

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL
CONSTITUTED
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

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In the Matter of Arbitration      :
Between:                          :
                                  :
CHEVRON CORPORATION (U.S.A.),    :
TEXACO PETROLEUM COMPANY (U.S.A.), :
                                  :
          Claimants,              :   PCA Case No.
                                  :   2009-23
          and                     :
                                  :
THE REPUBLIC OF ECUADOR,          :
                                  :
          Respondent.             :
- - - - -x   Volume 11

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TRACK 2 HEARING

Tuesday, May 5, 2015

The World Bank
700 18th Street, N.W.
J Building
Conference Room JB1-080
Washington, D.C. 20003

The Hearing in the above-entitled matter convened
at 9:30 a.m. before:

MR. V.V. VEEDER, Q.C., President

DR. HORACIO GRIGERA NAÓN, Arbitrator

PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

<p>Sheet 2</p> <p>2352</p> <p>Registry, Permanent Court of Arbitration:</p> <p>MR. MARTIN DOE, Secretary to the Tribunal</p> <p>Additional Secretary:</p> <p>MS. JESSICA WELLS</p> <p>Court Reporters:</p> <p>MR. DAVID A. KASDAN Registered Diplomat Reporter (RDR) Certified Realtime Reporter (CRR) Worldwide Reporting, LLP 529 14th Street, S.E. Washington, D.C. 20003 United States of America (202) 544-1903 info@wwreporting.com</p> <p>SR. VIRGILIO DANTE RINALDI, S.H. D.R. Esteno Colombres 566 Buenos Aires 1218ABE Argentina (5411) 4957-0083 info@dresteno.com</p> <p>Interpreters:</p> <p>MR. DANIEL GIGLIO</p> <p>MS. SILVIA COLLA</p>	<p>2354</p> <p>APPEARANCES: (Continued)</p> <p>Representing Chevron Corporation and Texaco Petroleum Company:</p> <p>MR. HEWITT PATE</p> <p>MR. MATTHEW FRIEDRICH</p> <p>MR. JOSÉ LUIS MARTIN</p> <p>MR. RICARDO REIS VEIGA</p> <p>MS. SARA McMILLEN</p> <p>MR. ANDRES ROMERO</p> <p>MS. TANYA VALLI</p>
<p>2353</p> <p>APPEARANCES:</p> <p>On behalf of the Claimants:</p> <p>MR. R. DOAK BISHOP MR. WADE CORIELL MS. TRACIE RENFROE MS. CAROL WOOD MR. DAVID WEISS MR. ELDY QUINTANILLA ROCHÉ MS. ANISHA SUD MS. SARA MCBREARTY MS. JAMIE MILLER MS. VIRGINIA CASTELAN King & Spalding, LLP 110 Louisiana Street, Suite 3900 Houston, Texas 77002 United States of America</p> <p>MR. EDWARD G. KEHOE MS. CALINE MOUAWAD MS. ISABEL FERNÁNDEZ de la CUESTA MR. JOHN CALABRO MS. JESSICA BEESS UND CHROSTIN King & Spalding, LLP 1185 Avenue of the Americas New York, New York 10036-4003 United States of America</p> <p>MR. BRIAN A. WHITE MS. ELIZABETH SILBERT King & Spalding, LLP 1180 Peachtree Street Atlanta, GA 30309 United States of America</p> <p>MR. JAN PAULSSON MR. LUKE A. SOBOTA Three Crowns, LLP 2001 Pennsylvania Avenue, N.W. Washington, D.C. 20005 United States of America</p>	<p>2355</p> <p>APPEARANCES: (Continued)</p> <p>On behalf of the Respondent:</p> <p>DR. DIEGO GARCÍA CARRIÓN, Attorney General DRA. BLANCA GÓMEZ del la TORRE DR. FELIPE AGUILAR LUIS DRA. DANIELA PALACIOS DRA. MARÍA TERESA BORJA Counsel, Attorney General's Office Procuraduría General del Estado Robles 731 y Av. Amazonas Quito, Ecuador</p> <p>MR. ERIC W. BLOOM MR. TOMÁS LEONARD MR. MARK BRAVIN MS. NICOLE SILVER MR. ALEX KAPLAN MR. GREGORY EWING MR. ERIC GOLDSTEIN MS. CAROLINA ROMERO ACEVEDO MS. CRISTINA VITERI TORRES MS. CHRISTINE WARING MR. JEFF JOHNSON MR. ERIC WERLINGER MR. PETER OSYF MR. SCOTT PHILLIPS MS. KATHY AMES VALDIVIESO Winston & Strawn, LLP 1700 K Street, N.W. Washington, D.C. 20006 United States of America</p> <p>MR. RICARDO UGARTE MS. NASSIM HOOSHMANDNIA Winston & Strawn LLP Grand-Rue 23 Geneva 1204 Switzerland</p>

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1 PROCEEDINGS

2 PRESIDENT VEEDER: Good morning, ladies and
 3 gentlemen. We'll start Day 11 of this Hearing.

15 Any other housekeeping matters? We ask the
 16 Claimants first.

17 MR. CORIELL: Nothing for the Claimants.

18 PRESIDENT VEEDER: For the Respondent?

19 MR. LEONARD: Just one minor recommendation. It's
 20 for the sake of the interpreters, for the Expert to slow
 21 down a little bit in order to making his recommendations
 22 since yesterday.

23 PRESIDENT VEEDER: Mr. Andrade, I hope you can
 24 hear me through the interpreter.

25 THE WITNESS: I'm listening to you, Mr. President,

C O N T E N T S

PRELIMINARY MATTERS:

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WITNESSES:

FABIÁN ANDRADE NARVÁEZ

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PROCEDURAL DISCUSSION

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09:28 1 yes. Good morning.

2 PRESIDENT VEEDER: I'm being asked to remind you,
 3 but also to remind all others that because your questions
 4 and answers are being translated, it's very important to
 5 speak slowly and also to leave a break between the question
 6 and the answer. This applies to counsel just as much as to
 7 witnesses. So, if you could bear that in mind, we may get
 8 on more quickly with less difficulty.

9 FABIÁN ANDRADE NARVÁEZ, RESPONDENT'S WITNESS, RESUMED

10 PRESIDENT VEEDER: Well, we return to the
 11 questions from the Claimants.

12 MR. CORIELL: Thank you, Mr. President.

13 CONTINUED CROSS-EXAMINATION

14 BY MR. CORIELL:

15 Q. Good morning, Dr. Andrade. I want to pick up with
 16 just a few final questions on where we ended yesterday
 17 because we stopped a little early, and you'll recall that
 18 we were discussing a ghostwriting of a judgment by a
 19 Plaintiff is a serious allegation; right?

20 A. Good morning.

21 Yes, of course, it is quite a serious allegation.
 22 (Technical difficulty.)

23 (Pause.)

24 Q. And ghostwriting of a judgment is illegal in
 25 Ecuador because it violates due process; correct?

<p>Sheet 4</p> <p>2360</p> <p>09:30 1 A. That is correct. 2 Q. And we agreed yesterday that any court hearing 3 that allegation has to decide that allegation as long as it 4 can do so based on evidence duly admitted to the 5 trial-court record; right? 6 A. That is correct, yes. 7 Q. So, I'd like for you to assume a hypothetical 8 situation with me, okay? 9 A. With pleasure, yes. 10 Q. Okay. Number one, a first-instance court issues a 11 judgment against a Defendant, and that judgment relies on a 12 document that I will call, "Document A," okay? 13 A. Very well, yes. 14 Q. Number two, the Defendant appeals that judgment, 15 and it loses at the Provincial Court, okay? 16 A. Very well, yes. 17 Q. Number three, the Defendant files a cassation 18 appeal, and one of its allegations is that Document A is 19 not in the original trial-court record, okay? 20 A. Correct. 21 Q. In that situation, you would agree that the 22 Cassation Court is required to consider and decide upon 23 that allegation; correct? 24 A. If it is under a rule, then, yes. 25 Q. Okay. And you would agree that the Cassation</p>	<p>2362</p> <p>09:33 1 it's going to find that document; correct? 2 A. Yes, of course, in connection with the case put 3 forth to the Cassation Court. And if the document, the 4 specific document, is relevant, it is going to review it, 5 and it is going to find it in the case file. 6 Q. And if it doesn't find it, then, obviously, it 7 would sustain the appellant's allegation that it's not 8 there? 9 A. I think so. I believe so. 10 Q. Okay. I'd like to go back to your First Report, 11 which we were discussing yesterday. This is behind Tab 1, 12 and it's the February 2013 Report. And just to refresh 13 what I think we agreed to yesterday, if I need to point you 14 to the discussion we had, I can do that, but you already 15 testified that as of the time you wrote this Report, you 16 had reviewed the violations that Chevron had alleged in its 17 cassation appeal; correct? 18 A. In connection with the contents, yes. 19 Q. And you had reviewed the violations described in 20 Claimants' Memorials in the arbitration proceedings; right? 21 A. Yes, the statements of the Memorial, I did review 22 them, and I compared them with the cassation writ. 23 Q. And then you described those allegations in the 24 Memorial and in the cassation writ as the same issues, 25 nearly the same I believe was the terminology you used?</p>
<p>2361</p> <p>09:31 1 Court, in doing that, couldn't determine whether Document A 2 is in the trial-court record by simply looking at the 3 trial-court record; correct? 4 A. Yes, of course. If this was an allegation in 5 connection with a provision related to matters in 6 connection with the weighing of the evidence--that's what 7 is important. And if a cassation appeal has been submitted 8 and if the violated rule relates to the weighing of 9 evidence, and if the appellant states that this is a 10 specific document that was involved, Document A, the Court 11 is going to consider the violation of the provision, and 12 it's going to make specific reference to the document that 13 is included in the case file, yes, that is the case. 14 Q. So, by definition, it would not have to consider 15 evidence extrinsic to the record in this hypothetical; 16 correct? 17 A. Yes, exactly. 18 Q. Because, if a document is duly admitted to the 19 trial-court record, and if you review that trial-court 20 record, you'll find the document in the record; is that 21 fair? 22 A. Could you please repeat the question? 23 Q. Sure. 24 If a document is duly admitted to the trial-court 25 record, and if the Cassation Court reviews that record,</p>	<p>2363</p> <p>09:35 1 A. Exactly, these are the allegations that are put 2 forth in connection with a series of violations of 3 provisions, legal provisions, that were put to the 4 Cassation Court, yes. 5 Q. And then you said that those allegations fell 6 squarely within each of the grounds established in 7 Article 3 of the Law of Cassation; right? 8 A. Yes. In fact, I describe the grounds under 9 Article 3. I state the different legal arguments that are 10 put to the Court, and these allegations fall squarely 11 within the concepts of due process and right to defense. 12 Essentially, these are the two notions that have to do with 13 legal arguments put to the Court, yes. 14 MR. CORIELL: Okay. And just for the Tribunal's 15 reference, that's at Paragraph 81 of the First Report. 16 BY MR. CORIELL: 17 Q. But if you bear with me, Dr. Andrade, I'd like to 18 turn you to Pages 3 to 4 in the English, I believe it 19 starts on Page 4 in the Spanish. It's in the Executive 20 Summary of your opinions in this Report, and it's Section 21 E, "Assessment of Evidence and Standard of Review at the 22 Appellate Level." And if you could let me know when you're 23 there. 24 A. Starting on Page 3; right? 25 Q. I'm not sure on the Spanish if it starts on 3 or</p>

<p>Sheet 5</p> <p>2364</p> <p>09:37 1 4, but it's Section E, "Assessment of Evidence." 2 A. Yes, I found it perfectly, well. 3 Q. And if you'll bear with me, I'm going to read this 4 into the record because I have just a few questions about 5 it. 6 You say: "A court hearing an appeal in a summary 7 oral proceeding may consider only evidence that has been 8 lawfully requested, ordered, and submitted during the 9 proceedings before the lower court. There is no 10 evidentiary phase at the appellate level of an oral summary 11 proceeding. The Appellate Court thus has no competence to 12 hear and rule on an issue if it does not form a merits of 13 the proceeding." 14 And then there is a second paragraph where you 15 say: "Chevron submitted voluminous documentary evidence to 16 the trial court in support of its allegations of 17 ghostwriting of the Judgment by the Lago Agrio Plaintiffs 18 and fraud surrounding the Cabrera Report and the Calmbacher 19 Report. These submissions were untimely and largely 20 comprised of inadmissible evidence under applicable rules 21 of procedure. The appellate panel was therefore barred 22 from considering as evidence the 'fraud' documents that 23 Chevron unilaterally submitted to the lower court, and 24 those submitted post-judgment in the course of its appeal 25 from the Judgment below." So, that's the Appellate Court.</p>	<p>2366</p> <p>09:40 1 of your Report as you sit here today as well; correct? 2 A. Yes, of course, that's correct. 3 Q. Now, I'd like you to imagine for me another 4 hypothetical, okay? I want you to imagine that this 5 three-paragraph Executive Summary that I just read into the 6 record from your First Report, that you wrote it not to 7 summarize for this Tribunal your expert opinion, but 8 instead that you wrote it as a memo for a client in Ecuador 9 for whom you were doing legal work, okay? 10 A. Yes, correct. 11 Q. And I want you to imagine that the purpose of the 12 memo, which is the purpose of this section of your report, 13 was to talk about the effective remedies--and I'm using 14 your words--for the alleged fraud--again using your 15 words--in the Lago Agrio Litigation, okay? 16 A. Okay. 17 Q. Would you blame your client after reading these 18 three paragraphs for accepting your advice that it file a 19 cassation appeal to remedy the alleged fraud? 20 A. I would not. Of course not. 21 Q. Would you blame your client for not filing a 22 collusion prosecution action to remedy the alleged fraud 23 since you never even mention it as a remedy anywhere in 24 this Report? 25 A. What actions do the initials you mentioned stand</p>
<p>2365</p> <p>09:38 1 And then you have a third paragraph: "However, 2 Ecuadorian law provides for at least two effective remedies 3 to address the alleged fraud or comparable violations of 4 due process and other constitutional rights by way of (1) 5 the cassation appeal to the National Court of Justice, and 6 (2) the extraordinary action for protection before the 7 Constitutional Court. In fact, the National Court can, and 8 presumably will, review Chevron's allegations of fraud and 9 procedural misconduct pursuant to its powers under 10 Article 3 of the Law of Cassation. Should the National 11 Court deny Chevron's cassation appeal, Chevron would have 12 an opportunity to file an extraordinary action for 13 protection before the Constitutional Court, which can and 14 would conduct an examination of, and redress any alleged 15 violation of due process during the course of the Lago 16 Agrio Litigation." 17 Now, before I ask you a couple of questions about 18 that, do you stand by this two-paragraph 19 summary--three-paragraph summary that you wrote in your 20 First Report? Do you stand by that today? 21 A. Yes, I do. Those three paragraphs are a summary 22 of Paragraphs 63 to 92 of my Report, and for each 23 paragraph I provided an explanation and details in this 24 section of my Report. 25 Q. And you stand, of course, by Paragraphs 63 to 92</p>	<p>2367</p> <p>09:42 1 for? 2 Q. Well, I used CPA instead of saying Collusion 3 Prosecution Act. 4 Q. So, let me repeat the question. 5 Would you blame your client for not filing a 6 Collusion Prosecution Act case to remedy the alleged fraud 7 since you never even mentioned that as a possible remedy in 8 this Report? 9 A. No. In this Report, I do make specific reference 10 to parallel measures that go beyond the line that a lawyer 11 would follow to present these things in Ecuador. Following 12 an appeal, he would file a cassation appeal, presenting his 13 arguments. He would then file an extraordinary action of 14 protection, if such allegations are related to due process 15 and fundamental rights. And this is completely independent 16 from parallel actions that could be taken, and reference of 17 that is made specifically, I think, at Paragraph 74 of my 18 First Report. As you must understand, there has to be a 19 logical order to be followed in proceedings. At this time 20 we were not discussing those parallel measures, but we were 21 discussing those measures that were at the same 22 hierarchical level. First, after an appeal, you have a 23 cassation appeal, because I have legal arguments that I 24 need to put to the Court. 25 Then I'm going to go to the Constitutional Court</p>

