EXPERT REPORT OF NANCY J. MOORE

I. Introduction

I have been retained by Gibson, Dunn and Crutcher LLP on behalf of Chevron Corporation ("Chevron") to render opinions as to whether Steven Donziger ("Donziger") and various lawyers from the law firms of Emery Celli Brinckerhoff & Abady LLP ("Emery Celli"), Patton Boggs LLP ("Patton Boggs"), and Motley Rice LLC ("Motley Rice") violated their professional responsibilities toward the court and/or other persons with respect to: (1) Donziger's involvement in ghostwriting the report of Richard Cabrera ("the Cabrera Report") in violation of Ecuadorian court orders; (2) Donziger's false statements to Congress concerning the "independence" of the Cabrera Report; (3) efforts by Donziger, Emery Celli, Patton Boggs, and Motley Rice, in various U.S. district court proceedings, to hide the truth concerning the ghostwriting of the Cabrera Report; (4) efforts by Donziger, Emery Celli, Patton Boggs, and Motley Rice, in various U. S. district court proceedings, to delay and prevent the discovery of documents that would disclose the truth concerning the ghostwriting of the Cabrera Report; (5) Donziger's involvement in the submission of a report to the Ecuadorian court purportedly signed by Charles W. Calmbacher ("Calmbacher"), but which in reality he did not write and which reached conclusions opposite to his own findings; (6) efforts by Donziger in a U.S. district court proceeding to delay or prevent the deposition testimony of Calmbacher; (7) efforts by Donziger and Patton Boggs to obtain third-party litigation funding; (8) Donziger's use of intimidation to obtain favorable rulings in Ecuador; and (9) Donziger's involvement in making and promising to make payments to then-current and former Ecuadorian judges to render favorable orders and rulings for his clients, including the final judgment against Chevron.

A copy of my Curriculum Vitae, including a list of all of my publications, is attached as Exhibit 1. A List of Expert Testimony 2008-2013 is attached as Exhibit 2. I am being paid at my regular hourly rate of $750 per hour.

In connection with rendering my opinions, I reviewed the pleadings and other documents related to this case as set forth in Exhibit 3.

II. Qualifications

I am Professor of Law and Nancy Barton Scholar at Boston University School of Law ("BU"). I have been a tenured full professor at BU since January 1999. From 1976 through December 1998, I was employed at Rutgers School of Law-Camden ("Rutgers") as an assistant professor, tenured associate professor, associate dean for academic affairs, and tenured full professor. I am Chair of the Multistate Professional Responsibility Test Drafting Committee. In

addition, I was Chief Reporter to the American Bar Association's Commission on Evaluation of Professional Rules of Conduct ("Ethics 2000 Commission"). I also served as an adviser to the American Institute's *Restatement of the Law (Third) Governing Lawyers*, and I served twice as Chair of the Professional Responsibility Section of the Association of American Law Schools. I have authored numerous articles on legal ethics.

I have testified as an expert on legal ethics via deposition, declaration, and in various state and federal tribunals, including testimony in courts in Connecticut, Florida, Maine, Maryland, Massachusetts, New Jersey, New York, and Pennsylvania. I am currently licensed to practice law in the Commonwealth of Massachusetts (active) and the Commonwealth of Pennsylvania (inactive). I have spoken on topics in legal ethics numerous times in the last thirty years at continuing legal education seminars and professional conferences, including national bar conferences. I have regularly taught courses in legal ethics since 1978. In addition to regularly teaching the basic course in Professional Responsibility (formerly at Rutgers and now at BU), I teach a seminar on Lawyering in the 21st Century.

III. Facts

I have no personal knowledge of the facts on which I am basing my opinions. For purposes of these opinions, I have examined the documents set forth in Exhibit 3 and believe that these documents contain evidence from which the trier of fact could find the facts as described in the remainder of this report. My opinion therefore assumes that these are the facts as they would be presented to and credited by the trier of fact. I understand that the defendants in this lawsuit contest at least some of these facts.

IV. Applicable Professional Standards

At all relevant times, Donziger was an attorney who was licensed to practice in New York and practiced law from an office in New York. The Emery Celli lawyers whose conduct is at issue in this case ("the Emery Celli lawyers") [1] were also licensed in New York and practicing from an office in New York. The Patton Boggs lawyers whose conduct is at issue in this case ("the Patton Boggs lawyers") [2] were practicing from an office in New Jersey and were licensed in both New Jersey and New York. The Motley Rice lawyers whose conduct is at issue in this

[1] When I use the term "the Emery Celli lawyers" with respect to their conduct or their knowledge of the facts, I mean that one or more of the Emery Celli lawyers representing the LAPs engaged in such conduct or had such knowledge. When knowledge of the facts is necessary to determine whether such conduct violated applicable standards of care, I use the term to mean that one or more of the Emery Celli lawyers engaged in such conduct with knowledge of the facts.

[2] When I use the term "the Patton Boggs lawyers" with respect to their conduct or their knowledge of the facts, I mean that one or more of the Patton Boggs lawyers representing the LAPs engaged in such conduct or had such knowledge. When knowledge of the facts is necessary to determine whether such conduct violated applicable standards of care, I use the term to mean that one or more of the Patton Boggs lawyers engaged in such conduct with knowledge of the facts.

case ("the Motley Rice lawyers")[3] were practicing from either an office in Connecticut or an office in California and were licensed either in Connecticut or California. The Emery Celli, Patton Boggs, and Motley Rice lawyers may have been licensed in other jurisdictions as well. The Emery Celli lawyers entered an appearance in various U.S. district courts on behalf of persons who were plaintiffs in a lawsuit against Chevron in Ecuador ("the Lago Agrio Plaintiffs" or "the LAPs"). The Patton Boggs lawyers represented the LAPs with respect to many of the court proceedings, including the lawsuit in Ecuador. They did not enter an appearance in the Ecuadorian court and did not enter an appearance in any of the U.S. district court proceedings until approximately November 2010. The Motley Rice lawyers represented the LAPs with respect to many of the court proceedings. They did not enter an appearance in the Ecuadorian court. They entered an appearance in several of the U.S. district court proceedings, including a §1782 proceeding in the District Court for the Middle District of Tennessee. Donziger represented the LAPs with respect to all of the various court proceedings, including the lawsuits in Ecuador and in the United States; however, he did not enter an appearance in either the Ecuadorian court or the U.S. courts.

With respect to their conduct in connection with any of the U.S. district courts in which they had entered an appearance, the Emery Celli lawyers' conduct is governed by the rules of professional conduct adopted by that court. Otherwise, their conduct is governed by the New York Rules of Professional Conduct ("the New York Rules").

With respect to their conduct in connection with any of the U.S. district courts in which they had entered an appearance, the Patton Boggs lawyers' conduct is governed by the rules of professional conduct adopted by that court. Otherwise, their conduct is governed by the rules of the jurisdiction in which the conduct occurred or where the predominant effect of the conduct would be, *see* New Jersey Rules of Professional Conduct, Rule 8.5(b), and by the New York Rules, *see* New York Rule 8.5(b). For purposes of this report, I am assuming that their conduct occurred in New Jersey.

With respect to their conduct in connection with any of the U.S. district courts in which they had entered an appearance, the Motley Rice lawyers' conduct is governed by the rules of professional conduct adopted by that court. Otherwise, the Connecticut lawyers' conduct is governed by the rules of the jurisdiction in which the conduct occurred or where the predominant effect of the conduct would be, *see* Connecticut Rules of Professional Conduct, Rule 8.5(b), whereas the California lawyers' conduct is governed by the rules governing lawyers practicing in California, *see* California Rules of Professional Conduct, Rule 1-100(D)(1). For purposes of this

[3] When I use the term "the Motley Rice lawyers" with respect to their conduct or their knowledge of the facts, I mean that one or more of the Motley Rice lawyers representing the LAPs engaged in such conduct or had such knowledge. When knowledge of the facts is necessary to determine whether such conduct violated applicable standards of care, I use the term to mean that one or more of the Motley Rice lawyers engaged in such conduct with knowledge of the facts.

report, I am assuming that the Connecticut lawyers' conduct occurred in Connecticut, and the California lawyers' conduct occurred in California.

Because Donziger did not enter an appearance in any of the U. S. district court proceedings, and may not have otherwise provided legal services in those jurisdictions**,** in my opinion his conduct is governed by the New York Rules.

V. Summary of Opinions

For the reasons set forth below, it is my opinion that: (1) Donziger's involvement in ghostwriting the Cabrera Report, in violation of Ecuadorian court orders, violated his professional responsibilities as a New York lawyer; (2) Donziger's false statements to Congress concerning the "independence" of the Cabrera Report violated his professional responsibilities as a New York lawyer; (3) the efforts by Donziger, the Emery Celli lawyers, the Patton Boggs lawyers, and the Motley Rice lawyers, in various U.S. district court proceedings, to hide the truth concerning the ghostwriting of the Cabrera Report violated their professional responsibilities under the rules of conduct applicable to these lawyers; (4) the efforts by Donziger, the Emery Celli lawyers, the Patton Boggs lawyers, and the Motley Rice lawyers, in various U.S. district court proceedings, to delay and prevent the discovery of documents that would disclose the truth concerning the ghostwriting of the Cabrera Report violated their professional responsibilities under the rules of conduct applicable to these lawyers; (5) Donziger's involvement in the submission to the Ecuadorian court of a report purportedly signed by Calmbacher, but which in reality he did not write and which reached conclusions opposite to his own findings, violated his professional responsibilities as a New York lawyer; (6) efforts by Donziger to delay or prevent the deposition testimony of Calmbacher in a U.S. district court proceeding violated his professional responsibilities as a New York lawyer; (7) efforts by Donziger and the Patton Boggs lawyers to obtain third-party litigation funding included violations of their professional responsibilities under the rules of conduct applicable to these lawyers; (8) Donziger's use of intimidation to obtain favorable rulings in Ecuador violated his professional responsibilities as a New York lawyer; and (9) Donziger's involvement in the making and promising to make payments to then-current and former Ecuadorian judges to render favorable orders and rulings for the LAPs, including the final judgment against Chevron, violated Donziger's professional responsibilities as a New York lawyer.

VI. Facts Assumed for Purposes of Analysis and Opinions

A. Background

In May 2003, Donziger assisted local Ecuadorian lawyers to file a lawsuit, *Maria Aguinda et al. v. Chevron-Texaco*, in the Superior Court of Nueva Loja, Ecuador ("the Lago Agrio Litigation"). In the lawsuit, the LAPs sought to force Chevron to pay the costs of remediating broadly defined "environmental damages" that the LAPs claimed were caused by

Texaco Petroleum, Inc. ("TexPet"), a company that merged with a subsidiary of Chevron in 2001. At the outset of the Lago Agrio Litigation, the Ecuadorian court ordered a process known as judicial inspections, by which experts for the parties would examine various oil drilling and oil production sites and submit them to a panel of "settling experts" to resolve any differences between the experts nominated by the parties.

The judicial inspections process was short-lived. At the request and insistence of the LAPs' counsel, the Lago Agrio court agreed to appoint a single "global assessment" expert. The court appointed Richard Cabrera ("Cabrera") in March 2007, and in April 2008, Cabrera filed a report ("the Cabrera Report") that was favorable to the LAPs in that it found evidence of contamination dangerous to human health and the environment, concluded that the contamination was caused by TexPet, and assessed the cost of remediation at approximately $16 billion. A subsequent report issued by Cabrera raised the cost of remediation to approximately $27 billion.

At some point, Chevron came to believe that Cabrera was not independent and neutral, as he purported to be. In an effort to uncover the truth, Chevron filed a series of proceedings in various U.S. district courts pursuant to 28 U.S.C. § 1782, which authorizes U.S. district courts to order persons residing or found in the district to give testimony or produce documents for use in a foreign or international tribunal ("§1782 proceedings"). Donziger, the Emery Celli lawyers, the Patton Boggs lawyers, the Motley Rice lawyers, and others represented the LAPs in their efforts to resist discovery in the §1782 proceedings and/or to delay discovery in those proceedings until they could obtain a favorable judgment in Ecuador.

B. Donziger's involvement in ghostwriting the Cabrera Report in violation of Ecuadorian court orders

With the knowledge and approval of Donziger, the local attorneys for the LAPs**,** including Pablo Fajardo Mendoza ("Fajardo"), pressured the Ecuadorian court to appoint Cabrera as the single court-appointed global damages assessment expert in the Lago Agrio Litigation in Ecuador. Donziger, the LAPs' local attorneys, and members of the LAPs' technical team, met with Cabrera in Ecuador before his appointment to discuss the contents of his anticipated report, including the fact that members of the technical team would be writing the report and that Cabrera would then sign the report as if it were his own. They also discussed that Chevron would be unaware of the LAPs' attorneys' and technicians' role in ghostwriting the Cabrera Report.

As anticipated, Cabrera was appointed by the Lago Agrio court to be the court-appointed expert. Numerous court orders required him and all of the technical experts who worked for him to remain neutral and independent of the parties and to act with complete transparency. He was to be compensated by the LAPs through judicially authorized methods, which included the

submission by Cabrera of invoices to the court and the submission of the LAPs' payments to Cabrera through the court.

Initially, Donziger, the LAPs' local attorneys, and the LAPs' technical team secretly drafted the work plan that Cabrera filed as his own work plan. Subsequently, Donziger, the LAPs' local attorneys, and Stratus Consulting, Inc. ("Stratus"), which was hired as a technical consultant by the LAPs, worked together to have Stratus and its subcontractors secretly write the Executive Summary and 11 of the 17 annexes to the Cabrera Report, which Cabrera filed more or less verbatim under his own name and without any independent review. One of the technical experts identified in the Cabrera Report was Juan Cristobal Villao Yepez ("Villao"). However, at the time that Villao was identified as a technical expert for Cabrera, he was also working for and being paid by Uhl, Baron, Rana & Associates ("UBR"), one of the consulting experts hired by the LAPs and their attorneys to develop a potable water analysis in Ecuador. After substantial edits by the LAPs' attorneys, UBR's potable water analysis was filed as an annex to the Cabrera Report. Donziger and the LAPs' attorneys concealed their relationship with Villao from Chevron in the Lago Agrio Litigation, and the Cabrera Report did not disclose Villao's relationship with UBR or the LAPs.

