

PCA CASE No. 2009-23

**IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED
IN ACCORDANCE WITH THE TREATY BETWEEN THE UNITED STATES OF
AMERICA AND THE REPUBLIC OF ECUADOR CONCERNING THE
ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS,
SIGNED 27 AUGUST 1993 (THE “TREATY”) AND THE UNCITRAL ARBITRATION
RULES 1976**

BETWEEN:

**1. CHEVRON CORPORATION (U.S.A.)
2. TEXACO PETROLEUM COMPANY (U.S.A.)**

The Claimants

- and -

THE REPUBLIC OF ECUADOR

The Respondent

FOURTH PARTIAL AWARD ON TRACK III

17 November 2025

The Arbitration Tribunal:

**Dr Horacio A. Grigera Naón
Professor Vaughan Lowe KC
Professor Albert Jan van den Berg (President)**

**Secretary to the Tribunal: Martin Doe
Assistant Secretary to the Tribunal: José Luis Aragón Cardiel**

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EXECUTIVE SUMMARY OF THE FOURTH PARTIAL AWARD ON TRACK III*

This Award sets out the Tribunal's findings and decisions on matters falling under the scope of Track III of the present Arbitration (*see* paragraphs 94 and 95 below).

Track II

Track III follows Track II of the Arbitration. By its Second Partial Award on Track II, dated 30 August 2018 (the Track II Award), the Tribunal ruled that the Respondent had committed multiple violations of the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment of 27 August 1993 (the Treaty) and international law, including (i) a violation of Article II(3)(a) of the Treaty and customary international law for denial of justice; (ii) a violation of Article II(3)(c) of the Treaty (Umbrella Clause); and (iii) a violation of the Tribunal's First Interim Award on Interim Measures dated 25 January 2012 and Second Interim Award on Interim Measures dated 16 February 2012.

All three violations stem, at their core, from the so-called Lago Agrio Judgment of 14 February 2011, which was issued in the Lago Agrio Litigation initiated by Ángel Piaguaje and others (the Lago Agrio Plaintiffs) against Chevron Corporation (Chevron) before Superior Court of Justice of Nueva Loja in Ecuador (the Lago Agrio Court). As found by the Tribunal, the Lago Agrio Judgment was not written by Judge Nicolás Zambrano of the Lago Agrio Court, but was rather 'ghostwritten' by certain representatives of the Lago Agrio Plaintiffs in corrupt collusion with Judge Zambrano. The Lago Agrio Judgment was later affirmed by the Lago Agrio Appellate Court, the National (Cassation) Court of Justice of Ecuador, and the Constitutional Court of Ecuador. The original Lago Agrio Judgment required Chevron to pay approximately USD 19 billion in damages, which were later reduced to approximately USD 9 billion by the Cassation Court.

In its Track II Award, the Tribunal ordered reparation for the Respondent's internationally wrongful acts in the form of several declarations and orders specifically targeted at wiping out the consequences of the recognition and enforcement of the unremedied Lago Agrio Judgment. Chief among them are the Tribunal's orders that the Respondent (i) take immediate steps, of its own choosing, to remove the status of enforceability from the unremedied Lago Agrio Judgment; and (ii) subject to further order by the Tribunal in Track III, make full reparation in the form of compensation for any injuries caused to the Claimants by the unremedied Lago Agrio Judgment.

Track III

In Track III, the Claimants seek compensation for the Respondent's internationally wrongful acts. In particular, they request (i) **USD 793,879,967.74** across 13 separate categories of damages related to legal fees and expenses allegedly incurred as a result of the Respondent's Treaty breaches; (ii) **USD 85,315,652** for the alleged embargo of certain trademarks and other intellectual property assets owned by three of Chevron's subsidiaries in Ecuador; (iii) **USD 13,000,000** in damages for the losses allegedly suffered by one of Chevron's subsidiaries as a result of the embargo of certain assets in Argentina in aid of the enforcement of the Lago Agrio Judgment; (iv) moral damages; and (v) pre- and post-award interest.

In addition, the Claimants request that the Tribunal (i) order the Respondent to indemnify them for any further damages resulting from pending or future enforcement actions of the Lago Agrio Judgment; and (ii) order further injunctive relief in view of the Respondent's purported failure to comply with the Track II Award.

* This Executive Summary does not form part of the Tribunal's reasons or decisions in this Fourth Partial Award on Track III.

General Matters and Legal Standards

Section VII of this Award sets out the Tribunal's analysis on general matters and legal standards cutting across the Claimants' damages claims.

As more fully set out therein, the Tribunal finds, consistently with its determinations in the Track II Award, that any measure of full reparation implemented in Track III must be targeted specifically at wiping out the injuries caused by the recognition and enforcement of the uncorrected Lago Agrio Judgment. On this basis, the Tribunal finds that any injury caused by the recognition and enforcement of the Lago Agrio Judgment (*e.g.* through attachment, arrest, interim injunction or execution) amounts to a form of direct damage under international law, while any legal fees and expenses incurred to mitigate such injury amount to incidental damages. The Tribunal also makes determinations regarding (i) the requirements that must be met for the compensation of each type of damage (proximate causation for direct damages, and causation and reasonableness for incidental damages); (ii) the corresponding cut-off dates for compensation in this case (1 March 2012 for direct damages, and 14 February 2011 for incidental damages); and (iii) the amount by which the damages award must be reduced to account for the legal fees and expenses the Claimants would have incurred in any event in a Treaty-compliant but-for scenario.

Under this heading, the Tribunal also rules that (i) Chevron, as a matter of principle, is entitled to claim compensation in this Arbitration in its own right for the injuries caused to certain of its international subsidiaries by the recognition and enforcement of the Lago Agrio Judgment; (ii) the Claimants did not breach their duty to mitigate by failing to pursue certain local remedies in Ecuador; (iii) under certain conditions, the Claimants are entitled to recover as damages in this Arbitration attorneys' fees awarded or settled in related domestic proceedings; and (iv) the Tribunal's damages award shall not be reduced on account on certain "tax savings" purportedly obtained by the Claimants when taking a tax deduction for the legal fees they claim as damages in this Arbitration.

Taking into account the preceding determinations, the Tribunal establishes a four-step methodology for the assessment of the Claimants' damages claims for legal fees and expenses based on the damages models provided by the Parties, taking into account the voluminous pool of information underlying such claims.

Damages Categories concerning Legal Fees and Expenses

The Claimants' damages claims comprise 13 damages categories relating to legal fees and expenses. 10 of those categories relate to distinct proceedings outside the present Arbitration: the Lago Agrio Litigation; proceedings relating to the recognition and enforcement of the Lago Agrio Judgment in Ecuador, Argentina, Brazil, and Canada; discovery proceedings in the United States of America under Section 1782 of Title 28 of the U.S. Code; proceedings in the United States of America under the RICO Act brought against, *inter alia*, certain of the Lago Agrio Plaintiffs' representatives; proceedings against non-party funders of the Lago Agrio Litigation in Gibraltar; criminal proceedings against certain Chevron employees in Ecuador; and proceedings before Dutch courts concerning applications for the annulment of awards issued in this Arbitration. The three remaining categories comprise costs of planning against potential enforcement in other jurisdictions, general defence costs, and treaty-arbitration costs incurred by non-counsel of record.

Applying its methodology for the assessment of incidental damages in this Arbitration to each of these damages categories, the Tribunal determines that the Claimants are entitled to a total of **USD 180,402,691.43** in compensation, plus (i) pre-award interest calculated at the 1-year U.S. Treasury bill rate (amounting to **USD 40,404,250.51** as of 15 October 2025); and (ii) post-award interest at the rate of 1-year U.S. Treasury bill + 2%. The Tribunal's decision regarding the amount of compensation awarded to the Claimants in connection with the RICO Litigation is subject to a separate dissenting opinion from co-arbitrator Dr. Horacio A. Grigera Naón.

Other Damages Categories

In respect of the damages categories “Embargo Losses in Argentina” and “Intellectual Property Losses in Ecuador”, the Tribunal finds that while the Claimants have established that they suffered a compensable injury, they have failed to establish the extent of the corresponding loss. Accordingly, the Tribunal rejects the Claimants' claims in respect of these categories. The Tribunal likewise rejects the Claimants' claim for moral damages.

Indemnification

The Tribunal finds that the Claimants have not established the necessary predicates for the granting of an indemnity order, or other remedies akin to an indemnification.

Injunctive Relief

The Tribunal grants the Claimants' requests for injunctive relief in part. In particular, it declares that, by failing to remove the status of enforceability from the Lago Agrio Judgment through steps of its own choosing, the Respondent has failed to meet its obligations under paragraphs 10.13(i), (ii), (vi), and (vii) of the Track II Award and, accordingly, orders the Respondent to take immediate steps to meet these obligations.

Track IV of the Arbitration

By its Procedural Order No. 84, the Tribunal determined that issues related to the allocation and assessment of costs and expenses within the meaning of Articles 38-40 of the UNCITRAL Arbitration Rules as claimed by the Parties would be dealt with in Track IV of the Arbitration, following Track III. Accordingly, following the issuance of this Award, the Arbitration now proceeds to Track IV.

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ABBREVIATIONS

<i>13 Trademarks</i>	Subset of the 43 Trademarks, encompassing 13 trademarks owned by Chevron IP included in the Trademark Licence that expired while under the Attachment Order
<i>15 October 2012 Order</i>	Order issued by the Lago Agrio Court on 15 October 2012 providing for the execution of the Lago Agrio Judgment
<i>1973 Concession Agreement</i>	Concession between the Respondent, TexPet and Gulf with a term expiring on 6 June 1992, dated 6 August 1973
<i>1995 Settlement Agreement</i>	Settlement agreement entitled “Contract for Implementing of Environmental, Remedial Work and Release from Obligations, Liability and Claims”, signed on 4 May 1995 by the Respondent, acting by its Ministry of Energy and Mining and PetroEcuador as “one Party” and TexPet as “the other party”
<i>1995-1998 Settlement and Release Agreements</i>	The 1995 Settlement Agreement, the 1996 Municipal and Provincial Releases, and the 1998 Final Release
<i>1996 Municipal and Provincial Releases</i>	Settlement agreements between TexPet and four municipalities in the Oriente Region (Shushufindi, Francisco de Orellana, Lago Agrio and La Joya de los Sachas) pursuant to paragraph VII(C) of Annex A of the 1995 Settlement Agreement
<i>1998 Final Release</i>	Final Release signed by the Respondent (acting by its Minister of Energy and Mines), PetroEcuador, PetroProduccion and TexPet on 30 September 1998
<i>25 October 2012 Order</i>	Order providing for the expansion of the 15 October 2012 Order issued by the Lago Agrio Court
<i>27 June 2013 Order</i>	Order issued by the Lago Agrio Court on 27 June 2013 providing for the attachment of the amounts owed by Ecuador to Chevron as a

result of the award in the *Chevron v. Ecuador* I arbitration

43 Trademarks

Subset of the 50 attached trademarks notified by the Lago Agrio Court to IEPI on 9 September 2013, excluding the seven trademarks over which Chevron's IP Subsidiaries had extinguished their rights prior to the Attachment Order (*i.e.*, "Havoline Diseño de etiqueta", "Havoline y Diseño ii", "Texaco, un mundo de energía" (No. 7010), "Texaco, un mundo de energía" (No. 2080), "Diseño estrella t-texaco", "Estrella roja t verde – texaco", and "Ursa super plus")

9 September 2013 Order

Order issued by the Lago Agrio court on 9 September 2013 notifying the attachment of 50 trademarks owned by Chevron's IP Subsidiaries to IEPI

Amazonia Action

Action brought by Chevron against Amazonia and Woodsford on 18 June 2014 before the Supreme Court of Gibraltar, in the context of the Gibraltar Proceedings

Amazonia Damages Judgments

Judgment dated 9 December 2015 and order dated 14 May 2018 issued by the Supreme Court of Gibraltar in the context of the *Amazonia* Action

Amazonia Liquidation Proceedings

Proceedings initiated by Chevron on 2 June 2016 requesting Amazonia's liquidation before the Supreme Court of Gibraltar, in the context of the Gibraltar Proceedings

Amended Complaint

Chevron's Amended Complaint in the RICO Litigation, dated 20 April 2011

Appellate Court

Provincial Court of Justice of Sucumbios, Ecuador

Argentina Embargo Order

Ex parte order issued by the National Civil Trial Court No. 61 of Argentina in *Aguinda Salazar Maria v. Chevron Corporation* on 6 November 2012, whereby it attached certain

	assets owned by Chevron's Argentine and Danish subsidiaries
<i>Argentina Embargo Proceedings</i>	Proceedings brought by the LAPs in Argentina on 5 November 2012 seeking to attach the assets of Chevron's Argentine and Danish subsidiaries
<i>Argentina Enforcement Proceedings</i>	Category concerning the legal fees and expenses allegedly incurred by the Claimants in connection with the Argentina Embargo Proceedings and the Argentina Recognition Proceedings
<i>Argentina Recognition Proceedings</i>	Recognition (<i>exequatur</i>) proceedings brought by the LAPs on 21 November 2012 against Chevron to recognize the Lago Agrio Judgment in Argentina
<i>Attachment Order</i>	15 October 2012 Order of the Lago Agrio Court (as further expanded by the 25 October 2012 Order)
<i>Brazil Recognition Proceedings</i>	Category concerning the legal fees and expenses allegedly incurred by the Claimants in proceedings brought by the LAPs against Chevron in Brazil on 27 June 2012, seeking the recognition of the Lago Agrio Judgment in Brazil
<i>Canada Enforcement Proceedings</i>	Category concerning the legal fees and expenses allegedly incurred by the Claimants in proceedings brought by the LAPs against Chevron, Chevron Canada and Chevron Finance on 30 May 2012, seeking the recognition and enforcement of the Lago Agrio Judgment in Canada
<i>Cash Call Retainer</i>	Monthly retainer fee agreement between Chevron the so-called "Ecuador Legal Team"
<i>Cash Calls</i>	168 documents related to payments which, according to the Claimants, Chevron made to the so-called "Ecuador Legal Team"

<i>Cassation Appeal</i>	Chevron's cassation appeal of the Appellate Court's judgment of 3 January 2012 and Order of 13 January 2012, filed before the Cassation Court on 20 January 2012
<i>Cassation Court</i>	National Court of Justice of Ecuador
<i>Cassation Judgment</i>	Judgment of the Cassation Court dated 12 November 2013, whereby the Cassation Court partially quashed the 3 January 2012 Judgment of the Appellate Court
<i>Categories</i>	Each of the main heads of damages listed in items (a) through (m) of paragraph 479.2 of the Claimants' Memorial on Damages
<i>Chevron</i>	Chevron Corporation, the First Claimant in this Arbitration
<i>Chevron Argentina</i>	Chevron Argentina S.R.L.
<i>Chevron Brazil</i>	Chevron Brasil Petróleo Ltda
<i>Chevron Canada</i>	Chevron Canada Limited
<i>Chevron Finance</i>	Chevron Canada Finance Limited
<i>Chevron IP</i>	Chevron Intellectual Property LLC
<i>Chevron's Guidelines</i>	Chevron's Corporation and Affiliate 2007 Guidelines for Outside Counsel and their subsequent versions
<i>Chevron's IP Subsidiaries</i>	Chevron IP, Texaco Inc., and Texaco Company
<i>Claimants' Damages Model</i>	Damages model filed by the Claimants as per Procedural Order No. 83, the first version of which was filed on 2 November 2022 and the final version of which was filed on 14 October 2025
<i>Claimants' Second Submission</i>	Claimants' Second Submission on Request for a Partial Award, dated 1 October 2020

<i>Components</i>	Distinguishable subcategories of costs or actions that are specific to each category or main proceeding for which damages are claimed (e.g., count IX of the RICO Litigation, each of the Section 1782 Proceedings, etc.)
<i>ConAuto</i>	ConAuto Compañía Anónima Automotriz
<i>Constitutional Action</i>	Chevron's Extraordinary Action for Protection, filed before the Constitutional Court on 23 December 2013
<i>Constitutional Court</i>	Constitutional Court of Ecuador
<i>Costs of Planning Against Potential Enforcement in other Jurisdictions</i>	Category concerning the legal fees and expenses allegedly incurred by the Claimants to prepare and implement their defensive strategy in anticipation of continuing efforts by the LAPs to enforce the Lago Agrio Judgment in multiple jurisdictions around the world
<i>Counter-Memorial</i>	Respondent's Counter-Memorial on Damages, dated 28 February 2020
<i>CPA</i>	Collusion Prosecution Act
<i>Criminal Proceedings</i>	Category concerning the legal fees and expenses allegedly incurred by the Claimants in connection with criminal proceedings initiated in Ecuador against Mr Ricardo Reis Veiga and Dr Rodrigo Pérez Pallares
<i>DCF</i>	Discounted Cash-Flow
<i>Decision on Interpretation</i>	Decision on the Respondent's Request for Interpretation under Article 35 of the UNCITRAL Arbitration Rules, dated 6 November 2018
<i>Decision on Track I(B)</i>	Decision on Track I(B), dated 12 March 2015
<i>Defensive 1782s</i>	Sub-category of the Section 1782 Proceedings concerning the legal fees and

expenses incurred by Chevron in connection with 13 Section 1782 actions brought by Ecuador and the LAPs against individuals and entities other than Chevron, including scientists and experts retained by Chevron in connection with the Lago Agrio Litigation, “targets aimed at undermining Ecuador’s bribery scandal involving Judge Nuñez” (as described by the Claimants), and Stratus

Denial of Justice Breach

Treaty breach declared by the Tribunal in paragraphs 10.4 and 10.5 of the Track II Award concerning the Respondent’s violation of Article II(3)(a) of the Treaty and customary international law for denial of justice

DeLeon Action

Action brought by Chevron against Mr DeLeon and Torvia on 17 December 2012 before the Supreme Court of Gibraltar, in the context of the Gibraltar Proceedings

Donziger Defendants

Mr Steven Donziger, the Law Offices of Steven R. Donziger, and Donziger & Associates, PLLC, defendants in the RICO Litigation

Dutch Set-Aside Proceedings

Category concerning the legal fees and expenses allegedly incurred by the Claimants in connection with the Respondent’s applications to annul six of the Tribunal’s awards in this arbitration before the Dutch Courts

Ecuador Enforcement Proceedings

Category concerning the legal fees and expenses allegedly incurred by the Claimants in proceedings concerning the execution of the Lago Agrio Judgment in Ecuador as a result of the Attachment Order