<p>Sheet 6</p> <p>2368</p> <p>09:44 1 because I had legal constitutional arguments to put to the 2 Court, this regardless of the parallel measures that I may 3 take. 4 Q. Well, let me break your answer into two pieces. 5 Let me start with where we currently are in the document, 6 the paragraphs that I just read that you concluded that 7 these two remedies could, "redress any alleged violation of 8 due process during the course of the litigation." You 9 didn't make the distinction--and I'm talking right now 10 about this Executive Summary--you didn't make the 11 distinction here between these two remedies and some other 12 sorts of parallel measures that might need to be taken, did 13 you? 14 A. I did not. 15 Q. And you didn't use--you didn't mention the 16 Collusion Prosecution Act as something relating to fraud, 17 due process, or even collusion in this Executive Summary, 18 did you? 19 A. Not in the Executive Summary, I did not. 20 Q. And you did not specifically mention the Collusion 21 Prosecution Act anywhere in your entire-- 22 A. You don't have to look for it because--you don't 23 have to look for it. Indeed, I did not specifically 24 mention the CPA or any other action that may be used in a 25 parallel manner, if you will.</p>	<p>2370</p> <p>09:47 1 time in a report in which you discussed, "effective 2 remedies to address the alleged fraud"? Do you understand 3 why I find that odd? 4 A. I understand. 5 In this Report, I am addressing whether, in 6 practice, we had at that time additional mechanisms that 7 Chevron could have in order to put forth its legal claims 8 according to a logical sequence that would be used by any 9 lawyer in Ecuador. If I submit an appeal to the Provincial 10 Court, the natural thing is to go to a cassation appeal if 11 I have legal claims. The legal claims were evidence in the 12 cassation appeal, and we see that those are the ones put 13 forth in this case. 14 Now, the natural thing after that is that if my 15 legal claims have a constitutional rank, for example, such 16 as a violation of due process, any lawyer in Ecuador would 17 submit an extraordinary protection action. 18 So, I was answering the question: Are there 19 mechanisms or additional means for these claims to be put 20 to the courts of Ecuador? The answer is yes, and this is 21 the logical order in which those should have been raised. 22 I also say that there are parallel measures and 23 that are different in nature, and they're varied in nature 24 as well. That's what I said in my Report. We were not 25 discussing that the fact that the only basis and the most</p>
<p>2369</p> <p>09:46 1 Q. And you understand, because I know that you sat 2 through Ecuador's opening two weeks ago--you understand 3 that Ecuador's position is that the Collusion Prosecution 4 Act was the only proper remedy for large portions of 5 Chevron's allegations of fraud and ghostwriting with 6 respect to the Lago Agrio Judgment; right? 7 A. Yes, because of a specific reason: The evidence 8 that wants to be used as evidence is evidence that the 9 other Party cannot contradict. It cannot submit new 10 evidence. It cannot discuss that evidence. For that to 11 happen, what I need is a process where we can have 12 evidence, we can listen to the other party and in which a 13 decision can be made in connection with matters that are 14 not necessarily related to the violation of a legal 15 provision, but the determination of a specific fact. 16 Q. Dr. Andrade-- 17 A. This was stated... 18 Q. And, Dr. Andrade--and if we can again stick to my 19 question because I wasn't asking what you were trying to 20 put forth there, but I appreciate the distinction that you 21 just made about new evidence. And you, in fact, talk about 22 evidentiary rules in this First Report: So, don't you find 23 it odd that if that is the important distinction with 24 respect to why Chevron needs to use the Collusion 25 Prosecution Act that you did not mention that mechanism one</p>	<p>2371</p> <p>09:49 1 relevant basis in the weighing of the evidence by Chevron 2 had to do with the demonstration of factual elements. And 3 in order to evidence factual elements, I need a specific 4 proceeding where I can explain to the other Party to which 5 I'm presenting those arguments, well, I have to indicate 6 that, the Judge has to weigh the evidence, notice has to be 7 made to the other party, everything has to be aired out, 8 and then the facts need to be characterized, and then a 9 decision of fact--a decision of law--a decision of law 10 needs to be made. That is all. At the time, we were not 11 talking about which was the most important element in the 12 weighing that was being made in connection with the 13 violations of due process. There were a number of 14 allegations of violations of due process. Many of them 15 have to do with a violation of legal provisions rather than 16 the determination of specific facts. 17 Q. And we can all look afterwards at Paragraph 74 of 18 your First Report and what you say about parallel measures. 19 I'd like to move to a different subject, if I 20 might, which is corporate separateness and piercing of the 21 corporate veil, and in particular I'm going to ask you some 22 questions about a portion of your Second Report, which is 23 behind Tab 2 at Paragraph 78, where you're responding to 24 certain allegations that were made at Paragraph 225 of 25 Chevron's Track 2 Reply Memorial?</p>

<p>Sheet 7</p> <p>2372</p> <p>09:51 1 A. Let me look for Paragraph 78, please. 2 Q. Okay. 3 A. I have found Paragraph 78, sir. 4 Q. And you see that you're responding to a series of 5 allegations that Chevron made at Paragraph 225 of its 6 Track 2 Reply Memorial? 7 A. Are you making reference to paragraph 78 collusive 8 acts? I'm lost. You're talking about the second report, 9 Tab 2; right? 10 Q. I'm at Tab 2, which is your Second Report, 11 Paragraph 78, at which you respond to a series of 12 allegations in Paragraph 225 of Chevron's Track 2 Reply. 13 Are you with me? 14 A. I found it, yes, thank you. 15 Q. And if you go to Tab 9, I'm going to show you the 16 particular accusation that Chevron made that I would like 17 to discuss with you. This is, in fact, the Track 2--it's 18 an excerpt from the Track 2 Reply, and I'm looking at 19 Page 102, the second bullet point. If you let me know when 20 you're on Page 102 of Tab 9. 21 A. I have found Tab 9, sir, yes. 22 Q. And you see in that second bullet point: One of 23 Chevron's allegations is that on October 15 of 2012, the 24 Lago Agrio Court issued an order against numerous assets of 25 Chevron and its subsidiaries, including the \$96 million</p>	<p>2374</p> <p>09:55 1 A. Yes, I've seen it. 2 Q. And you understand, as a general matter, that in 3 this Order, the Lago Agrio Court declares that the Judgment 4 may be enforced against the assets of dozens of direct and 5 indirect Chevron subsidiaries across the world; right? 6 A. That is the decision made, a series of assets are 7 seized, and these are subsidiaries of Chevron's, is my 8 understanding. 9 Q. And if you look at the bottom of Page 2 and most 10 of Page 3, you see a long list of all of those Chevron 11 subsidies whose assets are being seized to satisfy this 12 Judgment; right? Do you see that long list of companies 13 that takes up a page around Page 3 of the Order? 14 A. Yes, I see it. It is a long list, and the heading 15 of the Order says: "it is decreed that the enforcement of 16 this Judgment be enforced against the whole of the assets 17 of Chevron Corporation," and there is a list of 18 subsidiaries with the understanding that they belong to 19 Chevron Corporation. 20 Q. And then we can see that one of the companies that 21 this Order declares the Judgment may be enforced against is 22 actually Texaco Petroleum Company or TexPet. And we can 23 see that, I think, on Page 4, unfortunately, it's all one 24 paragraph, but it's a little more than halfway down, where 25 it says "the attachment also extends to all the Funds</p>
<p>2373</p> <p>09:53 1 Arbitral Award issued in the earlier Chevron versus Ecuador 2 BIT arbitration. 3 Do you see that? 4 A. I do see that, yes. 5 Q. Okay. So, let's go back to where you address that 6 contention which, just for reference, it's at Page 32 of 7 your Second Report. And you referred to that October 15th 8 Order as the "Seizure Order." And if you let me know when 9 you're ready, I can point you to the Order itself. 10 Do you understand the Seizure Order that I'm 11 talking about? 12 A. You're talking about the Seizure Order, yes, yes. 13 Q. Yes. 14 A. An attachment order, yes. Yes, that is an order 15 that is handed down at the enforcement stage, yes. 16 Q. Right. So, let's look at that, and I'm sorry, but 17 it's--the Order itself is in your Volume 2 binder behind 18 Tab 18. 19 A. It's only in English; right? 20 Q. There should be a Spanish translation right behind 21 the pink divider. 22 A. Yes, I found it, yes. 23 Q. And you understand generally, you have seen that 24 Order before; right? You reviewed it in working on your 25 Second Report?</p>	<p>2375</p> <p>09:57 1 deposited and existing in a certain account as well as any 2 other account, investment or fund owned by Texaco Petroleum 3 Company or TexPet." 4 Do you see that? 5 A. Yes, yes, I do see that. 6 Q. So, this Order by purporting to seize the assets 7 of TexPet to satisfy this Judgment, made TexPet a debtor on 8 this Judgment; correct? 9 A. No, that is not correct. This is the enforcement 10 stage of a decision that determines who the debtor is. 11 Now, at the enforcement stage, what must be 12 ordered here--and this is what is ordered here--well, the 13 attachment of the assets of Chevron, Chevron is a debtor 14 determined by the Judgment. On the basis of the 15 information provided to the Court by the creditor, I 16 understand, the Court understands that Chevron has property 17 and assets related to all of the subsidiaries. 18 Now, the normal thing to do at the enforcement 19 stage, if Chevron has no property in connection with these 20 companies, the owner of the assets, what they do is they 21 submit an action called "third-party actions by legitimate 22 owner" to exclude assets from enforcement proceedings, so 23 that they exclude from enforcement what does not belong to 24 Chevron at that stage. That is what goes on in those 25 proceedings.</p>

09:59 1 Q. I think we may be misunderstanding each other, so
 2 let me try that again.
 3 This Order attaches assets that belong, in part,
 4 to Texaco Petroleum Company; would you agree with that?
 5 And I can point you to the specific reference if that would
 6 help.
 7 A. Yes, that would be a good idea, yes.
 8 Q. So, on Page 5, about 10 lines up or so, you see a
 9 Number 6, and it says: "Likewise, and with the same
 10 content, the Ministry of Economics and Finance shall be
 11 notified of the attachment decreed over the total amount of
 12 the Award of U.S. \$96 million owed by the Government of
 13 Ecuador to Chevron Corporation as a result of an
 14 arbitration award." And then it says, "shall be notified
 15 of the attachment decreed" on the entire award of that
 16 amount against the Government.
 17 Do you see that?
 18 A. I do see that. In this ruling, reference is made
 19 to Chevron Corporation. That is to say--
 20 Q. Did you know that one of the Claimants with an
 21 interest in that whole U.S. \$96 million Award is Texaco
 22 Petroleum Company?
 23 A. I did not know that, Mr. Coriell. In fact, if it
 24 has interest, Texaco is going to be able to submit a
 25 third-party action by legitimate owner to exclude assets

10:01 1 from enforcement proceedings, so as to exclude from
 2 enforcement assets belonging to Texaco. No rights are
 3 declared at the enforcement stage. Right?
 4 What happens is that the mechanism is established
 5 for the debt to be, indeed, collected, and those that are
 6 affected by a Seizure Order over assets that do not belong
 7 to the debtor, can file a third-party action by legitimate
 8 owner to exclude assets from enforcement proceedings, thus,
 9 preventing that assets that do not belong to Chevron, be
 10 part of the assets seized and over which a debt is being
 11 enforced.
 12 Q. Well, let's go back, then, to the previous page,
 13 Page 4, which talks about TexPet's property in particular,
 14 okay? And what it says is that the attachment extends to
 15 all the Funds in a particular bank account as well as over
 16 any other bank account, investment or fund owned by Texaco
 17 Petroleum Company or TexPet.
 18 Are you aware that the Government of Ecuador has
 19 seized TexPet's Ecuadorian bank accounts pursuant to this
 20 Seizure Order?
 21 A. No, I didn't know this. As I said before, if this
 22 is what actually happened, any subject that is interested
 23 in removing from this enforcement procedure any of his
 24 property, may file a third-party action by legitimate owner
 25 to exclude assets from enforcement proceedings. This is

10:03 1 how it works. If you want, we can give an example. Let's
 2 say that the Judge--
 3 Q. Dr. Andrade, let me ask you my next question.
 4 Because I asked if you were aware that TexPet had had its
 5 bank accounts seized, and you said that you were not, and
 6 that's fair.
 7 And I think what you're telling me, as far as how
 8 the process works, is that if TexPet's bank accounts were
 9 seized, that would not be proper; correct?
 10 A. No--
 11 Q. In this Order.
 12 A. What I'm telling you is that if the enforcement of
 13 a judgment is declared on assets that do not belong to that
 14 debtor, what I'm saying is that those third-party actions
 15 by legitimate owner to exclude assets from enforcement
 16 proceedings may be presented, thus excluding those assets
 17 from enforcement. That's what I am saying. If, indeed,
 18 there has been a situation like this--and Texaco is not a
 19 debtor based on the Judgment, they may use that action and
 20 exclude those assets from the enforcement proceeding.
 21 Obviously...
 22 Q. And if they're not--and if they're not a debtor on
 23 the Judgment, and that if they bring forward that action,
 24 then they should succeed in that action; correct?
 25 A. It seems reasonable if they are able to prove

10:04 1 ownership. Yes, that's like that.
 2 Q. Okay. Let's move to another subject, then, which
 3 is related to some of the topics that you were discussing
 4 yesterday about tort law in Ecuador, okay? Environmental
 5 tort law.
 6 You would agree with me that the Lago Agrio Case--
 7 A. We don't need this anymore, do we? Or do we still
 8 need these binders?
 9 Q. We may. Depending--we may still need the binders.
 10 You would agree with me that the Lago Agrio Case
 11 is a case about harm to the environment; correct?
 12 Environmental impact.
 13 A. It has to do with environmental harm and all of
 14 the harmful events derived from that act.
 15 Q. Okay. And my understanding from your presentation
 16 yesterday was that you interpreted it to be about both
 17 actual harm to the environment and contingent harm to the
 18 environment; right?
 19 A. No, that is not correct. What I said in
 20 connection with this is that these are damages that
 21 actually happened in connection with the environment and,
 22 for sure, to individuals, and contingent harm as a result
 23 of the environmental harm to the rights of people who live
 24 in that place or in the impaired area.
 25 Q. Does the Lago Agrio Judgment vindicate contingent

