11-1150-cv(L)

11-1264-cv(Con)

United States Court of Appeals

for the

Second Circuit

CHEVRON CORPORATION,

Plaintiff-Appellee,

- v. -

HUGO GERARDO CAMACHO NARANJO, JAVIER PIAGUAJE PAYAGUAJE, STEVEN R. DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

EMERGENCY MOTION OF PLAINTIFF-APPELLEE CHEVRON CORPORATION FOR RELIEF FROM THIS COURT'S SEPTEMBER 19, 2011 SUMMARY ORDER AND FOR REARGUMENT

GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166
(212) 351-4000

Attorneys for Plaintiff-Appellee Chevron Corporation

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, undersigned counsel state that Chevron Corporation is a publicly traded company (NYSE: CVX) that has no parent company. No publicly traded company owns 10% or more of its shares.

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STATEMENT OF RELIEF SOUGHT

Pursuant to Federal Rule of Appellate Procedure 27, Chevron respectfully moves for emergency relief from this Court's September 19, 2011 summary order vacating the District Court's preliminary injunction and staying proceedings "on Count 9 of the Complaint" below. Dkt. 600. Prior to issuing that order, this Court inquired whether counsel for Appellants the Lago Agrio Plaintiffs ("LAPs") would provide written assurances that they would not seek to enforce the Lago Agrio judgment before the Ecuadorian appellate court ruled on the then-pending appeal. The LAPs' counsel represented that if that ruling were in their favor, it would be the event that rendered the judgment enforceable under Ecuadorian law. Since then, crucial circumstances have changed, necessitating immediate relief from the stay and re-imposition of the preliminary injunction.

On January 3, 2012, just more than one day ago, a panel of temporary judges presiding in the Provincial Court of Sucumbíos ("Ecuadorian appellate court") issued its decision affirming the fraudulent $18.2 billion judgment entered against Chevron ("Lago Agrio Judgment") by Lago Agrio Judge Zambrano on February 14, 2011, including the "penalty" imposed on Chevron for not publicly "apologizing." The Ecuadorian appellate court ignored extensive evidence of fraud permeating the case, including the ghostwriting of the Lago Agrio Judgment itself. In fact, the court expressly refused to consider the fraud evidence in part because "the

same accusations are pending resolution before authorities of the United States of America due to a complaint that has been filed by . . . Chevron, under what is known as the RICO act, and this Division has no competence to rule on the conduct of counsel, experts or other officials or administrators and auxiliaries of justice, if that were the case." Champion Dec. Ex. A at 11.[1]

The January 3, 2012 Ecuadorian appellate decision eliminated the LAPs' principal "ripeness" argument against Chevron's declaratory relief claim—it is now undisputed that the Lago Agrio Judgment is enforceable under Ecuadorian law. Although this Court has not yet issued its opinion, the pendency of the Ecuadorian appeal appears to have been a significant factor in the Court's consideration (*see infra* pp. 6–7, 12–14). And recent statements by the LAPs make clear that they now intend to immediately commence enforcement actions around the world to enforce the now-affirmed Lago Agrio Judgment (*see infra* pp. 10, 16). Indeed, yesterday the LAPs' lead Ecuadorian attorney declared, "We're going to start the necessary actions for the ruling to be enforced in several continents and countries

[1] References to "Champion Dec. Ex." refer to exhibits to the concurrently filed Declaration of Anne Champion. References to "Champion Dec. ¶" refer to paragraphs of that declaration. References to "Mastro Dec. Ex." refer to exhibits to the concurrently filed Declaration of Randy M. Mastro. References to "Mastro Dec. ¶" refer to paragraphs of that declaration. References to "A" refer to the Appendix, preceded by volume number in which the cited pages appear (for example, 2A100 refers to page 100 in Volume II of the Appendix). References to "SPA" refer to the Special Appendix.

where Chevron has assets." Mastro Dec. Ex. 1. The LAPs have publicly threatened, once the Ecuadorian appellate decision was issued, "to pursue Chevron assets anywhere in the world where they may be, until Chevron pays the entire amount of the judgment ordered by the Ecuadorian justices." Mastro Dec. Ex. 3. *See also* Mastro Dec. Ex. 4 (representative of LAP-affiliated Amazon Watch publishing the LAPs' intent to "prepare legal actions against Chevron's assets in the dozens of countries around the world where the oil giant does business").