After the Cabrera Report was filed, Stratus wrote the LAPs' "objections" to the report and then ghostwrote a response to the LAPs' objections that Cabrera filed as his own response ("the Cabrera Response"). The purpose of having Stratus draft objections to its own report, as well as the Cabrera Response, was to make Cabrera appear to be independent and neutral, although in fact he was not. In the Cabrera Response that Donziger, the LAPs' local attorneys, and Stratus had orchestrated, Cabrera increased his damage assessment by approximately $11 billion. Stratus then submitted a public comment "endorsing" the Cabrera Report, in which Stratus characterized its comment as the product of an apparently arms-length "review" and impliedly characterized itself as a neutral expert. In that public comment, Stratus failed to disclose either its status as a consultant hired and compensated on behalf the LAPs or its role in drafting both the initial Cabrera Report and the Cabrera Response.

In return for Cabrera's assistance to the LAPs, Donziger and the local LAPs' attorneys caused Cabrera to be paid surreptitiously from an account described as "the secret account." These payments were in addition to the payments Cabrera received through judicially authorized methods.

C. Donziger's false statements to Congress concerning the "independence" of the Cabrera Report

In April 2009, Donziger made false statements concerning Cabrera's purported "independence" to the Tom Lantos Human Rights Commission ("the Lantos Commission"), which is an official committee of the U.S. House of Representatives in Congress. The Lantos Commission was investigating the link between environmental degradation and human rights

norms. At a hearing of the Lantos Commission, in which Donziger discussed the Lago Agrio Litigation, Donziger falsely stated, both orally and in a written submission, that "[t]he best and most recent *independent* estimate available of the human health impact of this contamination is provided by the expert appointed by the court, Richard Cabrera" (emphasis added). Donziger also testified that "[n]umerous qualified scientists have reviewed this report and found its conclusions reasonable and the damages assessment consistent with the costs of other large environmental cleanups." Donziger did not disclose to Congress that the "qualified scientists" to whom he referred were associated with Stratus, which ghostwrote the Cabrera Report and the Cabrera Response, and which failed to disclose in its public comment that it was a consultant hired and paid by the LAPs.

D. Efforts by Donziger, Emery Celli, Patton Boggs, and Motley Rice, in various U.S. district court proceedings, to hide the truth concerning the ghostwriting of the Cabrera report

1. The Fajardo declaration

On May 5, 2010, the Emery Celli lawyers, who were representing the LAPs in a §1782 proceeding against Stratus in the U.S. District Court for the District of Colorado, submitted to that court a sworn declaration of Fajardo, one of the LAPs' local attorneys in the Lago Agrio Litigation in Ecuador ("the Fajardo declaration"). The Fajardo declaration was submitted in connection with the LAPs' effort to resist the production of documents from Stratus to Chevron for use in the Lago Agrio Litigation and in an international arbitration brought by Chevron pursuant to the Bilateral Investment Treaty between the United States and Ecuador. The Emery Celli lawyers were involved in the subsequent submission and use of the same Fajardo declaration in other U.S. district courts in at least three other §1782 proceedings, including in U.S. district courts for the Southern District of Texas (declaration filed 5/7/10), the District of New Jersey (declaration filed 6/7/10), and the Southern District of New York (declaration filed 8/28/10). The Motley Rice lawyers were involved in the subsequent submission and use of the same Fajardo declaration in the U.S. District Court for the Middle District of Tennessee (declaration filed 8/11/10). Donziger knew of and approved the submissions of the Fajardo declaration in Colorado and elsewhere.

The Fajardo declaration contained numerous statements that were knowingly false, including the following statements:

i. "Throughout the process by virtue of Cabrera's status as a court-appointed expert, Chevron enjoyed the same opportunity as Plaintiffs to provide materials to Cabrera supportive of its position in the litigation."
ii. "[T]he court concluded that the global damages assessment expert would be selected from the pool of seven independent experts it previously appointed in the case. Of the seven, the court appointed Richard Cabrera…."
iii. "Mr. Cabrera proceeded in his work on notice to both parties."

iv. "In addition to the information collected from the vast amount of field inspections he performed, Mr. Cabrera was also free to consider materials submitted to him by the parties. Both Plaintiffs and Chevron were asked to supply Mr. Cabrera with documents."

v. "Plaintiffs delivered materials to Mr. Cabrera [pursuant to a request and a court order directed to Plaintiffs on January 7, 2008, and on January 30, 2008, respectively]. The court did not retain a copy of the materials, opining that the materials would not be considered as evidence in the case, separate and apart from Cabrera's use of them in his report."

vi. "[T]o the extent that Mr. Cabrera put into his report any of the information that I supplied to him, it would be viewable by Chevron or any other member of the public that reviewed Mr. Cabrera's report."[4]

Donziger and the Patton Boggs lawyers assisted in drafting the Fajardo declaration. Donziger translated the declaration into Spanish prior to Fajardo's signing the declaration. Donziger knew at that time that it contained materially false statements. No later than May 2010, the Emery Celli lawyers, the Patton Boggs lawyers, and the Motley Rice lawyers also knew that the declaration contained materially false statements.

2. False statements by the LAPs' lawyers concerning the "independence" of Cabrera and the Cabrera Report

With the knowledge and assistance of Donziger, false statements were made to various federal courts by the LAPs' attorneys, including in numerous filings in which the Emery Celli lawyers, on behalf of the LAPs, falsely asserted that the parties in the Lago Agrio Litigation had "equal access" to Cabrera, that Cabrera was an "independent expert," and that the LAPs only submitted documents to Cabrera pursuant to orders of the Ecuadorian court.[5] The Motley Rice lawyers, on behalf of the LAPs, made several false statements to the U.S. District Court for the Middle District of Tennessee, including assertions that Cabrera requested equally from both parties the submission of documents to him for possible use in preparing his report, that the LAPs supplied Cabrera with information "to support the preparation [by him] of a global

[4] At no time prior to signing this declaration on May 5, 2010, did Fajardo either acknowledge delivery to Cabrera of documents other than those specifically referred to in various Ecuadorian court orders or offer the explanation that he was permitted to do so pursuant to Cabrera's request of January 7, 2008, and an Ecuadorian court order of January 30, 2008. Rather, those acknowledgments and explanations were offered for the first time in U.S. district courts in the context of the §1782 proceedings initiated by Chevron.

[5] On April 27, 2010, Joe Silver, an attorney for Stratus, made several false statements of fact to the Colorado court, including: (i) that Stratus did not have an opportunity to review the Cabrera Report in draft form; (ii) that there were no direct communications between Stratus and Cabrera; (iii) that Stratus did not know what specific information provided by Stratus to the LAPs' counsel was in turn provided by the LAPs' counsel to Cabrera and (iv) that Stratus was "astonish[ed]" by the "similarity" between the Stratus and the Cabrera reports. One of the Emery Celli lawyers was present at that hearing, and despite having taken a major role in the hearing, sat silently and did not correct Mr. Silver's false statements. It was not until May 18, 2010, that Mr. Silver corrected one of his false statements and admitted that there were communications between Cabrera and representatives of Stratus.

damages assessment report" and that the LAPs supplied documents to Cabrera pursuant to Ecuadorian court orders.

3. The LAPs' lawyers' knowing assistance in false testimony by witnesses

a. The Quarles declaration

In 2007 Donziger induced one of the LAPs' consultants, Mark Quarles ("Quarles"), to sign a declaration that was submitted in an action pending in the U.S. District Court for the Southern District of New York, stating that "Mr. Cabrera and his team have acted independently from both the [Lago Agrio] plaintiffs and the defendant." In making that statement, Quarles relied both on several days of observing the global assessment process in 2006 and on a false representation to him by Donziger that Cabrera had written the work plan upon which the Cabrera Report was based. Prior to the filing of the declaration, Donziger had pressed Quarles to make even stronger statements that, as Donziger knew, were patently false: "Mr. Cabrera has at all times acted independently from both the plaintiffs and the defendant. At no time has Mr. Cabrera entertained suggestions or even met with plaintiffs or their representatives regarding his current work plan." Since filing this declaration, Quarles has testified that he did not know at the time he signed the declaration that Cabrera had worked directly with the LAPs' counsel and technicians, and that if he had known that, he would not have signed the declaration.

b. The Chapman deposition

In April 2010, David E. Chapman ("Chapman"), a principal of Stratus and head of its natural resources economics group, falsely testified that he had no reason to think that Stratus had provided work product to Cabrera. The Emery Celli lawyers were present at that deposition on behalf of the LAPs and actively participated in the deposition, making numerous objections to questions posed to Chapman. The Emery Celli lawyers knew either then or no later than May 2010 that Chapman's testimony was materially false because they knew that Chapman and Stratus were substantially involved in ghostwriting the Cabrera Report. Nevertheless, the Emery Celli lawyers did not disclose to either Chevron or the court that Chapman's testimony was materially false. In addition, the Emery Celli lawyers subsequently used Chapman's testimony in a brief filed on behalf of the LAPs in the Colorado §1782 proceeding, arguing that further depositions of Stratus were unwarranted given Chapman's testimony "that he has never been to Ecuador, never met with Mr. Cabrera, and did not recognize his own work in the Cabrera report." The Emery Celli lawyers knew either then or shortly thereafter that Chapman's testimony that he "did not recognize his own work in the Cabrera Report" was false and that their statement to the court was itself either false or misleading.

c. The Woods affidavit

In March 2010, Andrew Woods ("Woods"), an associate in Donziger's law firm, filed an affidavit in support of a motion submitted on behalf of the LAPs to file a brief in opposition to

Chevron's petition to obtain Stratus documents in the §1782 proceeding in Colorado. In that affidavit, Woods stated that "Chevron had numerous opportunities to seek in Ecuador the same discovery it seeks in the United States. Likewise, Chevron had many opportunities and substantial time to seek information to impeach the credibility of the court-appointed expert in Ecuador, [Richard Cabrera]." Woods made that statement based on information that he was told by Donziger, who induced Woods to execute the affidavit in connection with the brief that was filed in the Colorado court. Donziger knew that Woods' statement in the affidavit was false. When Woods learned that Chevron might file a motion alleging fraud in connection with that declaration, Woods told Donziger that he was alarmed because he "still [didn't] know exactly what happened and was not around while all of the events that Chevron is seeking discovery on were happening." He stated further: "I based that motion entirely on information that I was told was valid by you." He asked Donziger to determine whether any of the statements was incorrect and misleading and further stated: "And if so, I need to file a clarification before the Denver court immediately." Donziger did not correct the false statements and no clarification was ever filed.

d. The Uhl depositions

On June 16, 2010, the LAPs' attorneys forwarded Chevron's subpoena of UBR to Vincent Uhl ("Uhl"). Uhl subsequently contacted Villao, and on June 17, 2010, Villao emailed Uhl versions of the potable water report in response to Uhl's request for documents responsive to the subpoena. On or about February 12, 2011, Patton Boggs produced to Chevron's counsel a copy of Villao's email and attachments, which totaled 107 pages.

In 2011 and 2012, as part of the UBR §1782 proceeding, Chevron deposed Uhl on three different days. At each deposition, Uhl was defended by a Patton Boggs lawyer. At each of the three depositions, Chevron's counsel asked Uhl whether he had requested any documents from Villao in response to Chevron's subpoena. A central issue in the §1782 proceeding was whether UBR should be compelled to produce documents from Villao, to which Patton Boggs, on behalf of UBR, repeatedly argued that Villao was not UBR's employee and that UBR should not be required to request documents from him. In response to Chevron's questions regarding communications with Villao, at the first and second depositions, Uhl falsely testified that he did not request documents from Villao in response to Chevron's subpoena. Even at the third deposition, Uhl again falsely testified that he did not request documents from Villao following receipt of the subpoena, and once confronted with the relevant email and attachments, Uhl stated that he could not recall the communications. The Patton Boggs lawyer defending the deposition had knowledge of the communications between Uhl and Villao following receipt of the subpoena.

4. Patton Boggs's false statement concerning UBR

On or about February 23, 2012, as part of the UBR §1782 proceedings, a Patton Boggs lawyer was representing UBR in a hearing before the District Court for the District of New Jersey regarding Chevron's motion to compel the production of documents from UBR and Villao, when the court posed the following question to the lawyer: "At any time did Mr. Uhl or UBR ever ask Villao for the documents, counsel?" The Patton Boggs lawyer answered, "To my knowledge, no." This denial was directly contradicted by the emails produced by Patton Boggs nearly one year earlier—indeed, the same Patton Boggs lawyer had been copied on that very production. This Patton Boggs lawyer had knowledge of the communications between Uhl and Villao in response to the Chevron subpoena.

E. Efforts by Donziger, Emery Celli, Patton Boggs, and Motley Rice to delay and prevent the discovery of documents that would disclose the truth concerning the ghostwriting of the Cabrera Report.

Lawyers for the LAPs, including Donziger and the Emery Celli, Patton Boggs, and Motley Rice lawyers, attempted to delay discovery in the U.S. district courts, including the Stratus §1782 proceedings in Colorado, the purpose of which was to uncover facts in aid of foreign litigation, despite court orders directing that documents be produced. In addition, the LAPs' lawyers, including Donziger and the Emery Celli, Patton Boggs, and Motley Rice lawyers, attempted to prevent discovery by withholding relevant documents from discovery that were not subject to privilege, contrary to court order, and to delay the deposition of witnesses. Their purpose was to prevent Chevron from exposing the truth concerning the LAPs' ghostwriting of the Cabrera Report. They believed their goal could be achieved by, among other things, delaying the disclosure of damaging documents in Colorado until they could file certain submissions in the Ecuadorian court that would eliminate or at least reduce the relevance of the Cabrera Report.

F. Donziger's involvement in the submission of a report purportedly signed by Calmbacher to the Ecuadorian court

Prior to the appointment of Cabrera as the single, court-appointed global damages assessment expert, the parties in the Lago Agrio Litigation were permitted to nominate and compensate their own experts. Donziger and the LAPs' local attorneys retained Calmbacher as one of the experts for the LAPs nominated during the judicial inspections process. Ecuadorian judicial procedure required experts such as Calmbacher to be sworn to tell the truth and to render a truthful report, and he did so swear. In late 2004, after several visits to Ecuador, he began writing a report, but Donziger and the LAPs' local attorneys informed him that they did not like his format. As a result, he gave them permission to write the report in their format, which he would then review for accuracy. The LAPs' local attorneys sent him a report in which the conclusion was that the impact of TexPet's activities on the environment or persons could not be

determined. Because that was the conclusion he had reached, he indicated his willingness to sign that report.

Calmbacher was asked to initial approximately 30 blank pages on which the report he approved would be printed. Although initially reluctant to do so, he agreed and initialed those pages and signed several blank signature pages. He sent the initialed and signed but otherwise blank pages to Donziger or to the local LAPs' attorneys. Donziger was aware of Calmbacher's findings and his opinion that there was no conclusive indication of contamination or failure to remediate on the part of TexPet.