<p>Sheet 9</p> <p>2380</p> <p>10:06 1 harm?</p> <p>2 A. I think it does.</p> <p>3 Q. Does the Lago Agrio Judgment vindicate actual</p> <p>4 harm, existing harm?</p> <p>5 A. Also. Actual harm and contingent harm. That is</p> <p>6 what is expressed in the Judgment.</p> <p>7 Q. Now, you agree with me that the Environmental</p> <p>8 Management Act of 1999 is what provides us the standard for</p> <p>9 determining whether environmental harm exists or not;</p> <p>10 correct?</p> <p>11 A. No, that is not correct.</p> <p>12 What are you referring to? Are you referring to</p> <p>13 the identification of environmental harm? Is that what</p> <p>14 you're referring to?</p> <p>15 Q. I'm asking if you agree that the Environmental</p> <p>16 Management Act provides the standard for determining</p> <p>17 whether there is or is not environmental harm. Do you</p> <p>18 agree with that?</p> <p>19 A. The Environmental Management Act--</p> <p>20 Q. Would you tell me if you agree with me first, and</p> <p>21 then given your explanation, please.</p> <p>22 A. I do not agree. It is not accurate. What the</p> <p>23 Environmental Management Act does is to capture as part of</p> <p>24 the glossary what environmental harm means. That's what it</p> <p>25 does.</p>	<p>2382</p> <p>10:09 1 environmental harm is, that is the definition of the term,</p> <p>2 lexicographic definition of the term.</p> <p>3 Q. Dr. Andrade, I can promise you that I think this</p> <p>4 will go easier if we can go through what I think are some</p> <p>5 uncontroversial views about the definition rather than</p> <p>6 trying to pack the entire anticipated discussion all up</p> <p>7 front in response to my introductory questions. So let</p> <p>8 me--I appreciate the clarification you made. We've agreed</p> <p>9 that the Environmental Management Act is the source of the</p> <p>10 definition for "harm," and let's try to go forward from</p> <p>11 there.</p> <p>12 My next question for you is: You agree that the</p> <p>13 legal standard in the Environmental Management Act for harm</p> <p>14 is significant negative impact; right? That's what</p> <p>15 constitutes a harm, if it's a significant negative impact?</p> <p>16 A. Yes, negative environmental impact, correct.</p> <p>17 MR. LEONARD: Mr. President, excuse me. I</p> <p>18 understand that Procedural Order Number 35 specifically</p> <p>19 states that the cross-examination may not be limited to the</p> <p>20 four corners of what is written in the respective Expert</p> <p>21 Reports, but just so that the record is clear, I will make</p> <p>22 an objection to this line of questions as exceeding the</p> <p>23 scope of the Expert's Report.</p> <p>24 PRESIDENT VEEDER: You may want to go a little bit</p> <p>25 further and tell us why.</p>
<p>2381</p> <p>10:07 1 Q. Okay. We're going to have to look to the binder,</p> <p>2 unfortunately. It's behind Tab 20. And what this is is</p> <p>3 your testimony from the Burlington Hearing, Page 466 in the</p> <p>4 English, Page 478 in the Spanish.</p> <p>5 A. At what tab, Mr. Coriell?</p> <p>6 Q. 20.</p> <p>7 And Page 478 of the Transcript in Spanish.</p> <p>8 A. Yes, I got it.</p> <p>9 Q. And if you'll look to where I asked the question:</p> <p>10 "So, let's move on to the specific definition of harm." I</p> <p>11 think it's Line 14 in the Spanish. I say: "You agree with</p> <p>12 me that the Environmental Management Law of 1999 is what</p> <p>13 provides us the standard for determining whether or not</p> <p>14 environmental harm exists?"</p> <p>15 And you answered: "Yes, yes, we get the reference</p> <p>16 values from them, yes."</p> <p>17 So, do you stand by that testimony in the</p> <p>18 Burlington Case, that the Environmental Management Law</p> <p>19 defines "environmental harm"?</p> <p>20 A. What I just told you is that this Environmental</p> <p>21 Management Act includes the definition of "environmental</p> <p>22 harm," and you may recall that during that chat, we</p> <p>23 discussed that environmental harm is not an abstract</p> <p>24 determination, rather a specific actual fact; and what the</p> <p>25 Environmental Management Act does is explain what</p>	<p>2383</p> <p>10:11 1 MR. LEONARD: The grounds for my objection?</p> <p>2 PRESIDENT VEEDER: Yes.</p> <p>3 MR. LEONARD: I believe that we're getting into a</p> <p>4 subject matter that the Expert did not address in these</p> <p>5 proceedings. If I understand the line of questions</p> <p>6 correctly, we're going to get into issues of standard for</p> <p>7 definition of what exactly is the meaning or the notion of</p> <p>8 environmental harm based on technical values established by</p> <p>9 statutes in Ecuador that are not in the record of these</p> <p>10 proceedings. Or, at least I understand they are not in the</p> <p>11 record of these proceedings.</p> <p>12 PRESIDENT VEEDER: I think you better try and sort</p> <p>13 this out now. Is that where you're going?</p> <p>14 MR. CORIELL: Two things, Mr. President. That's</p> <p>15 not where I'm going but just to respond to the objection as</p> <p>16 to going through this general subject, we had a direct</p> <p>17 presentation yesterday for a little under an hour that</p> <p>18 discussed the substantive standards in the procedural rules</p> <p>19 for general environmental tort liability under this</p> <p>20 particular Act that I'm asking the Expert about.</p> <p>21 We also had the Expert testify the he had</p> <p>22 testified as to these same standards for environmental tort</p> <p>23 liability in the Burlington and Perenco Cases, which</p> <p>24 testimony I'm now taking him to. So, I think that even</p> <p>25 aside from the Procedural Order, I think that this is fully</p>

<p>Sheet 10</p> <p>2384</p> <p>10:13 1 in response to the scope of what was a rather expansive 2 direct presentation. 3 PRESIDENT VEEDER: There is no issue about you 4 referring to the Burlington Transcript--I think that's not 5 in controversy. Can you confirm that? 6 MR. LEONARD: I can confirm that, to the extent 7 that one aspect relevant to the presentation that Professor 8 Andrade--Dr. Andrade gave yesterday. One aspect is the 9 fact of environmental contamination, that was assumed for 10 purposes of presentation. I would object to any questions 11 about standards, technical standards, that are applied or 12 not applied, depending on the case, to define whether 13 environmental harm exists or not. For purposes of 14 yesterday's presentation, Dr. Andrade assumed the fact of 15 damage as a fact that needs to be determined by the Court 16 in a given case, Delfina, Lago Agrio, whatever the case 17 might be. He did not testify as to the standards to define 18 what "environmental damage" means, and that's what I would 19 object, again, with the caveat that Procedural Order 20 Number 35 might render my objection moot, but in any event, 21 I would like to state it for the record. 22 PRESIDENT VEEDER: Just give us one second. 23 (Tribunal conferring). 24 PRESIDENT VEEDER: We will note the Respondent's 25 objection, but we're going to allow these questions to</p>	<p>2386</p> <p>10:16 1 And I just want to confirm your understanding of 2 where you and Dr. Coronel agree and where you disagree on 3 this particular issue, okay? So, I have some questions 4 about that. 5 A. Excuse me, joinder of third parties? Joinder of 6 individuals because that is the concept they have 7 translated; right? 8 Q. I'm talking about joint--right, you are correct. 9 I'm talking about joinder of Parties and where you and 10 Dr. Coronel disagree on that subject. I just have a couple 11 questions for you about that, okay? 12 MR. LEONARD: May I suggest--may I make a 13 suggestion to the interpreter. You are referring to the 14 joinder of third parties; is that correct? 15 MR. CORIELL: Yes. 16 MR. LEONARD: That would be "llamamiento de 17 terceros." 18 PRESIDENT VEEDER: Let's proceed on that basis. 19 BY MR. CORIELL: 20 Q. Okay. Thank you for the clarification. 21 A. No problem. Gracias. 22 Q. Now, you and Dr. Coronel both agree that in a 23 verbal summary proceeding like the Lago Agrio Case, joinder 24 of third parties is not permissible; right? 25 A. Correct.</p>
<p>2385</p> <p>10:15 1 continue because we understand that the Claimants are not 2 going to take this Expert Witness into technical standards 3 as such. 4 MR. CORIELL: That's correct. 5 PRESIDENT VEEDER: Please continue. 6 BY MR. CORIELL: 7 Q. And, in fact, I think we're almost finished with 8 the discussion of the general standard. We've agreed that 9 the Act, the Environmental Management Act, defines harm. 10 We've agreed that the legal standard in the Act is 11 "significant negative impact." 12 So, my third question, Dr. Andrade, you agree that 13 a negative impact is significant if it affects the 14 functioning of the ecosystems or the renewability of 15 resources; correct? 16 A. That is the rule stated under the Environmental 17 Management Act. It captures the real meaning of 18 "environmental harm." 19 Q. Okay. So, with that general background in mind, I 20 would like to discuss improper joinder, which is a topic 21 that you have opined on in your Reports in this case; 22 correct? 23 A. Yes, correct. 24 Q. And to begin, I would like to discuss joinder of 25 third parties under Ecuadorian law, so joinder of Parties.</p>	<p>2387</p> <p>10:18 1 Q. You understand that Dr. Coronel believes that 2 joinder of third parties is permissible in ordinary 3 proceedings; right? That's what he thinks. 4 A. According to some of the assumptions under the 5 law, it is possible under ordinary proceedings to have this 6 joinder of third parties. The rule is the opposite. 7 Q. Before we go to the rule, I'm just trying to 8 define where you and Dr. Coronel agree and where you 9 disagree. You agree that there is no joinder of third 10 parties in a verbal summary proceeding; right? 11 A. Correct. 12 Q. Your view is that, in an ordinary proceeding, the 13 general rule is that there is no joinder of third parties; 14 right? 15 A. Correct. 16 Q. His view is that there is--Dr. Coronel's view is 17 that there is? 18 A. I am not understanding your assertion very well. 19 Q. Do you understand that Dr. Coronel's opinion is 20 that third parties may generally be joined in an ordinary 21 proceeding? I know you disagree with it. Do you 22 understand that that is his opinion? 23 A. Yes, I--yes. 24 PRESIDENT VEEDER: Can I stop you? You must wait 25 until the end of the translation because you're making it</p>

10:19 1 very difficult for the transcribers. I can guess you speak
2 some English, but just wait until the Spanish finishes
3 before you say yes or no. Thank you.
4 BY MR. CORIELL:
5 Q. Now, your view is that, in general, joinder of
6 third parties is not permissible in ordinary proceedings,
7 but that there are a few exceptional circumstances where it
8 is; right?
9 A. That is correct.
10 Q. And, in your view, none of those exceptional
11 circumstances apply in the Lago Agrio Case?
12 A. That is correct.
13 Q. Okay. Now, we have been talking about joinder of
14 third parties. I now want to move to joinder of claims,
15 and before I do that, we may want to make sure that we have
16 an agreed translation for that, so that we don't have the
17 same confusion. All right.
18 PRESIDENT VEEDER: Is that agreed?
19 MR. LEONARD: Yes.
20 PRESIDENT VEEDER: Let's proceed.
21 BY MR. CORIELL:
22 Q. And you know that the joinder of claims in a
23 single action, that issue was discussed by the National
24 Court of Justice in the Lago Agrio Cassation Decision;
25 right?

10:21 1 A. Yes.
2 Q. I would like to walk through a little of that
3 reasoning, if I might, to test this issue, and so the
4 Cassation Decision is behind Tab 19, which is in your
5 second binder, and we will be looking at Pages 73 and 74 in
6 both the English and Spanish versions, and in particular
7 the paragraph that begins "the Environmental Management Act
8 in effect at the time."
9 Can you let me know when you're there.
10 A. Seventy-three, last paragraph, yes.
11 Q. And let me read the passage that then I would like
12 to just break down and discuss with you. It says: "The
13 Environmental Management Act, in effect at the time the
14 lawsuit was filed, allows for individuals, legal entities
15 (individual interests), or to social groups (collective
16 interest) to be heard in proceedings of a civil,
17 administrative or criminal nature. The President of the
18 Superior Court where the environmental harm occurs will
19 have jurisdiction to hear these lawsuits for damages and
20 lawsuits for the degradation to health or the environment.
21 Lawsuits for damages resulting from environmental harm will
22 be handled by means of summary verbal proceedings. The
23 procedural rules established in the Civil Code have been
24 auxiliary to this proceeding, but their use does not mean
25 that there has been a joinder of actions, nor does their

10:23 1 use imply that these must be individual actions."
2 So, let's break that passage down.
3 Is it your understanding that if environmental
4 harm occurs, the Court will have jurisdiction to hear
5 lawsuits for two things: Degradation to health or
6 degradation to the environment? Is that fair?
7 A. That is correct. There is environmental harm, and
8 from that you have actual and contingent harm, that is the
9 concept under the law.
10 Q. Okay. I understand. And so, then these lawsuits
11 for environmental harm will be handled by means of summary
12 verbal proceedings; right?
13 A. Correct.
14 Q. And the Lago Agrio Case, as we discussed earlier,
15 is a case of environmental harm, and it proceeded under
16 Article 43 of the Environmental Management Act; correct?
17 A. Correct.
18 Q. And it was handled by means of a summary verbal
19 proceeding; right?
20 A. Correct.
21 Q. Now, in the passage I just read, the National
22 Court says that the Civil Code provisions--I assume like
23 Article 2214, Article 2236--have been auxiliary to the Lago
24 Agrio proceeding. You saw where it says that; right?
25 A. Yes, I do see it.

10:25 1 Q. But then the Court is saying that the fact that
2 those provisions are used in the Lago Agrio proceeding does
3 not mean that there has been a joinder of actions; right?
4 A. Correct. That's what the text says.
5 Q. And it also says that the fact that those
6 provisions have been used does not imply that these must be
7 individual actions; right?
8 A. That's what you can read here in the text.
9 Q. Okay. Now, we're going to go back to the
10 Cassation Decision, so I wouldn't put your binder away, but
11 I would like to look at a reference that you made in your
12 Second Report, behind Tab 2 in the first binder, and I'm
13 going to be looking at Footnote 78. So, if you could let
14 me know when you get there.
15 PRESIDENT VEEDER: Page 20?
16 MR. CORIELL: Page 20 of the English, yes. It's
17 the bottom footnote.
18 BY MR. CORIELL:
19 Q. You see what I'm referring to, Dr. Andrade? It's
20 Footnote 78, and you're quoting a paragraph from a
21 Declaration of Drs. Eguiguren and Albán.
22 Do you see that?
23 A. Yes.
24 Q. And what they say is that the popular action,
25 Article 2236, would proceed as an ordinary action while an

<p>Sheet 12</p> <p>2392</p> <p>10:27 1 action under Article 43 of the EMA would be heard through 2 summary oral proceedings. 3 Do you see where they say that? 4 A. Yes, I see it. This is a quote from his Report, 5 the Report by Dr. Eguiguren. 6 Q. So, don't you understand Drs. Eguiguren and Albán 7 to be saying that the use of Civil Code provisions like 8 Article 2236 does mean that there has been a joinder of 9 actions, does mean that these must be individual-rights 10 actions? 11 A. That was not my understanding in my Report. 12 Q. Okay. So, you disagree with me, and what you're 13 saying and your understanding of what the Cassation Court 14 is saying is that the mere fact that a Civil Code claim has 15 been made does not mean that it has to be heard in an 16 ordinary proceeding. That's your position? 17 A. Correct. Exactly, the rules under the Civil Code 18 are general rules. In terms of procedure, Article 43 19 exclusively applies to harm of an environmental origin or 20 nature. 21 Q. So, what you're saying and what you understand the 22 Cassation Court to be saying is that no matter the 23 particular cause of action that's used, the question is 24 whether the subject matter of the case relates to 25 environmental harm; is that your position?</p>	<p>2394</p> <p>10:31 1 A. My statement is that when the tort system is 2 applied because of environmental impact, the summary oral 3 proceedings must be used because that is what Article 43 of 4 the EMA establishes. 5 Q. Okay. So, if it's an article--if it's an Article 6 2236 case alleging environmental harm, then it is required 7 to be heard in a summary verbal proceeding; right? 8 A. That is my idea. If the risk factor is 9 environmental damage, in order to avoid contingent harm, 10 one must resort to the summary oral proceedings. 11 Q. And that's true for contingent harm, it's true for 12 actual existing harm, either way; right? 13 A. I agree, yes. 14 Q. Okay. And so I would like to move back to the 15 Cassation Decision, and now I'm going to be on Page 200. 16 THE INTERPRETER: Where is it, sir? This is the 17 Interpreter. 18 MR. CORIELL: Yes, I'm sorry. It's behind Tab 19, 19 Page 200. 20 BY MR. CORIELL: 21 Q. And the middle paragraph at the page, I'm starting 22 at the Number 2 where the Court says "we must reiterate." 23 So, if you can let me know when you're there, Dr. Andrade. 24 A. I found it, yes. 25 Q. And so, I think this is the Cassation Court</p>
<p>2393</p> <p>10:29 1 A. Would you please repeat the question? 2 THE INTERPRETER: Says the Witness. 3 BY MR. CORIELL: 4 Q. Sure. 5 What you're saying and what you understand the 6 Cassation Court to be saying is that regardless of what 7 particular cause of action is being alleged, the question 8 for what proceeding it's supposed to be heard in is whether 9 the subject matter of the case relates to environmental 10 harm or not? 11 A. I think that there is a translation issue. What 12 I'm really saying is that the National Court here is not 13 saying that because the Civil Code provisions are used in 14 this case, you can say that this is an ordinary case under 15 the Civil Code provisions because this refers to the 16 environmental problem, the environmental harm, and 17 environmental issues are decided under Article 43 in terms 18 of procedure, and this would be my understanding, and this 19 is what it is said when they--when he refers to individual 20 actions or individual-right actions. 21 Q. Okay. So, I think I understand what you're 22 saying: Any action that substantively deals with 23 environmental harm or environmental impact is heard in a 24 single summary verbal proceeding, no matter what cause of 25 action is relied upon; is that a fair statement?</p>	<p>2395</p> <p>10:33 1 describing what you just told me. It says: "We must 2 reiterate that the application of the Civil Code and the 3 Environmental Management Act is not unusual, since, as said 4 above, Article 43 of the Act regulates the procedure in 5 civil actions provided to a collective for environmental 6 harm." Right? So, you're saying and you understand the 7 Court to be saying that Article 43 takes every type of case 8 for environmental harm and puts it in a summary verbal 9 proceeding; right? 10 A. That is correct, yes. 11 Q. And so, with respect to the allegation of improper 12 joinder, you disagree with Chevron. You're telling us that 13 the mere fact that Article 43 deals with the collective 14 right to reparation for environmental harm means that Civil 15 Code actions based on the same collective right may be 16 heard in the same action; is that a fair statement of your 17 position? 18 A. The joinder of claims or actions takes place in 19 this case in the same kind of proceeding which is the 20 summary oral proceeding. 21 Now, that note regarding collective rights 22 concerns me a little bit, but let's say that we agree as to 23 procedure. That is my criteria. 24 Q. Okay. Maybe there is an easier way for me to 25 phrase it without using the concerning term "collective</p>