Elements

When compared to categories and components, any other cost subsets that may be present in several categories, and the recoverability of which is disputed on the basis of the nature of the expenditure, the observation of pathological or allegedly

	inadequate billing practices or other reasons (e.g., block billing, public relations, etc.)
<i>Embargo Losses in Argentina</i>	Category concerning the losses allegedly suffered by the Claimants as a result of the Argentina Embargo Order
<i>E-Tech</i>	E-Tech International
<i>First Instance Appeal</i>	Chevron's appeal of the Lago Agrio Judgment, filed on 9 March 2011 before the Appellate Court
<i>First Interim Award</i>	First Interim Award on Interim Measures, dated 25 January 2012
<i>FOIA</i>	Freedom of Information Act
<i>Fourth Interim Award</i>	Fourth Interim Award on Interim Measures, dated 7 February 2013
<i>FTI</i>	FTI Consulting
<i>General 1782 Work</i>	Sub-category of the Section 1782 Proceedings concerning the legal fees and expenses allegedly incurred by the Claimants in connection with work which, according to the Claimants, cannot be allocated to a single 1782 action, including general Section 1782 work, indeterminate Section 1782 work, and efficiencies created by combining Section 1782 work
<i>General Defence</i>	Category concerning the legal fees and expenses allegedly incurred by the Claimants "in the General Defense against the Lago Agrio fraud and the resulting fraudulent Judgment"
<i>Gibraltar Proceedings</i>	Category concerning the legal fees and expenses allegedly incurred by the Claimants in connection with six proceedings initiated by Chevron before the Supreme Court of Gibraltar, namely: (i) the <i>DeLeon</i> Action; (ii) the <i>Amazonia</i> Action; (iii) the <i>GT</i> Action; (iv) the <i>TCPS</i> Action; (v) the <i>Jarvis</i> Action;

and (vi) the *Amazonia* Liquidation Proceedings

GT Action

Action brought by Chevron against GT Nominees on 18 June 2014 before the Supreme Court of Gibraltar, in the context of the Gibraltar Proceedings

GT Entities

GT Management Limited, GT Fiduciary Services Limited and Grant Thornton Fund Administration Limited

GT Nominees

GT Nominees Limited

Hearing on a Partial Award

Hearing on the Request for Partial Award held on 15-18 March 2021

IBA Rules

International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration (2010 edition)

IEPI

Ecuadorian Intellectual Property Agency

ILC Articles

International Law Commission's Articles on State Responsibility

Income Approach

Valuation approach proposed by Mr Weston Anson, expert for the Claimants, for the Claimants' alleged Intellectual Property Losses in Ecuador, which, as described by him, determines the current value of future economic benefits by way of a discounted cash-flow analysis

Intellectual Property Losses in Ecuador

Category concerning the intellectual property losses the Claimants claim to have incurred in Ecuador as a result of the embargo imposed by the Lago Agrio Court of trademarks and other intellectual property owned by Chevron's IP Subsidiaries by way of the Attachment Order

Interim Awards Breach

Treaty breach declared by the Tribunal in paragraph 10.18 of the Track II Award

concerning the Respondent's violation of the
First and Second Interim Awards

Invictus Memorandum

Document entitled "Invictus, Path Forward:
Securing and Enforcing Judgment and
Reaching Settlement" by Patton Boggs,
undated

Invoice Sample

Sample of approximately 400 invoices (to
95% accuracy) from the universe of 7,700-
plus invoices claimed by the Claimants in
Track III, prepared by Mr Daniel Slottje of
FTI, expert for the Claimants

Jarvis Action

Action brought by Chevron against Mr Julian
Jarvis on 20 June 2014 Action before the
Supreme Court of Gibraltar, in the context of
the Gibraltar Proceedings

Lago Agrio Complaint

Complaint filed by the LAPs against Chevron
before the Lago Agrio Court on 7 May 2003

Lago Agrio Court

Superior Court of Justice of Nueva Loja in
Ecuador

Lago Agrio Judgment

Judgment issued by the Lago Agrio Court on
14 February 2011, as well as the clarification
order issued by that same court on 4 March
2011

Lago Agrio Litigation

Litigation initiated by Ángel Piaguage and
others against Chevron by the Lago Agrio
Complaint. The same defined term refers to
the category concerning the legal fees and
expenses allegedly incurred by the Claimants
in connection with those proceedings

LAPs

The 48 plaintiffs in the Lago Agrio Litigation

Lyteca

Lubricantes y Tambores del Ecuador, C.A.

Marketer Agreement

Texaco and Chevron Lubrication Marketer
Agreement entered into by Chevron Products
Company and ConAuto

<i>Memorial</i>	Claimants' Memorial on Damages (Track III), dated 31 May 2019
<i>Moral Damages</i>	Category concerning the moral damages allegedly suffered by the Claimants as a result of the Criminal Proceedings, the Respondent's alleged media campaign against Chevron and the Respondent's breach of the Tribunal's Interim Orders and Awards
<i>Netflix</i>	Netflix, Inc.
<i>Partial Award on Track I</i>	First Partial Award on Track I, dated 17 September 2013
<i>Partial Award on Track III</i>	Partial Award on Threshold Issues of Track III, dated 30 June 2021
<i>PCA</i>	Permanent Court of Arbitration
<i>PetroEcuador</i>	Empresa Estatal de Petróleos del Ecuador, known earlier as its predecessor "CEPE"
<i>RAP</i>	Remedial Action Plan agreed by TexPet, Petro Ecuador and the Respondent in September 1995
<i>Rejoinder</i>	Respondent's Rejoinder on Damages, dated 20 May 2022
<i>Related Action</i>	<i>Chevron v. The Weinberg Group</i> , Case No. 11-409 (JMF) (DDC)
<i>Reply</i>	Claimants' Reply Memorial on Damages (Track III), dated 20 August 2021
<i>Request for Guidance</i>	Claimants' Request for Guidance Concerning the Evidence to Support Claimants' Damage Claim for Legal Fees and Costs, dated 21 April 2020
<i>Request for Partial Award</i>	Claimants' Request for a Partial Award on Threshold Issues, dated 21 April 2020

<i>Respondent's Damages Model</i>	Damages model filed by the Respondent as per Procedural Order No. 83, the first version of which was filed on 2 November 2022 and the final version of which was filed on 15 October 2025
<i>Respondent's Second Submission</i>	Claimants' Second Submission on Request for a Partial Award, dated 1 October 2020
<i>Response to the Request for Partial Award</i>	Respondent's Response to Claimants' Request for a Partial Award on Threshold Issues, dated 19 May 2020
<i>RFR Approach</i>	Valuation approach proposed by Mr Weston Anson, expert for the Claimants, for the Claimants' alleged Intellectual Property Losses in Ecuador, under which, as described by him, a hypothetical situation is created to estimate what a business would pay to license its own intellectual property assets in an arms-length transaction. The value is then calculated as the present value of the avoided hypothetical royalty charges.
<i>RICO</i>	18 U.S.C. Section 1962 of Title 18 of the U.S. Code, the Racketeer Influenced and Corrupt Organizations Act
<i>RICO Defendants</i>	Collectively, the Donziger Defendants, the Stratus Defendants, Messrs Fajardo and Yanza, and ADF and Selva Viva, defendants in the RICO Litigation
<i>RICO Judgment</i>	RICO Judgment of 4 March 2014
<i>RICO Litigation</i>	Category concerning the legal fees and expenses allegedly incurred by Chevron in connection with an action brought by Chevron on 1 February 2011 before the U.S. District Court for the Southern District of New York, whereby it claimed claimed damages and injunctive relief for a pattern of racketeering activity and violations of 18 USC Section 1962 and New York State law

<i>SAP Payments List</i>	List of payments downloaded from Chevron's SAP system used by Mr Steve Stanton of Deloitte, expert for the Claimants, to prepare his expert opinion in this Arbitration
<i>SAP System</i>	Chevron's SAP electronic payment system
<i>SDNY</i>	U.S. District Court for the Southern District of New York
<i>Second Circuit</i>	U.S. Court of Appeals for the Second Circuit
<i>Second Interim Award</i>	Second Interim Award on Interim Measures, dated 16 February 2012
<i>Second Procedural Meeting</i>	Procedural meeting held on 28-29 May 2020
<i>Section 1782</i>	Section 1782 of Title 28 of the U.S. Code (Assistance to foreign and international tribunals and to litigants before such tribunals)
<i>Section 1782 Proceedings</i>	Category concerning the legal fees and expenses allegedly incurred by the Claimants in connection with the Affirmative 1782s, the Defensive 1782s, and General 1782 Work
<i>SENADI</i>	Ecuadorian National Service for Intellectual Rights, known earlier as IEPI
<i>STJ</i>	Brazilian Superior Court of Justice (<i>Superior Tribunal de Justiça</i>)
<i>Stratus</i>	Stratus Consulting Inc.
<i>Stratus Defendants</i>	Collectively, Stratus and two of its employees, Ms Ann Maest and Mr Douglas Beltman, defendants in the RICO Litigation
<i>Swissoil</i>	Swissoil del Ecuador S.A.
<i>Swissoil PSA</i>	Purchase and Sale Agreement entered into by Lyteca and Swissoil on 12 January 2010

<i>TCPS</i>	TC Payment Services (International) Limited
<i>TCPS Action</i>	Action brought by Chevron against TCPS on 20 June 2014 before the Supreme Court of Gibraltar, in the context of the Gibraltar Proceedings
<i>Technical Information</i>	Know-how that was licenced through the Technology Licence and was used in connection with the trademarks included in the Trademark Licence
<i>Technology Licence</i>	Technology Licence Agreement entered into between Chevron IP and Swissoil in 2010, whereby Swissoil was granted “a non-exclusive, non-transferable license without right to sublicense to use” certain technical information in an “existing blending facility” of Swissoil in Ecuador, and only for purposes of manufacturing, packaging, marketing, distributing, using, and selling certain types of lubricants defined in the agreement
<i>Texaco</i>	Texaco Inc.
<i>TexPet</i>	Texaco Petroleum Company, the Second Claimant in this Arbitration
<i>Third Interim Award</i>	Third Interim Award on Jurisdiction and Admissibility, dated 27 February 2012
<i>Torvia</i>	Torvia Limited
<i>Track II Award</i>	Second Partial Award on Track II, dated 30 August 2018
<i>Track III Hearing</i>	Hearing on Track III held from 18 August to 7 September 2022
<i>Trademark Licence</i>	Trademark Licence Agreement entered into between Chevron IP and Swissoil del Ecuador S.A. in 2010, whereby Swissoil was granted “a limited, royalty-free, non-transferable, non-exclusive license to use” 17 trademarks owned by Chevron IP in Ecuador

“only on and in connection with” certain products identified in the Trademark Licence

Treaty

Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment of 27 August 1993

Treaty Arbitration Costs incurred by Non-Counsel of Record

Category concerning the legal fees and expenses allegedly incurred by the Claimants for work performed by non-counsel of record in connection with this Arbitration

Trunko Elements

Group of elements drawn from the Expert Report of John L. Trunko (RE-51), including: (i) (CLA) Activities allegedly relating to Media and Public Relations / (RES) Activities relating to Media and Public Relations; (ii) (CLA) Activities allegedly relating to Government Relations (including but not limited to USTR) / (RES) Activities relating to Government Relations (including but not limited to USTR); (iii) (CLA) Allegedly Nondefense-Related Activities / (RES) Nondefense-Related Activities; (iv) (CLA) Alleged Block Billing / (RES) Block Billing; (v) (CLA) Allegedly Vague Billing Entries / (RES) Vague Billing Entries; (vi) (CLA) Alleged Administrative and Clerical Activities / (RES) Administrative and Clerical Activities; (vii) (CLA) Alleged Getting Up to Speed and Training / (RES) Getting Up to Speed and Training; (viii) Multiple Attendance at Events; (ix) (CLA) Alleged Excessively Long Billing Days and Excessive Time / (RES) Excessively Long Billing Days and Excessive Time; and (x) (CLA) Alleged Double Billing Entries / (RES) Double Billing Entries

Umbrella Clause

Article II(3)(c) of the Treaty

Umbrella Clause Breach

Treaty breach declared by the Tribunal in paragraphs 10.7 and 10.8 of the Track II Award concerning the Respondent's violation of the Umbrella Clause

UNCITRAL Arbitration Rules

Arbitration Rules of the United Nations
Commission on International Trade Law
(1976)

WACC

Weighted Average Cost of Capital

Weinberg

Weinberg Group Inc.

Woodsford

Woodsford Litigation Funding Limited

World Bank Guidelines

World Bank Guidelines on the Treatment of
Foreign Direct Investment

* * *

I. THE ARBITRATION

1. *The First Claimant:* The First Claimant is Chevron Corporation, a legal person organised under the laws of the United States of America, with its principal place of business at 6001 Bollinger Canyon Road, San Ramon, California 94583, United States of America (“**Chevron**”).
2. *The Second Claimant:* The Second Claimant is Texaco Petroleum Company, also a legal person organised under the laws of the United States of America, with its principal place of business at 6001 Bollinger Canyon Road, San Ramon, California 94583 United States of America (“**TexPet**”).
3. Until 2001, TexPet was a wholly-owned indirect subsidiary of Texaco Inc., a legal person organised under the laws of the United States of America (“**Texaco**”); and thereafter, as from 2001, TexPet became and remains a wholly-owned indirect subsidiary of Chevron.
4. *The Claimants’ Legal Representatives:* During Track III of the Arbitration, the Claimants were represented by: R. Hewitt Pate Esq (General Counsel of the First Claimant); David Moyer Esq (Deputy General Counsel for Corporate Capability of the First Claimant), Andres R. Romero-Delmastro Esq (Chief Counsel, Strategic Issues and International Litigation of the First Claimant), and Heleina Formoso Esq (Senior Counsel, Strategic Issues and International Litigation of the First Claimant); R. Doak Bishop Esq, Tracie Renfroe Esq, Craig Miles Esq, Wade M. Coriell Esq, David H. Weiss Esq (until June 2023), Carol Wood Esq (until December 2020), Daniela Bravo Esq, and Sophia Sepulveda Harms Esq (all of King & Spalding LLP, Houston, Texas, USA); Elizabeth Silbert Esq, Brian A. White Esq (until July 2024), Amelia S. Magee Esq (until October 2022), Charlie Spalding Esq (until July 2025), and Carson W. Bennett Esq (all of King & Spalding LLP, Atlanta, Georgia, USA); Edward G. Kehoe Esq (until December 2024), Caline Mouawad Esq (until January 2020), Isabel Fernández de la Cuesta Esq (until April 2023), Jessica Beess und Chrostin Esq, Timothy McKenzie Esq, and Vivasvat Dadwal Esq (all of King & Spalding LLP, New York, New York, USA); Anisha Sud Esq (of King & Spalding (Singapore) LLP, Singapore); Sara McBrearty Esq and Nate Bilhartz Esq (both of King & Spalding LLP, Austin, Texas, USA); Eldy Quintanilla Roché Esq (of King & Spalding LLP, Denver, Colorado, USA); Herbert Stern Esq (Stern & Kilcullen

LLC, Florham Park, New Jersey, USA); and Jan Paulsson Esq, Luke Sobota Esq, Julia Sherman Esq, and William Sullivan Esq (all of Three Crowns LLP, Washington D.C., USA).¹

5. *The Respondent:* The Respondent is the Republic of Ecuador. It has owned and controlled at all material times Empresa Estatal de Petróleos del Ecuador (herein called “**PetroEcuador**”, known earlier as its predecessor “**CEPE**”), a legal person formed under the laws of Ecuador.
6. *The Respondent’s Legal Representatives:* During Track III of the Arbitration, the Respondent was represented by: Juan Carlos Larrea Valencia (Procurador General del Estado), Íñigo Salvador Crespo (Procurador General del Estado until October 2022), Ana María Larrea (Directora Nacional de Asuntos Internacionales y Arbitraje), Claudia Salgado Levy (Directora General de Asuntos Internacionales y Arbitraje until February 2023), Lily Diaz Granados (Subdirectora de Asuntos Internacionales), Nazaret Ramos (Subdirectora de Asuntos Internacionales until April 2022), Christel Gaibor (Subdirectora de Asuntos Internacionales until February 2019), Gary Lopez Velez, Diana Terán Zamora (until February 2024), Macarena Bahamonde (until August 2020) and Xavier Rubio (until April 2019) (all of Procuraduría General Del Estado, República Del Ecuador, Quito, Ecuador); Mark Clodfelter Esq (until July 2021) and Diana Tsutieva Esq (of Foley Hoag LLP, Washington, D.C., USA); Andrew Schwartz Esq, Kenneth Leonetti Esq, Jonathan Ettinger Esq, Mark Finsterwald Esq, and Richard Maidman (until May 2024) (all of Foley Hoag LLP, Boston, MA, USA); Nicholas Renzler Esq (Foley Hoag LLP, New York, NY, USA); and Eduardo Silva Romero, José Manuel García Represa, Audrey Caminades, and Raphaëlle Legru (all of Wordstone, Paris, France).²
7. *The Arbitration Agreement:* The arbitration agreement invoked by the Claimants is contained in Article VI of the Treaty between the United States of America and the

¹ See also Track II Award, para. 1.4, regarding the Claimants’ representation in earlier stages of these proceedings.

² See also Track II Award, para. 1.6, regarding the Respondent’s representation in earlier stages of these proceedings.

Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment of 27 August 1993 (the “**Treaty**”), providing (*inter alia*) as follows:

1. For purposes of this Article, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to (a) an investment agreement between that Party and such national or company; (b) an investment authorization granted by that Party's foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.
2. In the event of an investment dispute, the parties to the dispute should initially seek a resolution through consultation and negotiation. If the dispute cannot be settled amicably, the national or company concerned may choose to submit the dispute, under one of the following alternatives, for resolution:
 - (a) to the courts or administrative tribunals of the Party that is a party to the dispute;
or
 - (b) in accordance with any applicable, previously agreed dispute-settlement procedures; or
 - (c) in accordance with the terms of paragraph 3.
3. (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b) and that six months have elapsed from the date on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by binding arbitration:

...
 - (iii) in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
...
 - (b) an “agreement in writing” for purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (“New York Convention”).
4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national or company under paragraph 3. Such consent, together with the written consent of the national or company when given under paragraph 3 shall satisfy the requirement for:

...
 - (b) an “agreement in writing” for purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (“New York Convention”).
5. Any arbitration under paragraph 3(a) (ii), (iii) or (iv) of this Article shall be held in a state that is a party to the New York Convention.
6. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Party undertakes to carry out without delay the provisions of any such award and to provide in its territory for its enforcement.