In early 2005, with Donziger's knowledge and approval, the LAPs' local attorneys filed with the Ecuadorian court two reports purporting to be the reports of Calmbacher that were not Calmbacher's reports and that reached conclusions contrary to his conclusions. The reports were printed on pages that had been initialed or signed by Calmbacher, but they were not from the report he had approved. The reports concluded, contrary to Calmbacher's opinion, that Calmbacher had found contamination at various sites, that the contamination posed a risk to human health and the environment, and that TexPet had failed to adequately remediate one or more of the sites. Donziger knew and intended that the false reports be submitted to the Ecuadorian court in Calmbacher's name.

G. Efforts by Donziger to prevent or delay the deposition testimony of Calmbacher in a United States court proceeding

In March 2010, Donziger learned that Chevron would be taking Calmbacher's deposition in a §1782 proceeding in the Northern District of Georgia. The Emery Celli lawyers urged Donziger to "use any means necessary" to find Calmbacher and attempt to persuade him to delay his appearance by contacting Chevron's attorneys and informing them that he would not proceed without counsel.

Donziger contacted Calmbacher and attempted to convince him not to testify at his deposition, telling him that testifying could pose "real problems" for him and could result in a "potential law case against" him because "they're going after you for unprofessional behavior." Calmbacher disregarded Donziger's advice and testified pursuant to the court-authorized subpoena.

H. Efforts by Donziger and Patton Boggs to obtain third-party litigation funding

1. Misrepresentations to third-party litigation funders

I have reviewed evidence that, beginning in about early 2010, Donziger and Patton Boggs misled one or more third-party litigation funders in an effort to obtain litigation funding in the case. Among other things, the Patton Boggs lawyers provided a litigation funding organization with a copy of "the Invictus Report," which described the status of the Lago Agrio Litigation and

detailed an "action plan" for, among other things, enforcement of a judgment against Chevron. The Patton Boggs lawyers made misrepresentations that were designed to persuade the third-party litigation funder to provide funding, including false statements that: (i) the "global damages assessment expert report [was] prepared by [Cabrera]"; (ii) Chevron and the LAPs had equal opportunities to submit materials to Cabrera for his consideration and possible adoption; (iii) the LAPs' representatives believed that the limited ex parte contacts they had with Cabrera were permissible under Ecuadorian law; and (iv) Chevron's suggestions to the contrary were false and misleading. The Patton Boggs lawyers knew that such statements were false.

In addition, Donziger also had direct contacts with litigation funders and was aware that the Patton Boggs lawyers were making false representations concerning the Lago Agrio Litigation.

2. The funding from Russell DeLeon

In May 2010, Donziger sought litigation funding in the amount of $250,000 from Russell DeLeon ("DeLeon"), an internet entrepreneur who had previously provided funding to the LAPs. Donziger knew that DeLeon had been a lawyer but that he had not been practicing law for years. He did not know whether DeLeon was licensed to practice law in any jurisdiction. In May 2010, Donziger offered to provide DeLeon with more favorable terms than he had been given in the past, including a share of the legal fees that Donziger would earn from the litigation. Donziger knew that DeLeon would neither provide legal services nor assume joint responsibility for the LAPs' representation. Donziger had been advised by a legal ethics expert that he could not share legal fees with a nonlawyer or a nonpracticing lawyer such as DeLeon.

I. Donziger's use of intimidation and threats to obtain favorable rulings in Ecuador

Among the tactics used by Donziger in the Lago Agrio Litigation were intimidation and threats by representatives of the LAPs or third parties against judges in Ecuador, including threatening to file a complaint against one of the Lago Agrio judges unless the judge accepted the LAPs' request to withdraw the rest of the inspections except for four that the LAPs wanted to have done.

J. Donziger's involvement in making and promising to make payments to then-current and former Ecuadorian judges to render favorable orders and rulings for the LAPs, including the final judgment against Chevron.

Beginning in August 2009, Nicholás Zambrano Lozada ("Zambrano") was the presiding judge in the Lago Agrio Litigation. Sometime between August and October 2009, Zambrano arranged for Alberto Guerra Bastidas ("Guerra"), a former presiding judge in the Lago Agrio Litigation, to meet with Fajardo. Guerra had been ghostwriting civil opinions for Zambrano. At the meeting between Fajardo and Guerra, Guerra agreed to assist Zambrano in making orders and rulings that were favorable to the LAPs in return for payment by the LAPs' representatives

to Guerra of approximately $1,000 per month. After a short time, Guerra met with Donziger, who thanked Guerra for his work as a ghostwriter in the case and for helping to steer the case in the LAPs' favor. Guerra was paid either in cash or through deposits in his savings account. While writing rulings for Zambrano to sign, Guerra met regularly with Fajardo, approximately twice a month, to discuss his work. Chevron was unaware of the relationship between Zambrano, Guerra, and the LAPs' attorneys.

Sometime after October 2009, Zambrano was replaced as a judge in the Lago Agrio Litigation. In approximately August 2010, Zambrano ruled on Chevron's motion to recuse the then-presiding judge. Guerra helped Zambrano write the court ruling sustaining Chevron's motion. Zambrano then resumed his position as presiding judge over the Lago Agrio Litigation.

After unsuccessfully approaching Chevron with an offer to render a verdict in its favor in exchange for a payment of $500,000, Guerra made the same offer to Fajardo, at Zambrano's suggestion. Guerra met with Donziger, Farjardo and other LAPs' local representatives to present the offer. Donziger replied that the LAPs did not have that sum of money to pay Guerra and Zambrano. Subsequently, Zambrano informed Guerra that Fajardo had promised to pay Zambrano $500,000 from whatever money they collected from the judgment, in exchange for allowing the LAPs to write the judgment in the LAPs' favor. Zambrano also informed Guerra that he would share these proceeds with Guerra.

In January or February 2011, Guerra received a draft judgment in the LAPs' favor that had been written by the LAPs' representatives. Guerra worked on the document to give it a more legal framework, making mostly small word changes. On February 14, 2011, an essentially identical version of the draft judgment on which Guerra had worked was signed by Zambrano and issued as the trial court's final judgment in the Lago Agrio Litigation.

These events, which occurred with Donziger's knowledge and approval, were contrary to Ecuadorian court procedure. Chevron was unaware that the LAPs' representatives had made and promised to make payments to Guerra and Zambrano to draft rulings in favor of the LAPs or that the LAPs' representatives ghostwrote the trials court's final judgment.

VII. Analysis and Opinions

A. Introduction

U.S. lawyers, as members of the legal profession, are both representatives of their clients and officers of the legal system and the courts. As officers of the court, lawyers at all times owe a duty of candor to courts before which they appear. This duty of candor requires that lawyers be honest and truthful in all of their dealings with the court. *E.g., United States v. Shaffer Equip. Co.*, 11 F.3d 450 (4th Cir. 1993). Judges rely on lawyers to fulfill their duty of candor; indeed, judicial confidence in the word of lawyers has been characterized as "the very bedrock" of the

judicial system. *In re Kalil*, 773 A.2d 647, 648 (N.H. 2001). The duty of candor constrains a lawyer's conduct as an advocate on behalf of clients, requiring the lawyer to act at times contrary to a client's wishes and objectives. Although lawyers are obliged to vigorously pursue their clients' interests, "that duty must be met in conjunction with, rather than in opposition to, other professional obligations." *Thornton v. United States*, 357 A.2d 429, 437 (D.C. 1976). (*See also* ABA Model Rules of Professional Conduct ("ABA Model Rules"), Rule 3.3 ("Candor Toward the Tribunal").

A lawyer's duty of candor and truthfulness is not limited to lawyers who enter an appearance in litigation pending in a particular court. As officers of the legal system, lawyers are prohibited from knowingly inducing or assisting other lawyers who are appearing before a court in violating their duties of candor and are similarly prohibited from requesting or instructing others to act improperly on the lawyer's behalf. (*See* ABA Model Rules, Rule 8.4(a).) More generally, lawyers are prohibited from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation" (*id*., Rule 8.4(c)) and from engaging "in conduct that is prejudicial to the administration of justice" (*id*., Rule 8.4(d)).[6]

B. Donziger's involvement in ghostwriting the Cabrera Report in violation of Ecuadorian court orders violated his professional obligations as a New York lawyer

As a lawyer admitted to practice in New York, Donziger is subject to the disciplinary authority of the state of New York, regardless of where his conduct occurs and regardless of whether he is also subject to discipline in another jurisdiction. New York Rules, Rule 8.5(a). Because he did not appear and was not admitted to practice before the Ecuadorian court in the Lago Agrio Litigation, Donziger's conduct in connection with the Lago Agrio Litigation is clearly governed by the New York Rules. *Id*., Rule 8.5(b).[7]

Like the ABA Model Rules, the New York Rules prohibit a lawyer from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation," N.Y. Rule 8.4(c), and from engaging "in conduct that is prejudicial to the administration of justice," N.Y. Rule 8.4(d). In my opinion, Donziger violated these rules when he knowingly induced and assisted the LAPs' local attorneys in Ecuador in their efforts to secretly pressure the Lago Agrio court to appoint Cabrera as the single court-appointed global damages assessment expert; to ensure that Cabrera would not be neutral and independent of the parties and would not act with complete transparency, as various Ecuadorian court orders required; to secretly ghostwrite the Cabrera Report; and to secretly ghostwrite the Cabrera Response to the LAPs' objections. All of this conduct, which

[6] Rules that are identical or substantially similar to ABA Model Rules 8.4(c) and 8.4(d) have been adopted by virtually all U.S. jurisdictions.

[7] Violations of the New York Rules of Professional Conduct do not themselves give rise to a cause of action against a lawyer other than disciplinary proceedings. "Nevertheless, because the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct." *Id.* at Scope. This is also true of violations of other U.S. jurisdictions' rules of professional conduct, which is why I rely on such rules for purposes of rendering my opinions in this case.

Donziger orchestrated, was designed to deceive others---including but not limited to Chevron, the Ecuadorian and other courts, and the public---into believing that a neutral and independent expert had concluded that TexPet (and therefore, according to the LAPs, Chevron) was responsible for substantial damage to human health and the environment in Ecuador, causing approximately $27 billion in damages, when in fact those conclusions were drafted by the LAPs' attorneys and the LAPs' technicians with no independent review by Cabrera. Donziger's conduct clearly involved dishonesty, deceit and misrepresentation and was prejudicial to the administration of justice in Ecuador and in any other jurisdiction in which the LAPs would subsequently seek to enforce a judgment obtained in Ecuador.

C. Donziger's false statements to Congress concerning the "independence" of the Cabrera Report.

Donziger's appearance before Congress did not constitute an appearance before a court and was not otherwise in connection with an adjudicative proceeding. Nevertheless, as an attorney and therefore, a representative of the legal system, he was obligated to be truthful in his communications to Congress. *See* New York Rule 3.9, Comment [1] (representation before a legislative body in a nonadjudicative proceeding is governed by Rules 4.1-4.4 and 8.4).[8] To the extent that his appearance was part of his representation of the LAPs (as part of a public relations campaign that would inure to the benefit of the LAPs in the Lago Agrio Litigation and any subsequent efforts to enforce a judgment in that litigation), his conduct was governed by New York Rule 4.1, which provides that "[i]n the course of representing a client a lawyer shall not knowingly...make a false statement of material fact or law to a third person." N.Y. Rule 4.1(a).

Donziger made false statements when he characterized the Cabrera Report as an "independent" estimate of the human health impact of TexPet's activities in Ecuador. Donziger knew that Cabrera was not independent, but rather had been working with the LAPs' local attorneys and technicians to provide a report that was secretly ghostwritten by them for submission under Cabrera's name, with no independent review by Cabrera and with secret payments on behalf of the LAPs to Cabrera. This knowingly false statement concerned a fact that was material to the Lantos Commission, which was investigating the link between environmental degradation and human rights norms. In my opinion, in knowingly making this false statement of material fact, Donziger violated Rule 4.1(a) of the New York Rules.

Donziger also made knowingly false statements when he told the Lantos Commission that "[n]umerous qualified scientists have reviewed this report and found its conclusions reasonable and the damages assessment consistent with the costs of other large environmental cleanup." This statement clearly referred to the public comments Stratus made "endorsing" the

[8] Unlike most other jurisdictions, the New York courts did not officially adopt the Comments to the Rules. The Comments, which were adopted by the New York State Bar Association, are designed to provide helpful guidance to lawyers by explaining the black-letter rules. *See* Simon's New York Rules of Professional Conduct Annotated 3 (2012 ed.).

Cabrera Report, which Stratus itself had written. As Donziger knew, his statement was false because it incorporated or affirmed Stratus's false claim to have conducted an independent "review," when in fact it had authored the very report it purported to be reviewing. *See* N.Y. Rule 4.1, Comment [1] ("A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false."). In addition, to the extent that Donziger's statement was partially true, he knew that it was obviously misleading and thus the equivalent of an affirmative false statement. *See id*. ("Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.") This knowingly false statement concerned a fact that was material to the Lantos Commission's investigation. In my opinion, in knowingly making this false statement of material fact, Donziger violated Rule 4.1(a) of the New York Rules.

Even if Donziger's appearance before Congress was in a personal and not a representative capacity, it is my opinion that his conduct involved dishonesty, deceit and misrepresentation, in violation of Rule 8.4(c) of the New York Rules.

D. Efforts by Donziger, Emery Celli, Patton Boggs, and Motley Rice, in various U.S. court proceedings, to hide the truth concerning the ghostwriting of the Cabrera Report

1. The Fajardo declaration

The United States District Court for the District of Colorado has adopted virtually all of the Colorado Rules of Professional Conduct, including Rules 3.3 and 8.4. *See* D.C. Colo. Administrative Order 2007-6. Rule 3.3(a)(3) of the Colorado Rules of Professional Conduct ("the Colorado Rules") provides that a lawyer shall not knowingly "offer evidence that the lawyer knows to be false." It further provides that "If a lawyer, the lawyer's client, or witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal."