<p>Sheet 13</p> <p>2396</p> <p>10:35 1 rights."</p> <p>2 Are you saying and are you understanding the</p> <p>3 National Court to be saying that the substantive right at</p> <p>4 issue in Lago Agrio is the right to a clean environment and</p> <p>5 that Article 43 simply provides the procedure for</p> <p>6 vindicating that right? Is that a fair statement?</p> <p>7 A. Not really, because it is not only the right to</p> <p>8 live in a healthy environment, what is dealt with in the</p> <p>9 Lago Agrio Case, but it has to do with all of the rights of</p> <p>10 each one of the inhabitants of the area insomuch as they</p> <p>11 have been affected by an event such as environmental</p> <p>12 contamination.</p> <p>13 Q. Okay. Well, you began your answer by saying "it</p> <p>14 is not only the right to live in a healthy environment,"</p> <p>15 so, just to clear that up, you would agree that it is in</p> <p>16 part the right to live in a healthy environment that is</p> <p>17 what is substantively being vindicated in the Lago Agrio</p> <p>18 Case; right?</p> <p>19 A. It is one of the rights that is being vindicated,</p> <p>20 yes.</p> <p>21 Q. Okay. And let's look to how the National Court</p> <p>22 explains it in a little more detail, and this is the</p> <p>23 beginning of the next paragraph, "a plaintiff's standing."</p> <p>24 Do you see that?</p> <p>25 A. Yes, I do see that.</p>	<p>2398</p> <p>10:38 1 Q. And it says: "When a case involves damage to the</p> <p>2 environment, it is always a collective that will be harmed,</p> <p>3 so the Environmental Management Act itself contemplates</p> <p>4 group actions in order to enforce the Claims of a given</p> <p>5 group and achieve the corresponding remedies and to</p> <p>6 exercise the fundamental right to live in a healthy</p> <p>7 environment."</p> <p>8 So, in the first sentence I read, you understand</p> <p>9 the Court to be saying, when a case involves damage to the</p> <p>10 environment, it's held by a collective, this right. It's</p> <p>11 held by a collective; correct?</p> <p>12 A. What it's actually saying here is that when there</p> <p>13 is harm to the environment, generally what happens is that</p> <p>14 there is a plurality of individuals, the collective, and</p> <p>15 that collective is impaired, ultimately. That is what it</p> <p>16 is saying. They're not talking about right-holding.</p> <p>17 They're talking about the ordinary effect of the impact to</p> <p>18 the environment, and this is effectively what happens.</p> <p>19 Usually a collective is affected. It is not usually one</p> <p>20 person that is affected.</p> <p>21 Q. Well, they're talking--well, they do talk about</p> <p>22 right-holding, don't they? Because they say it's a</p> <p>23 collective that will be harmed, the Act contemplates group</p> <p>24 action to enforce the Claims of the group and achieve and</p> <p>25 exercise the fundamental right to live in a healthy</p>
<p>2397</p> <p>10:36 1 Q. And it says: "A plaintiff's standing, as we have</p> <p>2 said, corresponds to diffuse interests must be considered</p> <p>3 as general interests, meaning that they are interests held</p> <p>4 by all members of a collective or a large part thereof, the</p> <p>5 object of which consists of goods of general or collective</p> <p>6 importance."</p> <p>7 And then it says at the end: "The procedure in</p> <p>8 this case is dictated by the Environmental Management Act,</p> <p>9 complementing the Code of Civil Procedure."</p> <p>10 So, do you understand the Court here to be saying</p> <p>11 that the interest being vindicated substantively in the</p> <p>12 Lago Agrio Case is a, to use its words, "general interest,</p> <p>13 a diffuse interest" in a clean environment, at least in</p> <p>14 part?</p> <p>15 A. Yes. This is dealing with procedural legal</p> <p>16 standing, and it is indicating the origin of that legal</p> <p>17 standing in connection with the environmental problems.</p> <p>18 Q. And if we turn the page to Page 202, the paragraph</p> <p>19 at middle of the page that begins "As noted"--and just for</p> <p>20 reference you will see this is Section 9.9 of the Cassation</p> <p>21 Decision, "actions (the right to sue) existing before 1990.</p> <p>22 Individual suits for personal injury or economic</p> <p>23 harm."--and then you see that paragraph beginning "As</p> <p>24 noted"?</p> <p>25 A. I do see it, yes.</p>	<p>2399</p> <p>10:40 1 environment. So, you are achieving and exercising the</p> <p>2 fundamental right to live in a healthy environment through</p> <p>3 the collective because the collective is what's harmed with</p> <p>4 environmental harm. Is that what you understand the Court</p> <p>5 to be saying?</p> <p>6 A. I do not understand that out of the paragraph that</p> <p>7 you're citing. I am sorry to disagree, Mr. Coriell.</p> <p>8 Q. Well, let's break it down, then.</p> <p>9 Do you agree with the Court that, when a case</p> <p>10 involves damage to the environment, it is always a</p> <p>11 collective that will be harmed? Do you agree with that</p> <p>12 statement by the Cassation Court?</p> <p>13 A. I agree that when the environment is harmed, there</p> <p>14 is a group of individuals, a collective, that will be</p> <p>15 affected. That is regular, I think.</p> <p>16 Q. I'm not--we may be saying the same thing, but just</p> <p>17 to be clear for the record, do you agree with the Court</p> <p>18 that, when there is environmental harm, it is always a</p> <p>19 collective that will be harmed?</p> <p>20 A. Yes. I think that's natural.</p> <p>21 Q. And do you agree with the Court that the</p> <p>22 Environmental Management Act contemplates group</p> <p>23 actions--let's stop there. Do you agree with the Court</p> <p>24 that the Environmental Management Act contemplates group</p> <p>25 actions?</p>

<p>Sheet 14</p> <p>2400</p> <p>10:42 1 A. Yes. As I indicated, you have a group there, a 2 determinative group of people that are directly impaired, 3 and they're held together by a common interest. That is 4 the first part of Section 43, yes. 5 Q. Do you agree with the Court that the purpose of 6 these group actions is to enforce the Claims of a given 7 group? 8 A. Yes, of course. 9 Q. And do you agree with the Court that another 10 purpose of these group actions is to achieve the 11 corresponding remedies for that group? 12 A. Of course, the corresponding remedies as a 13 function of the legal interest that has been impaired, the 14 legally protected right that has been impaired. 15 Q. And do you agree with the Court that a third 16 purpose of these group actions is to exercise the 17 fundamental right to live in a healthy environment? 18 A. Yes, indeed. As an individual right to live in an 19 environment that is healthy, that is ecologically balanced 20 and free of contamination, yes. 21 Q. And am I right that, when we speak of the 22 fundamental right to live in a healthy environment, that is 23 the right that used to be contained at Article 19.2 of the 24 Ecuadorian Constitution? 25 A. 19.2, the right to live in a healthy environment,</p>	<p>2402</p> <p>10:45 1 for vindicating those rights; right? 2 A. Article 43, yes. Article 43. What the EMA does 3 is to establish or arrange the procedural matters for the 4 exercise of rights; in this case, rights that have to do 5 with vindication via the tort-liability system that is 6 general in nature. 7 Q. And just to close this point on improper joinder 8 since we have been walking through what the Cassation Court 9 said about it, if we go to the next paragraph on Page 202 10 of the Cassation Decision, the one that begins with the 11 word "further," are you with me? 12 A. Yes, I'm looking at the paragraph right now. 13 Q. The National Court of Justice concludes its 14 analysis saying "it is mistaken to state that Article 2214 15 of the Civil Code only contemplates individual actions, 16 considering that Title XXXIII, Intentional and 17 Unintentional Torts, provides for a popular-action lawsuit 18 in all cases of contingent damages in which indeterminate 19 persons are threatened by a party's imprudence or 20 negligence." 21 So, in other words, the Civil Code doesn't just 22 contemplate individual actions, it contemplates collective 23 actions for environmental harm like the Lago Agrio Case; 24 correct? 25 A. We have spoken about this. It does not only refer</p>
<p>2401</p> <p>10:44 1 ecologically balanced and free of contamination. That is 2 what the 1998 Constitution put forth. 3 Q. And your understanding--because we have been 4 looking at the portion of the Cassation Decision that talks 5 about the joinder of Civil Code claims and Chevron's 6 objection to that--your understanding that when the 7 Court--is that when the Court sets out this reasoning that 8 you and I have just walked through, they're saying that 9 this--and I know you said that there are other rights being 10 vindicated as well--so, they're saying, in part, that this 11 fundamental right to live in a clean environment is simply 12 being vindicated procedurally by the Environmental 13 Management Act; right? 14 A. Yes, the right to live in a healthy environment is 15 a large umbrella that includes a series of 16 rights--secondary-rank rights, if you will--that have to do 17 with health, with the control of pollution, yes. If you 18 are vindicating, let's say from a procedural standpoint, a 19 number of rights and legally protected interests are being 20 vindicated, rights and interests that are spread out 21 throughout the legal system. Yes, that is the mechanism 22 and nothing more. 23 Q. And your point is that the substance of the rights 24 does not come from the Environmental Management Act. The 25 Environmental Management Act is merely a procedural vehicle</p>	<p>2403</p> <p>10:47 1 to tort liability in connection with damages to individuals 2 considered independently. It also takes into account cases 3 where a number of individuals are impaired, and we can 4 think about this from this idea of group or collective 5 actions. I agree with what the Court says. It's very 6 clear. 7 Q. Okay. But just so that we're clear on the record, 8 the Court is referring to indeterminate persons--you see 9 that in this passage that I just read you--and so your 10 understanding of what it's saying is that the Civil Code 11 does not just contemplate individual actions, it also 12 contemplates collective actions for environmental harm like 13 the Lago Agrio Case; is that a fair statement? 14 A. Yes, that is correct. 15 Q. Okay. 16 MR. CORIELL: Mr. President, this may be a good 17 time for a break, at which point I think I can be very 18 short when I get back. 19 PRESIDENT VEEDER: Let's take a break now of 15 20 minutes. We will come back at 10 past 11:00. 21 Again, as always, please don't discuss the case or 22 your testimony away from the Tribunal. Thank you. 23 (Brief recess.) 24 PRESIDENT VEEDER: Let's resume. 25 Would you please give us some indication as to how</p>

<p>Sheet 15</p> <p>2404</p> <p>11:06 1 long you might be. 2 MR. CORIELL: I think it could be 20 to 30 3 minutes. 4 PRESIDENT VEEDER: Take your time. We've got 5 plenty of time. 6 BY MR. CORIELL: 7 Q. Dr. Andrade, I'd like to look at Article 397 of 8 the current 2008 Constitution. That's the Constitution 9 that's currently in force in Ecuador; correct? 10 A. Yes. 11 Q. And it's the Constitution that was in force when 12 the Lago Agrio Judgment was issued in February 2011; right? 13 A. That is correct. 14 Q. And the Lago Agrio Judgment was required to apply 15 and did apply the principles set out in the 2008 16 Constitution; correct? 17 A. I assume that they must have considered the 18 Constitution of 2008 in connection with principles. I 19 assume so. 20 Q. Okay. And I said I'd go to Article 397. It's at 21 Tab 13, which is in Volume 1 binder. It's Exhibit C-288. 22 And I think behind Tab 13 will be at Page 8 in the English, 23 and Page 178 in the Spanish. 24 A. I'm sorry, what tab? 25 Q. The English is not numbered, but it's Page 8.</p>	<p>2406</p> <p>11:10 1 is that, if the State finds that the natural environment 2 was impaired, it's not going to wait for long proceedings 3 before adopting a measure that avoids the situation. When 4 the State adopts the Measure, obviously, it has to recover 5 the costs incurred by going against the individual that 6 caused the harm. This is the regime established on 7 Article 397 of the Constitution in force starting in 2008. 8 And by the way, this is not a principle. It's a rule that 9 has been incorporated into the Constitution. 10 Q. So, I want to do one more hypothetical with you, 11 Dr. Andrade. 12 Assume with me that, in 2009, which was two years 13 before the Lago Agrio Judgment, the Ecuadorian State became 14 aware of environmental harm in the former Concession Area; 15 okay? 16 A. Yes, okay. 17 Q. Under Article 397 of the Constitution then in 18 force, Ecuador had the obligation to act immediately to 19 ensure the health and restoration of the ecosystems in the 20 former Concession Area; right? 21 A. Pursuant to this rule in the Constitution, yes, 22 that is the duty that the State has. 23 Q. And then, after it did that, it could seek 24 restitution from the Operator of the activity that produced 25 the harm; right?</p>
<p>2405</p> <p>11:08 1 It's behind the backside of the fourth physical page, and 2 it's 178 in the Spanish. 3 Will you let me know when you read Article 397, 4 Dr. Andrade? 5 A. I found it, yes. 6 Q. And this article of the Constitution says that, in 7 the event of environmental damage, the State shall act 8 immediately and subsidiarily to ensure the health and 9 restoration of the ecosystems; right? 10 A. Yes, that is what the provision says. 11 Q. And so what this is saying is that the State has 12 to act immediately in a case where it sees environmental 13 harm; correct? 14 A. It is a general rule, yes, that is the case. 15 Q. And then it goes on to say that, in addition to 16 whatever sanction there is for environmental harm, the 17 State shall seek restitution from the Operator of the 18 activity that produced the harm; right? 19 A. That is correct, yes. That is what the provision 20 says. 21 Q. So, what that does is it creates a right, the 22 right to receive compensation for whatever the State had to 23 invest in order to protect the natural environment. That's 24 what the Constitution says; right? 25 A. Yes. Starting in 2008, the purpose of this system</p>	<p>2407</p> <p>11:12 1 A. Theoretically it could, yes. 2 Q. If in this hypothetical it believed that TexPet 3 produced the harm, it could seek restitution from TexPet 4 for whatever it had to invest in order to protect the 5 natural environment. That's what the Constitution says; 6 right? 7 A. Yes. The Constitution, when it makes reference to 8 issues that are environmental in nature and the damages 9 caused to the environment, in the abstract, well, the State 10 could do that, and it could go after any operator that 11 caused the damage and seek restitution. In this case, 12 we're talking about rights and duties that are different. 13 The State has nothing to do with this matter, though. 14 Q. I understand, but, Dr. Andrade, you are aware 15 that, if Ecuador sought restitution from TexPet for 16 environmental harm in the former Concession Area, it would 17 be barred from doing so by the 1995 Settlement Agreement 18 and the 1998 Final Release, wouldn't it? 19 A. I didn't understand the question. Excuse me. 20 What couldn't the State do? 21 Q. If Ecuador sought restitution from TexPet for 22 environmental harm in the former Concession Area, it would 23 be barred from doing so by the 1995 Settlement Agreement 24 and the 1998 Final Release, wouldn't it? 25 A. I don't know the details of that Agreement.</p>

