the company. Chevron's defense is utterly frivolous for three reasons:
  - The "release" does not cover Plaintiffs' claims and there is indisputable evidence that the release cannot be construed in such a manner.
  - Even if the release could somehow be read to extend to the Plaintiffs, the government does not have the authority to release Chevron from third-party claims under Ecuadorian law.
  - The release was obtained on the basis of numerous false and misleading representations by Chevron and its subcontractors that render the release null and void as the product of fraud. Thus the release is null and void and cannot protect Chevron from its obligations to the people of Ecuador. Indeed, two Chevron lawyers and a number of government officials are being criminally prosecuted as a result of this fraud.

Conclusion

Chevron fought for years to keep this litigation out of the U.S. Courts and eventually won that battle. The case has been tried, at Chevron's demand, in Ecuador. Now that the case is reaching its conclusion, and now that mountains of evidence exposing its misconduct have piled up, Chevron has mounted a collateral attack on the plaintiffs, their attorneys, and the Ecuadorian courts. Chevron has even threatened the judge presiding over the case with criminal liability. The plaintiffs hope that the Court will see through these obvious attempts to distract attention from the real issue: Chevron's liability for its despicable conduct.

The evidence makes it clear and unmistakable that Chevron is guilty. Guilty of polluting the rainforests with toxic sludge from lucrative oil drilling operations, guilty of a shoddy and haphazard cleanup operation, guilty of letting toxic waste continue to devastate the rainforest and its inhabitants' lives, and perhaps worst of all, guilty of trying to cover it all up by destroying documents and making false accusations of fraud before courts in the U.S. and Ecuador. Chevron's complete disdain for Ecuador, its courts, and its citizens was captured perfectly by

a Chevron lobbyist who told *Newsweek*: "We can't let little countries screw around with big companies like this – companies that have made big investments around the world."[8]

It has been seventeen years since this case was first filed. Clearly, Chevron's plan to distract and delay the case's progress has worked. But no longer. The facts speak for themselves. All that remains is for the Court to hold Chevron accountable for the environmental disaster it brought to the rainforest and the people of Ecuador.

[8] "A $16 Billion Problem: Chevron hires lobbyists to squeeze Ecuador in toxic-dumping case. What Obama win could mean," by Michael Isikoff in NEWSWEEK (Aug. 4, 2008).