8. *Arbitration Rules:* Pursuant to Article VI(3)(a)(iii) of the Treaty, the Arbitration Agreement incorporates the UNCITRAL Arbitration Rules (1976) (the “**UNCITRAL Arbitration Rules**”), according to which this Arbitration has been conducted.
9. *The Arbitral Tribunal:* Pursuant to the Arbitration Agreement and the UNCITRAL Arbitration Rules, the Tribunal is comprised of three arbitrators appointed thereunder as follows:
 - (i) *Dr Grigera Naón:* In their Notice of Arbitration dated 23 September 2009, the Claimants notified the Respondent of their appointment as co-arbitrator of Dr Horacio A. Grigera Naón, of 5224 Elliott Road, Bethesda, Maryland 20816, United States of America.
 - (ii) *Professor Lowe:* On 4 December 2009, the Respondent notified the Claimants of its appointment as co-arbitrator of Professor Vaughan Lowe KC, of Essex Court Chambers, 24 Lincoln’s Inn Fields, London WC2A 3EG, United Kingdom.
 - (iii) *Professor van den Berg:* On 18 March 2020, following the resignation of Mr V.V. Veeder as presiding arbitrator on 1 January 2020, the Secretary-General of the Permanent Court of Arbitration (the “**PCA**”) appointed as the presiding arbitrator Professor Albert Jan van den Berg, of IT Tower, Avenue Louise 480, 1050 Brussels, Belgium.
10. By further agreement of the Parties, the International Bureau of the PCA was appointed to administer these arbitration proceedings, with Mr Martin Doe (of the PCA) acting as Secretary to the Tribunal. He is assisted by Mr José Luis Aragón Cardiel, also of the PCA.
11. *Place of Arbitration:* By agreement of the Parties, the legal place (or seat) of this Arbitration is The Hague, the Netherlands.
12. *Language of Arbitration:* By agreement of the Parties, English and Spanish are the official languages of this Arbitration and, as between them, English is to be the authoritative language, with all oral proceedings to be simultaneously interpreted and transcribed into English and Spanish. Orders, decisions and awards of the Tribunal are to be rendered in English.

* * *

II. TRACK III OF THE ARBITRATION

13. *Earlier Orders, Decisions and Awards in Tracks I, IB and II:* This Award follows three Orders on Interim Measures, seven Awards, two decisions and 86 procedural orders made in these arbitration proceedings. For ease of reference, the Tribunal’s main rulings in this Arbitration include:
- (i) The First Interim Award on Interim Measures dated 25 January 2012 (“**First Interim Award**”);
 - (ii) The Second Interim Award on Interim Measures dated 16 February 2012 (“**Second Interim Award**”);
 - (iii) The Third Interim Award on Jurisdiction and Admissibility dated 27 February 2012 (“**Third Interim Award**”);
 - (iv) The Fourth Interim Award on Interim Measures dated 7 February 2013 (“**Fourth Interim Award**”);
 - (v) The First Partial Award on Track I dated 17 September 2013 (“**Partial Award on Track I**”);
 - (vi) The Decision on Track I(B) dated 12 March 2015 (“**Decision on Track I(B)**”);
 - (vii) The Second Partial Award on Track II dated 30 August 2018 (“**Track II Award**”);
 - (viii) The Decision on the Respondent’s Request for Interpretation under Article 35 of the UNCITRAL Arbitration Rules dated 6 November 2018 (“**Decision on Interpretation**”); and
 - (ix) The Partial Award on Threshold Issues of Track III dated 30 June 2021 (“**Partial Award on Track III**”).
14. This Award is made in Track III of this Arbitration, following Track II. It serves no purpose to revisit here the full procedural history of these arbitration proceedings from September 2009. For simplicity’s sake, the Tribunal hereby incorporates by reference Part I of its Third Interim Award, Part A of its Partial Award on Track I, Part B of its

Decision on Track I(B) and Part I(D) of its Track II Award. It here includes only a summary of the major procedural events following the Track II Award.

15. *Track III Procedure:* The Tribunal issued its Track II Award on 30 August 2018. As more fully set out in the Operative Part (Part X) of the Track II Award, and further described below, the Tribunal made a series of declarations and orders as to jurisdiction, admissibility, merits and other miscellaneous issues. It also referred all issues still extant between the Parties to be addressed in Track III of the proceedings.
16. On 29 September 2018, the Respondent requested interpretation and clarification of the Track II Award. On 6 November 2018, following further submissions by the Parties, the Tribunal issued its Decision on Interpretation, wherein it declined formally to accede to the Respondent's requests for the interpretation of the Track II Award.
17. On 10 October 2018, the Tribunal issued Procedural Order No. 52, concerning Track III of the Arbitration. The Tribunal there invited the Parties to apply for permission to add any further issue or request for relief to be addressed by the Parties in Track III beyond the extant issues identified in the Operative Part (Part X) of the Track II Award. It also invited the Parties to submit written summaries of their respective claimed amounts for legal costs and expenses until the date of the Order. The Respondent was further invited to show cause why the Tribunal should not vary Paragraph 4 of its Second Interim Award by ordering the release to the Claimants of the amount of USD 50 million deposited by the Claimants with the PCA as security for the Claimants' contingent responsibility to the Respondent in regard to such interim measures.
18. On 28 November 2018, the Parties filed their respective submissions on costs as instructed under paragraph 10.16 of the Track II Award.
19. On 8 December 2018, the Tribunal issued Procedural Order No. 54. Having taken note that the Respondent had no objection should the Tribunal decide to vary paragraph 4 of its Second Interim Award by ordering the release to the Claimants of the amount of USD 50 million deposited by the Claimants with the PCA, the Tribunal there set out directions for the release of the Claimants' security deposit.

20. On 17 December 2018, the Tribunal issued Procedural Order No. 55. It there identified the issues to be decided in Track III of the Arbitration, as fully set out below.³ The Tribunal also requested the Parties to submit their proposals regarding (i) the procedural timetable for written and oral submissions concerning the issues to be addressed in Track III, as listed above; (ii) a proposed venue for an oral hearing on Track III; (iii) the estimated length of that hearing; and (iv) the preferred range of dates for such hearing.
21. On 19 March 2019, the Tribunal, the Parties and the PCA held a procedural meeting to address the matters set out in Procedural Order No. 55. On 10 April 2019, the Tribunal circulated a draft Procedural Order No. 56, regarding the procedural timetable for Track III, and invited the Parties' comments thereon. Having received the Parties' comments, on 26 April 2019, the Tribunal issued Procedural Order No. 56, setting out the Track III timetable and scheduling a procedural meeting for 28-29 May 2020 (the "**Second Procedural Meeting**"). It there also invited the Parties to seek a consensus as to the contents of a new confidentiality or protective order for Track III.
22. On 21 May 2019, the Tribunal issued Procedural Order No. 57, whereby it ruled upon the Respondent's 14 May 2019 application for certain amendments to Procedural Order No. 56.
23. On 22 May 2019, the Tribunal issued Procedural Order No. 58, a temporary confidentiality order in regard to the Claimants' Memorial and the Respondent's Counter-Memorial on Track III and the Parties' respective document productions under the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration (2010 edition) (the "**IBA Rules**"). The Tribunal ruled that the order would be in force until the Second Procedural Meeting, at which time the Tribunal would review the order *de novo*.
24. On 17 June 2019, the Tribunal issued Procedural Order No. 59, whereby the Tribunal declined to grant the interim relief requested by the Claimants on 6 June 2019 "relating to information that is confidential pursuant to Procedural Order No. 58".

³ See para. 94 below.

25. On 19 July 2019, the Tribunal granted leave to the Claimants to submit a short letter on the contemporaneous status of the LAPs' recognition and enforcement action brought against Chevron in Canada. On 20 July 2019, the Claimants submitted the letter; on 24 July 2019, the Respondent submitted its response.
26. On 19 April 2020 the Tribunal issued Procedural Order No. 60, wherein it defined the issues to be addressed at the Second Procedural Meeting and the timing of written submissions in the lead-up to that meeting. Among other things, Procedural Order No. 60 foresaw that the Parties would file submissions concerning the Claimants' applications (i) "for the Tribunal's guidance concerning the proof that the Tribunal will require for damages consisting of legal fees and costs" ("**Request for Guidance**"); (ii) to decide certain "threshold issues" ("**Request for Partial Award**"); (iii) that the confidentiality order in Procedural Order No. 58 remain in place; and (iv) regarding issues of compliance with the Track II Award.
27. On 2 May 2020, the Tribunal issued Procedural Order No. 61, wherein it addressed several requests raised by the Parties in connection with the directions given by the Tribunal in Procedural Order No. 60. It there also declined to postpone the Second Procedural Meeting, as requested by the Respondent.
28. On 10 May 2020, the Tribunal issued Procedural Order No. 62, wherein it addressed a request from the Respondent for certain corrections and clarifications in respect of Procedural Order No. 61.
29. On 15 May 2020, the Tribunal circulated a draft of Procedural Order No. 63, establishing the format, time, and agenda of the Second Procedural Meeting. On 26 May 2020, the Tribunal held a procedural meeting with the Parties (by video conference) in preparation for the Second Procedural Meeting. Immediately following the procedural meeting, the Tribunal issued Procedural Order No. 63.
30. On 28 May and 29 May 2020, the Tribunal, the Parties and the PCA held the Second Procedural Meeting. On 29 May 2020, during the meeting, the Tribunal issued Procedural Order No. 64, whereby it extended the temporary confidentiality order in Procedural Order No. 58 until expressly abrogated.

31. On 5 June 2020, the Tribunal invited the Claimants to confirm whether the damages categories for which they sought guidance under their Request for Guidance corresponded to the heads of damages set forth in paragraph 479(2)(a)-(m) of the Memorial on Damages, or to any other heads of damages. The Claimants addressed this matter in a letter dated 6 June 2020.
32. On 10 July 2020, the Tribunal issued Procedural Order No. 65. It there declined to bifurcate the Track III proceedings to determine, as a preliminary matter, the threshold questions identified by the Claimants in their Request for Partial Award. The Tribunal also invited the Parties to take into account in their Track III Reply and Rejoinder the considerations set out in the order.
33. On 16 July 2020, the Tribunal issued Procedural Order No. 66, whereby it decided the Parties' outstanding document production requests set out in the Redfern Schedules filed with the Tribunal on 11 May 2020.
34. On 5 August 2020, the Claimants requested that the Tribunal revise the existing Track III schedule. On the basis that the schedule could not be maintained "given the time required for Claimants to clarify and comply with the extensive document production and privilege review and logging obligations imposed by Procedural Order No. 66", the Claimants requested that the Tribunal set the Request for Partial Award for hearing in March 2021, on the previously reserved dates for the Track III Hearing, with one more round of briefing by the Parties beforehand. The Claimants also requested a stay of all the environmental discovery obligations of both Parties until after the Tribunal had issued a decision on the Request for Partial Award. By a letter dated 11 August 2020, the Respondent requested that the Tribunal, in view of the Claimants' alleged non-compliance with Procedural Order No. 66, order the Claimants to produce immediately "all documents previously provided to their Memorial experts and witnesses", fix a date for the Claimants to produce all other responsive documents and required privilege logs, that adverse inferences be drawn if the Claimants failed to comply with these orders, and that the Claimants submit their Reply as scheduled.
35. After further exchanges of correspondence on these issues, the Tribunal invited the Parties to indicate their availability to make further submissions on these issues at a video conference. On 3 September 2020, the Tribunal held such video conference with the

Parties. On 28 September 2020, the Tribunal issued Procedural Order No. 67. It there ordered (i) the further bifurcation of Track III with respect to the four preliminary questions raised by the Claimants in their Request for Partial Award; (ii) a stay of the Tribunal's orders on environmental document production; and (iii) that the confidentiality order set out in Procedural Order No. 58 remain in effect for all Track III materials until expressly abrogated. Flowing from its directions on these matters, the Tribunal also issued a revised Track III schedule, which foresaw (*inter alia*) that a Hearing on the Request for Partial Award would take place on 15-18 March 2021 (the “**Hearing on a Partial Award**”).

36. On 26 October 2020, the Tribunal issued Procedural Order No. 68. It there decided certain outstanding disputes between the Parties concerning the Claimants' 5 October 2020 privilege log, prepared in response to Document Requests Nos. 42-52 in the Respondent's Redfern Schedule.
37. On 5 November 2020, the Tribunal issued Procedural Order No. 69. It there fixed a revised schedule for Track III having taken note of the Parties' agreement to extend certain deadlines and their divergent positions on the extension of other deadlines in the schedule.
38. On 13 November 2020, the Tribunal issued Procedural Order No. 70. It there (i) ordered the Claimants to submit a Revised Appendix 2 to the Memorial on Damages to account for the Claimants' decision to reduce their pecuniary claim; (ii) rejected the Claimants' request that the Tribunal issue an order “to the effect that the production of their invoice detail as well as any inadvertent production of privileged documents would not result in a waiver and that a producing party could ‘claw back’ any privileged documents post-production, similar to the type of order a U.S. federal district court may enter pursuant to Rule 502(d) of the Federal Rules of Evidence”; and (iii) invited further comments from the Claimants regarding the Respondent's allegations of deficient document production.
39. On 22 December 2020, the Tribunal issued Procedural Order No. 71, whereby it found “that its order in respect of Request No. 31 [of the Respondent's 11 May 2020 Redfern Schedule] does not require the Claimants to produce the information constituting the Unclaimed Invoices or FTI's software. Accordingly, once the Claimants produced the Structured Data relating to Claimed Invoices, they satisfied the Tribunal's order in respect

of Request No. 31, as clarified in Procedural Orders Nos. 67 and 68.” On this basis, the Tribunal rejected the Respondent’s request that the Claimants produce the review database.

40. By a letter dated 8 January 2021, the Tribunal rejected a request from the Respondent for leave to submit a Reply to the Claimants’ Response to Ecuador’s Objections to Claimants’ Privilege and Confidentiality Log, dated 21 December 2020. It there also granted leave to the Respondent to submit a rebuttal expert report to the Claimants’ submitted expert report of Judge Stephen G. Larson and made certain adjustments to the Track III schedule.
41. On 8 February 2021, the Tribunal issued Procedural Order No. 72. It there decided outstanding privilege disputes concerning the Claimants’ Second Privilege and Confidentiality Log.
42. On 4 March 2021, the Tribunal, the PCA and the Parties attended a procedural meeting (by video conference) in preparation for the Hearing on a Partial Award. During the procedural meeting, the Respondent requested that the Tribunal issue an instruction excluding from the scope of the hearing and from the Tribunal’s ensuing decision any issues not directly responsive to the questions raised in the Claimants’ Request for Partial Award. The Tribunal ruled upon such request in its Procedural Order No. 73, dated 8 March 2021.
43. The Hearing on a Partial Award was held on 16 March and 17 March 2021 by video conference.
44. By a letter dated 22 May 2021, the Claimants informed the Tribunal of an alleged breach of the Tribunal’s confidentiality orders as established in Procedural Orders Nos. 58, 64 and 67. The Respondent addressed such allegations in a letter dated 28 May 2021. By its Procedural Order No. 74, dated 2 June 2021, the Tribunal reaffirmed its prior directions on confidentiality but declined to make any further orders at that juncture.
45. On 30 June 2021, the Tribunal issued its Partial Award on Threshold Issues of Track III (the “Partial Award on Track III”, as defined above). It is further described below.⁴

⁴ See paras. 92-93 below.

46. On 23 July 2021, the Tribunal issued Procedural Order No. 75, setting forth a revised schedule for Track III, leading to a Main Hearing on Track III to be held from 18 August to 7 September 2022 (the “**Track III Hearing**”).
47. On 1 July 2022, the Tribunal issued Procedural Order No. 76, whereby it rejected a request from the Claimants to strike from the record the expert reports of B. Tod Delaney (bearing the references RE-34 and RE-64). It further addressed the Claimants’ request to file additional evidence in response to the Rejoinder on Damages.
48. On 26 July 2022, the Tribunal issued Procedural Order No. 77, whereby it established a Hybrid Hearing Protocol for the Track III Hearing.
49. On 1 August 2022, the Tribunal issued Procedural Order No. 78. It there (i) granted leave to the Parties to submit into the record additional documents listed in their respective communications of 11 July and 25 July 2022, and (ii) rejected the Claimants’ request to submit into the record an additional opinion by Dr Ricardo Gil Lavedra.
50. On 11 August 2022, the Tribunal issued Procedural Order No. 79, whereby it (i) rejected the Respondent’s request for reconsideration of Procedural Order No. 78; and (ii) invited the Parties to confer and submit a revised joint hearing schedule.
51. The Track III Hearing was held from 18 August to 7 September 2022. It is further described below.⁵
52. On 23 August 2022, the Tribunal issued Procedural Order No. 80, whereby it rejected the Claimants’ request to “replace a document that was inadvertently submitted as Exhibit C-3488 with the correct document”.
53. On 23 September 2022, the Tribunal issued Procedural Order No. 81, issuing directions concerning (i) post-hearing indexes to be submitted by the Parties; and (ii) corrections to the Track III Hearing transcript.

⁵ See paras. 65-75 below.

54. Also on 23 September 2022, the Tribunal issued Procedural Order No. 82, deferring its decision on the Respondent's Motion to Strike the Claimants' Claims related to the "Cash Calls" dated 2 September 2022, to its Track III Award.
55. On 14 October 2022, the Tribunal issued Procedural Order No. 83, whereby it invited the Parties to submit a joint Microsoft Excel model for the calculation of damages and interest, provided directions for said model, and set forth the procedure for the submission of the model. On 3 November 2022, the Parties notified the Tribunal that they were unable to reach agreement on a joint damages and interest model, and each submitted a model. On 18 November 2022, the Parties submitted their respective disclaimers in respect of both models. The Claimants' disclaimer was accompanied by certain video tutorials concerning the Claimants' damages model. After being granted leave by the Tribunal, the Respondent filed its own video tutorials concerning its damages model on 9 December 2022.
56. Pursuant to paragraph 5 of Procedural Order No. 83, the Parties were required to provide monthly updates of their joint damages model in which the applicable benchmark interest rates and related data were already built-in as necessary. Starting in January 2023, in view of their failure to agree on a joint damages model, the Parties submitted updated versions of their respective damages model on a monthly basis. On 20 December 2024, the Claimants filed a model including, for the first time, interest calculations for the Claimants' alleged trademark and embargo losses. On 14 January 2025, the Respondent requested the Tribunal to reject the Claimants' 20 December 2024 damages model. On 11 April 2025, the Tribunal (i) instructed the Parties to continue filing damages models as prescribed under paragraph 5 of Procedural Order No. 83; and (ii) noted that it would not draw guidance from the Claimants' 20 December 2024 model in finalizing its award on Track III. The last versions of the Parties' damages models received by the Tribunal prior to the issuance of this Award were filed by the Claimants on 14 October 2025 and by the Respondent on 15 October 2025.
57. On 7 November 2022, the Parties filed their respective post-Track III Hearing indexes.
58. On 13 November 2022, the Tribunal issued Procedural Order No. 84, whereby it determined that issues related to the allocation and assessment of costs and expenses

within the meaning of Articles 38-40 of the UNCITRAL Arbitration Rules as claimed by the Parties would be dealt with in Track IV of the Arbitration.