The Fajardo declaration was made under penalty of perjury and was offered as evidence by the Emery Celli lawyers in the Colorado §1782 proceeding. Fajardo knew that it contained numerous false statements in that:

i. Chevron did not enjoy "the same opportunity as Plaintiffs to provide materials to Cabrera supportive of its position in the litigation" because Fajardo and other LAPs' agents were secretly involved in ghostwriting Cabrera's work plan, the Cabrera Report, and the Cabrera Response and because Cabrera had agreed to adopt those documents as his own, in return for secret payments on behalf of the LAPs.

ii. The court did not independently select Cabrera as the global damages assessment expert, as Fajardo clearly implied, but rather did so as a result of pressure from the LAPs' local attorneys, including Fajardo.

iii. Cabrera did not proceed "in his work on notice to both parties" because he did not advise Chevron that the LAPS' agents ghostwrote his work plan, the Cabrera Report or the Cabrera Response, and, in any event, he did not advise Chevron that, with Cabrera's knowledge and approval, the LAPs were planning to and did submit documents to him, including draft documents for his signature, before his ostensible "request" that the parties provide him with information in January 2008.

iv. Cabrera was not "free to consider materials submitted to him by the parties" nor were both the LAPs and Chevron permitted to supply Mr. Cabrera with documents on equal terms. Cabrera had accepted secret payments to adopt the LAPs' version of the facts and thus he would not be equally "considering" any materials submitted by Chevron. In addition, these statements were false because the LAPs were secretly submitting materials to Cabrera before his ostensible "request" that parties provide him with information in January 2008.

v. Plaintiffs did not deliver materials to Cabrera solely or even primarily pursuant to court orders in January 2008. Rather, the LAPs' counsel and representatives had been delivering materials to Cabrera before then. In addition, the court did not retain a copy of all of the materials submitted by Fajardo to Cabrera, because the vast majority of the materials submitted by Fajardo, including the LAPs' draft of the work plan, the Cabrera Report, and the Cabrera Response, were never delivered to the court but rather were secretly delivered directly to Cabrera.

vi. Neither Chevron nor members of the public that reviewed Cabrera's report would be able to see the materials that the LAPs' counsel had secretly given Cabrera that were used in the Cabrera Report because that report never mentioned that Cabrera's purported findings were based entirely on materials secretly delivered to Cabrera by Fajardo or by other LAPs' counsel or representatives.

To the extent that the Emery Celli lawyers who offered the Fajardo declaration as evidence in the Colorado §1782 proceedings knew at the time it was false, it is my opinion that they violated Rule 3.3(a)(3) of the Colorado Rules by knowingly offering false evidence.[9] Even

[9] I express no opinion whether any partially true but intentionally misleading statements constituted the crime of perjury. Nevertheless, it is my opinion that partially true but intentionally misleading statements constitute false evidence within the meaning of Colorado Rule 3.3(a)(3), which is not limited to perjury or other criminal acts. *See*, *e.g.,* 2 Geoffrey C. Hazard, Jr. et al, The Law of Lawyering §29,12 R 29-20 (2007 Supp.) (using the distinction between perjury and false evidence to justify conclusion that identical Model Rule prohibits lawyer's use of

if they did not know of the falsity of the Fajardo declaration at the time they offered it, they came to learn of its falsity some time shortly thereafter. Under Colorado Rule 3.3(a)(3), they had an obligation to take remedial measures, including, if necessary, disclosure to the court, if the false evidence was material to the proceedings. The Fajardo declaration was material because it was cited throughout the Emery Celli brief as evidence that Chevron had no basis to allege "that it was improper for Plaintiffs to give Mr. Cabrera documents," and therefore the court should grant the LAPs' motion for a protective order. The Emery Celli lawyers did not take remedial measures to correct the Fajardo declaration; as a result, it is my opinion that they violated Colorado Rule 3.3(a)(3) regardless of when they learned that it constituted false evidence. In addition, their conduct also involved dishonesty, deceit, and misrepresentation and was conduct prejudicial to the administration of justice, in violation of Colorado Rules 8.4(c) and 8.4(d).

The Rules of Professional Conduct adopted in the other U.S. district courts in which the Fajardo declaration was submitted are similar to those adopted in the U.S. District of Colorado. For example, the Emery Celli lawyers were involved in the submission and use of the Fajardo declaration in the Southern District of Texas. To the extent that the Emery Celli lawyers who offered and used the Fajardo declaration as evidence in the §1782 proceeding in the Southern District of Texas knew at the time it was false, it is my opinion that they violated Texas Rule of Professional Conduct 3.03(a)(5), which provides that a "[l]awyer shall not knowingly offer or use evidence that the lawyer knows is false." If they came to know of its falsity soon thereafter, then it is my opinion that the Emery Celli lawyers violated Texas Rule 3.03(b), which provides: "If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts." If this rule does not apply because the Emery Celli lawyers did not themselves submit the Fajardo declaration to the court, then it is my opinion that they knowingly assisted or induced another lawyer to violate the Texas Rules, or did so through the acts of another, in violation of Texas Rule 8.04(1) ("[a] lawyer shall not violate these rules, knowingly assist or induce another to do so, or do so through the actions of another"). In addition, their conduct also involved dishonesty, deceit, and misrepresentation, in violation of Texas Rule 8.04(a)(3) ("[a] lawyer shall not…engage in conduct involving dishonesty, fraud, deceit or misrepresentation").

By the time the Fajardo declaration was offered in the U.S. district courts in New Jersey and the Southern District of New York, the Emery Celli lawyers knew that the Fajardo declaration contained false statements of material fact. As a result, is my opinion that through their involvement in the submission and use of the Fajardo declaration, they violated the

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testimony that itself is not knowingly false, so long as lawyer knows of its falsity). In any event, most of the statements are actually false, and not just misleading. In addition, the Emery Celli lawyers used the Fajardo declaration in a manner that was intended to deceive the Colorado court, in violation of Colorado Rules 8.4(c) and (d), which are identical to the ABA Model Rules and the New York Rules previously discussed.

applicable rules of professional conduct in those states, which are substantially similar in relevant respects to Rule 3.3(a) of the Colorado Rules.[10] If those respective rules do not apply because the Emery Celli lawyers did not themselves submit the Fajardo declaration to the court, then it is my opinion that they violated the applicable rules in those states that are the same as Colorado Rules 8.4(a), 8.4(c), and 8.4(d) and the same ABA Model Rules.[11]

Donziger did not enter an appearance in any of the U.S. district courts in which the Fajardo declaration was offered into evidence by the Emery Celli lawyers. Nevertheless, it is my opinion that he violated his duties under the New York Rules. Donziger assisted in drafting the Fajardo declaration, knowing that it was false in all of the respects outlined above. He did so intending that the Emery Celli or other lawyers would offer the Fajardo declaration into evidence in all of the U.S. district courts in which it was subsequently submitted. In doing so, Donziger violated his duties under New York Rule 8.4(a), which provides that "[i]t is professional misconduct for a lawyer to…knowingly assist or induce another to [violate the Rules of Professional Conduct], or to do so through the acts of another." Donziger knowingly assisted and induced the Emery Celli and other lawyers to file the false Fajardo declaration in numerous U.S. district courts throughout the country, in violation of their professional responsibilities; he also violated the Rules through the acts of the Emery Celli or other lawyers. In addition, his conduct involved dishonesty, deceit, and misrepresentation and was prejudicial to the administration of justice. Therefore, it is my opinion that with respect to his role in drafting and submitting the false Fajardo declaration, Donziger violated New York Rules 8.4(a), 8.4(c), and 8.4(d).

To the extent that the Patton Boggs lawyers knew at the time they assisted in drafting the Fajardo declaration that it contained false statements, then it is my opinion that they knowingly assisted other lawyers---Donziger and the Emery Celli lawyers---in violating their professional responsibilities, and that their conduct involved dishonesty, deceit and misrepresentation and was prejudicial to the administration of justice, in violation of New Jersey and New York Rules 8.4(a), 8.4(c), and 8.4(d).

At the time the Motley Rice lawyers were involved in the submission and use of the Fajardo declaration in the U.S. District Court for the Middle District of Tennessee, they knew that it contained false statements. As a result, it is my opinion that they violated Tennessee Rules of Professional Conduct 3.3(b), which provides that "[a] lawyer shall not knowingly…offer evidence that the lawyer knows to be false" and 3.3(c), which provides that "[a] lawyer shall not affirm the validity of, or otherwise use, any evidence the lawyer knows to be false." In addition,

[10] *See* N.J. Rules of Prof. Conduct, Rule 3.3(a)(4) ("A lawyer shall not knowingly…offer evidence that the lawyer knows to be false.); New York Rule 3.3(a) ("A lawyer shall not knowingly…offer or use evidence that the lawyer knows to be false.") The U.S. district courts referenced here all adopt as a minimum standard of conduct the rules of professional conduct applicable to lawyers admitted to practice in the state where the district court is located, with some exceptions not relevant here.

[11] *See* N.J. Rules 8.4(a), (c), & (d) (same as ABA Model Rule); New York Rules 8.4(a), (c), and (d) (same as ABA Model Rules).

their conduct also involved dishonesty, deceit, and misrepresentation and was conduct prejudicial to the administration of justice, in violation of Tennessee Rules 8.4(c) and 8.4(d).

2. False statements by the LAPs' lawyers concerning the "independence" of Cabrera and the Cabrera Report

Rule 3.3(a)(1) of the Colorado Rules of Professional Conduct provides that a lawyer shall not knowingly "make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." A similar rule is also in force in the other federal district courts in which the Emery Celli lawyers appeared on behalf of the LAPs for the purpose of resisting the discovery by Chevron of documents that would reveal that Stratus and its subcontractors had ghostwritten the Cabrera Report.[12]

The Emery Celli lawyers made numerous false statements in various documents they submitted to these courts, including motions and briefs, when they falsely stated that the parties in the Lago Agrio Litigation had "equal access" to Cabrera, that Cabrera was an "independent expert" and that the LAPs only submitted documents to Cabrera pursuant to orders of the Ecuadorian court. These statements were false statements of material fact for the same reasons that similar statements in the Fajardo declaration were false statements of material fact.[13] To the extent that the Emery Celli lawyers who made these statements knew at the time they were false, it is my opinion that they violated Rule 3.3(a)(1) of the Colorado Rules or the analogous rules in the other federal district courts in which they made such statements. Even if they did not know of the falsity of one or more of the statements at the time they were made, they had an obligation to correct their previously made false statements of material fact, which they did not do, in violation of Colorado Rule 3.3(a)(1) or the analogous rules in the other federal district courts in which they made such statements.[14] Their conduct also involved dishonesty, deceit, and misrepresentation and was prejudicial to the administration of justice, in violation of Colorado

[12] *See* N.J. Rule 3.3(a)(1) ("[a] lawyer shall not knowingly…make a false statement of material fact or law to a tribunal"); N.Y. Rule 3.3(a)(1) ("[a]lawyer shall not knowingly… make a false statement of fact or law to a tribunal"); Tex. Rule 3.03(a) ("[a] lawyer shall not knowingly…make a false statement of material fact or law to a tribunal").

[13] As with the Fajardo declaration, it is my opinion that partially true but intentionally misleading statements constitute false statements of fact within the meaning of Colorado Rule 3.3(a)(1). *See, e.g. Daniels v. Alander*, 844 A.2d 182 (Conn. 2004) (stating that Rule 3.3(a)(1) applies not only to affirmative statements but to "misrepresentations that take the form of a failure to disclose": "[t]here are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation"); *cf. In re Hiller*, 694 P.2d 540 (Or. 1985) (misrepresentation, and not just dishonest conduct, occurred when a lawyer caused his client to file an affidavit claiming he had sold property without further disclosing that there was an agreement to reconvey for $1 consideration). In any event, most of the statements are actually false and not just misleading. In addition, the Emery Celli lawyers made these statements in a manner that was intended to deceive the Colorado court, in violation of Colorado Rules 8.4(c) and (d). *See In re Wilka*, 638 N.W.2d 245 (S.D. 2001) (true but intentionally misleading statement may not have violated Rule 3.3(a)(1), but did violate other rules, including Rules 8.4(c) and 8.4(d)).

[14] Most of the analogous rules cited in note 12, *supra*, not only forbid knowingly false statements of material fact, but also require lawyers to correct such statements when they learn of their falsity. Texas may not have adopted such a specific correction requirement. Even there, however, it is my opinion that continued reliance on a false statement of material fact constitutes conduct involving dishonesty and deceit, in violation of Texas Rule 8.04(3).

Rules 8.4(c) and 8.4(d). Finally, their conduct violated the analogous rules adopted in the other federal district courts in which they knowingly made and/or failed to correct false statements of material fact concerning the "independence" of Cabrera and the Cabrera Report.

The Motley Rice lawyers made several false statements to the U.S. District Court for the Middle District of Tennessee, including assertions that Cabrera made equal requests to both parties to submit documents to him for possible use in preparing his report, that the LAPs supplied Cabrera with information "to support the preparation [by him] of a global damages assessment report," and that the LAPs supplied documents to Cabrera pursuant to Ecuadorian court orders. The Motley Rice lawyers knew that the statements were false at the time they were made. As a result, it is my opinion that they violated Tennessee Rule 3.3(a)(1), which provides that "[a] lawyer shall not knowingly…make a false statement of fact or law to a tribunal." Their conduct also involved dishonesty, deceit, and misrepresentation and was prejudicial to the administration of justice, in violation of Tennessee Rules 8.4(d) and 8.4(d).

As with the Fajardo declaration, it is my opinion that Donziger's conduct in connection with the Emery Celli and Motley Rice lawyers' false statements of fact violated his duties under the New York Rules. Donziger was involved in drafting and otherwise assisting the Emery Celli and Motley Rice lawyers in filing the relevant documents in the Colorado and other U.S. district courts in the §1782 proceedings. At all times, Donziger knew that the statements they were making were false because he had orchestrated the ghostwriting of the Cabrera Report by the LAPs' agents in Ecuador. He knowingly assisted and induced the Emery Celli and Motley Rice lawyers to make false statements of fact in the Colorado and other U.S. district courts; he also acted through the Emery Celli and Motley Rice lawyers to accomplish that result. In addition, his conduct involved dishonesty, deceit, and misrepresentation and was prejudicial to the administration of justice. Therefore, it is my opinion that Donziger violated New York Rules 8.4(a), 8.4(c), and 8.4(d).

3. The LAPs' lawyers' knowing assistance in false testimony by witnesses

a. The Quarles declaration

In 2007, when the Quarles declaration was filed, Donziger was governed by the then-applicable New York Code of Professional Responsibility ("the New York CPR"). DR 7-102(A)(4) of the New York CPR provides that a lawyer may not "[k]nowingly use perjured testimony or false evidence," and DR 7-102(A)(6) of the New York CPR provides that a lawyer may not "participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false." It is my opinion that Donziger violated DR 7-102(A)(6), which is not limited to lawyers appearing before a tribunal. The Quarles declaration was made under penalty of perjury, and it was offered as evidence in a judicial proceeding in New York. Donziger knew that the declaration was false; therefore, he violated the rule by knowingly participating in the creation of false evidence. Although Donziger may not have violated DR 7-

102(A)(4), because he did not personally offer the false declaration into evidence, it is my opinion that he violated DR 1-102(A)(2), which provided that a lawyer may not "[c]ircumvent a Disciplinary Rule through actions of another." This rule is similar to current New York Rule 8.4(a), which provides that a lawyer may not "knowingly assist or induce another to [violate a Rule], or do so through the acts of another." It is my opinion that Donziger violated this rule because he caused Quarles to file a declaration that contained false statements and because he was involved in its subsequent submission by others into evidence.