<p>Sheet 16</p> <p>2408</p> <p>11:14 1 Q. You've read the Cassation Decision in this case?</p> <p>2 A. I did, yes.</p> <p>3 Q. And you're aware that the Cassation Decision spent</p> <p>4 a lot of time discussing this Agreement?</p> <p>5 A. From the viewpoint of the system of res judicata</p> <p>6 and the system related to settlement, the details of the</p> <p>7 commitments made by the State institutions under that</p> <p>8 Agreement, well, those details, I don't know them</p> <p>9 specifically, but if you're saying that, I accept your</p> <p>10 comment.</p> <p>11 Q. And if we could just put up on the screen,</p> <p>12 Mr. Johnson, the Track 1 Counter-Memorial from Ecuador in</p> <p>13 this case, it was from October 2012, and I'm looking at</p> <p>14 Paragraph 133. It's not in your binder, but I'll read it</p> <p>15 to you once we get it up on the screen.</p> <p>16 THE INTERPRETER: Mr. Coriell, read slowly,</p> <p>17 please.</p> <p>18 BY MR. CORIELL:</p> <p>19 Q. It's just the very last--second-to-last sentence:</p> <p>20 "The Republic and Petroecuador agreed not to bring suit</p> <p>21 against the Releasees."</p> <p>22 Assuming that's true, Dr. Andrade, then Ecuador</p> <p>23 could not seek restitution from TexPet for environmental</p> <p>24 harm in the former Concession Area under Article 397 of the</p> <p>25 Constitution; isn't that correct?</p>	<p>2410</p> <p>11:27 1 allowed in oral summary proceedings?</p> <p>2 A. No, it's not.</p> <p>3 Q. And as a general rule, is a joinder of third</p> <p>4 parties allowed in ordinary proceedings?</p> <p>5 A. No.</p> <p>6 Q. Are there exceptions to this rule?</p> <p>7 A. Specific rules provide for when a third party may</p> <p>8 be called to appear in a proceeding. There are very few</p> <p>9 exceptions.</p> <p>10 Q. And do I understand correctly that your position</p> <p>11 is that none of those exceptions apply to this case?</p> <p>12 A. That is correct. None of those provisions under</p> <p>13 the law applied to this case.</p> <p>14 Q. So, at the Lago Agrio Litigation, if that</p> <p>15 litigation had been tried in ordinary proceedings, and the</p> <p>16 assumption, if it was an ordinary proceeding as opposed to</p> <p>17 an oral summary proceeding, would any other Parties have</p> <p>18 been able to join third parties to the litigation?</p> <p>19 A. Not at all.</p> <p>20 Q. Would it have been possible for Chevron to log a</p> <p>21 claim for restitution against Petroecuador as part of the</p> <p>22 same proceedings?</p> <p>23 A. No, not at all. It is not possible. It would be</p> <p>24 a violation of due process.</p> <p>25 Q. Can you elaborate as to why it would be a</p>
<p>2409</p> <p>11:15 1 A. That is what the text says.</p> <p>2 MR. CORIELL: I have no further questions,</p> <p>3 Mr. President.</p> <p>4 PRESIDENT VEEDER: Thank you very much.</p> <p>5 There will now be questions from the Respondent.</p> <p>6 Do you want a short break, or are you ready to</p> <p>7 proceed?</p> <p>8 MR. LEONARD: If I could have a five-minute break.</p> <p>9 PRESIDENT VEEDER: Let's take a five-minute break.</p> <p>10 MR. LEONARD: Thank you.</p> <p>11 (Brief recess.)</p> <p>12 PRESIDENT VEEDER: Let's resume.</p> <p>13 MR. LEONARD: Thank you, Mr. President.</p> <p>14 REDIRECT EXAMINATION</p> <p>15 BY MR. LEONARD:</p> <p>16 Q. Dr. Andrade, I'm going to ask you a few questions</p> <p>17 about a variety of topics, so I'm going to start with the</p> <p>18 topics that we have fresh in our minds.</p> <p>19 You were asked questions about the notion of the</p> <p>20 joinder of third parties in Ecuador. Do you recall that</p> <p>21 line of questions?</p> <p>22 A. Yes, I do.</p> <p>23 Q. So, I would like to make some points of</p> <p>24 clarifications so that the record is clear.</p> <p>25 As a general rule, is a joinder of third parties</p>	<p>2411</p> <p>11:29 1 violation of due process?</p> <p>2 A. Because under Ecuadorian system, Procedural Rules</p> <p>3 are public; and, as I mentioned in my Report, the Supreme</p> <p>4 Court of Justice has said that procedural rules are</p> <p>5 obligatory for the Parties. Well, under the ordinary</p> <p>6 proceeding, there are also specific rules. And it is the</p> <p>7 Plaintiff the one that will determine who will be--who is</p> <p>8 the Party that is being claimed, and the Defendant is the</p> <p>9 one that answers through the complaint; and, in this way,</p> <p>10 the points at contention in the litigation are established.</p> <p>11 There is an evidentiary stage that is opened up, and then</p> <p>12 the Judge has to decide based exclusively on the subject</p> <p>13 matter of the litigation as established by the Parties.</p> <p>14 And, once in the enforcement stage, whenever there</p> <p>15 are third parties affected, those affected third parties,</p> <p>16 in full exercise of their rights, they can request the</p> <p>17 judge that they be heard, for example, through what I had</p> <p>18 talked about, a third party action by legitimate owner to</p> <p>19 exclude assets from enforcement proceedings. Any variation</p> <p>20 in this procedure should first be rejected by the Judge;</p> <p>21 and if, in fact, something like this occurred, then this</p> <p>22 would be a violation of procedure; and, in this case, that</p> <p>23 could lead to the nullity of the proceeding.</p> <p>24 Q. Just so we're clear, whose prerogative is it to</p> <p>25 determine who is going to be the Defendant in any given</p>

<p>Sheet 17</p> <p>2412</p> <p>11:31 1 proceeding?</p> <p>2 A. The Plaintiff is the one that is actually bringing</p> <p>3 forward the case.</p> <p>4 The Defendant, if it is not the right party in</p> <p>5 this substantive legal relationship, the goal of the legal</p> <p>6 proceeding, what it will do is to present its defense and</p> <p>7 say to the Judge that that Defendant is the wrong party.</p> <p>8 That is what will happen in the proceeding.</p> <p>9 Q. Thank you.</p> <p>10 You were asked questions by Mr. Coriell about</p> <p>11 joinder of actions. Can you very briefly describe the</p> <p>12 concept, the notion of joinder of actions and when could</p> <p>13 that take place, in what circumstances?</p> <p>14 A. The rule is that, in general, actions may be</p> <p>15 joined as part of the same claim, what is called the</p> <p>16 joinder of actions, except--and this is under the Civil</p> <p>17 Code--they are not compatible or they are contradictory or,</p> <p>18 in general, they require different proceedings. And, in</p> <p>19 this case, claims that originate on harm to the</p> <p>20 environment, regardless of the protected legal interest,</p> <p>21 all of them are subject to the summary oral proceedings.</p> <p>22 So, as part of the same claim, various claims that</p> <p>23 originate on environmental harm may be joined according to</p> <p>24 the article under the Environmental Management Law,</p> <p>25 Article 43.</p>	<p>2414</p> <p>11:35 1 of the damages as a result of an environmental claim. That</p> <p>2 is what Article 43 does.</p> <p>3 Q. Let me take you back to one of the hypotheticals</p> <p>4 or examples that you used during your presentation</p> <p>5 yesterday. You used the example of a forest. You also</p> <p>6 used the example that is, according to your presentation,</p> <p>7 typically used in law schools to teach the concept of</p> <p>8 popular action to students. And you described the example</p> <p>9 of a plant pot at the edge of a building, and there is a</p> <p>10 possibility that that--for different circumstances, that</p> <p>11 plant pot might fall on the street. And you explained that</p> <p>12 that gives rise to the popular action under Article 2236.</p> <p>13 So, if in 1861 I were one of the people who every</p> <p>14 day walked past that building, would I be entitled to file</p> <p>15 a claim under 2236 to remove that plant pot?</p> <p>16 MR. CORIELL: Mr. President--</p> <p>17 PRESIDENT VEEDER: One moment.</p> <p>18 MR. CORIELL: I'm not sure, and maybe there could</p> <p>19 just be some clarification on this. I'm not sure exactly</p> <p>20 what line of cross this relates to. It seems to be going</p> <p>21 back to a hypothetical that Dr. Andrade gave in his direct</p> <p>22 presentation, so if you can clarify that this arises from</p> <p>23 the line of cross, I'm fine with it, but otherwise I would</p> <p>24 object.</p> <p>25 MR. LEONARD: I intend to get there in a minute,</p>
<p>2413</p> <p>11:33 1 Q. And you recall that it is Claimants' position that</p> <p>2 the Lago Agrio Court improperly allowed the joinder of</p> <p>3 claims under Civil Code tort provisions on the one hand and</p> <p>4 under Article 43 of the EMA, on the other hand? Are you</p> <p>5 aware of that? Do you recall that that's the Claimants'</p> <p>6 position?</p> <p>7 A. Yes, I do.</p> <p>8 Q. And you did talk about Article 43 at some length</p> <p>9 yesterday during your presentation. Where is Article 43</p> <p>10 found in the text of the EMA?</p> <p>11 A. It is under the heading of civil actions.</p> <p>12 Q. Civil actions. Are those tort actions?</p> <p>13 A. That is correct. Those are all the actions that</p> <p>14 have to do with tort liability under the Code, yes.</p> <p>15 Q. And I understand that--I know that you addressed</p> <p>16 this yesterday, but I just want to clarify a few points.</p> <p>17 Is this civil action a new action--civil action</p> <p>18 created by Article--or set forth by Article 43, is that a</p> <p>19 new kind of civil action?</p> <p>20 A. No. Civil actions in connection with tort</p> <p>21 liability have been applied starting in 1861. This is the</p> <p>22 regime that is still in force in Ecuador.</p> <p>23 Article 43 does not refer to any of the</p> <p>24 substantive elements for tort liability. It just fixes</p> <p>25 procedural problems so as to address the particular aspects</p>	<p>2415</p> <p>11:37 1 so it may be longer than it should, but it relates directly</p> <p>2 to the line of questions by Mr. Coriell about the nature of</p> <p>3 the Lago Agrio Litigation.</p> <p>4 PRESIDENT VEEDER: Stop there. We'll get it go</p> <p>5 and then we'll see where it comes to, so please go on.</p> <p>6 BY MR. LEONARD:</p> <p>7 Q. So, let's cut to the chase. What are the</p> <p>8 evidentiary requirements of my claim under that popular</p> <p>9 action, 2236?</p> <p>10 A. There is a risk factor. Correct? I need to prove</p> <p>11 that there is a risk factor, and I also need to determine</p> <p>12 how this risk factor may have an impact on a protected</p> <p>13 legal right, and that is what I need to do. In the case of</p> <p>14 Lago Agrio, I should prove that there is environmental harm</p> <p>15 or impact, and that that harm may also impair the rights of</p> <p>16 the residents where that contamination has taken place;</p> <p>17 and, in that way, I would be meeting the requirements under</p> <p>18 2236 for activities that are abnormally dangerous.</p> <p>19 Q. All right. Assume that the Lago Agrio Complaint</p> <p>20 was filed in 1950. What would have been the proper</p> <p>21 procedure to hear that claim?</p> <p>22 A. From the procedural point of view, there would be</p> <p>23 a need for an ordinary proceeding. Article 2236 would be</p> <p>24 invoked, and there would be a need to prove the risk</p> <p>25 factor--the same elements in practice going back to 1950, I</p>

<p>Sheet 18</p> <p style="text-align: right;">2416</p> <p>11:39 1 think you just said. 2 Q. That is correct. 3 So, what about Articles 2214 and 2229? I 4 understand--do you understand that those are also referred 5 to in the Complaint and in the Judgment that's the basis 6 for the Complaint and the relief? So, let's just assume a 7 hypothetical identical to the Delfina Torres case in 1950, 8 where Article 2236 is out of the picture, and it's only 9 about Articles 2214 and 2229. 10 What would have been the proper procedure for a 11 claim under those provisions? 12 A. According to this regime, this is a claim due to 13 actual harm for activities that are abnormally dangerous 14 and the action would have been filed as an ordinary 15 proceeding. 16 Q. So, in your hypothetical of yesterday, you used 17 the Delfina case to choose the number of families or 18 individuals that live in that forest in your hypothetical. 19 Can you explain again how environmental harm 20 affects those residents? 21 A. Given an instance of contamination, contamination 22 as such leads to actual damage in the case of a protected 23 legal right; in this case, it is nature in itself or it 24 could be a more abstract concept, the right all of the 25 inhabitants of the country have, all of the inhabitants of</p>	<p style="text-align: right;">2418</p> <p>11:43 1 as to have on the one hand a reparation of the actual 2 damage and, on the other hand, an elimination of the risk 3 factors that may also have an impact on other legally 4 protected rights. This is the concept. The only thing 5 that was different was the procedure, and also the way to 6 avoid a dissemination of claims, and here under Article 43 7 that's what we have. We are just joining these 8 proceedings. 9 Q. So let's take us back to the issue of the joinder 10 of claims. So, in your opinion, any claim under Civil Code 11 tort provisions and the source--in circumstances where the 12 source of the tort, of the harm, is environmental 13 contamination must be heard through oral summary 14 proceedings by amendment of Article 43 of the EMA? 15 A. That is correct, yes. 16 Q. That would not be an improper joinder of claims 17 under the Civil Code and claims under Article 43? 18 A. Not at all because there is a specific proceeding 19 for all of the actions that originate from environmental 20 impact. 21 Just as an example of how I could do things 22 improperly, let's think that there is an event that entails 23 environmental contamination, and I am bringing forward an 24 action to have that contamination or pollution removed 25 because I see that my neighbors are becoming sick and I</p>
<p style="text-align: right;">2417</p> <p>11:41 1 the world to have no impairment of our rights. That is on 2 one hand. 3 But, on the other hand, contamination as such may 4 directly impact rights for the people that live there. 5 That is the human group that is directly affected or 6 impaired. And that impairment also entails, for example, 7 that people may die or become sick, and there are some 8 legal interests that are also protected because, finally, 9 if I drink from the water in that river, I will become 10 sick. I will die. Finally, they will bury me under the 11 ground. There will be a name, a date of birth, and a date 12 of death. 13 There are some different additional interests. 14 So, contamination as such is an actual damage. It is an 15 impairment of a protected legal right, and that protected 16 legal right can be seen from a universal perspective, but 17 it can also be seen from the perspective of direct 18 impairment of each of the individuals in that place. 19 So, as I mentioned before, each of those 20 individuals may--even before Article 43 and even now, may 21 bring forward an individual action so as to obtain the 22 restatement of their rights that also have an impact on 23 them as individuals. But also with Article 43, we can 24 bring forward the same action to protect each of the legal 25 interests for each of the members of this affected group so</p>	<p style="text-align: right;">2419</p> <p>11:45 1 want to avoid sickness for my children. I'm going to 2 assume that. And I go to the place, and let's say that 3 there is a security guard, and that security guard has a 4 bad reaction, I get hit, and some harm is caused. I cannot 5 invoke Article 43 because there has been environmental 6 contamination and also claim under the same action the harm 7 caused to me by the security guard when he hit me because 8 of that event. 9 So, this is an improper joinder of claims because 10 the damage that was caused to me did not originate from 11 environmental harm; correct? So, this is an improper 12 joinder of actions. All of the actions that come from 13 environmental harm that followed the regime, the tort 14 regime, should be in this case--should follow in this case 15 the summary oral proceedings. 16 Q. A small portion of your response may have been 17 lost in translation, so what--if I understand correctly, 18 what you're explaining to me is that I would not be able to 19 join a tort claim for the harm that I suffered as a result 20 of the assault that I suffered by the guard, who would not 21 be able to join that claim to claims arising from the 22 environmental contamination? 23 A. That is correct, and that is because under 24 Article 43, all of the actions need to have a direct link 25 to environmental pollution. The assault by the guard, even</p>