59. *Written Pleadings:* Pursuant to the Tribunal’s Procedural Orders, the Parties submitted the following written pleadings during Track III:

- (i) The Claimants’ Memorial on Damages (Track III), dated 31 May 2019 (“**Memorial**”);
- (ii) The Respondent’s Counter-Memorial on Damages, dated 28 February 2020 (“**Counter-Memorial**”);
- (iii) The Claimants’ Request for Guidance Concerning the Evidence to Support Claimants’ Damage Claim for Legal Fees and Costs, dated 21 April 2020 (defined earlier as “Request for Guidance”);
- (iv) The Claimants’ Request for a Partial Award on Threshold Issues, dated 21 April 2020 (defined earlier as “Request for Partial Award”);
- (v) The Respondent’s Response to Claimants’ Request for Guidance Concerning the Evidence to Support Claimants’ Damage Claim for Legal Fees and Costs, dated 19 May 2020;
- (vi) The Respondent’s Response to Claimants’ Request for a Partial Award on Threshold Issues, dated 19 May 2020;
- (vii) The Claimants’ Second Submission on Request for a Partial Award, dated 1 October 2020 (the “**Claimants’ Second Submission**”);
- (viii) The Respondent’s Second Submission on Request for a Partial Award, dated 15 January 2021 (the “**Respondent’s Second Submission**”);
- (ix) The Claimants’ Reply Memorial on Damages (Track III), dated 20 August 2021 (the “**Reply**”); and
- (x) The Respondent’s Rejoinder on Damages, dated 20 May 2022 (the “**Rejoinder**”).

60. Whilst the Parties have submitted during these proceedings other written pleadings touching upon issues decided in this Award, the Tribunal considers that their respective claims for relief in Track III can fairly be taken for present purposes from the submissions listed in Section IV *infra*, save where otherwise indicated below.⁶
61. *Written Factual Testimony*: During Track III, the Claimants submitted the following written factual testimony:
- (i) The witness statement of E.J. Rankin, dated 30 May 2019;
 - (ii) The third witness statement of Ricardo Reis Veiga, dated 30 May 2019;
 - (iii) The first witness statement of David S. Turner, dated 30 May 2019;
 - (iv) The witness statement of Colleen Kent, dated 31 May 2019;
 - (v) The fourth witness statement of Ricardo Reis Veiga, dated 29 July 2021;
 - (vi) The witness statement of Steven G. Kobre, dated 13 August 2021;
 - (vii) The witness statement of Robert A. Mittelstaedt, dated 18 August 2021;
 - (viii) The witness statement of Peter E. Seley, dated 18 August 2021; and
 - (ix) The second witness statement of David Turner, dated 19 August 2021.
62. The Respondent did not submit written factual testimony during Track III.
63. *Written Expert Testimony*: During Track III, the Claimants submitted the following written expert testimony:
- (i) The third expert report of Weston Anson, dated 31 May 2019;
 - (ii) The first expert report of Kiran Sequeira, dated 31 May 2019;
 - (iii) The first expert report of Steven F. Stanton, dated 31 May 2019;

⁶ See Track II Award, para. 1.47 for a fuller list of written pleadings filed prior to Track III. See also Section XIII below.

- (iv) The eighth expert report of Cesar Coronel Jones, dated 1 October 2020;
- (v) The expert report of Stephen G. Larson, dated 21 December 2020;
- (vi) The expert report of Daniel J. Slottje, dated 17 August 2021;
- (vii) The fourth expert report of Weston Anson, dated 19 August 2021;
- (viii) The expert report of José Luis Barzallo Sacoto, dated 19 August 2021;
- (ix) The expert report of Charles Silver, dated 19 August 2021;
- (x) The expert report of Clyde W. Lea, dated 20 August 2021;
- (xi) The expert report of Sanford Litvack, dated 20 August 2021;
- (xii) The expert report of Mark A. McGrath dated 20 August 2021;
- (xiii) The expert report of Geoffrey Parsons Miller, dated 20 August 2021;
- (xiv) The expert report of Joseph Ryan, dated 20 August 2021;
- (xv) The second expert report of Kiran Sequeira, dated 20 August 2021; and
- (xvi) The second expert report of Steven F. Stanton, dated 20 August 2021.

64. The Respondent submitted the following written expert testimony during Track III:

- (i) The expert report of Verónica Arias Cabanilla, dated 20 February 2020;
- (ii) The first expert report of Luis Sergio Parraguez Ruiz, dated 22 February 2020;
- (iii) The first expert report of María de los Ángeles Lombeida Araujo, dated 23 February 2020;
- (iv) The first expert report of Luciano de Souza Godoy, dated 25 February 2020;
- (v) The first expert report of Erik S. Knutsen, dated 25 February 2020;
- (vi) The first expert report of Juliette M. Luycks, dated 25 February 2020;

- (vii) The first expert report of Fernando García Pullés, dated 26 February 2020;
- (viii) The second expert report of William O. Kerr, dated 26 February 2020;
- (ix) The first expert report of Mari Henry Leigh, dated 26 February 2020;
- (x) The expert report of David Paige, dated 26 February 2020;
- (xi) The first expert report of S.I. Strong, dated 27 February 2020;
- (xii) The fourth expert report of Fabián Andrade Narváez, dated 28 February 2020;
- (xiii) The first expert report of B. Tod Delaney, dated 28 February 2020;
- (xiv) The first expert report of Daniel Flores, dated 28 February 2020;
- (xv) The fifth expert report of Fabián Andrade Narváez, dated 14 January 2021;
- (xvi) The second expert report of Luis Sergio Parraguez Ruiz, dated 13 January 2021;
- (xvii) The expert report of Richard D. Friedman, dated 25 January 2021;
- (xviii) The expert report of Misael Ruiz Fierro, dated 12 May 2022;
- (xix) The expert report of Albert J. Lee, dated 13 May 2022;
- (xx) The expert report of Bradley Wendel, dated 17 May 2022;
- (xxi) The second expert report of Fernando García Pullés, dated 17 May 2022;
- (xxii) The second expert report of María de los Ángeles Lombeida Araujo, dated 17 May 2022;
- (xxiii) The expert report of William O. Kerr and Gregory E. Smith, dated 18 May 2022;
- (xxiv) The second expert report of Mari Henry Leigh, dated 18 May 2022;
- (xxv) The second expert report of Luciano de Souza Godoy, dated 19 May 2022;

- (xxvi) The second expert report of Erik K. Knutsen, dated 19 May 2022;
 - (xxvii) The sixth expert report of Fabián Andrade Narváez, dated 19 May 2022;
 - (xxviii) The second expert report of Juliette Luycks, dated 19 May 2022;
 - (xxix) The expert report of John L. Trunko, dated 20 May 2022;
 - (xxx) The expert report of Lewis Baglietto, dated 20 May 2022;
 - (xxxi) The second expert report of Daniel Flores, dated 20 May 2022;
 - (xxxii) The second expert report of S.I. Strong, dated 20 May 2022; and
 - (xxxiii) The second expert report of B. Tod Delaney, dated 20 May 2022.⁷
65. *The Track III Hearing:* Issues under Track III were addressed by the Parties at the oral hearing held at the World Bank, in Washington D.C., USA held from 18 August to 7 September 2022, with the assistance of English and Spanish interpreters and recorded in the form of English and Spanish transcripts. The references below are made to the English version of the Track III Hearing transcript, as follows: “D1.10” signifies the first day, at page 10. As regards witness examinations, “x” signifies direct examination or direct presentation, “xx” signifies cross-examination, “xxx” signifies redirect examination, “xxxx” signifies recross-examination, and “QT” signifies questions from the Tribunal.
66. The Claimants and the Respondent were represented respectively at the Track III Hearing by those persons listed in the verbatim transcript, and it serves no purposes here listing these persons by name, save as follows.
67. For the Claimants, opening oral submissions were made by Jan Paulsson [D1.15], Doak Bishop [D1.42], Wade Coriell [D1.81], Edward Kehoe [D1.129], and Elizabeth Silbert [D1.166].

⁷ See Track II Award, paras. 1.49 *ff* for a fuller list of written witness and expert testimony submitted prior to Track III.

68. For the Respondent, opening oral submissions were made by Íñigo Salvador Crespo [D2.218], Andrew Schwartz [D2.226 & 384], Diana Tsutieva [D2.242, 340, & 372], Claudia Salgado Levy [D2.281 & 380], Jonathan Ettinger [D2.288 & 318], Richard Maidman [D2.300 & 360], Mark Finsterwald [D2.305, 330 & 368], Nicholas Renzler [D2.347], and Kenneth Leonetti [D2.394].
69. For the Claimants, further oral submissions were made by Elizabeth Silbert [D3.437], Jan Paulsson [D5.971 & D12.2784], Wade Coriell [D6.1249, D9.2031, D14.3258 & 3315], Doak Bishop [D7.1477, D8.1752, 1778 & 1788], Brian White [D10.2301, D14.3330 & 3359], and Luke Sobota Esq [D11.2600].
70. For the Respondent, further oral submissions were made by Richard Maidman [D3.442], Diana Tsutieva [D5.983, D6.1264, D11.2614 & D12.2800], Claudia Salgado Levy [D14.3300], Andrew Schwartz [D7.1492, D8.1765, 1786, D9.2041, D14.3218, 3307 & 3352], and Mark Finsterwald [D10.2307].
71. For the Claimants, closing oral submissions were made by Doak Bishop [D15.3379], Wade Coriell [D15.3392], Elizabeth Silbert [D15.3437], Craig Miles [D15.3463], Edward Kehoe [D15.3479], and Jan Paulsson [D15.3501].
72. For the Respondent, closing oral submissions were made by Claudia Salgado Levy [D15.3514], Diana Tsutieva [D15.3520], Jonathan Ettinger [D15.3548], Andrew Schwartz [D15.3570], Mark Finsterwald [D15.3598], and Kenneth Leonetti [D.15.3615].
73. The Claimants tendered 9 oral witnesses at the Track III Hearing who were all cross-examined by the Respondent: (i) Ricardo Reis Veiga [D3.454x, 467xx, 579xxx, 596QT, 607xxx & 608xxxx]; (ii) Peter E. Seley [D3.614x, 633xx, D4.711xx, 780xxx & 803QT]; (iii) Robert A. Mittelstaedt [D3.807x, 823xx & 939xxx]; (iv) Charles Silver [D5.995x, 1024xx, 1119xxx & 1123QT]; (v) Sanford Litvack [D5.1135x, 1163xx, D6.1277xx & 1289QT]; (vi) Joseph Ryan [D6.1301x, 1323xx & 1389xxx]; (vii) José Luis Barzallo Sacoto [D6.1401x, 1427xx & 1464xxx]; (viii) Weston Anson [D7.1508x, 1537xx & 1648xxx]; and (ix) Kiran Sequeira [D7.1662x, 1706xx, D8.1802xx & 1899xxx].
74. The Respondent tendered 10 oral witnesses at the Track III Hearing who were all cross-examined by the Claimants: (i) W. Bradley Wendel [D8.1920x & 1947xx]; (ii) S. I. Strong [D9.2051x, 2083xx, 2179xxx & 2196QT]; (iii) Mari Henry Leigh [D9.2206x,

2245xx, 2275xxx & 2279QT]; (iv) John L. Trunko Esq [D10.2316x, 2342xx, 2485xxx, 2429QT, D11.2567QT, 2581x⁸ & 2582xx⁹]; (v) Fabián Andrade Narváez [D10.2501x, 2520xx, D11.2626xx & 2648xxx]; (vi) Lewis Baglietto [D11.2655x, 2683xx, 2753xxx, 2757QT & 2764xxxx]; (vii) David Paige [D12.2818x, 2843xx & 2854xxx]; (viii) María de los Ángeles Lombeida [D12.2859x & 2885xx]; (ix) Gregory E. Smith [D12.2917x, 2938xx, D13.3007xx & 3032xxx]; and (x) Daniel Flores [D13.3047x, 3098xx, 3156QT, 3169xx, 3171QT & 3176xxx].

75. The Tribunal called one witness: Mark A. McGrath [D11.2545QT, 2562x,¹⁰ & 2563xx¹¹].
76. *Track III Procedural Orders*: The Tribunal has issued 30 orders relevant to Track III (Procedural Orders Nos 52, 55-84), as follows:¹²

<i>PO Number</i>	<i>Date</i>	<i>Subject-Matter</i>
PO No. 52	10 October 2018	Track III Of the Arbitration
PO No. 55	17 December 2018	Track III Timetable and Other Matters
PO No. 56	26 April 2019	Track III Timetable
PO No. 57	21 May 2019	Respondent's Request of 14 May 2019
PO No. 58	22 May 2019	Temporary Confidentiality Order
PO No. 59	17 June 2019	Claimants' Application for Interim Relief
PO No. 60	19 April 2020	May 2020 Procedural Meeting
PO No. 61	2 May 2020	Tribunal's Directions in PO No. 60
PO No. 62	10 May 2020	Tribunal's Decisions in PO Nos. 56, 58, 60 & 61
PO No. 63	26 May 2020	Track III Procedural Meeting

⁸ Examination by counsel for the Respondent.

⁹ Examination by counsel for the Claimants.

¹⁰ Examination by counsel for the Claimants.

¹¹ Examination by counsel for the Respondent.

¹² See Track II Award, Part I, Annex 2 for a list of all procedural orders issued in this Arbitration prior to Track III.

PO No. 64	29 May 2020	Extension of Temporary Confidentiality Order in PO No. 58
PO No. 65	10 July 2020	Decision on the Claimants' Requests for a Partial Award and for Guidance dated 21 April 2020 and Claimants' Letter of 4 May 2020 raising issues of non-compliance with the Track II Award dated 30 August 2018
PO No. 66	16 July 2020	Decision on Parties' Document Production Requests
PO No. 67	28 September 2020	Omnibus Order
PO No. 68	26 October 2020	Decision on Outstanding Privilege Disputes
PO No. 69	5 November 2020	Revised Track III Schedule
PO No. 70	13 November 2020	Omnibus Order
PO No. 71	22 December 2020	Document production
PO No. 72	8 February 2021	Decision on the Respondent's Request concerning the Scope of the Hearing on Partial Award
PO No. 73	8 March 2021	Decision on Outstanding Privilege Disputes
PO No. 74	2 June 2021	Respondent's Alleged Confidentiality Breaches
PO No. 75	23 July 2021	Revised Track III Schedule
PO No. 76	1 July 2022	Claimants' Requests to Strike the Second Delaney Report and to File Additional Evidence in response to the Track III Rejoinder
PO No. 77	26 July 2022	Hybrid Hearing Protocol
PO No. 78	1 August 2022	Requests to File Additional Evidence and Claimants' Request to Introduce the Gil Lavedra Legal Opinion
PO No. 79	11 August 2022	Respondent's Request for Reconsideration of PO No. 78
PO No. 80	23 August 2022	Claimants' Request to Introduce a Declaration Authored by John L. Trunko
PO No. 81	23 September 2022	Post-Hearing Indexes and Corrections to Track III Hearing Transcripts

PO No. 82	23 September 2022	Respondent’s Request to Strike the Claimants’ Claims related to the “Cash Calls”
PO No. 83	14 October 2022	Joint Model for Calculation of Damages and Interest
PO No. 84	13 November 2022	Track IV of the Arbitration
PO No. 85	28 October 2025	Closing the Record as regards Track III of the Arbitration
PO No. 86	7 November 2025	Embargo Order – Track III Award

77. *Closing the Record:* By its Procedural Order No. 85, dated 28 October 2025, the Tribunal ‘closed’ the record of this Arbitration as regards the issues under Track III that were to be decided in this Award.

* * *

III. BACKGROUND TO THE TRACK III AWARD

A. FACTUAL BACKGROUND

78. In Parts IV, V and VI of the Track II Award, the Tribunal considered and made its findings in respect of the Claimants’ allegations that several judges of the **Lago Agrio Court** wrongfully conducted and decided the **Lago Agrio Litigation**, in breach of the protections provided to the Claimants by the Treaty. Central among these was the Claimants’ allegation that Judge Nicolás Zambrano did not write the **Lago Agrio Judgment** of 14 February 2011 (with its Clarification Order of 4 March 2011) but, rather, that the Lago Agrio Judgment was “ghostwritten”, with Judge Zambrano’s corrupt connivance, by certain of the Lago Agrio Plaintiffs’ (the “**LAPs**”) representatives.
79. It would serve no purpose to repeat here in full the Tribunal’s findings on such allegations. However, for the sake of context the Tribunal provides a brief overview of some key aspects of the factual background of the case and the Tribunal’s findings of fact as set out in the Track II Award.
80. *Crude Oil Pollution in the Oriente*: On 21 February 1964, the Respondent granted oil exploration and production rights in Ecuador’s Oriente region to TexPet (a subsidiary of Texaco) and the Ecuadorian Gulf Oil Company (a subsidiary of Gulf) under a written concession made with these companies’ local subsidiaries operating as a Consortium.¹³ In 1967, the Consortium discovered significant deposits of crude oil in the Oriente and drilled its first wells. By 1969, the Consortium had found considerable reserves of crude oil.¹⁴ On 6 August 1973, the Respondent, TexPet and Gulf entered into a further concession agreement with a term expiring on 6 June 1992 (the “**1973 Concession Agreement**”),¹⁵ which, among other things, imposed environmental and related obligations on the Contractors (TexPet and Gulf) and the Operator (TexPet).¹⁶ On 30 June 1990, TexPet ceased to act as the “Operator” under the 1973 Concession Agreement, after

¹³ Track II Award, para. 4.55.

¹⁴ Track II Award, para. 4.56.