In addition, like the current New York Rules, the New York CPR prohibited a lawyer from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation" (DR 1-102(A)(4)) and from engaging "in conduct that is prejudicial to the administration of justice" (DR 1-102(A)(5)). It is my opinion that Donziger violated these rules with respect to his knowing involvement in causing other LAPs' attorneys to file the false Quarles declaration. Donziger's conduct clearly involved dishonesty, deceit and misrepresentation and was prejudicial to the administration of justice in Ecuador and in any other jurisdiction in which the LAPs would subsequently seek to enforce a judgment obtained in Ecuador.

b. <u>The Chapman deposition</u>

Rule 3.3(a)(3) of the Colorado Rules provides that [i]f a lawyer, the lawyer's client, or witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal." The Emery Celli lawyers did not represent either Chapman or Stratus; however, as a principal of Stratus, which was an agent of the LAPs, Chapman was offering evidence on behalf of the LAPs' efforts to establish that Chevron had an insufficient basis to discover the Stratus documents it was seeking---documents that would have revealed Stratus's ghostwriting of the Cabrera Report.[15] Indeed, the Emery Celli lawyers subsequently used Chapman's testimony in a brief filed on behalf of the LAPs in the Colorado §1782 proceeding, in which they urged that further depositions of Stratus were unwarranted given Chapman's testimony. Given that the Colorado Rule clearly applies to depositions, as ancillary court proceedings, *see* Comment [1] to Colorado Rule 3.3, it is my opinion that the Emery Celli lawyers violated Rule 3.3(a)(3) when they failed to take reasonable remedial measures after learning that Chapman had

[15] In the context of a deposition, evidence is typically "offered" by the witness giving the testimony, not by the lawyer conducting the deposition. When the witness is the lawyer's client, the duty to take remedial measures if the lawyer knows that the witness has given false material testimony is clear. With respect to other witnesses, it is my opinion that the phrase "witness called by the lawyer" refers, in deposition testimony, to witnesses whose testimony is being offered on behalf of the lawyer's client. Given that the Emery Celli lawyers took the lead role in defending the Chapman deposition, and subsequently used Chapman's testimony in their brief, it is my opinion that they had a duty to take remedial measures when they learned that he had given false material testimony. *Cf. U.S. v. Shaffer Equipment Co*., 11 F.3d 450, 461 (4th Cir. 1993) (finding that perjury by EPA employee, made with intent of disguising weakness in EPA case, was "fairly characterized" as an act of the EPA); *Daniels v. Alander*, 844 A.2d 182 (Conn. 2004) (Rule 3.1(a) imposed obligation to lawyer to correct a misstatement made by another lawyer to the court, when the nonspeaking lawyer had first-hand knowledge about the event and was "well situated to remedy the misstatement and thereby uphold his duty of candor to the court").

offered false material testimony in his deposition.[16] In addition, it is also my opinion that by using in their brief material evidence that they knew or came to know was false and material, the Emery Celli lawyers engaged in conduct involving dishonesty, deceit and misrepresentation, as well as conduct prejudicial to the administration of justice, in violation of Colorado Rules 8.4(c) and 8.4(d).

c. The Woods affidavit

Donziger's conduct in relation to the Woods affidavit was similar to his conduct with respect to the Quarles declaration, in that he knowingly participated in the creation of false evidence to be submitted to a U.S. district court. It is my opinion that in doing so, Donziger violated New York Rule 3.4(b), which provides that a lawyer may not "falsify evidence [or] counsel or assist a witness to testify falsely," when he provided Woods with false information for purposes of causing Woods to make false statements in his affidavit. In addition, it is my opinion that, by providing Woods with false information and then failing to assist Woods in his desire to correct any incorrect statements in his affidavit, Donziger knowingly "induced another to [violate the Rules]," in violation of New York Rule 8.4(a), engaged "in conduct involving dishonesty, deceit and misrepresentation," in violation of New York Rule 8.4(c), and engaged "in conduct prejudicial to the administration of justice," in violation of New York Rule 8.4(d).

d. The Uhl depositions

Rule 3.3(a)(4) of the New Jersey Rules of Professional Conduct provides that "[i]f a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures." Rule 3.3(a)(5) of the New Jersey Rules provides that a lawyer shall not knowingly "fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal…." In the context of a deposition, it is understood that testimony given by a lawyer's client constitutes testimony offered by the lawyer; therefore, when a lawyer knows that the lawyer's client has given false material testimony in response to an adversary's questioning, the lawyer has an obligation to take reasonable remedial measures. Uhl was testifying on behalf of UBR, which was represented by Patton Boggs. The Patton Boggs lawyer defending Uhl's depositions knew that Uhl gave material false testimony when he denied, on multiple occasions, that he had requested Villao to provide him with documents in response to Chevron's subpoena. Therefore, it is my opinion that the Patton Boggs lawyer's failure to take reasonable remedial measures, including disclosure of the true facts to Chevron or the tribunal if Uhl did not correct his false testimony, was in violation of New Jersey Rule 3.3(a)(4). In addition, the Patton Boggs lawyer knew that Uhl's failure to reveal, in response to questioning,

[16] The Emery Celli lawyers could not rely on Stratus's lawyers to take the requisite remedial measures if they had no reason to believe that Stratus's lawyers knew that Chapman's testimony was false. Moreover, even if Stratus's lawyers did know the testimony was false, if they subsequently did nothing, in violation of their professional obligations, then it is my opinion that the Emery Celli lawyers, who represented the parties most interested in Chapman's testimony, had a duty to do so themselves. *Cf.* authorities cited in note 12, *supra*.

that he had requested and received documents from Villao in response to Chevron's subpoena was an omission that was reasonably certain to mislead the tribunal. Therefore, it is my opinion that the Patton Boggs lawyer's knowing failure to disclose that fact to Chevron or the tribunal violated New Jersey Rule 3.3(a)(5).[17]

4. Patton Boggs's false statement concerning UBR

New Jersey Rule 3.3(a)(1) provides that "[a] lawyer shall not knowingly…make a false statement of material fact or law to a tribunal." A Patton Boggs lawyer knowingly made a false statement to the District Court for the District of New Jersey when he stated that neither UBR or Uhl "at any time" asked Villao to produce documents in response to the Chevron subpoena. This statement was material not only because it was given in direct response to a question posed by the court, but also because the fact that UBR could and did obtain documents from Villao was important to the proceeding. It is my opinion that in knowingly making a false statement of material fact to a tribunal, the Patton Boggs lawyer violated New Jersey Rule 3.3(a)(1).

E. Efforts by Donziger, Emery Celli, Patton Boggs, and Motley Rice to delay and prevent the discovery of documents that would disclose the truth concerning the ghostwriting of the Cabrera Report

Colorado Rule 3.2 provides that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." The Comment makes it clear that a failure to expedite is unreasonable "if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose." *Id.* at Comment [1]. The Emery Celli lawyers adopted various strategies in the Colorado §1782 litigation for the purpose of delaying, and thereby possibly preventing, the ability of Chevron to expose the truth concerning the ghostwriting of the Cabrera Report. These strategies included deliberately delaying the production of damaging documents, even when there was no arguable claim of privilege, in order to keep the proceedings going until they could either obtain a favorable judgment in Ecuador or submit filings in the Lago Agrio Litigation that would minimize the impact of any disclosure of the truth by Chevron. In other words, they had precisely the purpose "of frustrating an opposing party's attempt to obtain rightful redress or repose" that the Rule contemplates and were not acting for the purpose of promoting any legitimate interest of their clients.[18] It is my opinion that in so delaying the proceedings, the Emery Celli lawyers acted in violation of Colorado Rule 3.2. In addition, it is my opinion that they engaged in conduct prejudicial to the administration of justice, in violation of Colorado Rule 8.4(d).

[17] New Jersey Rule 3.3(a)(5) provides an exception for a disclosure that "is protected by a recognized privilege or is otherwise prohibited by law." That exception does not apply here.

[18] *See, e.g.*, Hazard et al, *supra* at §28.3 (use of the term "legitimate interest of a client" in the Comment makes it "clear that a client has no interest in delay itself that is entitled to weight in assessing the propriety of a lawyer's tactics on behalf of the client").

Although Donziger's conduct was not governed by Colorado Rule 3.2, it is my opinion that his involvement in efforts to delay and frustrate Judge Haggerty's insistence that documents be turned over in a timely fashion in the Colorado action constituted knowingly assisting the Emery Celli lawyers in violating their professional obligations, as well as conduct prejudicial to the administration of justice in that action, in violation of New York Rules 8.4(a) and 8.4(d).

The same analysis is applicable to the Patton Boggs lawyers, who like Donziger, did not enter an appearance in the Colorado action but nevertheless were involved in efforts to delay and frustrate timely discovery in that case. It is my opinion that the Patton Boggs lawyers' conduct constituted knowingly assisting the Emery Celli lawyers in violating their professional obligations, as well as conduct prejudicial to the administration of justice in that action, in violation of New Jersey Rules 8.4(a) and 8.4(d).

F. Donziger's involvement in the submission of a report that was purportedly signed by Calmbacher in the court in Ecuador

In late 2004 and early 2005, the New York CPR prohibited a lawyer from engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation" (DR 1-102(A.4)) and from engaging "in conduct that is prejudicial to the administration of justice" (DR 1-102A.5)). It is my opinion that Donziger violated these rules with respect to his knowing involvement in causing the LAPs' local attorneys to file reports with the Ecuadorian court that falsely purported to be reports signed and endorsed by Calmbacher, when Donziger knew that the reports w ere not Calmbacher's reports and that the reports contained conclusions that were not Calmbacher's conclusions. His conduct clearly involved dishonesty, deceit and misrepresentation and was prejudicial to the administration of justice in Ecuador and in any other jurisdiction in which the LAPs would subsequently seek to enforce a judgment obtained in Ecuador.

G. Efforts by Donziger to prevent or delay the deposition testimony of Calmbacher in a United States court proceeding

To the extent that Donziger attempted to delay Calmbacher's deposition testimony until events in the Ecuadorian litigation rendered his testimony irrelevant or moot, it is my opinion that Donziger's conduct assisted the LAPs in their efforts to delay the production of evidence in Georgia and was therefore conduct prejudicial to the administration of justice, in violation of New York Rule 8.4(d).

Donziger's efforts to prevent or delay Calmbacher's testimony included advising him that testifying would be contrary to his interests, including providing the basis for a "potential law case against" him based on "unprofessional behavior." New York Rule 4.3 provides that "[i]n communicating on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested." It further provides that "[t]he lawyer shall not give legal advice to an unrepresented person other than the advice to secure counsel if the lawyer knows or reasonably should know that the interests of such person are or have a

reason nable possibility of being in conflict with the interests of the client." It is my opinion that Donziger implied that his advice was disinterested (by failing to disclose that his advice was being given solely on behalf of himself and his clients[19]) and that he gave legal advice to Calmbacher, other than the advice to secure counsel, knowing that Calmbacher's interests were contrary to the interests of Donziger and the LAPs, in violation of New York Rule 4.3. This conduct was wrongful not only because it could harm Calmbacher himself, but also because it was unfair to Chevron, which was entitled to obtain Calmbacher's testimony in a timely fashion. *See* New York Rule 3.4, Comment [4].[20]

H. Efforts by Donziger and Patton Boggs to obtain third-party litigation funding

1. Misrepresentations to third-party litigation funders

In their efforts to obtain funding from third-party litigation funders, Donziger and Patton Boggs were obligated not to knowingly make false statements of material fact or law. *See* New Jersey Rules 4.1(a)(1) ("[i]n representing a client a lawyer shall not knowingly…make a false statement of material fact or law to a third person") and 8.4(c) ("[i]it is professional misconduct for a lawyer to…engage in conduct involving dishonesty, fraud, deceit or misrepresentation"); New York Rules 4.1 ("In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.") and 8.4(c). In making false statements of material facts to a third-party litigation funder, Patton Boggs violated New Jersey Rules 4.1(a)(1) and 8.4(c). It is unclear whether Donziger himself made false statements to a third party litigation funder concerning the status of the Lago Agrio Litigation or whether he merely knew that Patton Boggs made such false statements. If he made misrepresentations himself, then his conduct was in violation of New York Rules 4.1 ("In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.") and 8.4(c). Even if he did not, he knew that the Patton Boggs lawyers were making false statements to a third-party litigation funder on behalf of himself and the LAPs, as part of his ongoing efforts to secure third-party litigation funding for the Lago Agrio Litigation. In my opinion, he therefore knowingly assisted or induced the Patton Boggs lawyers to violate their professional responsibilities, in violation of New York Rule 8.4(a).

2. The funding from Russell DeLeon

New York Rule 5.4(a) provides that "[a] lawyer or law firm shall not share legal fees with a nonlawyer…." New York Rule 1.5(g) provides that "[a] lawyer shall not divide a fee for legal services with another lawyer who is not associated in the same law firm unless…the division is

[19] *See* Hazard et al, *supra* at §39-3 (stating that lawyer must make clear, not only that he represents a client other than the unrepresented person, but also that is he is acting "on behalf of the client alone").

[20] Rule 3.4 is entitled "Fairness to Opposing Party and Counsel." Comment [4] to that rule contains a cross-reference to Rule 4.3 By providing this cross-reference in the Comment to Rule 3.4, the New York State Bar Association clearly recognized that attempts to persuade unrepresented persons not to testify, in violation of Rule 4.3, constitute an impermissible means of obstructing the opposing party's interests in obtaining evidence.

in proportion to the services performed by each lawyer or, by a writing given to the client, each lawyer assumes joint responsibility for the representation." Given that DeLeon had not been practicing law for some time, in my opinion he was a nonlawyer. As a result, it is my opinion that when Donziger offered to share legal fees with DeLeon, his conduct constituted an attempt to violate New York Rule 5.4(a), in violation of New York Rule 8.4(a), which prohibits a lawyer's attempts to violate a rule of professional conduct. Even if DeLeon is considered to be a lawyer, Donziger knew that DeLeon would not be providing legal services or assuming joint responsibility for the representation of the LAPs, but rather would be functioning solely as an investor. It is my opinion that Donziger's conduct constituted an attempt to violate New York Rule 1.5(g), in violation of New York Rule 8.4(a).