Accordingly, Chevron respectfully requests that the Court grant emergency relief from its September 19, 2011 summary order. Specifically, Chevron requests that the Court vacate its prior order, pending reargument, insofar as it vacated the District Court's preliminary injunction and stayed proceedings below. Without such relief, the LAPs will be able immediately to commence their extortionate plan to harass Chevron through multiplicative, vexatious enforcement proceedings expressly intended to disrupt the operations of Chevron affiliates in foreign countries even though Chevron itself—the sole debtor on the Lago Agrio Judgment —is present only in the United States and could satisfy the judgment in full. Given the imminent threat of multiple enforcement proceedings and resulting irreparable harm, Chevron respectfully requests that the Court resolve its motion by January

10, 2012, one week after the issuance of the Ecuadorian appellate decision.[2]

BACKGROUND

Chevron brought this action against Steven Donziger, the 47 LAPs, the Amazon Defense Front ("Front") (the designated beneficiary of the Lago Agrio Judgment), and their agents on February 1, 2011. In Count 9 of its complaint, Chevron seeks, among other relief, a declaration that the multi-billion-dollar judgment of the provincial court in Lago Agrio, Ecuador, is not entitled to recognition or enforcement. 1A67–221.[3]

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[2] Yesterday, Chevron asked the arbitration tribunal hearing Chevron's claims against the Republic of Ecuador under the Bilateral Investment Treaty between Ecuador and the United States to order the Republic to inform the tribunal "of the steps that it intends to take to comply with the Interim Measures Order," which requires the Republic to prevent the Lago Agrio Judgment from being enforced. *See* Mastro Dec. Ex. 5. Thus far, the Republic has not taken any steps of which Chevron is aware to comply with the Interim Measures Order. And, as this Court is aware, Chevron has moved by regular noticed motion in the District Court for issuance of an order of attachment to secure Chevron a meaningful right to recover in the likely event it prevails on its RICO and common law claims for money damages against the defendants in the now-severed, non-Count 9 action. Because the District Court had not yet ruled on Chevron's fully-briefed motion before the Ecuadorian appellate court issued its opinion, Chevron today asked the District Court to enter a very brief temporary restraining order to prevent defendants from dissipating their assets, including assigning their interests in the Lago Agrio Judgment, during the brief period in which the attachment motion remains pending and unresolved in the District Court.

[3] Only the LAPs and the Front now remain as defendants on this count, which has been severed from the rest of Chevron's complaint. Of the 47 LAPS, only two appeared in the District Court (though all purportedly authorized Patton Boggs LLP to represent them in related litigation). Thus, the LAPs' papers on appeal

[Footnote continued on next page]

On February 3, Chevron moved for a TRO and preliminary injunction restraining defendants from carrying out their threats to attempt imminently to enforce the Judgment. *See* 2A228–3A577. Following a hearing on notice to all parties, on February 9 the court granted the TRO.

The very next week—despite having just proclaimed that he still had 50,000 pages of the 200,000-page record to review (15A4150)—the Lago Agrio judge issued a 188-page Judgment against Chevron for $8.6 billion, with an additional $868 million for the Front. The court also ordered that an $8.6-billion "penalty" be imposed unless Chevron issued a "public apology" in the U.S. and Ecuadorian press within fifteen days, before any appeal. SPA56–58; Dkt. 49-6 at 184–86.