¹⁵ Track II Award, para. 4.58.

¹⁶ Track II Award, para. 4.59.

25 years (1965 to 1990). From 1 July 1990 onwards, PetroEcuador (by its subsidiary, Petroamazonas) became the “Operator” under the 1973 Concession Agreement.¹⁷

81. There is today crude oil pollution in the former concession area of the Oriente, including pollution lying close to human habitation.¹⁸ The origin of such crude oil pollution, apart from accidental leaks and spills, derives principally from a mixture of oil and “produced water” in pits, subject to run-off into adjoining land and water courses.¹⁹
82. *The 1995-1998 Settlement and Release Agreements:* This term, as used in the Track II Award and in this Award, comprises three sets of contractual documentation: (i) the **1995 Settlement Agreement** of 4 May 1995; (ii) the **1996 Municipal and Provincial Releases**; and (iii) the **1998 Final Release** of 30 September 1998.²⁰ The general features of the 1995-1998 Settlement and Release Agreements are as follows:
- (i) *The 1995 Settlement Agreement:* The 1995 Settlement Agreement was signed for the Respondent by the Minister of Energy and Mines (Dr Galo Abril Ojeda), for PetroEcuador by its Executive President (Dr Federico Vintimilla Ojeda) and for TexPet by its Vice-President (Mr Ricardo Reis Veiga) and its legal representative (Dr Rodrigo Pérez Pallares). It provides (*inter alia*): “the scope of the Environmental Remedial Work to be undertaken by TexPet to discharge all of its legal and contractual obligations and liability [for] Environmental Impact arising out of the Consortium’s operations has been determined and agreed to by TexPet, the Government and PetroEcuador as described in this Contract”; the agreed scope of the environmental remedial work is attached as Annex A; and “TexPet agrees to undertake such Environmental Remedial Work in consideration for being released and discharged of all its legal and contractual obligations and liability for Environmental Impact arising out of the Consortium’s operations”.²¹

¹⁷ Track II Award, para. 4.62.

¹⁸ Track II Award, para. 4.71.

¹⁹ Track II Award, para. 4.72.

²⁰ Track II Award, para. 3.15.

²¹ Track II Award, paras. 4.157, 4.159.

By Article 5.1 of the 1995 Settlement Agreement, the Respondent and PetroEcuador release, acquit and forever discharge TexPet and its fellow “Releasees” of “all the Government’s and Petroecuador’s claims against the Releasees for Environmental Impact arising from the Operations of the Consortium, except for those related to the obligations contracted hereunder for the performance by TexPet of the Scope of Work (Annex A) which shall be released as the Environmental Remedial Work is performed to the satisfaction of the Government and Petroecuador. . .”.²²

(ii) *The 1996 Municipal and Provincial Releases:* In May-September 1996, the Municipal and Provincial Releases were agreed between TexPet and four municipalities in the Oriente (Shushufindi, Francisco de Orellana, Lago Agrio and La Joya de los Sachas), pursuant to paragraph VII(C) of Annex A of the 1995 Settlement Agreement and approved by the Ecuadorian Courts.²³

(iii) *The 1998 Final Release:* The Final Release was issued on 30 September 1998, signed by PetroEcuador, the relevant Ministries, and TexPet. In summary, within the former concession area, a total of 250 pits and 7 spills at 133 well sites in 10 fields had been investigated under the Remedial Action Plan agreed by TexPet, Petro Ecuador and the Respondent in September 1995 (the “RAP”). Remedial action was taken at 168 of these locations; and the balance (of 89) not subjected to remedial action because it was not required under the RAP.²⁴

83. *The Aguinda Litigation:* The Aguinda Complaint was filed in the District Court for the Southern District of New York on 3 November 1993. It pleaded a claim by the Aguinda Plaintiffs as a putative (uncertified) class action under the USA’s Federal Rules of Procedure, by named individuals and “on behalf of a class of all others similarly situated” for personal injuries and property damage caused by the defendant’s wrongdoing. The original defendant was Texaco.²⁵

²² Track II Award, para. 4.158.

²³ Track II Award, para. 4.164.

²⁴ Track II Award, para. 4.178.

²⁵ Track II Award, para. 4.75.

84. As pleaded, the named individuals and unnamed class members estimated as numbering 30,000 were all resident in Ecuador from 1972 onwards within a geographical area defined by latitude and longitude, south of the Colombian border. This complaint asserted individual civil claims for personal injury and property damage, aggregated as members of the same putative class. The causes of action were pleaded in tort, including negligence, public nuisance, private nuisance, strict liability, trespass, and civil conspiracy, with relief claimed as compensatory damages, punitive damages and equitable relief to remedy the alleged pollution and contamination “of the plaintiffs’ environment and the personal injuries and property damage caused thereby”.²⁶
85. After years of litigation at the trial court and appellate levels, by its judgment dated 30 May 2001, the U.S. District Court for the Southern District of New York (Judge Rakoff) dismissed the Aguinda Complaint (for a second time). The Court ordered an unconditional stay on the ground of *forum non conveniens* because the case had “everything to do with Ecuador and nothing to do with the United States [of America]”. As there also recorded: “Following remand [by the Second Circuit to Judge Rakoff], Texaco provided the missing commitment to submit to the jurisdiction of the courts of Ecuador” on 11 January 1999.²⁷ By its judgment dated 16 August 2002, the Second Circuit affirmed, as modified, Judge Rakoff’s Order.²⁸
86. *The Lago Agrio Litigation*: On 7 May 2003, the LAPs filed the Lago Agrio Complaint with the Lago Agrio Court against Chevron (which, by then had “merged” with Texaco) (the “**Lago Agrio Complaint**”). The Complaint identified the 48 individual plaintiffs as being “domiciled in the Secoya Community of San Pablo de Aguarico, Canton of Shushufundi, Province of Sucumbíos” and “Ecuadorian nationals engaged in farming activities”. These plaintiffs were described as having been the same Aguinda Plaintiffs as in the stayed Aguinda Litigation New York, having there sought “enforcement of their own rights as well as those of other people in the same class, as the term is used in [New York’s] procedural rules to designate the people who might find themselves in an

²⁶ Track II Award, para. 4.76.

²⁷ Track II Award, paras. 4.82-4.83.

²⁸ Track II Award, para. 4.84.

identical legal situation with regard to the specifics of the lawsuit [*i.e.*, the Aguinda Litigation]”.²⁹

87. The Lago Agrio Court (Judge Zambrano) issued the Lago Agrio Judgment on 14 February 2011 (with its Clarification Order of 4 March 2011), adverse to Chevron. It awarded USD 18.2 billion in damages to be paid by Chevron, including USD 8.6 billion as punitive damages subject to a timely public apology by Chevron, with a 10% award to the Amazonian Defence Front (“**ADF**”).³⁰
88. Chevron initiated three successive appeals against the Lago Agrio Judgment, resulting in the Judgments of the Provincial Court of Justice of Sucumbios (the “**Appellate Court**”) in 2012, the National Court of Justice (the “**Cassation Court**”) in 2013, and the Constitutional Court of Ecuador (the “**Constitutional Court**”) in 2018.³¹ In its 12 November 2013 Judgment, the Cassation Court affirmed in part the Lago Agrio Judgment, but nullified the punitive damages imposed for Chevron’s omission to “apologise”, as required by that Judgment and as upheld by the Appellate Court. As a result, the Cassation Court reduced the Lago Agrio Judgment’s award of damages to USD 8.6 billion, with 10% to be paid to the ADF.³² The Constitutional Court issued its Judgment on 27 June 2018, affirming the Judgment of the Cassation Court.³³
89. *The ‘Ghostwriting’ of the Lago Agrio Judgment:* In Part VIII of the Track II Award, the Tribunal analysed in the aggregate the factual and forensic conclusions it had reached in Parts IV, V and VI of the Award as regards the Claimants’ allegations that the Lago Agrio Judgment was ‘ghostwritten’ for Judge Nicolás Zambrano of the Lago Agrio Court:

The facts established on the factual, expert and forensic evidence speak for themselves, as set out at length in Parts IV, V and VI above.

As there explained, the details as to how exactly all or material parts of the Lago Agrio Judgment came to be written, corruptly by certain of the Lago Agrio Plaintiffs’ representatives for Judge Zambrano, remain incomplete. The missing factual and forensic evidence is likely available only in Ecuador, if it still exists at all. Yet the circumstantial

²⁹ Track II Award, paras. 4.89-4.90.

³⁰ Track II Award, para. 5.2.

³¹ Track II Award, para. 4.94.

³² Track II Award, para. 5.172.

³³ Track II Award, para. 5.180.

and other evidence adduced in this arbitration is overwhelming. Short of a signed confession by the miscreants, as rightly submitted by the Claimants at the end of the Track II Hearing, the evidence establishing ‘ghostwriting’ in this arbitration “must be the most thorough documentary, video, and testimonial proof of fraud ever put before an arbitral tribunal.”

As found by the Tribunal in Parts IV and V above, two of the Lago Agrio Plaintiffs’ representatives who were privy to the ‘ghostwriting’ exercise were Mr Donziger and Mr Fajardo. As the Respondent acknowledged at the Track II Hearing, the participation of Mr Fajardo in ‘ghostwriting’ for Judge Zambrano, if correct (which the Respondent denies), would suffice to support the Claimants’ claims for denial of justice. The Tribunal agrees: the Claimants’ inability to identify by name with sufficient probability others of the Lago Agrio Plaintiffs’ representatives, also involved in ‘ghostwriting’ (in addition to Mr Donziger), cannot by itself exculpate the Respondent from liability for denial of justice. If it were otherwise, the more successful the ghostwriting exercise, the less culpability would result. In any event, for denial of justice, the relevant actor is Judge Zambrano; and his participation in the ‘ghostwriting’ of the Lago Agrio Judgment is firmly established on the evidence before this Tribunal.

On such evidence, the Tribunal has found that Judge Zambrano acted corruptly, in return for a bribe promised to him by certain of the Lago Agrio Plaintiffs’ representatives. Judge Zambrano’s collusive conduct in the ‘ghostwriting’ of the Lago Agrio Judgment was not authorised under Ecuadorian law. Nor was it under judicial standards long established under international law. He was far from acting as an independent or impartial judge deciding the Lago Agrio Litigation fairly between the parties, under minimum standards for judicial conduct long recognized under international law.³⁴

B. KEY RULINGS IN THE TRIBUNAL’S PRIOR AWARDS AND DECISIONS

90. In its Track II Award, Part I, Annex 1, the Tribunal re-stated the Operative Parts of its Orders on Interim Measures, Awards and Decision on Track I(B). It is unnecessary to repeat those decisions here. For ease of reference, however, the Tribunal repeats here the Operative Parts of the Track II Award and the Partial Award on Track III.

91. *Track II Award*: Part X (the Operative Part) of the Track II Award reads as follows:

A: Introduction

10.1 For the reasons set out in this Award, based on the evidential materials adduced in these arbitration proceedings together with its earlier awards, orders and decision, the Tribunal makes the following declarations and orders under the Treaty and international law:

B: Declarations as to Jurisdiction and Admissibility

10.2 The Tribunal declares that it has jurisdiction under Article VI of the Treaty over the claims pleaded in this arbitration by the First Claimant (Chevron) and the Second

³⁴ Track II Award, paras. 8.53-8.56.

Claimant (TexPet) under Articles II(3)(a) and II(3)(c) of the Treaty; and the Tribunal rejects all objections as to lack of jurisdiction pleaded by the Respondent;

- 10.3 The Tribunal declares that the claims pleaded in this arbitration by the First Claimant and the Second Claimant under Articles II(3)(a) and II(3)(c) of the treaty are admissible under Article VI of the Treaty; and the Tribunal rejects all objections as to non-admissibility pleaded by the Respondent.

C: Declarations as to the Merits

- 10.4 The Tribunal declares that material parts of the Lago Agrio Judgment of 14 February 2011 (as clarified by order of 4 March 2011) were corruptly ‘ghostwritten’ for Judge Nicolás Zambrano Lozada, as a judge of the Lago Agrio Court, by one or more of the Lago Agrio Plaintiffs’ representatives in return for a promise by such representative(s) to pay to Judge Zambrano a bribe from the proceeds of the Lago Agrio Judgment’s enforcement by the Lago Agrio Plaintiffs;
- 10.5 The Tribunal declares that the Respondent, by issuing, rendering enforceable, maintaining the enforceability and executing the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) and knowingly facilitating its enforcement outside Ecuador, wrongfully committed a denial of justice under the standards both for fair and equitable treatment and for treatment required by customary international law under Article II(3)(a) of the Treaty;
- 10.6 The Tribunal declares that the Respondent is liable to make full reparation to the First Claimant and the Second Claimant for denial of justice under the standards both for fair and equitable treatment and for treatment required by customary international law under Article II(3)(a) of the Treaty; and the Tribunal rejects the defences pleaded by the Respondent;
- 10.7 The Tribunal (by a majority) declares, confirming its Decision on Track IB, that the Lago Agrio Complaint of 7 May 1998, as an initial pleading, included individual claims (for personal harm) resting upon individual rights under Ecuadorian law, not falling within the scope of the 1995 Settlement Agreement and that, therefore, the Lago Agrio Complaint was not wholly barred at its inception by res judicata under Ecuadorian law, by virtue of the 1995 Settlement Agreement;
- 10.8 The Tribunal declares that the said Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) decided only diffuse claims as distinct from individual claims for personal harm by the Lago Agrio Plaintiffs, whereby the Respondent violated its obligations towards the First Claimant and the Second Claimant as “Releasees” under the 1995 Settlement Agreement;
- 10.9 The Tribunal declares that the Respondent is liable to make full reparation to the First Claimant and the Second Claimant under Article II(3)(c) of the Treaty for the non-observation of its obligations towards each of them as a “Releasee” under the 1995 Settlement Agreement; and the Tribunal rejects the defences pleaded by the Respondent;
- 10.10 The Tribunal declares that, given the Respondent’s said denial of justice, the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) grossly violated the fundamental procedural rights of the First

Claimant (including its rights of defence); the said Lago Agrio Judgment (as thus decided) is contrary to international public policy; and no part of the said Lago Agrio Judgment should be recognised or enforced by any State with knowledge of the Respondent's said denial of justice;

10.11 The Tribunal declares that any injury to the First Claimant or the Second Claimant caused by the recognition or enforcement of any part of the Lago Agrio Judgment within or without Ecuador (as decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) shall be injuries for which the Respondent is liable to make reparation under international law;

10.12 For the avoidance of doubt, the Tribunal declares and confirms that neither this Award nor any of its earlier awards, orders and decision precludes a claim by any of the Lago Agrio Plaintiffs against the First or Second Claimants made for personal harm in respect of his or her individual rights, not being a diffuse claim within the meaning of the 1995 Settlement Agreement.

D: Orders as to the Merits

10.13 The Respondent shall, to the satisfaction of the Tribunal and as unconditional obligations of result (save where otherwise indicated):

- (i) Take immediate steps, of its own choosing, to remove the status of enforceability from the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts);
- (ii) take immediate steps, of its own choosing, to preclude any of the Lago Agrio Plaintiffs, any "trust" purporting to represent their interests (including the "Frente de Defensa La Amazonia"), any of the Lago Agrio Plaintiffs' representatives, and any non-party funder from enforcing any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts), directly or indirectly, whether by attachment, arrest, interim injunction, execution or howsoever otherwise;
- (iii) on notice from the First or Second Claimants, advise promptly in writing any State (including its judicial branch), where the Lago Agrio Plaintiffs may be seeking directly or indirectly, now or in the future, the enforcement or recognition of any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) of this Tribunal's declarations and orders regarding the Respondent's internationally wrongful acts comprising a denial of justice resulting from the Lago Agrio Judgment (as thus decided); and, for this purpose (being required by legal duty or to pursue a legal right), any Party shall be entitled, notwithstanding Article 32(5) of the UNCITRAL Arbitration Rules, to disclose to the State's judicial branch (on whatever terms that its courts may order) a copy of this Award and its earlier awards, orders and decision;
- (iv) abstain from collecting or receiving, directly or indirectly, any proceeds from the enforcement or recognition of any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) within or without Ecuador;
- (v) return promptly to the First Claimant any such proceeds that (notwithstanding the foregoing) come into the Respondent's custody, possession or control;

- (vi) take corrective measures, of its own choosing, to “wipe out all the consequences” of all the Respondent’s internationally wrongful acts in regard to the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts), within the meaning of Article 31 of the International Law Commission’s Articles on State Responsibility, excepting only reparation in the form of compensation (as to which, see Section E below);
- (vii) comply with its obligations towards the First Claimant and the Second Claimant as “Releasees” under the 1995 Settlement Agreement, in accordance with Article II(3)(c) of the Treaty; and
- (viii) subject to further order of this Tribunal in Track III, make full reparation in the form of compensation for any injuries caused to the First Claimant and the Second Claimant by the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate Court, Cassation and Constitutional Courts).

E: Compensation

10.14 All issues as to reparation in the form of compensation for any injuries sustained by the First or Second Claimant, as claimed by the Claimants and denied by the Respondent, including any assessment of the amount of compensation, moral damages, indemnities, reimbursements, payments, expenses and interest, are currently assigned for further submissions by the Parties to Track III. These issues are not decided in this Award.

F: Legal and Arbitration Costs

10.15 All issues relating to the allocation and assessment of costs and expenses (within the meaning of Articles 38-40 of the UNCITRAL Arbitration Rules), as claimed by the Claimants and the Respondent, are currently assigned for further submissions by the Parties later in these arbitration proceedings. These issues are not decided in this Award;

10.16 Nonetheless, so as to facilitate this later exercise as to assessment, the Claimants and the Respondent shall submit written summaries (not to exceed ten pages) of their respective claimed amounts for costs and expenses to date, to be submitted to the Tribunal not later than 90 days following the date of this Award. These summaries shall contain only a breakdown of the claimed amounts and shall not include any submissions as to the merits of the Parties’ respective claims for costs (including issues of allocation).