I. Donziger's use of intimidation and threats to obtain favorable rulings in Ecuador

Under the New York Rules, which apply to Donziger's conduct in Ecuador, the use of intimidation and threats is not a permissible means of obtaining favorable rulings by a court, whether in the United States or in Ecuador, particularly when these tactics are being used outside the public record and without the knowledge of the adversary. It is not an excuse that the lawyer believes that similar impermissible tactics are being used by the lawyer's adversary. Whether Donziger engaged in such tactics himself or knowingly assisted or induced others to do so, his conduct was prejudicial to the administration of justice and adversely reflected on his fitness as a lawyer, in violation of New York Rules 8.4(d) and 8.4(h).

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J. Donziger's involvement in making and promising payments to then-current and former Ecuadorian judges to render favorable orders and rulings for the LAPs, including the final judgment against Chevron.

In my opinion, Donziger's involvement in making and promising payments to Guerra and Zambrano, in return for their rendering favorable orders and rulings for the LAPs, constituted conduct involving dishonesty, deceit and misrepresentation, in violation of N.Y. Rule 8.4(c), and conduct prejudicial to the administration of justice, in violation of N.Y. Rule 8.4(d). Ecuadorian procedure and law required judges to be neutral and prohibited them from accepting or agreeing to accept payments from a party in return for favorable orders and rulings for that party. The purpose of the LAPs' payments was to obtain favorable orders and rulings from Zambrano, including the trial court's final judgment against Chevron, and to do so in a manner in which Zambrano appeared to be neutral and independent, which he was not. This conduct clearly involved dishonesty, deceit and misrepresentation and was prejudicial to the administration of justice in Ecuador and in any other jurisdiction in which the LAPs would subsequently seek to enforce the judgment obtained in Ecuador.

I reserve the right to modify or supplement my opinions in light of any additional information presented to me.

February 28, 2013
Date

Nancy J. Moore

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PUBLICATIONS:

----------"Ethical Issues in Mass Torts Plaintiffs' Representation: Beyond the Aggregate Settlement Rule," ___*Fordham L. Rev*. ___ (forthcoming 2013);

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----------"Foreward: Lawyering for the Middle Class," 70 *Fordham Law Review* 623 (2001);

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----------"Ethics Matters, Too: The Significance of Professional Regulation of Attorney Fees and Costs in Mass Tort Litigation—A Response to Judith Resnik," 148 *University of Pennsylvania Law Review* 2209 (2000);

----------"The Ethical Role and Responsibilities of a Lawyer-Ethicist: The Case of the Independent Counsel's Independent Counsel," 68 *Fordham Law Review* 771 (1999) (symposium: ethics issues raised by Independent Counsel investigation of Pres. Clinton);

--------"The Case Against Changing the Aggregate Settlement Rule in Mass Tort Lawsuits," 41 *South Texas Law Review* 149 (1999) (symposium on emerging professional responsibility

issues in litigation);

---------"Conflicts of Interest For In-House Counsel: Emerging Issues in the Expanding Role of the Attorney-Employee," 39 *South Texas Law Review* 497 (1998);

---------"The Ethical Dilemmas of Insurance Defense Lawyers: Are Special Solutions Required?" 4 *Connecticut Insurance Law Journal* 259(1997);

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---------"Conflicts of Interests in Representing Children," 64 *Fordham L. Rev.* 1819 (1996);

----------"Entrepreneurial Doctors and Lawyers: Regulating Business Activities in the Medical and Legal Professions, in R. Spece and R. Shimm, eds., *Conflicts of Interest in Medical Practice* (1995, Oxford University Press);

----------"Expanding Duties of Attorneys to 'Non-Clients': Reconceptualizing the Attorney-Client Relationship in Entity Representation and Other Inherently Ambiguous Situations," 45 *S. Carolina L.Rev.* 659 (1994)

----------"Intra-Professional Warfare Between Prosecutors and Defense Attorneys: A Plea For an End to the Current Hostilities," 53 *U. Pitt. L.Rev.* 515 (1992)

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----------"`Two Steps Forward, One Step Back:' An Analysis of New Jersey's Latest `Right-To-Die' Decisions," 19 *Rutgers Law Journal* 955 (1988);

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Comparative Approach to Medical and Legal Ethics" 36 *Case Western Res. L. Rev.* 177 (1985-86);

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PRACTICE PUBLICATIONS:

----------"Ethical Issues in Transnational Legal Practice: the U.S. Lawyer Goes Abroad," 76 Bar Examiner 29(2007);

----------"Not Quite a Client," 90 ABAJ 50 (Jan. 2004);

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----------"Professional Liability of Lawyer to Clients and Non-Clients under United States Common Law," in Jonge Balie Congress 1991, *Bereopsaansprakelijkheid: Recht op een scheve schaats* 139 (W.E.J. Tjeenk Willink Azwolle 1991)(prepared for conference of Young Dutch Lawyers Organization in Noordwijk, The Netherlands).

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----------1988-1990: Director, N.J. Department of Higher Education Humanities Grant, "Introducing Ethics into the Core Curriculum of Undergraduate Legal Education";

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PRESENTATION OF SCHOLARLY PAPERS:

--------Nov. 2012: "Ethical Issues in Mass Torts Plaintiffs' Representation: Beyond the Aggregate Settlement Rule." Fordham Law School Conference on Group Representation. New York, NY.

---------Apr. 2012: "Who Will Regulate Class Action Lawyers?" The Future of Class Actions and its Alternatives. Loyola University Chicago Law Journal Conference, Chicago, IL.

----------Oct. 2011: "Regulating Global Law Firm Conflicts: Peace in Our Time." Fordham Law School Conference on Globalization and the Legal Profession. New York.

----------Oct. 2011: "Intent and Consent in the Law of Battery: Confusion and Controversy." BU Law Faculty Workshop. Boston, MA.

----------Mar. 2010: "The Absence of Legal Ethics in the ALI's Principles of the Law of Aggregate Litigation: A Missed Opportunity---and More." George Washington Law Review Symposium on Aggregate Ligation: Critical Perspectives. Wash. D.C.

----------May 2009: "Mens Rea Standards in Lawyer Disciplinary Codes." 36th ABA National Conference on Professional Responsibility. Chicago, IL.

----------Apr. 2009: "The Appearance of Impropriety: Is It an Appropriate Standard for Discipline of Judges in the Twenty-First Century?" The Judiciary in the Twenty-First Century. Loyola University Chicago Law Journal Conference. Chicago, IL.

----------Feb. 2009: "Mens Rea Standards in Lawyer Disciplinary Codes." Joint Program of Association of Professional Responsibility Lawyers and National Organization of Bar Counsel. ABA Midyear Meeting. Boston, MA.

----------Apr. 2007: "The ALI Draft Proposal to Bypass the Aggregate Rule." Clifford Symposium on Challenges to the Attorney/Client Relationship." DePaul University College of Law. Chicago, IL.

---------Apr. 2002: "Who Should Regulate Class Action Lawyers?" Symposium on Ethics 2000 and Beyond: Reform or Professional Responsibility as Usual? Univ. of Illinois, Champaign, IL.

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----------Feb. 2001: “Conflicts of Interest in Patent Representation.” Patenting Genomics and Proteomics. American Conference Institute. New York, NY.

----------Nov. 1999: “Ethics Matters, Too: A Response to Judith Resnik.” Mass Torts: A Symposium sponsored by the David Berger Program on Complex Litigation and the University of Pennsylvania Law School in conjunction with the Advisory Committee of Civil Rules of the Judicial Conference of the United States. Philadelphia, PA.

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----------Feb. 1997: “Ethical Issues in Third Party Payment: Beyond the Insurance Defense Paradigm.” Conflicts of Interest Symposium sponsored by University of Texas Review of Litigation and Texas Center for Ethics and Professionalism. Austin, Texas.

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----------Member, Warren G. Burger Prize Committee, American Inns of Court (since 2004);

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----------Member, ALI Principles of Aggregate Litigation Members Consultative Group (2005-2009);

----------Member, Supreme Court of Rhode Island Committee to Review Rules of Professional Conduct (2002-2006);

----------Chief Reporter, ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000") (Co-Reporter, 1997-1998; Chief Reporter, 1998-Aug. 2002);

----------Member, Advisers for the Restatement of the Law, Third, The Law Governing Lawyers (1989-2000); member, American Law Institute (elected 1992);

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----------Chair, Planning Committee for Fall 1998 AALS Workshop on Professional Responsibility;

----------Member, New Jersey Supreme Court Committee on Women in the Courts (1994-1998);

----------Reporter, ALI-ABA Practice Evaluation Project (1988-91)(drafted *How to Achieve Excellence in the Practice of Law*);

----------Member, ALI-ABA group reviewing standards for continuing legal education programs (1988-90);

----------Member, Planning Committee for Spring 1988 AALS- sponsored Workshop on Teaching of Professional Responsibility (1987-88);

----------Trustee, N.J. Citizen's Committee on Biomedical Ethics (1988-1991);

----------Member, Institutional Review Board/Committee for the Protection of Human Subjects, UMDNJ-School of Osteopathic Medicine (1987-89)

----------Selected Recent Lectures and Panel Discussions:

Oct. 2012: "Corporate Lawyers as Whistleblowers." Co-presenter. LegalEd Center Webcast.

Feb. 2012: "Recent Developments in Aggregate Litigation." Panelist. Association of Professional Responsibility Lawyers Annual Meeting. New Orleans, LA.

Oct. 2011: "Legal Ethics in Pro Bono Practice." Panelist. Association of Pro Bono Counsel Annual Meeting. Boston, MA.

Dec. 2010: "The Future of Lawyers and Law Firms: An Ethics Perspective." Panelist. Second Annual FBA Hawaii Conference. Honolulu, HA

July 2010:"Ethics in U.S. Class Actions." Panelist. Stanford International Legal Ethics Conference. Palo Alto, CA.

April 2010: "The Future of Legal Ethics." Panelist. APRL's 20th Anniversary Celebration Conference. New Orleans, LA.

Aug. 2009: "The Ethics of Expert Witnesses: The Simon-Green Debate." Association of Professional Responsibility Lawyers. Chicago.

Apr. 2009: "Ethical Rules Applicable to Lawyers Representing Museums and Other Non-Profit Entities." Panel participant. Legal Issues in Museum Administration. Boston, MA.

Feb. 2009: "Strict Liability vs. Scienter---Filling the Mental-State Gaps in the Model Rules. Presenter and panel participant. Joint Program of Association of Professional Responsibility Lawyers/National Organization of Bar Counsel. Boston, MA.

Oct. 2008: "Developments in Ethics in Transactional Practice." ALI-ABA Program on Investment Management Basics." Boston, MA.

Apr. 2008: "Litigators and the Public." Panel participant. ABA Section on Litigation's Celebrating the Canons Centennial. Washington, D.C.

Feb. 2008: "Making the Call on Material Limitation Conflicts." Panel participant. Midyear Meeting of Association of Professional Responsibility Lawyers. Pasadena, CA.

June 2007: "Joint Representation and Aggregate Settlements." Panel participant. Annual Meeting of Association of Professional Responsibility Lawyers. San Francisco, CA.

June 2006: "Ethics in Transnational Legal Practice." Panel participant. 32nd National Conference on Professional Responsibility. Vancouver, Canada.

Oct. 2005: "Impact Litigation: Ethical Issues in Representing Workers in Class, Collective & Multiple Plaintiff Action." Panel participant. Conference of National Employment Lawyers Association. Boston, MA.

June 2005: "Contract Lawyering Risks." Panel participant. ABA Counsel Connect teleconference.

April 2005: "Contract Lawyering." Panel participant. Spring 2005 ABA National Legal Malpractice Conference." Boston, MA.

Sept. 2004: "Ethics and Media Relations." Speaker, Association of Defense Trial Attorneys, New England Regional Conference. Framingham, MA.

Aug. 2004:"Attorney-Client Privilege and Work Product in the Post-Enron Era: Confidentiality Under Siege." Panel Participant, ABA Annual Meeting. Atlanta, GA.

Jun. 2004: "What is Fraud and Why Does it Matter?" Moderator, Panel Discussion. 30th National Conference on Professional Responsibility. Naples, FL.

Apr. 2004: "Lawyers Caught in the Enron Spotlight." Panel Participant. ABA Section of Business Law. Seattle, WA

Jan. 2004: "Ethics and Class Action Reform." Panel Participant. AALS Annual Meeting, Section on Professional Responsibility. Atlanta, GA.

Jan. 2003: "Hot Topics in Legal Ethics." Mid-year meeting of Conference of Chief Justice. Williamsburg, VA.

Jun. 2002: "General Counsel and the Model Rules of Professional Conduct: When Ethical Issues Are Up-Close and Personal." Panelist. Nat'l Assoc. Of College and University Attorneys 42nd Annual Conference. Boston, MA.

May, 2002: "Ethics 2000: What Have They Done and Where Do We Go From Here?" Moderator, Panel Discussion. 28th Nat'l Conference on Professional Responsibility. Vancouver, British Columbia, Canada.

Apr. 2002: "The Assault on the Citadel of Privilege." Primary speaker. St. Thomas More Society of Rhode Island Fourth Annual Spring Seminar. Providence, RI.

Oct. 2001: "New Influences on Professional Responsibility." Principal speaker. 11th Annual Dan K. Moore Program in Ethics. Chapel Hill, NC.

June 2001: "Lawyers' Duties to Non-clients." Rhode Island Bar Association Annual Meeting. Providence, RI.

May 2001: "Changing the ABA Model Rules on Ethics: An Update." Moderator, ABA Teleconference program.

May 2001: "An Ethics 2000 Town Hall." Moderator, Panel Discussion. Annual meeting of Professional Responsibility Lawyers. Miami, FL.

May 2001: "Multijurisdictional Practice." Conference on "Stewardship of Bar Admissions: Maintaining Integrity in a Changing World sponsored by the National Conference of Bar Examiners. Madison, WI.

April 2001: "The Impact of Ethics 2000 and Restatement on Finance Practice." Co-presenter, Spring meeting of American College of Investment Counsel. Chicago, IL.

Feb. 2001: "Conflicts of Interest in Patent Representation." Conference on Patenting Genomics sponsored by the American Conference Institute.

July 2000: "Ethics 2000." Presentation and Panel Discussion. Annual Meeting of Conference of Chief Justices of State Supreme Courts. Rapid City, So. Dakota.

June 2000: “Ethics 2000.” Moderator, Panel Discussion. ABA National Conference of Professional Responsibility Lawyers. New Orleans, LA.