On March 7, the District Court granted a status quo injunction, preliminarily enjoining defendants "from directly or indirectly funding, commencing, prosecuting, advancing in any way, or receiving benefit from any action or proceeding, outside the Republic of Ecuador, for recognition or enforcement of the judgment previously rendered . . . or any other judgment that hereafter may be rendered in *the Lago Agrio Case* by that court or by any other court in Ecuador in or by reason of *the Lago Agrio Case* . . . or for prejudgment seizure or attachment of assets, out-

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have been filed on behalf of two "LAP Representatives." Chevron uses the term "LAPs" interchangeably to refer to the two LAPs proceeding in this Court and the LAPs as a whole.

side the Republic of Ecuador, based upon a Judgment." SPA129.[4]

The LAPs appealed, and this Court held oral argument on September 16. During oral argument, members of the panel asked both sides about the status of the Ecuadorian appellate process, the timing of the Judgment's enforceability vis-à-vis that process and the LAPs' intention to attempt to enforce the judgment during the pendency of the Ecuadorian appeal. For example, Judge Lynch said, "I don't know what the other members of the panel think but I'd be interested in seeing whether we get a letter in some reasonable period of time saying that" the LAPs will stipulate not to enforce the judgment pending determination of the first-level appeal in Ecuador. Mastro Dec. Ex. 6 at 83:20–25. Judge Wesley then asked James Tyrrell of Patton Boggs, who appeared on behalf of the two LAPs who are Appellants here, "[A]re you willing to contact the other forty-five [LAPs] and see if they will stipulate to not enforcing the Ecuadorian judgment until the appellate process in Ecuador has run its course?" *Id.* at 84:4–9. Mr. Tyrrell promised that "we'll get back to the [C]ourt with a letter." *Id.* at 84:11–12. Later that day, the LAPs submitted a letter reporting "that the Ecuadorian Plaintiffs will stipulate not to commence pre-judgment attachment or enforcement proceedings anywhere in

[4] On May 12, 2011, this Court stayed that order only to the limited extent "the preliminary injunction restrains activities other than commencing, prosecuting, or receiving benefit from recognition, enforcement, or pre-judgment seizure or attachment proceedings." Dkt. 135.

the world prior to entry of a ruling by the Provincial Court of Sucumbíos on the *de novo* appeal currently pending before that court in Ecuador." Dkt. 593.

This Court entered its summary order the next business day, September 19. In addition to vacating the preliminary injunction, the order stayed proceedings in the District Court on Count 9, and denied a mandamus petition seeking the District Judge's removal.[5]

The procedural posture in Ecuador has now changed materially, mooting

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[5] After Chevron filed in the District Court a motion for attachment to secure its recovery on those claims, Appellants here precipitously applied to this Court to stay the proceedings below in the severed RICO action (No. 11-cv-0691). *See* Dkts. 608, 614. This Court denied that motion 5 days later, without Chevron having to file an opposition. Dkt. 618. Chevron therefore was not able to inform this Court of blatant misrepresentations the LAPs made in their motion papers. The LAPs contested before this Court one piece of the significant evidence, which Chevron had put before the District Court, that the LAPs, or those working at their behest, wrote the Lago Agrio Judgment, making use of material not in the public record. The LAPs asserted that the language in the judgment that repeats verbatim a portion of an email from their lead Ecuadorian counsel, Pablo Fajardo, discussing an Ecuadorian court decision on trusts, is a "cut-and-pasted excerpt" from a published court opinion containing "'stock' language." Dkt. 606-2 at 11 n.6. This is false, and obviously so. Fajardo's email expressly includes a "transcription" of an Ecuadorian court opinion, but the transcription contains numerous mistakes or paraphrasings not found in any published version of the opinion. *See Chevron Corp. v. Donziger*, No. 11-cv-0691 (LAK) Dkt. 369 at 3 n.2 (S.D.N.Y. Dec. 20, 2011); *Chevron Corp. v. Donziger*, No. 11-cv-0691 (LAK) Dkt. 370 ¶¶ 2–16 (S.D.N.Y. Dec. 20, 2011). The Lago Agrio Judgment repeats all of these mistakes, exactly as they appear in Fajardo's email alone, as well as a citation error Fajardo made there citing a case that has nothing to do with trusts. *See id*. Thus, this Fajardo email is particularly damning, and the LAPs' representations to this Court are demonstrably false.