<p>Sheet 19</p> <p>2420</p> <p>11:47 1 within the context of this environmental harm, it is not a 2 damage that results from the environment. 3 Q. I understand, thank you. 4 Now, I would like you to take you to Tab 19 of the 5 second binder that Claimants' counsel provided to you this 6 morning. Page 73, please, the last sentence. 7 A. Is it in Spanish? 8 Q. The English version. I'm not sure what the page 9 number in the Spanish version is. Also 73. 10 I would like you to pay attention to the Spanish 11 version, though, so this particular sentence is found at 12 the second-to-last paragraph, halfway through that 13 paragraph. And it begins-- 14 A. I see the page, and I am also looking at the 15 second-to-last paragraph. 16 Q. Perfect. 17 Mr. Coriell asked you a question this morning 18 about the language that begins with, "the norms prescribed 19 in the Civil Code, established in the Civil Code." 20 Do you see that language? 21 A. Yes, towards the end. 22 Q. Could you please read that language for the record 23 slowly so the interpreter can correctly interpret that 24 language. 25 THE INTERPRETER: The procedural rules</p>	<p>2422</p> <p>11:51 1 make a note. It's an objection to the translation of the 2 document that we have at Tab 19. This is at Page 73, the 3 last paragraph in the English version, and the language 4 starting with, "the procedural rules established in the 5 Civil Code." This is incorrect aspect to this translation. 6 These are not procedural rules; these are substantive 7 rules. 8 MR. CORIELL: We disagree with that objection on 9 the procedural and substantive grounds, which I'm happy to 10 explain. 11 PRESIDENT VEEDER: Let's take it slowly. I think 12 we can't take it further with this Witness, but after this 13 Witness is completed, please talk to each other. We have 14 enough Spanish speaker, because this more a question 15 Spanish legal translation into English legal translation, 16 but I think we need to get beyond the interpreter. Let's 17 see how it goes, if you can sort this out. If you can't, 18 we'll deal with it later. 19 MR. LEONARD: Let me ask just one follow-up 20 question. 21 BY MR. LEONARD: 22 Q. Dr. Andrade, are you aware of Procedural Rules in 23 the Civil Code? 24 A. There are some. None of those have been applied 25 or discussed in this case.</p>
<p>2421</p> <p>11:50 1 establish--I was on the wrong channel, sorry. 2 PRESIDENT VEEDER: Let's start again. 3 Do you want to put your question again? Because 4 we've got to get this right. 5 MR. LEONARD: Yes, we will. 6 The interpreter, please, this language, if you can 7 interpret what the Expert is reading and not what appears 8 on this document. 9 BY MR. LEONARD: 10 Q. So, if you could please start again reading this 11 language that begins with, "The norms established in the 12 Civil Code." 13 A. Very well: "The rules established by Civil Code 14 have been ancillary to this proceeding, without this 15 meaning that there is a joinder of actions or that by 16 invoking them, they refer to individual claims. The claim 17 is clear in connection with this process. 18 This is a quote. 19 And on the other hand, since there are no special 20 provisions regarding the environmental Civil Liability, 21 there is a need to resort to the Civil Code and also to the 22 oldest and best known principle such as the ones to repair 23 damage caused by negligence." 24 Q. Thank you. 25 MR. LEONARD: Mr. President, I would just like to</p>	<p>2423</p> <p>11:53 1 Q. And to be clear, which are--which ones are the 2 Civil Code rules that have been applied in this case? 3 Which are the Civil Code rules that have been applied in 4 this case? 5 A. The general rule that establishes risk liability 6 under Article 2214; the specific rule on inherently 7 dangerous activities, Article 2229; the specific rule on 8 contingent harm, 2236 mainly; and there is an incredible 9 number of rules on joint liability, joint and several 10 liability, but these are basically the ones I mentioned. 11 Q. Are any of those rules of a procedural nature? 12 A. Not in particular. There may be some procedural 13 content when you're referring to a popular action under 14 2236, but this is the rule that governs contingent harm, 15 and that goes back to a more general concept that has to do 16 with popular action. And from the procedural point of 17 view, we need to understand the meaning of popular action, 18 and that's the reason why yesterday I referred to that 19 concept. 20 Q. Thank you. 21 Let me change subjects, and let me take you back 22 to the exchange that Mr. Coriell and you had yesterday 23 afternoon concerning your First Report. That's RE-9, and I 24 believe that's at Tab 1 of either of the binders, either 25 the one that we provided to you or the one that Claimants</p>

<p>Sheet 20</p> <p style="text-align: right;">2424</p> <p>11:55 1 provided to you. 2 A. First Report? 3 Q. Let me know when you're there. 4 A. Where in the Report? 5 Q. Well, I'm going to take you to Page 4 of the 6 Spanish version. 7 MR. LEONARD: Mr. President, this is on Page 3 and 8 Page 4 of the English version. 9 THE WITNESS: I'm there at Page 4. 10 BY MR. LEONARD: 11 Q. Thank you. 12 So, I'm looking at the second paragraph of Section 13 E. There, you referred to voluminous evidence, documentary 14 evidence, that Chevron submitted to the trial court in 15 support of its allegations of ghostwriting of the Judgment, 16 and also allegations of fraud concerning the Cabrera Report 17 and the Calmbacher Report. 18 Do you see that? 19 A. Yes. 20 Q. In the next sentence you explained that the 21 evidence that Chevron submitted is inadmissible evidence 22 under applicable Rules of Procedure. 23 A. That is correct. 24 Q. How is that evidence inadmissible under applicable 25 Rules of Procedure?</p>	<p style="text-align: right;">2426</p> <p>11:59 1 finds that the evidence has probative value and, in fact, 2 shows the alleged fraud affecting the Cabrera and the 3 Calmbacher Reports. What remedy would Judge Zambrano have 4 to apply in respect of that evidence in respect of those 5 Reports? 6 A. Simply, he has to eliminate that evidence, and he 7 cannot resort to that for the Judgment to refer to the 8 facts cited in that evidence. This is what he has to do. 9 This is evidence that cannot be taken into account by the 10 Judge and cannot be the grounds for a judgment for the 11 facts that are intended to be proved through that evidence. 12 Q. And based on your review of the Judgment, the Lago 13 Agrio Judgment, isn't that what Zambrano ordered? 14 A. I think so. That is what he did, I think, in 15 connection with the Report prepared by Mr. Cabrera. 16 Now, in connection with Mr. Calmbacher, I don't 17 remember. I don't recall this connection. 18 Q. Fair enough. 19 Let's move on to the appellate level. 20 And assume as a fact that Chevron has grounds for 21 appeal in connection with those two Reports. Chevron 22 argues that Judge Zambrano relied on the Cabrera Report and 23 also argues that the Report has been procured by fraud. 24 So, the first question that I have for you is: 25 Does the Court of Appeal have competence to examine</p>
<p style="text-align: right;">2425</p> <p>11:57 1 A. The legal regime of Ecuador clearly, clearly 2 starting with the Constitution as a rule of due process, 3 provides for evidence that is properly presented as the 4 only one to be used in the proceeding. And what is the one 5 that is properly presented? The one that has been 6 requested at the right stage that has been ordered by the 7 Judge in the proceeding after hearing or listening to the 8 opposing party and that has been also presented according 9 to the Judge's instructions. This is key for the evidence 10 to be properly presented. 11 That is to say, the other Party has to be heard in 12 connection with the evidence so that this Party may present 13 arguments, but at the same time present evidence opposing 14 the content of the other evidence and documents that are 15 introduced to the file outside these basic rules by the 16 Parties has no value for the proceeding. And this complete 17 explanation can be found in the Report. 18 Q. All right. Now, let's focus on the evidence 19 concerning the fraud allegations in respect of the Cabrera 20 Report and the Calmbacher Report. 21 Suppose, hypothetically speaking, that the 22 materials that Chevron submitted to the trial court are, in 23 fact, admissible evidence and that the Court can properly 24 consider it. 25 Assume further that the Court, Judge Zambrano,</p>	<p style="text-align: right;">2427</p> <p>12:01 1 Chevron's evidence of fraud in respect of that Report? 2 A. Following the hypothesis that the evidence was 3 duly submitted or how? 4 Q. I should clarify that: We are not operating on 5 the basis of that hypothesis. 6 In real life, does a court of appeal have 7 competence to examine and rule upon that evidence of fraud? 8 A. If they had been unduly submitted, it must be 9 thought that they do not exist, although evidently the 10 Court is going to look at the documents to see if they had 11 been submitted duly or not. This is what should happen. 12 If it reaches a conclusion that that is not duly submitted, 13 the Court cannot consult them. The Appellate Court or any 14 other Court in Ecuador, they cannot consider any evidence 15 that has been unduly submitted. 16 Q. So, you're referring to the trial court record. 17 What prevents Chevron from producing that evidence at the 18 Appellate Court level? 19 A. In the verbal summary proceedings, according to 20 Article 838 of the Code of Civil Procedure, it is provided 21 that the Judge of the Provincial Court that hears the 22 appeal must rule on the basis of the merits of the 23 proceedings. 24 What does that mean? Well, it means whatever was 25 legally and duly submitted in the summary oral proceedings</p>

<p>Sheet 21</p> <p style="text-align: right;">2428</p> <p>12:03 1 at the appeal level, there is no new evidentiary phase. 2 You cannot open up an evidentiary period during the appeal 3 at the summary oral proceeding. 4 Now, the Appeal Judge must consider the arguments 5 put forth at the appeal level only on the basis of those 6 elements that had been legally incorporated into the 7 proceedings. 8 Q. Is there any exception to this rule? 9 A. None. 10 Q. And do you recall where this rule is set forth? 11 A. I think I said, I think it's Article 838 of the 12 Code of Civil Procedure. Perhaps the number is wrong. I'm 13 sorry. 14 Q. No, I apologize. I missed that on the Transcript, 15 your response. 16 Now, let's move on to the cassation level, and I 17 would like to turn to Paragraph 80 of your Report. So, 18 there you explain the various grounds on which a cassation 19 appeal could be grounded, could be based. Now, suppose 20 that Chevron alleges that the Court improperly applied 21 applicable rules of evidence by relying on the fraudulent 22 report of Cabrera and the Calmbacher Report. My first 23 question is whether the Cassation Court could review these 24 allegations pursuant to its powers under Article 3 of the 25 cassation law.</p>	<p style="text-align: right;">2430</p> <p>12:06 1 regular proceeding that takes place in those circumstances. 2 Q. Thank you for that explanation. 3 You may have answered the question that I intended 4 to pose to you, so let me--just to be clear, let me 5 rephrase. 6 So, if the allegation is that the Court violated 7 the rules of evidence, regardless of the factual basis for 8 the allegation, is there allegation appropriately grounded 9 in one of the bases provided for in Article 3 of the 10 cassation law? 11 A. Of course, it is. Yes, surely. I'm alleging the 12 violation of a legal provision that has to do with the 13 weighing of the evidence, and on that basis, I am invoking 14 Ground 3 of the cassation law, and that is how I am put--I 15 am putting my allegation to the Court. That is the way 16 this is done. 17 Q. So, it would be within the Court's mandate to 18 address my allegation? 19 A. Yes, that is correct. 20 Q. Now, let's assume that the Cassation Court, the 21 National Court has not issued the cassation appeal in the 22 Lago Agrio Litigation. Given what we just discussed about 23 Judge Zambrano having dismissed or rejected the Cabrera 24 Report, what would be your prediction as to the outcome of 25 the cassation appeal on that basis? Is the question clear?</p>
<p style="text-align: right;">2429</p> <p>12:04 1 A. Yes. Let's see. Just a moment ago, we were 2 saying that there are specific rules in the sense that 3 evidence that was duly submitted, only that evidence can 4 have full faith and credit at a proceeding. 5 Now, let's assume that a judge applied evidence 6 that was unduly submitted. Now, what can the appellant do? 7 He can say, okay, the rule was violated. The rule that 8 says that the evidence that the Judge could consider in 9 order to make a decision is only the legally submitted 10 evidence. The other requirement that the Court asks for is 11 that the violation of the legal norm refers to a specific 12 documents that is included in the case file and that 13 explains its relevance. 14 For example, Judge Zambrano, in his Judgment, 15 cited a report that has been unduly submitted. The Court, 16 on the basis of Ground 3 of Article 3 of the cassation law, 17 will consider this argument, will see whether that piece of 18 evidence was duly submitted and, if it was not duly 19 admitted, it will say Article--and I forget the number of 20 the Article--Article whatever the number was, was violated. 21 The Article says that only duly submitted evidence has full 22 faith and credit during a proceeding. 23 So, it will quash the Judgment and, according to 24 Article 16 of the cassation law is going to hand down a 25 judgment that is relevant in that case. That is the</p>	<p style="text-align: right;">2431</p> <p>12:08 1 A. Not really, no. 2 Q. Let's go back in time before the National Court 3 issued--rendered the decision. And we know that Judge 4 Zambrano struck the Cabrera Report from the record. 5 Chevron files a cassation appeal, nonetheless, alleging a 6 violation of the rules of evidence under Article 3. So, we 7 don't know how the Court will rule on that matter, but what 8 would be your opinion as to the likely outcome of that 9 aspect of the cassation appeal? 10 A. The National Court was not going to admit the 11 allegation. And as I had said before, what the trial court 12 does is to do exactly what must be done in connection with 13 evidence that has been unduly submitted. It will not 14 consider it for purposes of its decision. That is the 15 common regular effect whenever you have a situation such as 16 that. 17 Q. If I could take you back to Page 4 of your Report? 18 THE INTERPRETER: This is in the First Report? 19 (Pause.) 20 PRESIDENT VEEDER: Let's continue. 21 MR. LEONARD: Thank you. 22 BY MR. LEONARD: 23 Q. So, you just predicted that the National Court 24 would reject that aspect of the cassation appeal on the 25 basis of the facts as we know them?</p>