Aug. 1999: “Lawyers Investing In and Doing Business With Their Clients.” Panel discussion. ABA Section of Litigation. ABA Annual Meeting. Atlanta, Georgia.

March 1997: “Ethics Issues in Third Party Payment.” Faculty Colloquium. Roger Williams University School of Law. Briston, RI.

Sept. 1996: “Is the Restatement Necessary?” Annual Meeting of Colorado Bar Association. Vail, CO.

April 1995: “Implications for Legal Malpractice of the ALI’s Restatement of the Law Governing Lawyers.” ABA Section on Professional Liability. Phoenix, Arizona.

Aug. 1993: "Professionalism and Law Firm Culture." American Bar Association Annual Meeting. New York, NY.

Sept. 1992: "Quality Assurance and the Practice Evaluation Project." State Bar of New Mexico Annual Convention. Ruidoso, New Mexico.

April 1992: "The ALI-ABA Practice Evaluation Project." Annual Conference of ABA Standing Committee on Lawyers' Liability. New Orleans.

November 1991: "Professional Liability of Lawyers to Clients and Non-Clients under United States Common Law." Conference of Young Dutch Lawyers' Organization. Noordwijk, The Netherlands.

Apr. 1991: "Legal and Ethical Aspects of Informed Consent." Rutgers-Camden anthropology class in Death and Dying. Camden, N.J. (Lecture also given in same class and in a graduate anthropology seminars in 1987-89 and in 1990.)

Feb. 1990: "Topics in Medical Malpractice." Course for fourth year medical students at UMDNJ-Rutgers-Camden. Camden, N.J. (Similar lectures also given in the winter terms of 1986-89).

Jan. 1990: "The Law of Informed Consent." Course in law and medicine. Pennsylvania College of Podiatric Medicine. (Similar lecture given in 1989.)

Dec. 1988: "Termination of Life-Sustaining Medical Treatment." Special law and medicine course for third-year medical students at UMDNJ-School of Osteopathic Medicine. Stratford, N.J.

Jan. 1988: "Professionalism: Rekindle or Reconsider?". Annual meeting of AALS Section on Professional Responsibility. Miami Beach, Fla. (Prepared and moderated panel discussion).

EXHIBIT 2

List of Expert Witness Testimony 2008-2013
Professor Nancy J. Moore

Date	Case	Court	Testimony
2008	Epstein v. Kaplinsky	Ct. Com. Pleas Mont. Cty, PA	trial
2008	Public Employees v. Citigroup	SDNY 1:08-cv-0135	affidavit
2008	U.S. ex rel Frazier	US D. Arizona CV 05-0766-PHX-SRB	affidavit
2008	In re Thorpe Insulation Co.	US Bkrp. CD Cal.2:07-19271-BB (Ch. 11)	affidavit
2008	Lowe v. Continental Ins. Co.	Cir. Ct. Baltimore 24-C-05-005067	affidavit
2008	Vt. Pure, et al v. Sobol, et a	Super. Ct. MA 06-1814-BLS1	deposition
2008	State of RI v. Lead Industries, Inc.	RI Superior Ct. Civ. Act. 99-5226	affidavit
2008	Treon et al v. Leath, Bouche Crawford et al	Com. Pl. SC 2008-CP-07-3145	affidavit
2008	Cont. Cas. Co. v. City of Jacksonville	US D. M.D.FL 3:04-cv-1170-J-20MCR	affidavit/ deposition
2009	Treon et al v. Leath Bouce Crawford et al	Com. Pl. SC 2008-CP-07-3145	deposition
2010	BDO Seidman v. Morgan, Lewis & Backius	Super. Ct. D.C. Civ.: C.A. No. 9640-09M	affidavit
2010	Synthes, LLC et al v. Mathew	Com. Pl. PA 2009-08219	hearing
2010	Commerce v. McCarthy	Suffolk Superior Ct (MA) No. 08-5691-PBS	deposition
2010	Cahaly, et al	Suffolk Superior	deposition/

	v. Merrill Lynch, et al	01-0116-BLS2; 01-0299-BLS2	trial
2010	Lance Wargo v. Comm'r	CT--Rockville CV-05-4000484	trial
2010-2011	US ex rel Jerre Frazier v. IASIS Healthcare	US D. AZ CV-05-0766-PHX-SRB/RCT	affidavit supp. affid.
2011	Dahl v. Bain Capital Partners	US D MA 1:07-cv-12388-EFH	affidavit
2011	In re Regions Morgan Keegan	US W.D. Tenn. 2:09-md-02009-SHM	affidavit supp. affid.
2012	US ex rel Rawles v. UTI, Inc.	US D. Az. CV11-2320-PHX-ROS	affidavit sup. Affid.
2012	Manganella v. Goulston & Storrs Civ.	Mass. Super. Ct. 09-2161-BLS2	testimony

EXHIBIT 3

Documents Relied Upon

1. Chevron Corporation's Annotated Amended Complaint in Chevron Corp. v. Donziger et al., 12-cv-0691 (LAK) (S.D.N.Y.)

2. First Amended Answer of Hugo Gerardo Camacho Naranjo and Javier Piaguaje Payaguaje in Chevron Corp. v. Donziger et al., 12-cv-0691 (LAK) (S.D.N.Y.)

3. First Amended Answer of Stratus Consulting Inc., Douglas Beltman, and Ann Maest in Chevron Corp. v. Donziger et al., 12-cv-0691 (LAK) (S.D.N.Y.)

4. Answer of Steven Donziger, the Law Offices of Steven R. Donziger, and Donziger & Associates, PLLC in Chevron Corp. v. Donziger et al., 12-cv-0691 (LAK) (S.D.N.Y.)

5. Filing by Richard Cabrera in the Lago Agrio Litigation, dated Jan. 7, 2008

6. Filing by Pablo Fajardo in the Lago Agrio Litigation, dated Oct. 10, 2007

7. Filing by Richard Cabrera in the Lago Agrio Litigation, dated Oct. 11, 2007

8. Report filed by Richard Cabrera on Apr. 1, 2008 in the Lago Agrio Litigation

9. Annex R to the Report filed by Richard Cabrera on Apr. 1, 2008 in the Lago Agrio Litigation

10. Annex V to the Report filed by Richard Cabrera on Apr. 1, 2008 in the Lago Agrio Litigation

11. Supplemental Report Filed by Richard Cabrera on Nov. 17, 2008 in the Lago Agrio Litigation

12. Filing by Chevron in the Lago Agrio Litigation, dated Dec. 10, 2007

13. Filing by Chevron in the Lago Agrio Litigation, dated Dec. 12, 2007

14. Filing by Chevron in the Lago Agrio Litigation, dated Dec. 5, 2007

15. Report on Sacha 94 filed by the LAPs in the Lago Agrio Litigation on Feb. 14, 2005

16. Filing by Pablo Fajardo in the Lago Agrio Litigation, dated Feb. 18, 2008

17. Filing by Chevron in the Lago Agrio Litigation, dated Feb. 27, 2008

18. Report on Shushufindi 48 filed by the LAPs in the Lago Agrio Litigation on Mar. 8, 2005

19. Filing by Pablo Fajardo in the Lago Agrio Litigation, dated Apr. 18, 2008

20. Filing by Pablo Fajardo in the Lago Agrio Litigation, dated Apr. 25, 2008

21. Filing by Pablo Fajardo in the Lago Agrio Litigation, dated Apr. 4, 2008

22. Filing by Pablo Fajardo in the Lago Agrio Litigation, dated May 10, 2007

23. Filing by Richard Cabrera in the Lago Agrio Litigation, dated June 25, 2007

24. Filing by Richard Cabrera in the Lago Agrio Litigation, dated July 12, 2007

25. Filing by Richard Cabrera in the Lago Agrio Litigation, dated July 23, 2007

26. Filing by Pablo Fajardo in the Lago Agrio Litigation, dated Sept. 16, 2008

27. Filing by Chevron in the Lago Agrio Litigation, dated Sept. 4, 2007

28. Certification of James T. Hunt, Jr.in support of the Response of the Ecuadorian Plaintiffs, Uhl, Baron, Rana & Associates, Inc., and Juan Cristóbal Villao Yepez to Order to Show Cause and Opposition to Chevron Corporation's Application for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery, In re Application of Chevron Corp., 10-cv-2675-KM-MCA (D.N.J.) (June 7, 2010)

29. Declaration of Maria C. Severson in support of Plaintiffs' and Respondents' Motion to Quash Subpoenas, In re Application of Chevron Corp., 10-cv-1146-IEG-WMC (S.D. Ca.) (June 26, 2010)

30. Declaration of Susan L. Burke in Support of the responses of the Ecuadorian Plaintiffs to Orders to Show Cause and in opposition to applications for discovery under 28 U.S.C. § 1782, In re Application of Chevron Corp., 10-mc-0370-CKK-DAR (D.D.C.) (June 28, 2010)

31. Declaration of W. David Bridgers in support of Respondent Mark Quarles and Interested Parties the Lago Agrio Plaintiffs' Opposition to Application of Chevron Corporation for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery, In re Application of Chevron Corp., 10-cv-0686 (D. Tenn.) (Aug. 11, 2010)

32. Declaration of Wyatt S. Stevens in support of Respondent Charles Champ and Interested Parties the Lago Agrio Plaintiffs' Opposition to the Chevron Petitioners' Applications for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery, In re Application of Chevron Corp., 10-mc-0027 (W.D.N.C.) (Aug. 25, 2010)

33. Declaration of John W. Boyd in support of the Plaintiffs' and Respondents' Preliminary Response Including Request to Transfer the Proceedings for Consolidation with an Earlier-Filed Related Action, or, Alternatively, to Stay the Proceedings Pending Resolution of that Earlier-Filed Action, or to Establish a Reasonable Briefing Schedule to Oppose Chevron's Application to Take Discovery from Respondents and the Subpoenas Directed To Same, In re Application of Chevron Corp., 10-mc-0021 (D.N.M.) (Aug. 26, 2010)

34. Opposition to Third Party's Motion to Quash, No. 4:10-mc-134 (S.D. Tex.) (May 12, 2010), Dkt. 40

35. Reply Memorandum of Points and Authorities in Further Support of Ecuadorian Plaintiffs' Motion to Quash, No. 4:10-mc-134 (S.D. Tex.) (May 18, 2010) Dkt. 49

36. Ecuadorian Plaintiffs' Brief in Support of Motion to Quash Subpoenas Duces Tecum and Ad Testificandum Issued to 3TM International, Inc. and 3TM Consulting, LLC by Chevron Corporation Pursuant to 28 U.S.C. § 1782, No. 4:10-mc-134 (S.D. Tex.) (May 7, 2010) Dkt. 38

37. Declaration of Pablo Fajardo Mendoza (May 5, 2010) filed in In re Application of: Chevron Corporation vs. 3TM Consulting, LLC and 3TM International, Inc. No. 4:10-mc-134 (S.D. Tex.) (May 7, 2010) , Dkt. 38-16

38. Complaint to Stay Arbitration (Jan. 14, 2010) filed in Chevron Corporation vs. 3TM Consulting, LLC and 3TM International, Inc. No. 10-20389 (5th Cir.) (June 17, 2010) Dkt. 00511145435

39. Appellants' Brief, No. 20389 (5th Cir) (July 16, 2010) Dkt. 00511176044

40. Appellants' Reply Brief, No. 10-20389 (5th Cir.) (Aug. 2, 2010) Dkt. 00511192237

41. Respondent and Interested Parties' Joint Opposition to Applications for Orders Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings, No. 1:10-mc-27 (W.D. No. Carolina) (Aug. 24, 2010), Dkt. 20

42. Declaration of Pablo Fajardo Mendoza (May 5, 2010) filed in Chevron Corporation v. Charles Champ, No. 1:10-mc-27 (W.D. No. Carolina) (Aug. 24, 2010) Dkt. 20-10

43. Steven R. Donziger's Memorandum of Law in Support of His Motion to Quash or Modify Subpoenas, No. 10-mc-0002 (LAK) (S.D. N.Y.) (Aug. 27, 2010), Dkt. 26

44. The Ecuadorian Plaintiffs' Memorandum of Law in Support of Their Motion to Quash or Modify Subpoenas Served Upon Steven R. Donziger, No. 10-mc-0002 (LAK) (S.D.N.Y.) (Aug. 28, 2010), Dkt. 28

45. Declaration of O. Andrew F. Wilson in Support of Ecuadorian Plaintiffs' Motion to Quash or Modify Subpoenas Served Upon Steven R. Donziger, No. 10-mc-0002 (LAK) (S.D.N.Y.) (Aug. 28, 2010), Dkt. 29

46. Declaration of Pablo Fajardo Mendoza (May 5, 2010) filed in In re Application of: Chevron Corporation, et al., for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings, No. 10-mc-0002 (LAK) (S.D.N.Y.) (Aug. 28, 2010) Dkt. 31-6

47. Motion to Quash Subpoena Tuces [sic] Tecum and Ad Testificandum Issued to E-Tech International, Inc. and William Powers by Chevron Corporation Pursuant to 28 U.S.C. § 1782, No. 10-cv-01146-IEG-WMC, (S.D. Cal.) (June 26, 2010), Dkt. 18

48. Declaration of Pablo Fajardo Mendoza (May 5, 2010) filed in In re Application of Chevron Corporation v. E-Tech International and William Powers, No. 10-cv-01146-IEG-WMC (S.D. Cal) (June 26, 2010), Dkt. 16-4

49. Opposition to Motion to Quash (Dkt. 18), No. 10-cv-1146 IEG-WMC, (S.D. Cal.) (June 30, 2010), Dkt. 20

50. Reply Memorandum in Further Support of Motion to Quash Subpoena Duces Tecum and Ad Testificandum Issued to E-Tech International, Inc. and William Powers by Chevron Corporation Pursuant to 28 U.S.C. § 1782, No. 10-cv-01146-IEG-WMC, (S.D. Cal.) (July 6, 2010) Dkt. 21

51. Respondents' and Ecuadorian Plaintiffs' Preliminary Response Including Request to Transfer the Proceedings for Consolidation with an Earlier-Filed Related Action, or, Alternatively, to Stay the Proceedings Pending Resolution of that Earlier-Filed Action, or to Establish a Reasonable Briefing Schedule to Oppose Chevron's Application to Take Discovery from Respondents and the Subpoenas Directed to Same, No. 10-mc-00021-JCH-LFG (D.N.M.) (Aug. 25, 2010), Dkt. 60