many of the concerns this panel expressed at oral argument and leaving Chevron imminently vulnerable to irreparable harm: On January 3, 2012, the Ecuadorian appellate court rendered a decision affirming the Lago Agrio Judgment. The 16-page appellate decision upholds in full the first-instance award against Chevron and awards to the LAPs attorney's fees of .1% of the total award (thus, approximately $18.2 million).[6] Champion Dec. ¶¶ 4, 5.

Based on an initial review of the Ecuadorian appellate decision, it does not purport to explain or even mention the extensive evidence that the Lago Agrio Judgment was ghostwritten by parties other than Judge Zambrano, who had secret access to the LAPs' internal, unfiled work product. In particular, the decision ignores: (1) the extensive verbatim overlap between the judgment and the LAPs' un-

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[6] There is evidence of substantial irregularity in the constitution of the panel that heard Chevron's appeal of the first instance judgment. The composition of the panel changed multiple times from March 2011, when it was originally selected by a secret "lottery" held by Judge Zambrano, although such lotteries are supposed to be public, and then changed multiple times over subsequent months until it was finalized on December 1, 2011, after another secret "lottery." All three members of the panel are temporary, substitute judges of the Provincial Court of Sucumbíos. Two of those judges were appointed by Judge Núñez, who was recused from the trial after being caught on tape promising to rule against Chevron as part of a bribery scheme, and the other was appointed by Judge Zambrano, who issued the ghostwritten judgment against Chevron, just after he issued the *autos para sentencia* order closing the docket of the case and little over a month before he made the appointment. And the issuance of the panel's decision barely more than a month after the panel formally convened leaves no doubt that the members of the panel did not actually review the voluminous trial court record. Champion Dec. ¶¶ 10, 12.

filed "Fusion memo" on corporate successor liability, *see* Dkt. 379-4 (Exs. 11, 13); (2) the overlap between the judgment and the LAPs' unfiled record summary, *see id.*; (3) the LAPs' internal emails evidencing their plan to draft the judgment, *see* Dkt. 608-5 at 7 n.5; and (4) expert linguistic testimony that the judgment was not written by Judge Zambrano, *see* Dkt. 379-4 (Ex. 13). *See also* Champion Dec. ¶ 7.

Moreover, the Ecuadorian appellate court expressly declined to address the fraudulent litigation preceding the issuance of the Lago Agrio Judgment, including the LAPs' ghostwriting of the report of the court's "global damages" expert (Richard Stalin Cabrera Vega), and their submission of forged reports from their own expert (Dr. Charles Calmbacher). *See* Dkt. 310 at 22–26, 30–31. The Ecuadorian appellate court stated that Chevron's showing of such fraud is "pending resolution before authorities of the United States of America due to a complaint that has been filed by . . . Chevron, under what is known as the RICO act, and this Division has no competence to rule on the conduct of counsel, experts or other officials or administrators and auxiliaries of justice, if that were the case." Champion Dec. Ex. A at 11.

With the issuance of this Ecuadorian appellate decision, it is therefore now undisputed that the judgment is imminently enforceable against Chevron in Ecuador. Moreover, the LAPs' stipulation not to seek "pre-judgment attachment or en-

forcement proceedings anywhere in the world," which two members of the panel specifically requested at oral argument, has now expired by its own terms.