G: Miscellaneous

- 10.17 The Parties’ extant requests for relief, as marked-up in the enclosures to their respective letters dated 19 March and 20 April 2018 for Track III, shall be addressed by the Parties in Track III of these arbitration proceedings;
- 10.18 The Tribunal confirms, as declared in its Fourth Interim Award on Interim Measures dated 7 February 2013, that the Respondent violated its First and Second Interim Awards on Interim Measures dated 25 January and 16 February 2012 in breach of Article VI of the Treaty, Article 32(3) of the UNCITRAL Arbitration Rules and international law;

- 10.19 In accordance with the Tribunal's said Fourth Interim Award, at Paragraph 2 of Part IV (page 31), the 'show cause' issues relating to compensation claimed by the First and Second Claimants for the Respondent's violations of the said First and Second Interim Awards shall be addressed by the Parties in Track III of these arbitration proceedings;
- 10.20 The Respondent's application of 1 March 2013 for the reconsideration of the Tribunal's First, Second and Fourth Interim Awards shall be further addressed by the Parties in Track III of these arbitration proceedings;
- 10.21 In the light of this Award, not later than 90 days following the date of this Award, any Party may apply to the Tribunal for permission to add any further issue or request for relief to be addressed by the Parties in Track III of these arbitration proceedings;
- 10.22 Further, in the light of this Award, not later than 90 days following the date of this Award, the Respondent may (in writing) show cause why the Tribunal should not vary Paragraph 4 of its Second Interim Award on Interim Measures by ordering the release to the Claimants of the amount of US\$ 50 million deposited by the Claimants with the Permanent Court of Arbitration as security for the Claimants' contingent responsibility to the Respondent in regard to such interim measures; and
- 10.23 Save as aforesaid, the requests for relief made by the First and Second Claimants for decision in this Track II are not granted; and the requests for relief made by the Respondent for decision in this Track II are not granted.
- 10.24 This Award, although separately signed by the Tribunal's members on three signing pages, constitutes a "partial award" signed by the three arbitrators under Article 32 of the UNCITRAL Arbitration Rules.
92. *Partial Award on Track III:* As already stated above, by its Procedural Order No. 67 the Tribunal ordered the bifurcation of Track III with respect to the four preliminary questions raised by the Claimants in their Request for Partial Award, which arose from the hypothetical "but-for" reduction and "mitigation" arguments outlined in the Respondent's Counter-Memorial, namely:

Question #1: Is Ecuador's request for a reduction in damages based upon a hypothetical "but-for" scenario barred by the Tribunal's Track II finding that the entire Lago Agrio proceeding was pervaded by a denial of justice comprised of fraud and corruption?

Question #2: Do the Tribunal's prior rulings regarding the scope and effects of the 1995 and 1998 Settlement and Release Agreements, as well as its rulings on its own jurisdiction, preclude both the claims that Ecuador's Counter-Memorial on Damages refers to as "collective" claims and any offset based on individual claims?

Question #3: If any hypothetical "but-for" scenario offset were permitted here, would it be limited to the confines of those claims actually pursued by the 48 named Lago Agrio Plaintiffs and to the actual Lago Agrio Litigation record?

Question #4: Do the Tribunal's prior rulings preclude Ecuador's argument that Claimants failed to mitigate their damages by not pursuing local remedies under Ecuadorian law?

93. The Operative Part of the Partial Award on Track III reads:

For the reasons set out above, the Tribunal:

- (i) Declares, in respect of Question #1, that there is no finding in the Tribunal's Track II Award that the entire Lago Agrio proceeding was pervaded by a denial of justice comprised of fraud and corruption;
- (ii) Declares, in respect of Question #2, that its prior rulings do not preclude an offset based on individual claims or collective claims, to the extent that it refers to the legal costs that the Claimants would in all probability have incurred in defending themselves against those claims in a Treaty-compliant Lago Agrio Litigation;
- (iii) Declares in respect of Question #3, that any hypothetical but-for scenario offset should in principle at least be limited to the confines of the claims actually pleaded by the 48 named Lago Agrio Plaintiffs and to the actual Lago Agrio Litigation record;
- (iv) Declares, in respect of Question #4, that the Tribunal's prior rulings do not preclude the Respondent's argument that the Claimants failed to mitigate their damages by not pursuing local remedies under Ecuadorian law;
- (v) Vacates its Decision on the Parties' Document Production Requests in relation to requests concerning environmental matters, as originally set out in Procedural Order No. 66 and stayed by paragraph 7 of Procedural Order No. 67;
- (vi) Rejects the Parties' claims and requests to the extent that they contradict the Tribunal's decisions in this Partial Award; and
- (vii) Reserves its decision on all other claims and requests for subsequent determination.

C. SCOPE OF TRACK III

94. On 17 December 2018, the Tribunal issued Procedural Order No. 55. It there directed that the issues to be decided in Track III would be those identified in the Track II Award and paragraph 4 of Procedural Order No. 52, namely:

- a. All issues as to reparation in the form of compensation for any injuries sustained by the First Claimant or the Second Claimant, as claimed by the Claimants and denied by the Respondent, including any assessment of the amount of compensation, moral damages, indemnities, reimbursements, payments, expenses and interest;
- b. All issues relating to the allocation and assessment of costs and expenses (within the meaning of Articles 38-40 of the UNCITRAL Arbitration Rules), as claimed by the Claimants and the Respondent respectively, for Tracks I, II and III;
- c. The Parties' extant requests for relief, as marked-up for Track III in the enclosures to their respective letters dated 19 March and 20 April 2018 and set out in the Tribunal's Second Partial Award;

- d. The ‘show cause’ issues relating to compensation claimed by the First Claimant and the Second Claimant for the Respondent’s violations of the First and Second Interim Awards; and
 - e. The Respondent’s application of 1 March 2013 for the reconsideration of the Tribunal’s First, Second and Fourth Interim Awards.
95. In respect of item (b) in the preceding quote, and as already noted, by its Procedural Order No. 84 the Tribunal assigned all issues relating to the allocation and assessment of costs and expenses (within the meaning of Articles 38-40 of the UNCITRAL Arbitration Rules), as claimed by the Claimants and the Respondent for further submissions by the Parties to Track IV of the Arbitration. Accordingly, such issues are not addressed in this Award.

* * *

IV. THE PARTIES’ REQUESTS FOR RELIEF IN TRACK III

A. THE CLAIMANTS’ REQUESTS FOR RELIEF

96. In their letter dated 20 October 2025, the Claimants indicated the parts of their requests for relief that remain extant for Track III and, separately, Track IV.³⁵ What follows are the Claimants’ prayers for relief from the outset of the Arbitration, highlighting **in bold** the relief extant for Track III (highlighted in yellow in the original), in underscore the relief extant for Track IV (highlighted in blue in the original), and **in bold and underscore** the relief relevant to both Tracks III and Track IV (in green in the original).
97. In their Amended Memorial on the Merits dated 23 September 2010, the Claimants made the following request for relief (footnotes here omitted):

547. Accordingly, Claimants request an Order and Award granting the following relief:
1. Declaring that under the 1995, 1996 and 1998 Settlement and Release Agreements, Claimants have no liability or responsibility for environmental impact, including but not limited to any alleged liability for impact to human health, the ecosystem, indigenous cultures, the infrastructure, or any liability for unlawful profits, or for performing any further environmental remediation arising out of the former Consortium that was jointly owned by TexPet and Ecuador, or under the expired Concession Contract between TexPet and Ecuador.
 2. Declaring that Ecuador has breached the 1995, 1996, and 1998 Settlement and Release Agreements and the U.S.-Ecuador Treaty, including its obligations to afford fair and equitable treatment, full protection and security, an effective means of enforcing rights, non-arbitrary treatment, non-discriminatory treatment, and to observe obligations it entered into under the investment agreements.
 3. Declaring that under the Treaty and applicable international law, Chevron is not liable for any judgment rendered in the Lago Agrio Litigation.
 4. Declaring that any judgment rendered against Chevron in the Lago Agrio

³⁵ See also Letter from the Claimants to the Tribunal dated 20 October 2025: “Consistent with the enclosure that Claimants submitted on 19 March 2018 listing their requests for relief, Claimants have highlighted each extant request for relief only once and have highlighted only the most recent extant requests. In other words, where Claimants sought relief in an earlier submission and subsequently sought the same relief in a later submission, Claimants have only highlighted the request from the later submission. The Tribunal can disregard the requests for relief that are not highlighted because either they are no longer extant or they are included in the yellow, blue, and green highlighted requests.

Claimants reserve the right to apply for relief from the Tribunal during Track IV, in addition to the relief currently highlighted in blue or green in Enclosure 1, to the extent such relief becomes necessary due to any action or inaction by Respondent.”

Litigation is not final, conclusive or enforceable.

5. Declaring that Ecuador or Petroecuador (or Ecuador and Petroecuador jointly) are exclusively liable for any judgment rendered in the Lago Agrio Litigation.
 6. Ordering Ecuador to use all measures necessary to prevent any judgment against Chevron in the Lago Agrio Litigation from becoming final, conclusive or enforceable.
 7. Ordering Ecuador to use all measures necessary to enjoin enforcement of any judgment against Chevron rendered in the Lago Agrio Litigation, including enjoining the nominal Plaintiffs from obtaining any related attachments, levies or other enforcement devices.
 8. Ordering Ecuador to make a written representation to any court in which the nominal Plaintiffs attempt to enforce a judgment from the Lago Agrio Litigation, stating that the judgment is not final, enforceable or conclusive;
 9. Ordering Ecuador to dismiss the Criminal Proceedings in Ecuador against Messrs Ricardo Veiga and Rodrigo Pérez.
 10. Ordering Ecuador not to seek the detention, arrest or extradition of Messrs Veiga or Pérez or the encumbrance of any of their property.
 11. Awarding Claimants indemnification against Ecuador in connection with a Lago Agrio Judgment, including a specific obligation by Ecuador to pay Claimants the sum of money awarded in to the Lago Agrio judgment.
 12. Awarding Claimants any sums that the nominal Lago Agrio Plaintiffs collect against Claimants or their affiliates in connection with enforcing a Lago Agrio judgment.
 13. Awarding all costs and attorneys’ fees incurred by Claimants in (1) defending the Lago Agrio Litigation and the Criminal Proceedings, (2) pursuing this Arbitration, (3) uncovering the collusive fraud through investigation and discovery proceedings in the United States, (4) opposing the efforts by Ecuador and the Lago Agrio Plaintiffs to stay this Arbitration through litigation in the United States, (5) as well as all costs associated with responding to the relentless public relations campaign by which the Lago Agrio Plaintiffs’ lawyers (in collusion with Ecuador) attacked Chevron with false and fraudulent accusations concerning this case. These damages will be quantified at a later stage in these proceedings.
 14. Awarding moral damages to compensate Claimants for the non-pecuniary harm that they have suffered due to Ecuador’s outrageous and illegal conduct.
 15. Awarding both pre- and post-award interest (compounded quarterly) until the date of payment.
 16. Any other and further relief that the Tribunal deems just and proper.
98. In their Supplemental Memorial on the Merits dated 20 March 2012, the Claimants made the following request for relief (footnotes here omitted):

257. Accordingly, Claimants request an Order and Award granting the following relief:
1. Declaring that under the 1995, 1996 and 1998 Settlement and Release Agreements, Claimants have no liability or responsibility for environmental impact, including but not limited to any alleged liability for impact to human health, the ecosystem, indigenous cultures, the infrastructure, or any liability for unlawful profits, or for performing any further environmental remediation arising out of the former Consortium that was jointly owned by TexPet and Ecuador, or under the expired Concession Contract between TexPet and Ecuador;
 2. Declaring that Ecuador has breached the 1995, 1996, and 1998 Settlement and Release Agreements;
 3. Declaring that Ecuador has breached the U.S.-Ecuador Treaty, including its obligations to afford fair and equitable treatment, full protection and security, an effective means of enforcing rights, non-arbitrary treatment, non-discriminatory treatment, and to observe obligations it entered into under the investment agreements;
 4. Declaring that Ecuador has committed a denial of justice under customary international law;
 5. Declaring that under the Treaty and applicable international law, Chevron is not liable for any judgment rendered in the Lago Agrio Litigation;
 6. Declaring that any judgment rendered against Chevron in the Lago Agrio Litigation is not final, conclusive or enforceable;
 7. Declaring that Ecuador or Petroecuador (or Ecuador and Petroecuador jointly) are exclusively liable for any judgment rendered in the Lago Agrio Litigation;
 8. Ordering Ecuador to use all measures necessary to prevent any judgment against Chevron in the Lago Agrio Litigation from becoming final, conclusive or enforceable;
 9. Ordering Ecuador to use all measures necessary to enjoin enforcement of any judgment against Chevron rendered in the Lago Agrio Litigation, including enjoining the nominal Plaintiffs from obtaining any related attachments, levies or other enforcement devices;
 10. Ordering Ecuador to make a written representation to any court in which the nominal Plaintiffs attempt to enforce a judgment from the Lago Agrio Litigation, stating that the judgment is not final, enforceable or conclusive;
 11. Awarding Claimants indemnification against Ecuador in connection with a Lago Agrio Judgment, including a specific obligation by Ecuador to pay Claimants the sum of money awarded in to the Lago Agrio Judgment;
 12. Awarding Claimants any sums that the nominal Lago Agrio Plaintiffs collect against Claimants or their affiliates in connection with enforcing a Lago Agrio Judgment;
 13. Awarding all costs and attorneys’ fees incurred by Claimants in (1) defending the

Lago Agrio Litigation and the Criminal Proceedings, (2) pursuing this Arbitration, (3) uncovering the collusive fraud through investigation and discovery proceedings in the United States, (4) opposing the efforts by Ecuador and the Lago Agrio Plaintiffs to stay this Arbitration through litigation in the United States, (5) as well as all costs associated with responding to the relentless public relations campaign by which the Lago Agrio Plaintiffs’ lawyers (in collusion with Ecuador) attacked Chevron with false and fraudulent accusations concerning this case. These damages will be quantified at a later stage in these proceedings;

14. Awarding moral damages to compensate Claimants for the non-pecuniary harm that they have suffered due to Ecuador’s outrageous and illegal conduct;
15. Awarding both pre- and post-award interest (compounded quarterly) until the date of payment; and
16. Any other and further relief that the Tribunal deems just and proper.

99. In their Reply Memorial on the Merits for Track 1 dated 29 August 2012, the Claimants requested the following relief:

272. Accordingly, Claimants request a Partial Award that effectively protects Claimants’ rights, and reverses (as far as possible) the harmful effects of Ecuador’s breaches of the Settlement Agreements and its international-law obligations. To achieve this result, Claimants respectfully submit the following list of requests, from which the Tribunal can fashion a combination of declaratory, injunctive, and monetary relief in protection of Claimants’ rights:

A. Specific Performance

1. Order that Ecuador specifically perform the Settlement Agreements.

B. Declaratory Relief

(i) Scope of the Settlement Agreements

1. Declare that both Claimants are “Releasees” under the Settlement Agreements, and were released from all diffuse environmental claims arising from TexPet’s operations in Ecuador; and
2. Declare that the claims pleaded in the Lago Agrio Litigation (and upon which the Lago Agrio Judgment is based) are the same diffuse environmental claims settled and released in the Settlement Agreements.

(ii) Legal Effect of the Settlement Agreements

1. Declare that Claimants have no liability or responsibility for satisfying the Lago Agrio Judgment because they were fully released for all such claims by the Settlement Agreements;
2. Declare that the claims pleaded in the Lago Agrio Litigation (and upon which the Lago Agrio Judgment were based) are barred by res judicata and collateral estoppel;

3. Declare that under the Settlement Agreements, Claimants have no further liability or responsibility for diffuse environmental claims in Ecuador for Environmental Impact arising out of the Consortium’s operations, or for performing any further environmental remediation;
4. Declare that Ecuador (through its various branches of Government) has breached the Settlement Agreements, inter alia, by refusing to specifically perform the Settlement Agreements, by refusing to ensure Claimants’ enjoyment of their releases and their right to be free of litigation, by refusing to dismiss the Lago Agrio Plaintiffs’ claims, by refusing to indemnify Chevron for the Lago Agrio Plaintiffs’ claims, by seeking to nullify the Settlement Agreements by illegitimate means, and by refusing to comply with this Tribunal’s Interim Awards;
5. Declare that Ecuador’s actions have breached the U.S.-Ecuador BIT, including its obligations to afford fair and equitable treatment, full protection and security, effective means of enforcing rights, and to observe obligations it entered into under the overall investment agreements;
6. Declare that enforcement of the Lago Agrio Judgment within or without Ecuador would be inconsistent with Ecuador’s obligations under the Settlement Agreements, the BIT and international law;
7. Declare that the Lago Agrio Judgment is a nullity as a matter of international law; and
8. Declare that: (i) the Judgment is not final, enforceable, or conclusive under Ecuadorian and international law, and thus, is not subject to recognition and enforcement within or without Ecuador; (ii) any enforcement of the Judgment would place Ecuador in violation of its international-law obligations; (iii) the Judgment violates international public policy and natural justice, and as a matter of international comity and public policy, the Judgment should not be recognized and enforced.

C. Injunctive Relief

1. Order Ecuador to use all measures necessary to comply with its obligations under the Settlement Agreements to release Claimants (and to ensure that Claimants may effectively enjoy the benefits of such releases) from any liability or responsibility for the Lago Agrio Judgment in Ecuador or in any other country;
2. Order Ecuador to use all measures necessary to prevent the Lago Agrio Judgment from becoming final, conclusive, or enforceable in Ecuador or in any other country;
3. Order Ecuador to use all measures necessary to stay or enjoin enforcement of the Lago Agrio Judgment, including enjoining the Lago Agrio Plaintiffs from obtaining any related attachments, levies, or other enforcement devices in Ecuador or in any other country;
4. Order Ecuador to use all measures necessary to revoke and nullify the Judgment;

5. Order Ecuador to make a written representation to any court in which the Lago Agrio Plaintiffs attempt to recognize and enforce the Lago Agrio Judgment that: (i) the claims that formed the basis of the Judgment were released by the Government; (ii) the Lago Agrio Court had no personal or subject-matter jurisdiction over Chevron; (iii) the Judgment is a legal nullity; (iv) the Judgment is not final, enforceable, or conclusive under Ecuadorian and international law, and thus, is not subject to recognition and enforcement within or without Ecuador; (v) any enforcement of the Judgment would place Ecuador in violation of its international-law obligations; (vi) the Judgment violates international public policy and natural justice; (vii) any enforcement proceedings should be stayed pending the Tribunal’s final award in this arbitration; and (viii) as a matter of international comity and public policy, the Judgment should not be recognized and enforced; and
6. Order that, in the event that any court orders the recognition or enforcement of the Lago Agrio Judgment, Ecuador must satisfy the Judgment directly.

