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Chevron faces asset seizure in Brazil over \$18 billion Ecuador judgment

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CONSULTORES
AMARO MARTINS DE ALMEIDA (1914-1998)
HELIO CAMPISTA GOMES (1925-2004)
SALVADOR CÍCERO VELLOSO PINTO
JORGE FERNANDO LORETTI
ELENA LANDAU

HON. PRESIDING MINISTER OF THE SUPERIOR COURT OF JUSTICE

MARÍA AGUINDA SALAZAR, CARLOS GREFA HUATATOCA,
CATALINA ANTONIA AGUINDA ZALAZAR, LIDIA ALEXANDRA AGUINDA
AGUINDA, PATRICIO ALBERTO CHIMBO YUMBO, CLIDE RAMIRO AGUINDA
AGUINDA, LUÍS ARMANDO CHIMBO YUMBO, BEATRIZ MERCEDES GREFA
TANGUILA, LUCIÓ ENRIQUE GREFA TANGUILA, PATRICIO WILSON AGUINDA
AGUINDA, CELIA IRENE VIVEROS CUSANGUA, FRANCISCO MATIAS
ALVARADO YUMBO, FRANCISCO ALVARADO YUMBO, OLGA GLORIA GREFA
CERDA, LORENZO JOSÉ ALVARADO YUMBO, NARCISA AIDA TANGUILA
NARVAÉZ, BERTHA ANTONIA YUMBO TANGUILA, GLORIA LUCRECIA
TANGUILA GREFA, FRANCISCO VICTOR TANGUILA GREFA, ROSA TERESA
CHIMBO TANGUILA, JOSÉ GABRIEL REVELO LLORE, MARÍA CLELIA
REASCOS REVELO, MARÍA MAGDALENA RODRIGUEZ BARCENES, HUGO
GERARDO CAMACHO NARANJO, JOSÉ MIGUEL IPIALES CHICAIZA,
HELEODORO PATARON GUARACA, LUISA DELIA TANGUILA NARVÁEZ,
LOURDES BEATRIZ CHIMBO TANGUILA, MARÍA HORTENCIA VIVEROS
CUSANGUA, SEGUNDO ANGEL AMANTA MILÁN, OCTAVIO ISMAEL CÓRDOVA
HUANCA, ELÍAS ROBERTO PIYAHUAJE PAYAHUAJE, JAVIER PIAGUAJE
PAYAHUAJE, DANIEL CARLOS LUSITANDE YAIGUAJE, BENANCIO FREDY
CHIMBO GREFA, GUILLERMO VICENTE PAYAGUAJE LUSITANTE, DELFÍN
LEONIDAS PAYAGUAJE PAYAGUAJE, ALFREDO DONALDO PAYAGUAJE
PAYAGUAJE, TEODORO GONZALO PIAGUAJE PAYAGUAJE, MIGUEL MARIO
PAYAGUAJE PAYAGUAJE, FERMIN PIAGUAJE PAYAGUAJE, REINALDO

UNOFFICIAL TRANSLATION

LUSITANDE YAIGUAJE, LUIS AGUSTÍN PAYAGUAJE PIAGUAJE, EMILIO MARTÍN LUSITANDE YAIGUAJE, SIMON LUSITANDE YAIGUAJE, ARMANDO WILFRIDO PIAGUAJE PAYAGUAJE, ANGEL JUSTINO PIAGUAJE E FRENTE DE DEFENSA DE LA AMAZONÍA, (details of identification), hereby apply, via their undersigning attorneys (doc. 1), on the basis of art. 105, I, i, of the Federal Constitution and Resolution n.º 9 of May, 4, 2005 of this Superior Court of Justice, for recognition of a foreign court order, being the order on appeal granted by the *Sala Única da Corte Provincial de Sucumbíos* (Sole Chamber of the Provincial Court of Sucumbíos, in Ecuador), against CHEVRON CORPORATION, which is the former name of the CHEVRON TEXACO CORPORATION (details of identification). The grounds for the application are as follows:

THE AMAZON CHERNOBYL

1. The Provincial Court of Sucumbíos, a province of the Republic of Ecuador, handed down a ruling (referred to as sentencia in Spanish), upholding, on the merits, the order for damages made against Chevron in a lawsuit filed (before the same court) by Maria Aguinda Salazar and her co-parties, who are the applicants in this request for recognition (doc.2). The Court upheld the order for damages, merely rejecting Plaintiffs' request for increase in quantum. It also granted in part the appeal filed by the Defendant, merely so as to declare that there was lack of evidence of contamination by mercury.

2. As can be seen from the original document, which is accompanied, as required, by its translation into Portuguese (doc. 3), the ruling on appeal, in upholding the order for damages (docs 4 - 6), increased the percentage of counsel fees payable to the attorneys of the winning parties.