Further, the words of the LAPs' representatives since this Court's summary order leave no doubt what the LAPs intend unless this Court vacates in part its order, reinstating the status-quo injunction entered below and allowing Chevron's claim that the judgment is not entitled to recognition or enforcement to be litigated. The day after this Court issued its summary order, Pablo Fajardo, lead Ecuadorian counsel for the LAPs, said, "The plaintiffs got a green light to undertake actions to enforce the judgment anywhere in the world we find suitable." He further explained that the LAPs "expect the judgment to be affirmed on appeal at the local court"—an affirmance that has now occurred—"after which they can begin the actions necessary to collect payment." Mastro Dec. Ex. 2. Two days after these comments, Fajardo vowed in an interview that the LAPs would "pursue Chevron's assets to ensure that it pays the entire award set by Ecuadorian judges anywhere in the world it has assets." And he made clear when they would do this: "We will do so when the judgment is fully enforceable." Mastro Dec. Ex. 7.[7]

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[7] The LAPs' representatives also took the opportunity in the period following this Court's summary order to slander Judge Kaplan, the District Judge below. *See, e.g.*, Mastro Dec. Exs. 8 (accusing Judge Kaplan of a "conspiracy" with Chevron); 3 (calling Judge Kaplan "truly corrupt" and "openly biased in favor of [Chevron]"); 7 (calling Judge Kaplan "a judge who made racist decisions against the Ec-

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In short, the Lago Agrio Judgment is now imminently enforceable in Ecuador. The time that the LAPs' counsel declared they would begin enforcement actions has come. Chevron therefore respectfully requests that this Court vacate its summary order insofar as it vacated the preliminary injunction. That would allow the status quo to be preserved and prevent the LAPs from executing their plan to institute multiplicative, vexatious enforcement proceedings against Chevron affiliates outside the United States in order to pressure Chevron Corp., a U.S. corporation but the only Lago Agrio Judgment debtor, into settling—the consummation of their scheme to extort money from the company by means of a fraudulent judgment. In addition, Chevron asks this Court to vacate its summary order insofar as it stayed proceedings below, thus allowing Chevron's challenges to the judgment under the New York Recognition Act, the U.S. Constitution, and federal common law to be resolved in a single forum. Finally, in light of the latest developments in Ecuador, this Court should rehear arguments in this case.

ARGUMENT

While the parties here contested whether the Lago Agrio Judgment was subject to enforcement actions before the Ecuadorian appellate court rendered a deci-

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uadorian State," and who "was seeking to benefit the company financially, and to protect it so it wouldn't have to pay the legal sanction in Ecuador").

sion,[8] now that it has ruled in the LAPs' favor there is no longer any question that the Lago Agrio Judgment is enforceable under Ecuadorian law and the LAPs are poised to initiate multiplicative and vexatious enforcement actions around the world.

I. The Ecuadorian Appellate Decision Decisively Alters the Posture of This Case, Mooting the Principal Concerns This Panel Expressed

This Court has not yet handed down its opinion, so the reasoning behind its summary order is not yet known. Nonetheless, the panel's questions at oral argument indicated that the pendency of the Ecuadorian appellate decision had a significant impact on this Court's own decision.

At oral argument, the panel asked several questions about the implications of the fact that the Lago Agrio Judgment remained on appeal with an intermediate appellate court. Examples include the following:

> ● Hon. Wesley: Mr. Tyrrell, can you tell me the status of the Ecuadorian judgment now? . . .
> Hon. Wesley: Does the final appeal require posting of the bond?
> Mr. Tyrrell: It is disputed. We think it should.
> Hon. Wesley: Is it disputed as to the period of time it will take the Ecuadorian intermediate court to resolve the matter?
> Mr. Tyrrell: It isn't disputed, but no one knows.
> Hon. Pooler: At what stage could collection of the judgment be initiated?

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[8] As Chevron previously explained, the Lago Agrio Judgment could have been used as a basis for preliminary measures in those countries committed to the Inter-American Convention on the Execution of Preventive Measures. *See* Dkt. 310 at 49–51.

Mastro Dec. Ex. 6 at 22:14–16, 23:2–14.