<p>Sheet 22</p> <p>2432</p> <p>12:11 1 A. Yes. 2 Q. And are you back at Page 4 of your Report? Again, 3 this is RE-9, in the First Report. 4 A. I'm there, yes. 5 Q. All right. There you refer to the cassation 6 appeal as an effective remedy. 7 Did you mean to suggest that effective necessarily 8 means an outcome favorable to the appellant? 9 A. I would not be able to do that, although I may 10 have a personal opinion in the sense that in connection 11 with certain subject matters, those allegations should have 12 been rejected. I cannot be certain as to what the result 13 of the future judgment is going to be. When I prepared 14 this Report at that date, I didn't consider under any 15 circumstance what the result or the outcome could have been 16 in each one of the assumptions or how the Court would have 17 conducted itself in connection with each of the allegations 18 made. I wouldn't have been able to suggest that I was 19 going--that Chevron, rather, was going to obtain a 20 favorable Judgment. 21 In our legal system, there are a number of 22 mechanisms that have to do with getting decisions off and 23 deciding the issues that will be put forth in this case. 24 Q. All right. Now, I would like to focus on the 25 evidence of ghostwriting. And I believe that we've</p>	<p>2434</p> <p>12:15 1 case under Article 43 of the EMA, and it is signed by a 2 judge other than the Presiding Judge of the Provincial 3 Court--are you with me? 4 A. Yes, I do. 5 Q. And let's assume that the Defendant or--let's 6 assume the Defendant appeals, and the Court of Appeals 7 affirms the Judgment, that Judgment is against me. Do I 8 have grounds for cassation appeal under either of the 9 grounds such as you described at Paragraph 80 of your 10 Report? Eighty. 11 A. Was this a statement or a question on your part? 12 Q. I will state it again. 13 So, I have a Judgment in a case under Article 43 14 that is signed by a judge other than the Presiding Judge of 15 the Provincial Court. Do I have grounds for appeal under 16 Article 3 of the cassation law? 17 A. Yes, you do. 18 Q. In your opinion, which of the grounds listed in 19 Paragraph 80 could I invoke on the basis of these facts? 20 A. Yes, of course. 21 If the signor of the Judgment or the preparer of 22 the Judgment is not a judge, we could allege lack of 23 jurisdiction. If the Judge handing down the ruling is not 24 the one that had to hand down the Judgment, we could 25 alleged lack of competence of the Court. One thing has to</p>
<p>2433</p> <p>12:13 1 established it, but could the Court of Appeals examine and 2 rule upon such evidence? 3 A. No. These were documents or pieces of evidence, 4 instruments that were foreign to the proceedings. 5 Q. Same result in respect of the Cassation Court? 6 A. That is right. Article 15 of the cassation law 7 also prohibits the evidentiary stage at that phase in 8 connection with all the proceedings of that nature, and the 9 National Court could not consider in its decision-making 10 process evidence that was external to those proceedings. 11 Q. All right. Let's turn to Paragraph 83 of that 12 same report. It's the paragraph that begins with "The main 13 grounds asserted by Chevron in its cassation appeal." 14 There was an extensive back and forth yesterday 15 about Item D? 16 A. Yes, I recall. 17 Q. By a third party. 18 I would like to ask you a few questions so the 19 record is clear, and I have two hypotheticals for you. And 20 these are questions concerning the first hypothetical. 21 Who is the competent Court to hear a claim under 22 Article 43 of the EMA? 23 A. The Presiding Judge of the Provincial Court of the 24 location where the contamination event took place. 25 Q. All right. And assume that a judgment issues in a</p>	<p>2435</p> <p>12:17 1 do with jurisdictional powers, and the other has to do with 2 the distribution of the jurisdictional powers amongst the 3 Judges of the Republic. We could use the grounds of lack 4 of jurisdiction and lack of competence. 5 And also, this is an event that brings about 6 procedural nullity. This is a solemn--this is a 7 substantial formality so, we should go to Grounds 2 of 8 Article 3 of the cassation law in connection with events 9 that create nullity, procedural nullity. 10 Q. Are these violations are the kind that would 11 require me to produce extrinsic evidence? 12 Let me ask the question again. 13 MR. CORIELL: Can we get an answer to the 14 question? 15 THE INTERPRETER: The interpreter didn't really 16 hear the question properly. Can you please rephrase it? 17 MR. LEONARD: Or ask it again. 18 BY MR. LEONARD: 19 Q. Are these violations that you're referring to of 20 the kind that I would have to prove by submitting extrinsic 21 evidence? 22 A. As I have said, at the cassation level, you cannot 23 present extrinsic evidence. It doesn't work that way. But 24 there are violations of this nature that derive clearly 25 from the proceedings. In the case you are proposing, if</p>

<p>Sheet 23</p> <p>2436</p> <p>12:19 1 we're talking about a judge that's different from the judge 2 that had to hand down the Judgment, there is going to be, 3 for example, the certificate of the lottery that would 4 establish who should have heard the cause. 5 Now, if the argument is that the writer of the 6 ruling was not a judge, it would be a little bit more 7 difficult to prove that at the cassation level. This is a 8 piece of information that goes beyond that proceeding. 9 Q. In your opinion, what would be the chances that 10 the Court would accept my cassation appeal on the basis of 11 these facts? 12 A. The facts described under 83? 13 Q. We're talking about a judgment issued by a 14 different judge. 15 In your opinion, what are my chances of success in 16 my cassation appeal? 17 A. If it's a different judge and the reason has to do 18 with lack of competence, for example, that is going to be 19 included in the case file, and the Cassation Court will 20 have that very clear in its mind. 21 Now, if what I'm putting forth is that the writer 22 of the Judgment is not the signor of the Judgment, I don't 23 think I'm going to be successful at the cassation level 24 because I'm asking the cassation level to do something that 25 it will not do because it is specifically prevented from</p>	<p>2438</p> <p>12:24 1 legal provisions; validation, which means that there are 2 certain nullities that are not effective anymore because 3 they had been admitted or accepted by the Parties because 4 of the own conducts of the Parties--and this is the 5 estoppel in common law, that is my understanding, we call 6 it preclusion in our system; or--well, when those behaviors 7 or conducts are validated. And the most used in our system 8 is the principle of transcendence. 9 For something to create nullity of an act or a 10 proceeding, it could be an administrative act or act 11 between private parties, one has to have transcendence. 12 Transcendence means that in practice, without that element, 13 no effects would have existed or the effects pursued in 14 such proceedings, and there would be transcendence, for 15 example, if a document that is extrinsic to the proceedings 16 would have been taken. And if, on the basis of that 17 document, the judge would have issued his decision, and 18 without that document the judge would have never been able 19 to make that decision in that way. That's an example. 20 There would be transcendence if the violation in 21 the proceedings would have generated the impossibility for 22 the opposing party to defend itself. These three 23 principles show the possibility for a proceeding to declare 24 null; and, according to this same logic, well, we can apply 25 this same logic to other areas of the law.</p>
<p>2437</p> <p>12:21 1 doing that by the legal provisions. 2 Q. I was going to turn to the second hypothesis, but 3 I believe that you have just addressed it. 4 MR. LEONARD: Mr. President, if I could have a 5 minute to go over my notes. 6 PRESIDENT VEEDER: Please do. 7 (Pause.) 8 MR. LEONARD: Just a couple more questions. 9 BY MR. LEONARD: 10 Q. I would like to direct your attention to probably 11 the second tab on that binder, your Second Report, RE-20. 12 If you could go to Page 25, Footnote 102. 13 Today, you talked about what is the meaning, the 14 significance of the merits of the proceedings and what 15 evidence is admissible, what evidence is inadmissible. And 16 Mr. Coriell asked you a question about a judgment that 17 references a document that does not appear to be in the 18 record. 19 Could you explain whether that would lead to the 20 nullity of the proceedings and under what circumstances. 21 A. Let's see, in general terms, it would not only 22 entail the nullity of the process but the general system of 23 nullity in Ecuador. There are three principles in this 24 regard: Specificity--that is to say, the reason whereby 25 the nullity is declared, is expressly established in the</p>	<p>2439</p> <p>12:26 1 In the case put forth by you, one would have to 2 see the relevance that that document has in the Final 3 Decision made by the Court, by the Judge. That is what 4 would happen. 5 Q. Thank you. 6 MR. LEONARD: I have no further question, 7 Mr. President. 8 PRESIDENT VEEDER: Thank you very much. 9 The Tribunal may have questions. 10 QUESTIONS FROM THE TRIBUNAL 11 ARBITRATOR LOWE: I have one or two questions 12 which I would like to ask to crystallize and clarify the 13 record for my purpose. 14 I know that there are matters that you've already 15 gone over in your Reports and have addressed in 16 cross-examination, but it will be helpful if you could be 17 patient with me and deal with them. 18 The first question is in two parts. 19 Assume that there is an allegation that a document 20 that is in the record of a hearing of a case has been 21 fraudulently prepared. First, can the Cassation Court 22 consider that issue on the basis that it concerns material 23 that is in the Report, or must the Cassation Court refuse 24 to consider it on the grounds that proof of the fraud 25 involves reference to materials that are extrinsic to the</p>

<p>Sheet 24</p> <p>2440</p> <p>12:27 1 record?</p> <p>2 THE WITNESS: The Cassation Court will surely</p> <p>3 reject that allegation insofar as the claim of violation of</p> <p>4 the legal provision that applies in connection with the</p> <p>5 weighing of evidence could only be proven by elements that</p> <p>6 are extrinsic to the proceedings. I'm convinced that the</p> <p>7 Cassation Court would reject that kind of claim.</p> <p>8 ARBITRATOR LOWE: That is what I had understood</p> <p>9 your testimony to be, so my real first question is this:</p> <p>10 Is there any legal consequence under the law of Ecuador of</p> <p>11 the fact that it is known that a key document in a case has</p> <p>12 been alleged to have been procured as a result of a serious</p> <p>13 fraud, or do the Courts simply carry on as if the document</p> <p>14 is a perfectly proper document and the Judgment that was</p> <p>15 based upon it is one which can be allowed to stand like any</p> <p>16 other Judgment?</p> <p>17 THE WITNESS: The Judges that hear a case and that</p> <p>18 have external knowledge of a fact cannot make decisions in</p> <p>19 connection with things that do not have value in the</p> <p>20 process. They must continue to hear the case because</p> <p>21 that's a legal obligation.</p> <p>22 Now, at the same time, they can notify the</p> <p>23 Competent Authorities if one of the Parties requires so, or</p> <p>24 if they are convinced that there is a problem of that</p> <p>25 nature, then they are going to notify the Competent</p>	<p>2442</p> <p>12:31 1 or bringing a report.</p> <p>2 Now, in the case of judges, those obligations</p> <p>3 derive from the conviction that the Judge has that there is</p> <p>4 enough evidence of the fact because when the Judge hands</p> <p>5 down a judgment, and when he's convinced that something</p> <p>6 like this has happened, it can send the whole case file to</p> <p>7 the Prosecutor General's Office for a criminal action to be</p> <p>8 brought, or it can notify the Council of the Judiciary for</p> <p>9 the Council of the Judiciary to take the administrative or</p> <p>10 disciplinary measures that may be in order.</p> <p>11 And also the Parties. If they know that a</p> <p>12 violation has existed, they have to notify via a claim or a</p> <p>13 report by the Prosecutor General's Office if it's a</p> <p>14 criminal case or the Council of the Judiciary to impose</p> <p>15 sanctions, and are also there are remedies in the</p> <p>16 proceedings to deal with their situation in connection with</p> <p>17 the case that is taking place.</p> <p>18 I hope I answered your question.</p> <p>19 ARBITRATOR LOWE: That's helpful.</p> <p>20 Can I press you to the very specific point in my</p> <p>21 question, which is whether there is a legal duty. What</p> <p>22 you've described are a number of possible procedures that</p> <p>23 might be pursued. Is there, as a matter of Ecuadorian law,</p> <p>24 an actual legal duty on anyone to take any action in these</p> <p>25 circumstances? This may be outside the scope of your</p>
<p>2441</p> <p>12:30 1 Authorities of the fact. For example, the Prosecutor</p> <p>2 General's Office or, for example, the Council of the</p> <p>3 Judiciary, if this is in connection with a judicial officer</p> <p>4 or a judicial assistant, fully independently of the powers</p> <p>5 and rights that attorneys may have and the Parties may have</p> <p>6 in connection with the existence of a relevant violation,</p> <p>7 okay?</p> <p>8 ARBITRATOR LOWE: That starts to answer my</p> <p>9 follow-up question to that, which is that if there is prima</p> <p>10 facie evidence of a serious fraud in the administration of</p> <p>11 justice, is there under the Constitution or under any other</p> <p>12 law in Ecuador, a duty either on the State as such or on a</p> <p>13 particular agency of the State to take action in respect to</p> <p>14 that fraud?</p> <p>15 THE WITNESS: Well, let's say that the</p> <p>16 responsibility in these matters falls on many on the basis</p> <p>17 of the belief of many. The first duty falls on the</p> <p>18 parts--on the Parties to the proceeding and also on the</p> <p>19 lawyers to the proceedings. There is an ethical duty that</p> <p>20 lawyers have, where if they gain knowledge of an event that</p> <p>21 may entail an illegal act, a fraudulent act, they have to</p> <p>22 notify the Prosecutor General's Office so that the</p> <p>23 Prosecutor General's Office may bring a public action.</p> <p>24 Also, they have to notify the disciplinary authorities--for</p> <p>25 example, the Council of the Judiciary, by stating a claim</p>	<p>2443</p> <p>12:33 1 expertise or your evidence; and, if it is, then please say</p> <p>2 so.</p> <p>3 THE WITNESS: The way you are presenting it to me,</p> <p>4 Professor, as if there is any legal duty for someone to</p> <p>5 adopt a specific measure giving evidence, I will tell you</p> <p>6 that, no, it doesn't exist. As for the Judges, it depends</p> <p>7 on the discretionality of the Judge and also the conclusion</p> <p>8 reached by the Judge, and in the case of the Parties,</p> <p>9 clearly it is different, but based on your question, no,</p> <p>10 the answer is no.</p> <p>11 ARBITRATOR LOWE: If I can be allowed one further</p> <p>12 backup question on that heading, I notice in Tab 13 of the</p> <p>13 first Cross-Examination Bundle, which is the tab which has</p> <p>14 in the provisions from the Constitution, we were taken to</p> <p>15 Article 397, which concerns the State's duty to take action</p> <p>16 in respect of environmental harm, and I noticed that, on</p> <p>17 the opposite page in the English translation, though it</p> <p>18 won't be in the Spanish, Article 437 sets out a</p> <p>19 constitutional right in loose terms to due process.</p> <p>20 And I guess one way of putting my question is</p> <p>21 whether the State has, in relation to the constitutional</p> <p>22 right to due process, a duty to take action that is similar</p> <p>23 to the duty that the State has to take action to protect</p> <p>24 the environment.</p> <p>25 THE WITNESS: Are you referring to using this</p>

<p>Sheet 25</p> <p>2444</p> <p>12:35 1 extraordinary action for protection? 437 under the 2 Constitution refers to what we called the "extraordinary 3 action for protection." This is a constitutional action 4 that has to do with key rights, with essential fundamental 5 rights. And in the case of a legal person, whether public 6 or private, thinks that the rights have been impaired, may 7 bring forward a claim. But this has nothing to do with the 8 duty the State has to protect some rights such as the 9 environment. It's a general duty, such as health, housing, 10 et cetera. Let's say this is not--this is not the place of 11 regulation. The extraordinary action for a protection has 12 to do with a specific Judgment where there is a violation 13 of a constitutional right, and any of the Parties to that 14 proceeding has standing to bring forward the extraordinary 15 action for protection; and, in this case, we cannot have a 16 third party. 17 For example, the State, to bring forward an 18 extraordinary action for protection to protect some rights 19 that allegedly were violated as part of the underlying 20 proceeding. 21 ARBITRATOR LOWE: Thank you. That's helpful. 22 It's a point which I guess might get taken up in the 23 closing. 24 There are two other short points. One is simply a 25 matter of clarification in relation to your First Report,</p>	<p>2446</p> <p>12:39 1 this answer. 2 ARBITRATOR LOWE: Clarified, but not brought to a 3 complete resolution. Let me put it another way. 4 Is abuse an essential component of the 5 justification for piercing the corporate veil in every 6 case? 7 THE WITNESS: Yes. There is a need to have abuse 8 of this concept. 9 ARBITRATOR LOWE: Thank you. 10 My last question changes topic, and again, this is 11 a case of clarifying in my mind evidence that you've 12 already given. But assuming that both Chevron and 13 Petroecuador would be liable in tort or delict for 14 environmental harm, and assuming that there was 15 environmental harm, and assuming that the claim is brought 16 against Chevron alone and not against Petroecuador, what 17 are the procedures that are available to Chevron to have a 18 court in Ecuador determine two things: First, that Chevron 19 is liable only for a part of the harm and, second, that 20 Petroecuador is also liable for a part of the harm? 21 THE WITNESS: Let's say that the normal proceeding 22 would be a claim against the joint and several obligor, 23 with the assumptions that you have mentioned, this would 24 have to be filed before the administrative contentious 25 jurisdiction, the claim should be filed there. And this is</p>
<p>2445</p> <p>12:37 1 and it concerns the section in which you deal with piercing 2 the corporate veil, and it relates to Paragraph 95 of your 3 First Report. 4 In that paragraph, you say that Ecuadorian law 5 recognizes the Court's prerogative to lift the corporate 6 veil of a business organization when the corporation is 7 used as a vehicle to promote abuse of the law or to 8 defraud, or where recognition of corporate separateness 9 would lead to an inequitable result. 10 Now, as I read your Report, you give examples of 11 the lifting or piercing of the corporate veil in order to 12 prevent abuse, but is it your testimony that, as a matter 13 of Ecuadorian law, even in the absence of abuse, a court 14 has the right to pierce the corporate veil in order to 15 secure an equitable result in a case before it? 16 THE WITNESS: I apologize if the language is not 17 clear, but the regime for the piercing of the corporate 18 veil in Ecuador is intended to protect third parties 19 vis-à-vis the abusive use of the corporate identity. I 20 think that this is a good summary for the concept, and what 21 I tried to say when I referred to an inequitable result has 22 to do with avoiding or preventing any damage to a third 23 party. I cannot use the corporation to damage third 24 parties. That would be an abusive of the corporate form in 25 this case. And I don't know if I was able to clarify with</p>	<p>2447</p> <p>12:42 1 not a knowledge proceeding [one of the parties has to prove 2 the existence of a right], this is a declaratory proceeding 3 [the judge simply recognizes the existence of a right]. 4 And, in this proceeding the obligation of 5 Petroecuador would be declared, for example, of assuming 6 first, that it is a joint and several obligor, and in 7 second place, to assume its corresponding share of the 8 joint and several obligation to which it was found liable, 9 for example Chevron; this would be the normal proceeding 10 and certainly article 1538 of the Civil Code will be 11 raised, which as I have mentioned before establishes the 12 applicable regime to the joint and several debtor that 13 Chevron may propose a claim before the judicial branch, in 14 this case the administrative contentious jurisdiction, 15 because this would be a claim against Petroecuador. 16 ARBITRATOR LOWE: Let's assume for the sake of 17 argument without wishing to be uncharitable to Petroecuador 18 that it does not accept that it is liable and that it is 19 not a willing participant in proceedings, and suppose that 20 the action has been brought against Chevron alone. What 21 procedures are available under the law of Ecuador under 22 which Chevron could compel, under which Chevron has a right 23 to have a court in Ecuador determine that it is only liable 24 for part of the harm and that Petroecuador is also liable 25 for part of the harm?</p>