3. It can be seen from a breakdown of the order upheld on appeal (in fact, in accordance with the principle set out in

art. 512 of the Brazilian Code of Civil Procedure the order on appeal is deemed to have substituted the original order for damages) that the Defendant was ordered:

(a) to pay US\$ 8,646,160,000,00 (eight billion, six hundred and forty six million one hundred and sixty thousand dollars) to cover the costs of repairing the damage caused to the environment and the local populace (this amount being the total quantum resulting from seven separate awards);

(b) to pay an equal amount as punitive damages;

(c) to pay an additional 10% of the amount ordered, with grounds on art. 43 of the Ecuadorian Environmental Law dated 30.7.99; and

(d) to pay counsel fees set at 0.10% of the total award of damages

THE APPLICATION FOR RECOGNITION

4. Applicants seek an order for recognition by this Superior Court of Justice, as per the provisions of item i of sub-paragraph I of art. 105 of the Constitution, of the Ecuadorian ruling comprised of the original order and the order on appeal which upheld it. We address below the compliance with the requisites of Resolution 09 of May 4, 2005.

SUMMARY EXPLANATION

5. An application for recognition of a foreign order is essentially concerned with formalities and is required in order to enable verification that the provisions of national law have been complied with. Fresh examination of the issues decided by

the foreign court is not permitted. That is not, however, a bar to our setting out in this petition a succinct explanation of the background to the lawsuit which led to the order, recognition of which is now sought.

6. CHEVRON CORP., the Defendant in these proceedings, took over and therefore succeeded TEXACO INC. which, for 28 years, operating via its subsidiary TEXPET, drilled for oil on mainland Ecuador, causing the damage for which Defendant hereto was ordered by the Ecuadorian courts to redress. We use the name CHEVRON in this petition to refer both to the company held liable by the Ecuadorean court and to the company which preceded it prior to the incorporation referred to.

7. The colossal damage caused was the result of the catastrophic contamination of the water table, surface water sources, soil, flora and fauna within an area of 3.855 km², equivalent, if comparison may be permitted, to the combined geographical area of the cities of São Paulo, Buenos Aires, Mexico City and Quito. Needless to say, the victim of the damage caused was the local population of over thirty thousand people, poisoned by the abusive and irresponsible actions of a foreign corporation that profits from the extraction and sale of oil, with blatant disregard for nature and for people. Successive generations of this population have been afflicted by a calamity that could have been avoided if measures had been adopted to protect the environment and the people living in it.

8. The enormous disaster and its permanent and untold consequences have been described as the "Amazon Chernobyl", comparing this scourge with the radiation leak which occurred in the Ukraine several years ago.

9. Demonstrating the extent of the catastrophe is not, strictly speaking, relevant to these recognition proceedings, which are predominantly concerned with formalities, but the

facts are nevertheless significant. In comparative terms, the recent oil spill which occurred in the Gulf of Mexico and for which the future (in terms of repair of the damage) is unforeseeable, involved a total of 750 million liters of crude oil. The spillage of residues in Ecuador is close to the shocking total of 60 billion liters. The worst part is that this contamination did not derive from an accident, but from Chevron's deliberate choice to reduce oil exploration costs, transferring them to the Ecuadorian population. This resulted in damages to the delicate and important Amazonian ecosystem.

10. In the light of this the Ecuadorian court could do nothing but grant the claim for damages filed by the Plaintiffs. It did so, following proceedings which lasted for ten years, having been commenced in 2003. The court's final ruling was based on a vast body of evidence including (with no exaggeration) over one hundred expert reports.

CLEAR STANDING TO SUE

11. All the Plaintiffs (Applicants) in this application for recognition were also plaintiffs in the lawsuit which led to the order in Ecuador (for which recognition is now sought in Brazil). The Defendant to this application is CHEVRON, also the sole defendant in the proceedings before the Ecuadorian court. This can be confirmed by comparing the Statement of Case (Complaint) in both cases (doc 2.).

PRE-REQUISITES TO RECOGNITION

12. We shall demonstrate here that the requirements of the STJ Resolution 09/05, which are pre-conditions to the hearing of the application and pre-requisites to the granting

of an order on the merits by your honor (and, if necessary, by the Special Court) have been complied with.

I - Competent Authority

13. There can be no doubt that the Ecuadorian judiciary (court) that made the order (for which recognition is now sought) had jurisdiction to do so. It is known that a positive finding as to jurisdiction can be based on inferences drawn from the acts performed by the bodies before which the relevant lawsuit was commenced, prosecuted and concluded.

14. In the specific case in issue, the Ecuadorian judicial authorities who made the order for which recognition is now being sought made no declaration whatsoever as to any lack of jurisdiction on their part. On the contrary, after a long battle in which Chevron was able to set aside the jurisdiction of the American courts, the Ecuadorian court's jurisdiction was expressly recognized after Chevron surprisingly decided to question it. The challenge was denied as can be seen in the order filed before this court (doc. 6 - p. 1 of the original and page 256 of the translation).