> ● Hon. Pooler: Did [Judge Kaplan] set that November [trial] day with reference to what the Ecuadorian courts will do? . . .
> Hon. Pooler: Is there any indication that should the intermediate court not issue a decision before the November trial that Judge Kaplan would adjourn the trial?

Id. at 39:18–20, 40:23–41:4.

> ● Hon. Wesley: Doesn't it seem like you're spending an awful lot of money to finish a trial in November where on the last day of trial the Ecuadorian intermediate court vacates the judgment, finds it's procured by fraud, and absolves Chevron of all liability?

Id. at 53:18–25.

> ● Hon. Wesley: Well, what are you going to do if Mr. Tyrrell stands up in open federal court and states they'll stipulate that they'll not take any enforcement actions anywhere in the world pending the outcome of the intermediate court? . . .
> Mr. Mastro: Well, ask him if he'll do that . . . . Because if he really represents all the plaintiffs and they will come into court and stipulate, that would be different.

Id. at 57:6–12, 57:14–15, 57:25–58:4.

> ● Hon. Lynch: [A]ll of [the LAPs] haven't conveyed the stipulation that Mr. Mastro suggested with respect to not taking advantage of this Latin American treaty [permitting certain enforcement actions while the Ecuadorian judgment is on first-instance appeal].
> Mr. Tyrrell: Right . . . . no, they have not made any such stipulation. . . . I'm willing to go and ask [the LAPs]. . . .
> Hon. Lynch: [Mr. Mastro is] asking that the plaintiffs, the Lago Agrio plaintiffs stipulate that they need to do something that you say they can't do anyway. I don't know what the other members of the panel think but *I'd be interested in seeing whether we get a letter in some reasonable period of time saying that sure, they'll do that*.
> Hon. Wesley: . . . are you willing to contact the other forty-five and see if they will stipulate to not enforcing the Ecuadorian judgment until the appellate process in Ecuador has run its course?

> Mr. Tyrrell: I understand that request and we'll get back to the court with a letter.

Id. at 81:20–82:3, 82:19–20, 83:17–84:12 (emphasis added).

The same day this Court heard oral argument, the LAPs' counsel submitted a letter to the Court—at the panel's suggestion—stipulating that the LAPs would not enforce the Lago Agrio Judgment pending resolution of the first-level appeal in Ecuador. The next business day, this Court issued its summary order.

The LAPs' letter pointedly limited their commitment, saying only that they would not seek to enforce the Lago Agrio Judgment before the first-level appeal was decided. Now that the Ecuadorian appellate court has rendered a decision, the stipulation the LAPs submitted has expired by its own terms. All indications are that the LAPs will seek to enforce the Lago Agrio Judgment immediately. *See supra* p. 10, *infra* p. 16. It therefore appears that a significant circumstance impacting this Court's consideration of this appeal has evaporated.

II. By All Accounts, Issuance of the Ecuadorian Appellate Decision Makes the Judgment Enforceable as a Matter of Ecuadorian Law

Although Chevron believes, based upon the overt threats of the LAPs' counsel, that the threat of enforcement absent an injunction has been imminent ever since the Lago Agrio Judgment was entered, there can be no question of it now, given the limitation of their representations to this Court.

As Chevron expert Dr. Cesar Coronel Jones explained in the District Court proceedings, "[a] trial court's judgment becomes enforceable in Ecuador after an

appeal is resolved." 22A-6157; *see also id.* ("After the appeal is decided, the judgment becomes fully enforceable in Ecuador."). Furthermore, although Chevron may still seek the extraordinary remedy of "cassation review" before Ecuador's National Court of Justice—a limited form of review that does not consider questions of fact underlying the judgment—doing so "will not itself stay the judgment's enforcement." 22A-6156–57. Indeed, the "only possibility" for staying enforcement now that the first-instance appeal has been handed down, 22A-6182–83, would be to "post[ ] a bond with the appellate court in an amount set by the appellate court in light of the judgment," 22A-6157.[9] The LAPs' own counsel has predicted that the amount of the bond would likely be "equivalent to 100% of the judgment," 14A-3724. Thus, posting the bond could require Chevron to deposit, with no likelihood of recoupment, several billion dollars into the coffers of the very court system whose corruption and bias, among other reasons, render the Lago Agrio Judgment unenforceable. In short, now that the Ecuadorian appeal has been decided, the Lago Agrio Judgment is enforceable under Ecuadorian law and Chevron's declaratory judgment claim is ripe.