<p>Sheet 26</p> <p>2448</p> <p>12:43 1 MR. LEONARD: If I could reiterate my request for 2 the Expert to slow down to allow for a more accurate 3 translation of his responses. 4 THE WITNESS: Perfect. 5 Chevron may propose a claim. In this case, this 6 is the--in the administrative area of the law because this 7 would be a claim against Petroecuador. As part of that 8 proceeding, it may be--there might be an invocation or 9 declaration of the liability of Petroecuador. And finally, 10 there would be a determination of the amount that 11 Petroecuador would have to pay. Then Chevron would be able 12 as part of that claim to obtain a declaration of liability 13 by Petroecuador, and even the determination of the amount 14 to be paid by Petroecuador given a liability that was 15 previously declared against Chevron, to be more specific. 16 ARBITRATOR LOWE: So, to make sure that I've 17 understood it, in a case where liability is founded upon 18 tort or delict, one party which is found liable has a right 19 to proceed against a third party which could have been sued 20 but which was not sued in essence for a contribution 21 towards the damages that had been ordered against it, and 22 that would be given effect through the institution of a 23 separate proceeding by the party which was found 24 responsible in the first place; is that right? 25 Actually, I think my question was less clear than</p>	<p>2450</p> <p>12:47 1 portion. This is the idea behind the proceeding. That is 2 to say, this is completely independent of any other sort of 3 allegation and claim that may be brought forward that is 4 not based on that Article; rather, in general, presented 5 against the State as co-liable or co--or joint obligor as 6 part of this situation or case. 7 ARBITRATOR LOWE: That's very helpful. I think I 8 was confused because your answer was translated to say that 9 Chevron may propose that claim. Another way of making that 10 point is to say that Chevron can initiate a separate claim 11 against Petroecuador. Thank you, that's fine. 12 PRESIDENT VEEDER: That brings to an end the 13 questions from the Tribunal. But as a matter of fairness, 14 we give the floor to the Claimants if they wish to ask any 15 questions arising from the Tribunal's questions. 16 MR. CORIELL: Just one, Mr. President, arising 17 from Professor Lowe's initial line of questions. 18 RECROSS-EXAMINATION 19 BY MR. CORIELL: 20 Q. Dr. Andrade, if the Attorney General of Ecuador 21 possesses prima facie evidence of judicial fraud, does he 22 have an legal duty to investigate and remedy that fraud? 23 MR. GALINDO: I don't know to whether you're 24 referring to Procurador General del Estado Attorney General 25 or the Fiscalía General del Estado.</p>
<p>2449</p> <p>12:45 1 your answer. 2 (Laughter.) 3 THE WITNESS: I think I understand what you say. 4 When Chevron is declared--is found liable, Chevron 5 may propose a claim before the judicial branch, in this 6 case the administrative contentious jurisdiction, because 7 this would be a claim against Petroecuador, so that 8 Petroecuador is considered also co-liable and also the 9 participation in the damages is determined because here 10 this is a different problem. We're not referring to the 11 liability arising from the original case, rather the 12 co-liability as co-obligor and how--or joint obligor and 13 how this will be distributed based on the participation in 14 the harmful act. 15 So, yes, this could be part of a separate 16 proceeding. And since this is a claim against a public 17 institution, there is a specific judge that has 18 jurisdiction, and this is a proceeding where evidence will 19 be presented, and that's when the situation will be 20 explained, so that Chevron can explain why Petroecuador is 21 the joint obligor and also the part to be paid by 22 Petroecuador given their participation in the generation of 23 harm. This is the organized--the ordered proceeding. 24 As I told you, Chevron has the right, based on 25 Article 1538, if as the joint obligor Chevron pays their</p>	<p>2451</p> <p>12:49 1 MR. CORIELL: Both, as to each one. 2 THE WITNESS: The Attorney General has a duty 3 within a specified area to represent the State, and also 4 some other responsibilities in connection with this topic. 5 He has no specific duty in connection with a case of fraud 6 or something like this. The Prosecutor General of the 7 State is the Party that heads the agencies that are in 8 charge of the public criminal action, and he is the one 9 that has to find the evidence to sustain in front of a 10 Court, and also to defend the right, the interest of 11 society, given a crime before the competent Judge or the 12 Judge with jurisdiction. 13 MR. GALINDO: I'm sorry to interrupt again. The 14 Attorney General has asked me to intervene, Mr. President. 15 PRESIDENT VEEDER: Of course. Please. 16 MR. GALINDO: When the interpreter is referring to 17 Solicitor General, the right institution is the Prosecutor 18 General of Ecuador. 19 PRESIDENT VEEDER: That's an important correction. 20 Is that agreed by the Spanish speakers on the 21 Claimants' side? 22 MR. CORIELL: Yes. 23 PRESIDENT VEEDER: Let's have that corrected in 24 the Transcript. Thank you for raising that to the 25 Tribunal's attention.</p>

<p>Sheet 27</p> <p>2452</p> <p>12:50 1 MR. GALINDO: Thank you, Mr. President. 2 BY MR. CORIELL: 3 Q. So, is your answer that the Attorney General does 4 not have the duty that I asked you about and that the 5 Prosecutor General does have the duty that I asked you 6 about? 7 A. As I just mentioned, their roles are completely 8 different. The duties and the obligations of the 9 Prosecutor General are to investigate and also to look into 10 all of the crimes that have been committed, and then the 11 Attorney General has to do with the legal representation. 12 Now, if this has to do with any public authority 13 that has knowledge of a crime, what you're telling me is 14 that, yes, indeed, any public authority that is convinced, 15 that is completely convinced, that there is crime may 16 inform this to the Office of the Prosecutor General, so 17 that the process continues to be investigated. There is an 18 important difference here. 19 Q. Is a public authority so convinced required to 20 inform that to the Office of the Prosecutor General? 21 Required to inform that? 22 A. That is correct. 23 Q. And the Prosecutor General is required to 24 investigate and required to remedy that judicial fraud? 25 A. I wouldn't say "remedy." What they're going to do</p>	<p>2454</p> <p>12:54 1 being gathered to obtain the evidence, this first stage is 2 not public. It's reserved. There are only some 3 individuals that may have access to this information. 4 Q. And if as a result of these preliminary 5 investigation the Prosecutor General reaches the conclusion 6 that there is not enough indicia or evidence of a crime and 7 decides not to proceed with an investigation or not to 8 prosecute the relevant subjects in this case, would that 9 decision become public? 10 A. As a matter of fact, the prosecutor communicates 11 to the judge that the prosecutor decided not to continue 12 with the proceeding and what he requests is the closing of 13 the case, and this is more or less the end of the process. 14 That's basically the relevant information, yes. 15 MR. LEONARD: Then I have three comments of a 16 translation nature. The first one is, with the one 17 exception of Mr. Coriell's question, I have been asked to 18 instruct the Tribunal that every reference to the 19 "Prosecutor General" is actually a reference--the "Attorney 20 General" is actually a reference to the "Prosecutor 21 General." 22 THE WITNESS: Since I am a judicial prosecutor, 23 the level of risk is different, so my title was changed, 24 and I ended up with life insurance that I shouldn't have 25 had.</p>
<p>2453</p> <p>12:52 1 is to investigate, they will determine whether there is 2 enough evidence to be able to bring forward this public 3 criminal action until the Final Decision is reached. This 4 is not going to be done through the Prosecutor General, 5 rather the Judge hearing the case. 6 MR. CORIELL: Thank you. 7 PRESIDENT VEEDER: Does the Respondent have any 8 further questions arising from the Tribunal's questions? 9 MR. LEONARD: Yes, Mr. President. And I would 10 like to begin first with a follow-up question to 11 Mr. Coriell's questions. And again this may be beyond the 12 scope of your area of expertise. 13 FURTHER REDIRECT EXAMINATION 14 BY MR. LEONARD: 15 Q. But do you know whether in a case where the 16 Prosecutor General commences an investigation, and the term 17 is in Spanish "indagación previa," whether that aspect of 18 the proceedings before the Prosecutor General's Office or 19 by the Prosecutor General's Office, is that public or 20 public knowledge? 21 A. No. During this stage--that is called a 22 preliminary investigation--which is the search for grounds 23 to begin the actual--the formal investigation, this is a 24 secret stage. There is a secrecy of the case so that this 25 information is not made public. The information that is</p>	<p>2455</p> <p>12:57 1 MR. LEONARD: Well, the translation is different. 2 Two last points, Mr. President. There is, in 3 connection with the responses to Mr. Lowe's questions, the 4 abuse of the corporate form was translated as "abuse of the 5 corporation." I'm not sure how appropriate this is. Maybe 6 perhaps we could discuss it with opposing counsel. 7 And there was also a response to the duties of a 8 judge to refer a certain matter in the event of prima facie 9 evidence of a crime, and the response spoke about the 10 conviction of the Judge, and that was not the--the term 11 "conviction" did not appear in the translation. 12 I do not want to restate the answer. I just want 13 to make this point, and perhaps we will discuss it with 14 opposing counsel and make the appropriate revisions to the 15 Transcript. 16 PRESIDENT VEEDER: Well, thank you for that. 17 Generally, there may be, after this week, time for 18 everyone just to check the interpretation and, indeed, the 19 transcription, and we will have a procedure with a time 20 limit where this can be done, first of all, by the Parties 21 cooperating with each other because often these can be 22 agreed very quickly. If they can't be, then obviously 23 there is a tape-recording, and if that can't resolve the 24 issue, it will come to the Tribunal. So, thank you for the 25 comments, but there will be another opportunity to correct</p>

12:58 1 the Transcript--not to change it, but just to correct it.
 2 Is there anything else from the Respondent that we
 3 need to hear at this stage?
 4 MR. LEONARD: Nothing from the Respondent.
 5 PRESIDENT VEEDER: We've come to the end of your
 6 testimony. We thank you for coming here to assist the
 7 Tribunal, and you may leave the table.
 8 THE WITNESS: Pleasure, thank you very much,
 9 Mr. President.
 10 (Witness steps down.)
 11 PRESIDENT VEEDER: Well, it's now 1:00. We've
 12 probably extended the interpreters and the shorthand
 13 writers almost as far as they can take this morning. But
 14 given that we will break after the housekeeping, it may be
 15 helpful if we tried to do the housekeeping over the next
 16 ten or so minutes, but if it's going to take longer, we
 17 should take a break and then come back after lunch.
 18 But can we, first of all, establish that both
 19 Parties have completed the evidential phase of this Hearing
 20 and that on Thursday and Friday we will start with the
 21 closing oral submissions? We would like, in that regard,
 22 to have a better understanding of when you would like us to
 23 start the Hearing on Thursday and Friday and how you
 24 foresee each side going through the day with perhaps the
 25 usual breaks or fewer breaks or more breaks, and when we

01:01 1 to 5:30 p.m.

[REDACTED]

01:00 1 might finish.
 2 We ask the Claimants first.
 3 MR. BISHOP: Yes, Mr. President, we have finished
 4 the evidence. We are--we will be prepared to proceed on
 5 Thursday and Friday with the Closing Statements. From the
 6 Claimants' standpoint, we would ask that we start at 9:00
 7 on Thursday. We believe we will be done--with the normal
 8 breaks and the normal lunch hour--we believe we will be
 9 done approximately 5:30. That would be our proposal, and
 10 that's the way we would plan to go forward on Thursday.
 11 PRESIDENT VEEDER: Thank you.
 12 And the Respondent?
 13 MR. BLOOM: We can confirm what Mr. Bishop said.
 14 We, too, are fine beginning at 9:00, concluding at 5:30,
 15 both Thursday and Friday.
 16 It does dawn on me as we're talking about being
 17 completed with the evidentiary phase, we owe the Tribunal
 18 the two exhibits that Mr. Bishop and I spoke about the
 19 other day whereby we both agreed to allow additional
 20 evidence that had been inadvertently omitted, so we have
 21 that housekeeping measure to do. But other than that the
 22 evidentiary phase should be completed.
 23 PRESIDENT VEEDER: Well, that's satisfactory for
 24 the Tribunal. We will start again Thursday 9:00. We'd run
 25 to 5:30 p.m., and on Friday we will start at 9:00 and run

01:03

[REDACTED]

01:04

[REDACTED]

01:07

[REDACTED]

01:06

[REDACTED]

01:09

[REDACTED]

01:10

[REDACTED]

01:12

[REDACTED]

01:11

[REDACTED]

01:14

[REDACTED]

01:15

[REDACTED]

01:29

[REDACTED]

01:16

[REDACTED]

01:31

[REDACTED]

01:33

[REDACTED]

01:36

[REDACTED]

01:35

[REDACTED]

01:38

[REDACTED]

01:40

[REDACTED]

01:43

[REDACTED]

01:41

[REDACTED]

01:45

[REDACTED]

01:46

[REDACTED]

23 (Whereupon, at 1:48 p.m., the Hearing was

24 adjourned until 2:48 p.m., the same day.)

25

02:53

[REDACTED]

1

AFTERNOON SESSION

2

PRESIDENT VEEDER: Let's resume.

[REDACTED]

02:54

[REDACTED]

02:56

[REDACTED]

02:59

[REDACTED]

02:57

[REDACTED]

03:01

[REDACTED]

03:03

[REDACTED]

03:07

[REDACTED]

03:05

[REDACTED]

03:08

[REDACTED]

03:10

[REDACTED]

03:13

[REDACTED]

03:11

[REDACTED]

03:14

[REDACTED]

03:15

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] more we could can do?

8 It's now 3:15. I'm sure you've got better things to do,
9 but let's ask the Claimants first.

10 MR. BISHOP: The Claimants have nothing further,
11 Mr. President. Thank you.

12 PRESIDENT VEEDER: And the Respondent?

13 MR. BLOOM: Nothing further.

14 PRESIDENT VEEDER: Well, you will, I hope, get
15 later today the final, final, final, final draft, so
16 helpfully monitored by the Tribunal's Secretary, Mr. Doe.
17 And if you any comments on it or corrections, please come
18 back to us tomorrow, and we will take those into account,
19 because the idea is that we would have this ready to be
20 signed on Thursday morning.

21 So, until Thursday morning at 9:00. Thank you all
22 very much.

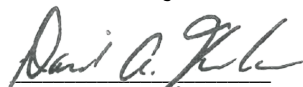
23 (Whereupon, at 3:16 p.m., the Hearing was
24 adjourned until 9:00 a.m., Thursday, May 7, 2015.)
25

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CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do
hereby certify that the foregoing proceedings were
stenographically recorded by me and thereafter reduced to
typewritten form by computer-assisted transcription under
my direction and supervision; and that the foregoing
transcript is a true and accurate record of the
proceedings.

I further certify that I am neither counsel for,
related to, nor employed by any of the parties to this
action in this proceeding, nor financially or otherwise
interested in the outcome of this litigation.


DAVID A. KASDAN