15. Note that the hon. SCJ has already correctly ruled that it falls to the foreign court to decide whether or not it has jurisdiction to try the lawsuit filed before it in the case where the order referred to in the request for recognition was granted. Clearly, recognition can only be denied in cases where Brazilian courts have absolute and exclusive jurisdiction, as confirmed previously in Civil Procedure Code, art. 89. (AgRG on SEC 854/EX, Special Court, Rapporteur Min. LUIZ FUX, Rapporteur for the Order Min. NANCY ANDRIGHI, judged February 16, 2011)

II - Valid Service of Process, no judgment in default.

16. There is no need to demonstrate that service of process was validly affected given that CHEVRON has never questioned the validity of its joinder to the proceedings. It participated fully in said proceedings, filed a defense (doc. 3) and was never held to be in default.

III - Res judicata

17. The order on appeal for which recognition is sought is final and binding (*res judicata*). Unequivocal evidence of this is provided by the declaration of the Ecuadorian court which judged (together) motions for declaration filed by both parties against the final order (doc. 7). To wit:

"Given that the order of January 3, 2012, together with this extension and clarification, brings to a close the cognizance stage of the proceedings, with a ruling being made on the substantive issue at the highest instance, it is evident that there is *res judicata* (both formal and substantive) following the order on appeal. It is following said order that [the possibility of] an application to vacate [*recurso de cassação*] arises, precisely because the lawsuit has been concluded. The Plaintiff has clearly addressed this issue of the order and no further clarification is needed on this point." (doc. 7, p. 1 of the original and pg. 273 of the translation)

18. In other words, the Ecuadorian ruling is supported by [applicable] procedural rules which enable a ruling to constitute formal and substantive *res judicata* even when an appeal based on constitutional grounds [a so-called "extraordinary" appeal] has been lodged. (e.g., Portugal, Civil Procedure Code art. 676°, 2, c.c. art. 771° et seq)

IV - Documentation in order

19. The fact that the documentation is in order, as required in item IV of art. 5 of Resolution no. 09/05 of the

SCJ, has been clearly demonstrated with regard to the documents annexed to this Statement of Case with the original documents having been certified by the relevant Brazilian consular authority and translated by an official translator.

V - No Breach

20. There is no need to waste rivers of ink in stating that which is blatantly obvious: the order for which recognition is sought neither runs contrary to Brazilian sovereignty nor does it breach prevailing Brazilian public policy. There is no question of there being such breach when the judgment in issue is a foreign court ruling which ordered a tortfeasor to provide redress for its victims, with the facts, the loss and the nexus of causation having been proven.

FURTHER CONSIDERATIONS

21. The Plaintiffs could go on at length in setting out information and observations on the proceedings which led to the order for which recognition is now sought. The legal and factual background to the order is full of [details of] appalling actions, many of them criminal in nature, others whilst not actually crimes, giving rise to similar consequences. All these acts were unlawful beyond a shadow of doubt, perpetrated by the Defendant which, considering itself beyond good and evil, believes itself omnipotent, free to evade the rightful, albeit delayed, penalty imposed for its wrongful acts which pitilessly took the lives of children and adults, spread cancer and illnesses, ruined the well being of future generations, destroyed forests, poisoned animals, polluted the water table, infected waterways, spread fear, disease and desperation, massacring impoverished and defenseless human beings.

22. We know that CHEVRON will use diversionary tactics, procedural maneuvers and fallacious arguments in an attempt to draw out the recognition proceedings for as long as it can, dragging its heels "until Hell freezes over", apparently unaware that the honorable courts of Brazil will uphold the Ecuadorean order and integrate it into the Brazilian legal system, so that it becomes enforceable in accordance with art. 475-N, VI, of the Civil Procedure Code. In so doing the judiciary will ensure that no failure to act or complicit omission leads to evil going unpunished and to evildoers becoming bolder.

FREE LEGAL ASSISTANCE

23. Impoverished and starving, victims of an outrageous and horrifying attack on their physical health and well being, lacking resources with which to fund a lawsuit, the Plaintiffs declare, in accordance with the provisions of art. 4 of Law 1.060, of February 5, 1950, that they do not have the wherewithal to pay court costs and legal fees without prejudice to themselves and their families. As such they request the free legal assistance referred to in the paragraphs of art. 3 of said law.

REQUESTS

24. The Plaintiffs request postal service of process on the Defendant, at its address in the city of Rio de Janeiro, RJ, at Avenida República do Chile n° 230, 18° andar, Centro, CEP 20031-170, so that Defendant is joined to the proceedings and remains so until a final order is rendered.

25. Plaintiffs further request recognition of the foreign court order made by the Sole Chamber (Sala Única) of the Provincial Court of Appeal of Sucumbíos, in the Republic of Ecuador, with an award of suit fees (including attorney fees)

against the Defendants in relation to acts which are not the responsibility of the Plaintiffs.

26. Plaintiffs request leave to file fresh documents, with further evidence being unnecessary given the nature and purpose of this application for recognition. Plaintiffs also beg leave to file the powers of attorney, set out in document 1, which are pending consular certification and official translation.

27. The estimated amount in issue is R\$ 100,000.

28. Plaintiffs declare that their attorneys will accept service of notice in the Federal District at the address set out at the head of this document.

An order in these terms is sought.
Brasília, June 27, 2012

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