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[9] Should Chevron pursue cassation and fail, it could also seek an extraordinary protection action, which is designed to protect against violations of due process of law or other constitutional violations committed during a trial. 22A-6182. This remedy, however, affords no possible stay of enforcement. *Id.* (citing Ecuadorian law).

The Appellants' experts on this question, whose reports were submitted below (albeit untimely in Donziger's case) and are in the record on appeal, agree that Ecuadorian judgments are enforceable after the first-instance appeal (barring posting of a bond on cassation review). Alejandro Garro, Donziger's expert, recognized that, "[u]nlike during the first appeal to the intermediate appellate court, the judgment rendered by the intermediate court of appeals is enforceable while the writ of cassation is pending before the Supreme Court of Ecuador." 22A-6123. And the LAPs' expert, Ricardo Simon, agreed: "When the Provincial Court has ruled on a re-appeal and this ruling has been appealed and the cassation appeal has been granted, this fact does not usually prevent the sentence or order appealed from being executed." 22A-6145.

Not only is the Lago Agrio Judgment enforceable, the LAPs have made clear that they intend to enforce it immediately: Their letter to this Court on September 16, 2011 promised only that they would not "commence pre-judgment attachment or enforcement proceedings anywhere in the world **prior to entry of a ruling by the Provincial Court of Sucumbíos on the *de novo* appeal** [then] pending before that court in Ecuador." Dkt. 593 (emphasis added). Now that the appeal has come down, there is nothing—no injunction, no stipulation—stopping the LAPs from immediately carrying out their extortionate threats to bring multiple actions to enforce the fraudulent Ecuadorian judgment.

Thus, the situation has materially changed since this Court entered its summary order. The pendency of the Ecuadorian first-level appeal, which appeared to give this panel pause, has come to an end. And the Ecuadorian appellate court not only affirmed the Lago Agrio Judgment, it did so while ignoring almost all of the evidence that the LAPs controlled the content of the judgment and explicitly abjuring competence to adjudicate over Chevron's other fraud allegations. The Lago Agrio Judgment is imminently enforceable as a matter of Ecuadorian law, even as its corrupt provenance becomes ever clearer. And the LAPs are poised to imminently bring their long-threatened, vexatious enforcement actions—"one of the biggest forced asset seizures in history," as Donziger has long predicted they would. 8A-2034–35. New circumstances require renewed preservation of the status quo and renewed consideration by this panel.

CONCLUSION

In light of the latest developments in Ecuador, this Court should grant Chevron emergency relief and, pending reargument, vacate its prior summary order insofar as it vacated the preliminary injunction and stayed proceedings below.

Dated: January 5, 2012

Respectfully submitted,

/s/ Randy M. Mastro
Gibson, Dunn & Crutcher LLP

Randy M. Mastro
200 Park Avenue
New York, New York 10166
(212) 351-4000

Andrea E. Neuman
3161 Michelson Drive
Irvine, CA 92612
(949) 451-3800

William E. Thomson
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000

CERTIFICATE OF COMPLIANCE WITH TYPEFACE AND TYPE STYLE REQUIREMENTS

This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14-point Times New Roman font.

/s/ Randy M. Mastro

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2012, electronic copies of the foregoing Emergency Motion for Plaintiff-Appellee Chevron Corporation were served upon the following parties via the CM/ECF system:

/s/ Randy M. Mastro
Randy M. Mastro
GIBSON, DUNN & CRUTCHER LLP
200 PARK AVENUE
New York, NY 10166
Telephone: (212) 351-4000