52. Declaration of Pablo Fajardo Mendoza (May 5, 2010) filed in Chevron Corporation to Issue Subpoenas for the Taking of Depositions and the Production of Documents, No. 10-mc-00021-JCH-LFG (D. N.M.) (Aug. 26, 2010), Dkt. 63-2

53. Respondent Quarles and Interested Parties the Lago Agrio Plaintiffs' Opposition to Application of Chevron Corporation for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery, No. 3:10-10-cv-00686, (M.D. Tenn.) (Aug. 11, 2010), Dkt. 42

54. Declaration of Pablo Fajardo Mendoza (May 5, 2010) filed in In re Application of Chevron Corporation v. Mark Quarles, No. 3:10-10-cv-00686, (M.D. Tenn.) (Aug. 11, 2010), Dkt. 44-9

55. Declaration of Mark Anthony Quarles, P.G., No. 04-cv-8378-LBS (S.D.N.Y.) (Sep. 17, 2007), Dkt. 225

56. Respondent's and Ecuadorian Plaintiffs' Joint Brief in Opposition to Chevron Corporation's *Ex Parte* Application for Discovery Under 28 U.S.C. § 1782, No. 8:10-cv-2989-AW (D. Md.) (Nov. 16, 2010), Dkt. 24

57. Complaint to Stay Arbitration, No. 1:10-cv-0316-LBS (S.D.N.Y.) (Jan. 14, 2010), Dkt. 1

58. Motion for 30-Day Leave to File Brief in Opposition to Chevron's 28 U.S.C. § 1782 Petition (and Affidavit of Andrew Woods), No. 1:10-cv-00047-MSK-MEH (D. Colo.) (March 3, 2010), Dkt. 18 and Dkt. 18-1

59. Ecuadorian Plaintiffs' Motion for a Protective Order in Connection with Subpoenas Issued to Certain of the Ecuadorian Plaintiffs' Non-Testifying Litigation Consultants Pursuant to 28 U.S.C. § 1782 and Application to Establish Briefing Schedule for Same, No. 1:10-cv-00047-MSK-MEH (D. Colo.) (April 26, 2010), Dkt. 68

60. Chevron's Opposition to the Lago Agrio Plaintiffs' Motion for Protective Order (Dkt. 68) and Brief in Support Thereof (Dkt. 102), No. 1:10-cv-00047-MSK-MEH (D. Colo.) (May 10, 2010), Dkt. 123

61. Reply Memorandum of Points and Authorities in Further Support of Ecuadorian Plaintiffs' Motion for a Protective Order, No. 1:10-cv-00047-MSK-MEH (D. Colo.) (May 17, 2010), Dkt. 144

62. Supplemental Declaration of Andrew G. Neidl, No. 1:10-cv-00047-MSK-MEH (D. Colo.) (May 17, 2010) Dkt. 141

63. Respondents' Status Report, No. 1:10-cv-00047-MSK-MEH (D. Colo.) (May 18, 2010) Dkt. 148

64. Plaintiffs' Response to Stratus's Status Report and Chevron's Response to Stratus's Status Report, No. 1:10-cv-00047-MSK-MEH (D. Colo.) (May 24, 2010) Dkt. 152

65. Memorandum of Points and Authorities in Support of Ecuadorian Plaintiffs' Motion for a Protective Orderin Connection with Subpoenas Issued to the Ecuadorian Plaintiffs' Non-Testifying Litigation Consultants Pursuant to 28 U.S.C. § 1782, No. 1:10-cv-00047-MSK-MEH (D. Colo.) (May 5, 2010), Dkt. 102

66. Declaration of Pablo Fajardo Mendoza, No. 1:10-cv-00047-MSK-MEH (D. Colo.) (May 5, 2010), Dkt. 99

67. Chevron's Fed. R. Civ. P. 72(a) Objections to Magistrate Judge Hegarty's June 1, 2010 Order (Dkt. 161) and Request for Expedited Briefing and Hearing Schedule, No. 1:10-cv-00047-MSK-MEH (D. Colo.) (June 15, 2010), Dkt 169

68. Plaintiffs' Response to Chevron's Fed. R. Civ. P. 72(a) Objections to Magistrate Judge Hegarty's June 1, 2010 Order (Dkt. 161) and Request for Expedited Briefing and Hearing Schedule, No. 1:10-cv-00047-MSK-MEH (D. Colo.) (July 9, 2010), Dkt. 196

69. Plaintiffs' Opposition to Chevron's Motion to Compel (Dkt. #205), No. 1:10-cv-00047-MSK-MEH (D. Colo.) (Aug. 13, 2010), Dkt. 216

70. Petitioner Chevron Corporation's Motion to Compel Production of All Responsive Documents Withheld, No. 1:10-cv-00047-MSK-MEH (D. Colo.) (Sep. 20, 2010), Dkt. 232

71. The Ecuadorian Plaintiffs' Memorandum of Law in Opposition to Chevron's Motion to Compel, No. 1:10-cv-00047-MSK-MEH (D. Colo.) (Sep. 28, 2010), Dkt. 250

72. Response of the Ecuadorian Plaintffs' Uhl, Baron, Rana & Associates, Inc., and Juan Cristobal Villao Yepez to Order to Show Cause and Opposition to Chevron Corporation's Application for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery, No. 2:10-cv-02675-SRC-MAS (D. N. J.) (June 7, 2010), Dkt. 6

73. Declaration of Pablo Fajardo Mendoza (May 5, 2010) filed in In re Application of Chevron Corporation for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings, No. 2:10-cv-02675-SRC-MAS (D. N. J.) (June 7, 2010), Dkt. 5-15

74. Corrected Brief for Appellants and Joint Appendix Volume I of IV (Pages A1 to A60.28), No. 10-2815 (3d Cir.) (Aug. 9, 2010), Dkt. 003110245675

75. Reply Brief for Appellants, No. 10-2815 (3rd Cir.) (Sep. 10, 2010), Dkt. 003110280433

76. Response of the Ecuadorian Plaintiffs in Opposition to Chevron Corporation's Application for an Order, Pursuant to 28 U.S.C. § 1782, to Conduct Discovery for Use in Foreign Proceedings, No.1:10-mc-00371-CKK-DAR (D.D.C.) (June 28, 2010), Dkt. 22

77. Declaration of Pablo Fajardo Mendoza (May 5, 2010) filed in In re Application of Chevron Corp., 10-mc-0370-CKK-DAR (D.D.C.) (June 28, 2010), Dkt. 22-2

78. Memorandum of Law in Support of Chevron Corporation's Motion to Compel, In re Applic. of Chevron Corp., 10-cv-02675-ES (D.N.J.) (Sept. 9, 2011), Dkt. 63-1

79. Declaration of Alberto Guerra Bastidas, filed on Jan. 28, 2013 in Chevron Corp. v. Donziger, et al., 12-cv-0069 (S.D.N.Y.)

80. Supplemental Declaration of Alberto Guerra Bastidas, filed on Jan. 28, 2013 in Chevron Corp. v. Donziger, et al., 12-cv-0069 (S.D.N.Y.)

81. Expert Report of Dr. Gustavo Romero, dated Jan. 29, 2013, filed in Chevron Corp. v. Donziger et al., 12-cv-0691 (S.D.N.Y.)

82. Hearing Transcript, In re Application of Chevron Corp., No. 10-mc-27 (W.D.N.C.) (Aug. 27, 2010)

83. Hearing Transcript, In re Application of Chevron Corp., No. 10-cv-01146-IEG-WMC (S.D. Cal.) (Aug. 27, 2010)

84. Hearing Transcript, In re Application of Chevron Corp., No. 3:10-cv-00686 (M.D. Tenn.) (Aug. 16, 2010)

85. Hearing Transcript, Chevron Corp. v. Stratus Consulting, Inc., No. 1:10-cv-00047-MSK-MEH (D. Colo.) (Apr. 27, 2010)

86. Hearing Transcript, In re Application of Chevron Corp., No. 2:10-cv-02675-SRC-MAS (D.N.J.) (June 11, 2010)

87. Oral Argument Transcript, In re Application of Chevron Corp., 10-2815 (3d Cir.) (Nov. 17, 2010)

88. Hearing Transcript, In re Application of Chevron Corp., 10-cv-02675-ES-CLW (D.N.J.) (Feb. 23, 2012)

89. Hearing Transcript, Chevron Corp. v. Stratus Consulting, Inc., No. 1:10-cv-00047-MSK-MEH (D. Colo.) (Apr. 30, 2010)

90. Court Order in Lago Agrio Litigation, dated Jan. 30, 2008

91. Court Order in Lago Agrio Litigation, dated Dec. 3, 2007

92. Court Order in Lago Agrio Litigation, dated Nov. 29, 2007

93. Court Order in Lago Agrio Litigation, dated Mar. 19, 2007

94. Court Order in Lago Agrio Litigation, dated June 13, 2007

95. Court Order in Chevron Corp. v. Stratus Consulting, Inc., No. 1:10-cv-00047-MSK-MEH (D. Colo.), dated May 25, 2010

96. Court Order in Chevron Corp. v. Stratus Consulting, Inc., No. 1:10-cv-00047-MSK-MEH (D. Colo.), dated June 1, 2010

97. Court Order in Chevron Corp. v. Stratus Consulting, Inc., No. 1:10-cv-00047-MSK-MEH (D. Colo.), dated June 21, 2010

98. Court Order in Lago Agrio Litigation dated April 14, 2008

99. Transcript and video of CRS-187-01-02

100. Transcript and video of CRS-191-00-CLIP-03

101. Transcript of CRS-046-02-CLIP-01

102. Transcript of CRS-052-02-CLIP-05

103. Transcript of CRS-052-02-CLIP-06

104. Transcript of CRS-129-00-CLIP-02

105. Transcript of CRS-350-04-CLIP-01

106. Transcript of CRS-350-04-CLIP-02

107. Transcript of CRS-361-11-CLIP-01

108. Transcript of the Deposition of Dr. Charles Calmbacher, dated March 29, 2010, taken in In re Applic. of Chevron Corp., 10-MI-0076-TWT-GGB (N.D. Ga.)

109. Transcript of the Deposition of David Chapman, dated April 23, 2010, taken in Chevron Corp. v. Stratus Consulting, Inc., No. 1:10-cv-00047-MSK-MEH (D. Colo.)

110. Transcript of the Deposition of Mark Quarles, dated Sept. 1, 2010, taken in In re Application of Chevron Corp., No. 3:10-cv-00686 (M.D. Tenn.)

111. Transcript of the Deposition of Mark Quarles, dated Oct. 12, 2010, taken in In re Application of Chevron Corp., No. 3:10-cv-00686 (M.D. Tenn.)

112. Transcript of the Deposition of Steven Donziger, dated Nov. 29, 2010, Dec. 1, 2010, Dec. 8, 2010, Dec. 10, 2010, Dec. 13, 2010, Dec. 22, 2010, Dec. 23, 2010, Dec. 29, 2010, Jan. 8, 2011, Jan. 14, 2011, Jan. 18, 2011, Jan. 19, 2011, Jan. 29, 2011, Jan. 31, 2011, Mar. 23, 2011, July 19, 2011, taken in In re Application of Chevron Corp., No. 10-mc-00002 (S.D.N.Y.)

113. Transcript of the Deposition of Vincent Uhl, dated Apr. 19, 2011, July 27, 2011, and July 10, 2012, taken in In re Applic. of Chevron Corp., 10-cv-02675-ES-CLW (D.N.J.)

114. VU00000037

115. VU00000039

116. DONZ-HDD-0117908

117. DONZ-HDD-0119262–63

118. VU00000082–82.0001

119. VU00000135

120. VU00000150

121. DONZ00068007–10

122. DONZ00031365

123. DONZ00058069

124. VU00000178

125. VU00000179-179.0001

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127. DONZ00126645

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129. DONZ00023182

130. DONZ00027256

131. DONZ00036281

132. DONZ00128396

133. DONZ-HDD-0113389

134. DONZ00025328-29

135. STRATUS-NATIVE051388–89

136. STRATUS-NATIVE053480

137. DONZS00015670

138. STRATUS-NATIVE065167-69

139. STRATUS-NATIVE043232–33

140. STRATUS-NATUS043849–59

141. STRATUS-NATIVE05388-89

142. DONZ0031129

143. DONZ00083815

144. DONZ00042758

145. WOODS-HDD-0142381

146. DONZ00054491-94

147. DONZ00114970

148. DONZ00055225

149. DONZ00025842-43

150. STRATUS-NATIVE053928

151. STRATUS-NATIVE062046-49

152. DONZ00045505-06

153. WOODS-HDD-0210407

154. DONZ00042961

155. DONZ-HDD-0004621 at 1-2

156. DONZ00055716

157. DONZ00055719

158. DONZ00031206

159. DONZ00029740

160. DONZ00061973

161. DONZ00055339

162. DONZ00108564

163. DONZ00062273

164. STRATUS-NATIVE044489

165. STRATUS-SDNY-0205144

166. DONZ00056679

167. DONZ00056668

168. DONZ00031315

169. DONZ00056881

170. DONZ00056918

171. DONZ00031335

172. DONZ00031337

173. DONZ00057054

174. DONZ00031246-47

175. DONZ00056348-49

176. DONZ00031273-74

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178. DONZ-HDD-0113389

179. DONZ-HDD-0113361–63

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184. STRATUS-NATIVE042610-11

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186. WOOOS-HDD-0139986

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193. Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement, Prepared by Patton Boggs LLP, Summer 2010

194. Court Docket of In re Application of Chevron Corp., No. 10-cv-01146-IEG-WMC (S.D. Cal.)

195. Court Docket of In re Application of Chevron Corp., No. 10-mc-00021-RB (D.N.M.)

196. Email dated February 12, 2011 from Andrew Kirshenbaum to Mark Rufolo, Re: Proposed Stipulation and Order

197. Letter dated February 15, 2011 from Stern & Kilcullen, LLC to Patton Boggs, Re: In re Application of Chevron Corporation, Civ. Case No. 2:10-cv-02675 (SRC) (MAS)

198. Comments on the Report of the Court-Appointed Expert Ing. Richard Cabrera Vega in the Case of Maria Aguinda y Otros v. Chevron Corp., Stratus Consulting Inc., dated Dec. 1, 2008

199. Declaration of Ramiro Fernando Reyes Cisneros, filed on Dec. 12, 2012 in Chevron Corp. v. Donziger et al., 12-cv-0691 (S.D.N.Y.)

200. Transcript of Hearing Before the Tom Lantos Human Rights Commission, dated Apr. 28, 2009

201. Written Statement by Steven R. Donziger to the Tom Lantos Human Rights Commission, dated Apr. 28, 2009