D. Damages, Costs and Attorneys’ Fees

1. Award Claimants full indemnification and damages against Ecuador in connection with the Lago Agrio Judgment, including a specific obligation by Ecuador to pay Claimants the sum of money awarded in the Judgment;
2. Award Claimants any sums of money that the Lago Agrio Plaintiffs or others collect against Claimants or their affiliates in connection with enforcing the Judgment in any forum, with such sums to be paid by Respondent;
3. Award all costs and attorneys’ fees incurred by Claimants in (i) defending the Lago Agrio Litigation, (ii) pursuing this arbitration, (iii) opposing the efforts by Ecuador and the Lago Agrio Plaintiffs to stay this arbitration through litigation in the United States; and (iv) preparing for and defending against enforcement actions brought by the Lago Agrio Plaintiffs. These amounts will be quantified at the time and in the manner ordered by this Tribunal;
4. Award both pre- and post-award interest (compounded quarterly) until the date of payment; and
5. Award such other and further relief that the Tribunal deems just and proper, including any specific relief appropriate to wipe out all consequences of Respondent’s breaches of the Settlement Agreements and its violations of its obligations under the Interim Awards, the BIT and international law.

100. At the Track 1 Hearing on the Merits in November 2012, by a written document, the Claimants made the following request for relief:

I. Request for an Immediate Interim Award as a Result of Ecuador’s Breaches of the First and Second Interim Awards:

1. Declare that Ecuador is in breach of the First and Second Interim Awards;
2. Declare that pending the outcome of this arbitration, the Lago Agrio Judgment is not final, enforceable, or conclusive under Ecuadorian and international law, and thus, is not

subject to recognition and enforcement within or without Ecuador; and

3. Declare that Ecuador is responsible to Claimants in indemnification and damages for all damages, costs, expenses, and attorneys’ fees incurred by Claimants as a result of its breach.

II. Request for a Partial Final Award as a Result of Track 1:

A. Declaratory Relief

(i) Scope of the Settlement Agreements

1. Declare that both Claimants are “Releasees” under the Settlement Agreements, and were released from all diffuse environmental claims arising from TexPet’s operations in Ecuador; and

2. Declare that the claims pleaded in the Lago Agrio Litigation (and upon which the Lago Agrio Judgment is based) are the same diffuse environmental claims settled and released in the Settlement Agreements.

(ii) Legal Effect of the Settlement Agreements

4. Declare that the Lago Agrio Judgment is a nullity as a matter of international law;

5. Declare that enforcement of the Lago Agrio Judgment within or without Ecuador would be inconsistent with Ecuador’s obligations under the Settlement Agreements, the BIT and international law;

6. Declare that Claimants have no liability or responsibility for satisfying the Lago Agrio Judgment because they were fully released for all such claims by the Settlement Agreements;

7. Declare that the claims pleaded in the Lago Agrio Litigation (and upon which the Lago Agrio Judgment were based) are barred by res judicata and collateral estoppel;

8. Declare that under the Settlement Agreements, Claimants have no further liability or responsibility for diffuse environmental claims in Ecuador for Environmental Impact arising out of the Consortium’s operations, or for performing any further environmental remediation;

9. Declare that Ecuador (through its various branches of Government) has breached the Settlement Agreements, inter alia, by refusing to specifically perform the Settlement Agreements, by refusing to ensure Claimants’ enjoyment of their releases and their right to be free of litigation, by refusing to dismiss the Lago Agrio Plaintiffs’ claims, by refusing to indemnify Chevron for the Lago Agrio Plaintiffs’ claims, by seeking to nullify the Settlement Agreements by illegitimate means, and by refusing to comply with this Tribunal’s Interim Awards;

10. Declare that Ecuador’s actions have breached the U.S.-Ecuador BIT, including its obligations to afford fair and equitable treatment, full protection and security, effective means of enforcing rights, and to observe obligations it entered into under the overall

investment agreements; and

11. Declare that: (i) the Judgment is not final, enforceable, or conclusive under Ecuadorian and international law, and thus, is not subject to recognition and enforcement within or without Ecuador; (ii) any enforcement of the Judgment would place Ecuador in violation of its international-law obligations; (iii) the Judgment violates international public policy and natural justice, and as a matter of international comity and public policy, the Judgment should not be recognized and enforced.

B. Injunctive Relief

1. Order Ecuador to use all measures necessary to comply with its obligations under the Settlement Agreements to release Claimants (and to ensure that Claimants may effectively enjoy the benefits of such releases) from any liability or responsibility for the Lago Agrio Judgment in Ecuador or in any other country;

2. Order Ecuador to use all measures necessary to prevent the Lago Agrio Judgment from becoming final, conclusive, or enforceable in Ecuador or in any other country;

3. Order Ecuador to use all measures necessary to stay or enjoin enforcement of the Lago Agrio Judgment, including enjoining the Lago Agrio Plaintiffs from obtaining any related attachments, levies, or other enforcement devices in Ecuador or in any other country;

4. Order Ecuador to use all measures necessary to revoke and nullify the Judgment;

5. Order Ecuador to make a written representation to any court in which the Lago Agrio Plaintiffs attempt to recognize and enforce the Lago Agrio Judgment that: (i) the claims that formed the basis of the Judgment were released by the Government; (ii) the Lago Agrio Court had no personal or subject-matter jurisdiction over Chevron; (iii) the Judgment is a legal nullity; (iv) the Judgment is not final, enforceable, or conclusive under Ecuadorian and international law, and thus, is not subject to recognition and enforcement within or without Ecuador; (v) any enforcement of the Judgment would place Ecuador in violation of its international-law obligations; (vi) the Judgment violates international public policy and natural justice; (vii) any enforcement proceedings should be stayed pending the Tribunal’s final award in this arbitration; and (viii) as a matter of international comity and public policy, the Judgment should not be recognized and enforced; and

6. Order that, in the event that any court orders the recognition or enforcement of the Lago Agrio Judgment, Ecuador must satisfy the Judgment directly.

C. Damages, Costs and Attorneys’ Fees

1. Award Claimants full indemnification and damages against Ecuador in connection with the Lago Agrio Judgment, including a specific obligation by Ecuador to pay Claimants the sum of money awarded in the Judgment;

2. Award Claimants any sums of money that the Lago Agrio Plaintiffs or others collect against Claimants or their affiliates in connection with enforcing the Judgment in any forum, with such sums to be paid by Respondent;

3. Award all costs and attorneys’ fees incurred by Claimants in (i) defending the Lago Agrio Litigation, (ii) pursuing this arbitration, (iii) opposing the efforts by Ecuador and the Lago Agrio Plaintiffs to stay this arbitration through litigation in the United States; and (iv) preparing for and defending against enforcement actions brought by the Lago Agrio Plaintiffs. These amounts will be quantified at the time and in the manner ordered by this Tribunal;

4. Award both pre- and post-award interest (compounded quarterly) until the date of payment; and

5. Award such other and further relief that the Tribunal deems just and proper, including any specific relief appropriate to wipe out all consequences of Respondent’s breaches of the Settlement Agreements and its violations of its obligations under the Interim Awards, the BIT and international law.

101. In their Amended Reply Memorial - Track II dated 12 June 2013, the Claimants made the following request for relief (footnotes omitted):

424. The unique circumstances of this case require a combination of remedies that includes declarative, injunctive and monetary relief to prevent further (and unprecedented) injury to Claimants, and to compensate them for losses resulting from Ecuador’s breaches of its contractual, Treaty, and international law obligations, Claimants request a Final Award on the Merits including the following relief:
1. Declaring that under the 1995, 1996 and 1998 Settlement and Release Agreements, Claimants have no liability or responsibility for environmental impact, including but not limited to any alleged liability for impact to human health, the ecosystem, indigenous cultures, the infrastructure, or any liability for unlawful profits, punitive damages or penalties, or for performing any further environmental remediation arising out of the former Consortium that was jointly owned by TexPet and Ecuador, or under the expired Concession Contract between TexPet and Ecuador;
 2. Declaring that Ecuador has breached the 1995, 1996, and 1998 Settlement and Release Agreements;
 3. Ordering Ecuador to specifically perform the Settlement and Release Agreements;
 4. Declaring that Ecuador has breached the U.S.-Ecuador BIT, including its obligations to afford fair and equitable treatment, full protection and security, an effective means of enforcing rights, non-arbitrary treatment, non-discriminatory treatment, national treatment, and to observe obligations it entered into with regard to investments;
 5. Declaring that Ecuador has committed a denial of justice under customary international law;
 6. Declaring that under the Treaty and applicable international law, Chevron is not liable for the Judgment;

7. Declaring that Ecuador is exclusively liable for the Judgment;
8. Nullifying the existence, validity, and all effects of the Judgment, and declaring that the Judgment is a nullity as a matter of international law;
9. Ordering Ecuador to use all measures necessary to enjoin enforcement of the Judgment, including enjoining the nominal Plaintiffs or any Trust from obtaining any related attachments, levies or other enforcement devices;
10. Ordering that, in the event that any court orders the recognition or enforcement of the Judgment, Ecuador must satisfy the Judgment directly;
11. Awarding Claimants indemnification against Ecuador in connection with the Judgment, including a specific obligation by Ecuador to pay Claimants the sum of money awarded in the Judgment;
12. Awarding Claimants any sums that the nominal Lago Agrio Plaintiffs collect against Claimants or their affiliates in connection with enforcing the Judgment, including the amounts embargoed thus far;
13. Declaring that: (i) the Judgment is not final, enforceable, or conclusive under Ecuadorian and/or international law, and thus, is not subject to recognition and enforcement within or without Ecuador; (ii) any enforcement of the Judgment places Ecuador in violation of its international law obligations; (iii) the Judgment violates international public policy and natural justice, and as a matter of international comity and public policy, the Judgment should not be recognized and enforced;
14. Ordering Ecuador to make a written representation to any court in which the Lago Agrio Plaintiffs or any Trust attempt to recognize and enforce the Judgment that: (i) the claims that formed the basis of the Judgment were released by the Government; (ii) the Lago Agrio Court had no personal or subject-matter jurisdiction over Chevron; (iii) the Judgment is a legal nullity; (iv) the Judgment is not final, enforceable, or conclusive under Ecuadorian and/or international law, and thus, is not subject to recognition and enforcement within or without Ecuador; (v) any enforcement of the Judgment places Ecuador in violation of its international law obligations; (vi) the Judgment violates international public policy and natural justice; (vii) any enforcement proceedings should be dismissed; and (viii) as a matter of international comity and public policy, the Judgment should not be recognized and enforced;
15. Awarding all costs and attorneys’ fees incurred by Claimants in inter alia (1) pursuing this Arbitration, (2) uncovering the collusive fraud through investigation and discovery proceedings in the United States, and (3) defending against enforcement of the Lago Agrio Judgment in various jurisdictions including Argentina, Brazil, and Canada, as well as other attorneys’ fees incurred in related matters;
16. Awarding both pre- and post-award interest (compounded quarterly) until the date of payment; and
17. Any other and further relief that the Tribunal deems just and proper.

102. In their Supplemental Memorial on Track 1 dated 31 January 2014 (paragraph 32), the Claimants made the following request for relief:

A. Declaring that:

- (1) The Lago Agrio Litigation is exclusively a diffuse-rights case.
- (2) The 1999 EMA has no legal effect on the Settlement and Release Agreements.
- (3) The Lago Agrio Litigation was barred at its inception by res judicata.
- (4) By issuing the Lago Agrio Judgment and rendering it enforceable within and without Ecuador, Ecuador violated various provisions of the BIT.
- (5) By issuing the Lago Agrio Judgment on diffuse claims barred as res judicata, Ecuador breached the 1995, 1996, and 1998 Settlement and Release Agreements, and also violated Chevron’s rights under the BIT.
- (6) The Lago Agrio Judgment is a nullity as a matter of Ecuadorian law.
- (7) The Lago Agrio Judgment is a nullity as a matter of international law.
- (8) The Lago Agrio Judgment is unlawful and consequently devoid of any legal effect.
- (9) The Lago Agrio Judgment is a violation of Chevron’s rights under the BIT, and is not entitled to enforcement within or without Ecuador.
- (10) The Lago Agrio Judgment violates international public policy and natural justice, and that as a matter of international comity and public policy, the Lago Agrio Judgment should not be recognized and enforced.
- (11) By: (i) taking measures to enforce the Judgment against assets within Ecuador, and (ii) taking measures to facilitate enforcement of the Judgment in other jurisdictions.
- (12) Ecuador is in breach of its obligations under the BIT, and must compensate Claimants for any sum of money collected by the Lago Agrio Plaintiffs and/or their agents as a result of the Judgment.

B. Ordering Ecuador (whether by its judicial, legislative, or executive branches):

- (1) To take all measures necessary to set aside or nullify the Lago Agrio

Judgment under Ecuadorian law.

(2) To take all measures necessary to prevent enforcement and recognition within and without Ecuador of the Lago Agrio Judgment.

(3) To take all measures necessary to prevent the Lago Agrio Plaintiffs or any Trust from obtaining any related attachments, levies, or other enforcement devices under the impugned Judgment.

(4) To make a written representation to any court in which the Lago Agrio Plaintiffs or any Trust attempt to recognize and enforce the Lago Agrio Judgment that: (i) the claims that formed the basis of the Lago Agrio Judgment were validly released under Ecuadorian law by the Government; (ii) the Lago Agrio Judgment is a legal nullity; and (iii) any enforcement of the Lago Agrio Judgment will place Ecuador in violation of its obligations under the BIT.

Claimants also request that the Tribunal provide for a subsequent phase in this arbitration to determine all costs and attorneys’ fees that should be awarded to Claimants for being forced to (i) pursue this arbitration; (ii) uncover the Judgment fraud; and (iii) defend against enforcement of the Lago Agrio Judgment in any jurisdiction.

103. In their Supplemental Memorial on Track II dated 9 May 2014, the Claimants made the following request for relief:

A. Declaring that:

1. By issuing the Judgment and rendering it enforceable within and without Ecuador, Ecuador committed a denial of justice under international law in breach of the provisions of the BIT.
2. By issuing the Judgment on diffuse claims barred as *res judicata*, Ecuador breached the 1995, 1996, and 1998 Settlement and Release Agreements, and, in doing so, violated Chevron’s rights under the BIT.
3. The court rendering the Judgment asserted jurisdiction illegitimately and was not competent in the international sphere to try the Lago Agrio case and to pass judgment.
4. The Judgment was issued in a process that violated general standards of due process and in which Chevron did not have an opportunity to present its defense.
5. The Judgment is a nullity as a matter of international law.
6. The Judgment is unlawful and consequently devoid of any legal effect.
7. The Judgment is a violation of Chevron’s rights under the BIT, and is not entitled to enforcement within or without Ecuador.
8. The Judgment is contrary to international public policy.
9. The Judgment violates international public policy and natural justice, and that as a

matter of international comity and public policy, the Judgment should not be recognized and enforced.

10. By taking measures to enforce the Judgment against assets within Ecuador, and taking measures to facilitate enforcement of the Judgment in other jurisdictions, Ecuador is in breach of its obligations under the BIT, and must indemnify Claimants and any of their affiliates for any sum of money collected from them as a result of the Judgment.

B. Ordering Ecuador (whether by its judicial, legislative, or executive branches):

1. To take all measures necessary to set aside or nullify the Judgment under Ecuadorian law.
2. To take all measures necessary to prevent enforcement and recognition within and without Ecuador of the Judgment.
3. To take all measures necessary to prevent the Lago Agrio Plaintiffs or any Trust from obtaining any related attachments, levies, or other enforcement devices under the impugned Judgment.
4. To make a written representation to any court in which the Lago Agrio Plaintiffs or any Trust attempt to recognize and enforce the Judgment that: (i) the claims that formed the basis of the Judgment were validly released under Ecuadorian law by the Government; (ii) the Judgment is a legal nullity; and (iii) any enforcement of the Judgment will place Ecuador in violation of its obligations under the BIT.
5. To abstain from collecting or accepting any proceeds arising from or in connection with the enforcement or execution of the Judgment, and to return to Claimants any such proceeds that may come into Respondent’s possession.

C. Awarding Claimants:

1. All costs and attorneys’ fees incurred by Claimants in (i) pursuing this arbitration; (ii) uncovering the Judgment fraud; and (iii) defending against enforcement of the Lago Agrio Judgment in any jurisdiction.
2. Indemnification for any and all damages, including fees and costs, arising from Respondent’s violation of any injunctive relief this Tribunal has granted or will in the future grant.
3. Indemnification for any and all sums that the Lago Agrio Plaintiffs collect against Claimants or their affiliates in connection with the Judgment.
4. Moral damages to compensate Claimants for the non-pecuniary harm that they have suffered due to Ecuador’s illegal conduct.
5. Both pre- and post-award interest (compounded quarterly) until the date of payment.

104. In their Post-Submission Insert to the Claimants’ Supplemental Memorial on Track II – Examination of Zambrano Computer Hard Drives dated 15 August 2014, the Claimants made the following request for relief:

59. Therefore, for the reasons stated above and in Claimants’ previous submissions to the Tribunal, Claimants request the Tribunal make the findings and grant them the relief as set forth most recently in Claimants’ Supplemental Memorial on Track 2.

105. In their Supplemental Reply to Respondent’s Supplemental Memorial Track II Counter-Memorial dated 14 January 2015, the Claimants made the following request for relief:

435. For the reasons stated above, and as set out in Claimants’ previous memorials and other submissions, Claimants ask the Tribunal for a Final Award granting them the combination of remedies, including declarative, injunctive, and monetary relief, to prevent further injury to Claimants and to compensate them for losses resulting from Ecuador’s breaches of its contractual, Treaty, and international law obligations, as set out below:

A. Declaring that:

1. By issuing the Judgment and rendering it enforceable within and without Ecuador, Ecuador committed a denial of justice under international law and breached provisions of the BIT.
2. By issuing the Judgment on diffuse claims barred as *res judicata*, Ecuador breached the 1995, 1996, and 1998 Settlement and Release Agreements, and in doing so, violated Chevron’s rights under the BIT.
3. The court rendering the Judgment asserted jurisdiction illegitimately and was not competent in the international sphere to try the Lago Agrio case and to pass judgment.
4. The Judgment was issued in a process that violated general standards of due process and in which Chevron did not have an opportunity to present its defense.
5. The Judgment is a nullity as a matter of international law.
6. The Judgment is unlawful and consequently devoid of any legal effect.
7. The Judgment is a violation of Chevron’s rights under the BIT, and is not entitled to enforcement within or without Ecuador.
8. The Judgment is contrary to international public policy.
9. The Judgment violates international public policy and natural justice, and that as a matter of international comity and public policy, the Judgment should not be recognized and/or enforced.
10. By taking measures to enforce the Judgment against assets within Ecuador, and taking measures to facilitate enforcement of the Judgment in other jurisdictions, Ecuador is in breach of its obligations under the BIT, and must indemnify Claimants and any of their affiliates for any sum of money collected from them as a result of the Judgment.

B. Ordering Ecuador (whether by its judicial, legislative, or executive branches):

1. To take all measures necessary to set aside or nullify the Judgment under Ecuadorian law.
2. To take all measures necessary to prevent enforcement and recognition within and without Ecuador of the Judgment.
3. To take all measures necessary to prevent the Plaintiffs or any Trust from obtaining any related attachments, levies, or other enforcement devices under the impugned Judgment.
4. To make a written representation to any court in which the Plaintiffs or any Trust attempt to recognize and/or enforce the Judgment that: (i) the claims that formed the basis of the Judgment were validly released under Ecuadorian law by the Government; (ii) the Judgment is a legal nullity; and (iii) any enforcement of the Judgment will place Ecuador in violation of its obligations under the BIT.
5. To abstain from collecting or accepting any proceeds arising from or in connection with the enforcement or execution of the Judgment, and to return to Claimants any such proceeds that may come into Respondent’s possession.

C. Awarding Claimants:

1. All costs and attorneys’ fees incurred by Claimants in (i) pursuing this arbitration; (ii) uncovering the Judgment fraud; and (iii) defending against enforcement of the Lago Agrio Judgment in any jurisdiction.
2. Indemnification for any and all damages, including fees and costs, arising from Respondent’s violation of any injunctive relief this Tribunal has granted or will in the future grant.
3. Indemnification for any and all sums that the Plaintiffs collect against Claimants or their affiliates in connection with the Judgment.
4. Moral damages to compensate Claimants for the non-pecuniary harm that they have suffered due to Ecuador’s illegal conduct.
5. Both pre- and post-award interest (compounded quarterly) until the date of payment.

106. In their Post-Track II Hearing Brief on Track I Issues dated 14 July 2015, the Claimants made the following request for relief:

46. Claimants request relief that effectively protects their rights and reverses the harmful effects of Ecuador’s breaches of the Settlement and Release Agreements and its international law obligations. To achieve this result, Claimants respectfully request a Final Award:

A. Declaring that:

- 1) The Lago Agrio Litigation is exclusively a diffuse-rights case.
- 2) The 1999 EMA has no legal effect on the Settlement and Release Agreements.

- 3) The Lago Agrio Litigation was barred at its inception by res judicata.
- 4) By issuing the Lago Agrio Judgment and rendering it enforceable within and without Ecuador, Ecuador violated various provisions of the BIT.
- 5) By issuing the Lago Agrio Judgment on diffuse claims barred as res judicata, Ecuador breached the 1995, 1996 and 1998 Settlement and Release Agreements, and also violated Chevron’s rights under the BIT.
- 6) The Lago Agrio Judgment is a nullity as a matter of international law.
- 7) The Lago Agrio Judgment is unlawful and consequently devoid of any legal effect.
- 8) The Lago Agrio Judgment is a violation of Chevron’s rights under the BIT, and is not entitled to enforcement within or without Ecuador.
- 9) The Lago Agrio Judgment violates international public policy and natural justice, and that as a matter of international comity and public policy, the Lago Agrio Judgment should not be recognized and enforced.
- 10) By: (i) taking measures to enforce the Judgment against assets within Ecuador, and (ii) taking measures to facilitate enforcement of the Judgment in other jurisdictions, Ecuador is in breach of its obligations under the BIT, and must compensate Claimants for any sum of money collected by the Lago Agrio Plaintiffs and/or their agents as a result of the Judgment.

B. Ordering Ecuador (whether by its judicial, legislative, or executive branches):

- 1) To take all measures necessary to set aside or nullify the Lago Agrio Judgment under Ecuadorian law.
- 2) To take all measures necessary to prevent enforcement and recognition within and without Ecuador of the Lago Agrio Judgment.
- 3) To take all measures necessary to prevent the Lago Agrio Plaintiffs or any Trust from obtaining any related attachments, levies, or other enforcement devices under the impugned Judgment.
- 4) To make a written representation to any court in which the Lago Agrio Plaintiffs or any Trust attempt to recognize and enforce the Lago Agrio Judgment that: (i) the claims that formed the basis of the Lago Agrio Judgment were validly released under Ecuadorian law by the Government; (ii) the Lago Agrio Judgment is a legal nullity; and (iii) any enforcement of the Lago Agrio Judgment will place Ecuador in violation of its obligations under the BIT.

47. Claimants’ requested relief is without prejudice to all other remedies sought in relation to Track II or any other remedy that may effectively protect Claimants’ rights, including a damage remedy as part of Track III.

107. In their Submission on Costs dated 28 November 2018, the Claimants claimed a total of USD 258,804,126 for costs of legal representation and assistance for Tracks I and II.

108. In their Memorial on Damages dated 31 May 2019, the Claimants made the following request for relief (footnotes here omitted):

479. To “make full reparation in the form of compensation for any injuries caused to the First Claimant and the Second Claimant by the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate Court, Cassation and Constitutional Courts)[,]” in addition to the Track II relief already ordered, Claimants request an Award on Track III granting the following relief:

1. Awarding Claimants US\$ 258,804,126 in Track I and II costs;
2. To the extent not awarded as Track I and II costs, awarding Claimants all of their damages, including all costs and attorneys’ fees incurred by Claimants in pursuing this arbitration, uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including:
 - a. US\$ 165,948,547.27 in relation to the Lago Agrio Litigation;
 - b. US\$ 66,286,194.18 in relation to the § 1782 Actions;
 - c. US\$ 328,258,466.65 in relation to the RICO Action;
 - d. US\$ 3,703,465.90 in relation to the Ecuador Enforcement Action;
 - e. US\$ 26,473,951.23 in relation to the Argentina Enforcement Action;
 - f. US\$ 21,682,698.55 in relation to the Brazil Enforcement Action;
 - g. US\$ 40,736,344.94 in relation to the Canada Enforcement Action;
 - h. US\$ 27,534,505.48 in relation to defense against recognition and enforcement in other countries and general recognition and enforcement work;
 - i. US\$ 39,651,933.78 in relation to the Gibraltar offensive actions and other offensive action against co-conspirators;
 - j. US\$ 57,768,063.05 in relation to the general defense against the Lago Agrio fraud and the resulting fraudulent Judgment;
 - k. US\$ 7,065,435.37 in relation to the Ecuadorian Criminal Proceedings;
 - l. US\$ 35,776,712.89 in relation to the BIT Non-Counsel-of-Record Fees; and
 - m. US\$ 3,692,384.48 in relation to the Dutch Set-Aside Proceedings.
3. Awarding Claimants:
 - a. US\$ 85,315,652 in compensation for the Ecuador IP Losses;
 - b. US\$ 11.8 million in compensation for the Argentina Embargo Losses;
 - c. Moral Damages in the amount that the Tribunal deems just and proper;

4. Ordering Ecuador to indemnify and hold harmless Claimants for any and all damages, including fees and costs, arising from Respondent’s violation of any injunctive relief this Tribunal has granted or will in the future grant;
 5. Ordering Ecuador to indemnify and hold harmless Claimants from and against any costs incurred in responding to the public relations campaign by which the LAPs lawyers and/or Respondent target Chevron;
 6. Ordering Ecuador to use all measures necessary to enjoin enforcement of the Judgment in compliance with the Track II Award;
 7. Ordering that, in the event that any court orders the recognition or enforcement of the Judgment, Ecuador must satisfy the Judgment directly;
 8. Awarding Claimants any sums that the nominal LAPs or any other party collect against Claimants or their affiliates in connection with enforcing the Judgment;
 9. Awarding Claimants contingent damages in the amount of the Lago Agrio Judgment;
 10. Ordering Ecuador to indemnify and hold harmless Claimants from and against any loss, expense, liability, damage or cost (including litigation costs and attorneys’ and experts’ fees) incurred in any jurisdiction by Claimants or their affiliates arising out of (1) any and all attempts to seek the recognition or enforcement of the Judgment within or without Ecuador (including any sums collected in connection with the Judgment); and (2) the Lago Agrio Litigation in Ecuador and any related Ecuadorian Criminal Proceedings;
 11. Ordering Ecuador to refrain from providing any funding or support to the LAPs or Related Parties that may assist or support any efforts to seek the recognition or enforcement of the Judgment within or without Ecuador;
 12. Ordering Ecuador immediately to cease its continuing violations of the Treaty and the Tribunal’s Awards;
 13. Ordering Respondent to protect the rights of Claimants’ lawyers, experts, witnesses, litigation vendors, consultants, and contractors involved in any litigation or proceedings relating to the Lago Agrio Judgment, whether within or without Ecuador, including this arbitration, the proceedings in the Aguinda litigation in Ecuador, Southern District of New York proceedings, § 1782 proceedings, recognition and enforcement actions, Gibraltar proceedings and others discussed in this Memorial and its attachments and take all steps necessary to ensure they are not subject to arbitrary action (including searches, seizure of person or belongings, arrest or detention), harassment, retaliation, intimidation, threats or public derogatory statements.
 14. Awarding Claimants’ costs incurred in this Arbitration until completion;
 15. Awarding both compound pre- and post-award interest until the date of payment; and
 16. Such other and further relief as the Tribunal shall deem just and proper.
109. In their Request for a Partial Award on Threshold Issues dated 21 April 2020, the Claimants made the following request for relief:

175. In light of the foregoing, Claimants respectfully ask the Tribunal for a Partial Award declaring that: (1) Ecuador’s claim for a reduction in damages in this case based upon its hypothetical “but-for” scenario is precluded by the doctrine of res judicata and/or international law.

(2) What Ecuador in its Counter-Memorial refers to as “collective” claims are in fact “diffuse” claims encompassed in the 1995 and 1998 Settlement and Release Agreements, as previously determined by the Tribunal in its prior awards and decisions, which are res judicata.

(3) Ecuador’s argument that Claimants failed to mitigate their damages by not pursuing local remedies under Ecuadorian law is precluded under the doctrine of res judicata.

110. In their Second Submission on the Request for a Partial Award dated 1 October 2020, the Claimants made the following request for relief:

222. In light of the foregoing, Claimants respectfully request that the Tribunal find in their favor on the four threshold questions that are the subject of this partial award procedure. Any other finding would allow Ecuador to relitigate issues barred by this Tribunal’s prior rulings, the 1995 and 1998 Settlement and Release Agreements, and international law. Ecuador’s attempts to relitigate issues previously decided by the Tribunal are a clear violation of the international norm of res judicata and will exacerbate the denial of justice and other treaty violations already found by this Tribunal.

223. Specifically, Claimants request that the Tribunal find as follows:

(1) Ecuador’s environmental offset defense shall be dismissed on the basis of any of the following independent grounds:

a. The Tribunal’s findings and holdings in the Track II Award that the Lago Agrio Litigation constituted a denial of justice comprised of fraud and corruption preclude Ecuador from any damage offset based upon its hypothetical “but-for” scenario. Moreover, no environmental offset is permissible because the Tribunal cannot rule on the basis of the corrupt Lago Agrio record, and it has ruled that it does not have jurisdiction over all relevant parties.

b. Ecuador’s environmental merits defenses are precluded by the Tribunal’s findings and holdings in the Track I and Track II Awards that (i) Ecuador released all diffuse and collective claims and (ii) the Tribunal has no jurisdiction over individual damage claims. Moreover, no environmental offset is permissible because the Tribunal already ruled that it has no jurisdiction over any cross-claim or offset for individual claims and that Ecuador failed to prove its environmental cross-claim.

c. The Tribunal’s consideration of Ecuador’s environmental merits defenses under its hypothetical “but-for” scenario would be limited to evidence of individual claims for personal harm by the 48 named plaintiffs that is contained in the Lago Agrio record. Because individual claims were not prosecuted in the Lago Agrio proceeding and no evidence of individual claims was adduced in the Lago Agrio record, any such “but-for” scenario fails.

d. The Tribunal’s findings and holdings in the Track II Award dismissing Ecuador’s exhaustion of local remedies defenses preclude Ecuador’s damage mitigation defenses based on the same alleged local remedies.”

111. In their Reply on Damages dated 20 August 2021, the Claimants made the following request for relief (footnotes here omitted):

1212. To “make full reparation in the form of compensation for any injuries caused to the First Claimant and the Second Claimant by the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate Court, Cassation and Constitutional Courts),” in addition to the Track II relief already ordered, Claimants request an Award on Track III granting the following relief:

1. Awarding Claimants all of their costs in Tracks I, II, and III of these proceedings;
2. **Awarding Claimants all of their damages, including all costs and attorneys’ fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including:**
 - a. **US\$ 161,525,161.89 in relation to the Lago Agrio Litigation;**
 - b. **US\$ 62,363,592.93 in relation to the Section 1782 Actions;**
 - c. **US\$ 323,180,099.51 in relation to the RICO Action;**
 - d. **US\$ 3,582,889.44 in relation to the Ecuador Enforcement Action;**
 - e. **US\$ 25,695,438.12 in relation to the Argentina Enforcement Action;**
 - f. **US\$ 20,668,398.44 in relation to the Brazil Enforcement Action;**
 - g. **US\$ 39,798,158.90 in relation to the Canada Enforcement Action;**
 - h. **US\$ 26,166,897.09 in relation to defense against recognition and enforcement in other countries and general recognition and enforcement work;**
 - i. **US\$ 38,421,547.26 in relation to the Gibraltar Actions and General Offensive Measures;**
 - j. **US\$ 47,213,917.33 in relation to the general defense against the Lago Agrio fraud and the resulting fraudulent Judgment;**
 - k. **US\$ 6,933,905.69 in relation to the Ecuadorian Criminal Proceedings;**
 - l. **US\$ 34,653,249.61 in relation to the BIT Non-Counsel-of-Record Fees; and**
 - m. **US\$ 3,676,711.53 in relation to the Dutch Set-Aside Proceedings;**
3. **Awarding Claimants:**
 - a. **US\$ 85,315,652 in compensation for the Ecuador IP Losses;**
 - b. **US\$ 13 million in compensation for the Argentina Embargo Losses;**

- c. Moral Damages in the amount that the Tribunal deems just and proper;
4. Ordering Ecuador to indemnify and hold harmless Claimants for any and all damages, including fees and costs, arising from Ecuador’s violation of any injunctive relief this Tribunal has granted or will in the future grant;
 5. Ordering Ecuador to indemnify and hold harmless Claimants from and against any costs incurred in responding to the public relations campaign by which the LAPs’ lawyers and/or Ecuador target Chevron;
 6. Ordering Ecuador to use all measures necessary to enjoin enforcement of the Judgment in compliance with the Track II Award;
 7. Ordering that, in the event that any court orders the recognition or enforcement of the Judgment, Ecuador must satisfy the Judgment directly;
 8. Awarding Claimants any sums that the nominal LAPs or any other party collect against Claimants or their affiliates in connection with enforcing the Judgment;
 9. Awarding Claimants contingent damages in the amount of the Lago Agrio Judgment, contingent on the enforcement of the Judgment and to the extent enforced;
 10. Ordering Ecuador to indemnify and hold harmless Claimants from and against any loss, expense, liability, damage or cost (including litigation costs and attorneys’ and experts’ fees) incurred in any jurisdiction by Claimants or their affiliates arising out of: (i) any and all attempts to seek the recognition or enforcement of the Judgment within or without Ecuador (including any sums collected in connection with the Judgment); and (ii) the Lago Agrio Litigation in Ecuador and any related Ecuadorian Criminal Proceedings;
 11. Ordering Ecuador to indemnify and hold harmless Claimants from and against any loss, expense, liability, damage or cost (including litigation costs and attorneys’ and experts’ fees) arising from Ecuador’s violations of the Tribunal’s Orders and Awards;
 12. Ordering Ecuador to refrain from providing any funding or support to the LAPs or Related Parties that may assist or support any efforts to seek the recognition or enforcement of the Judgment within or without Ecuador;
 13. Ordering Ecuador to cease violations of Procedural Order Nos. 17, 26, 58, 64, and 67;
 14. Ordering Ecuador immediately to cease its continuing violations of the Treaty and the Tribunal’s Awards;
 15. Ordering Ecuador to protect the rights of Claimants’ lawyers, experts, witnesses, litigation vendors, consultants, and contractors involved in any litigation or proceedings relating to the Lago Agrio Judgment, whether within or without Ecuador, including this arbitration, the proceedings in the Aguinda litigation in Ecuador, Southern District of New York proceedings, Section 1782 proceedings, recognition and enforcement actions, Gibraltar proceedings and others discussed in this Memorial and its attachments and to take all steps necessary to ensure they are not subject to arbitrary action (including searches,

seizure of person or belongings, arrest or detention), harassment, retaliation, intimidation, threats or public derogatory statements;

16. Awarding Claimants’ costs incurred in this Arbitration until completion;
17. **Awarding both compound pre- and post-award interest until the date of payment; and**
18. **Such other and further relief as the Tribunal shall deem just and proper.**³⁶

B. THE RESPONDENT’S REQUESTS FOR RELIEF

112. In its letter dated 20 October 2025, the Respondent indicated the parts of its requests for relief that remain extant for Track III and, separately, Track IV.³⁷ What follows are the Respondent’s prayers for relief from the outset of the Arbitration, highlighting **in bold** the relief extant for Track III (indicated with the words “Track III” in blue in the original), in underscore the relief extant for Track IV (indicated with the words “Track IV” in green in the original), and **in bold and underscore** the relief relevant to both Tracks III and Track IV (indicated with the words “Track III and Track IV”).

113. In its Track 1 Counter-Memorial dated 3 July 2012, the Respondent made the following request for relief (with sub-paragraphs here added for ease of reference):

263. Based on the foregoing, the Republic respectfully requests that the Tribunal declare that it does not have jurisdiction over Chevron’s claims under the Settlement and Release Agreements and reject TexPet’s contractual claims under the 1995 Settlement Agreement. In particular, the Republic requests that the Tribunal:

[1] Dismiss Chevron’s claims under the 1995 Settlement Agreement and the 1998 Final Release for lack of jurisdiction under Article VI(1)(a) of the Treaty;

[2] Dismiss Chevron’s claims for lack of jurisdiction under Article VI(1)(c) of the Treaty to the extent that its treaty claims are predicated on breach of the 1995 Settlement Agreement and/or the 1998 Final Release;

[3] Dismiss Chevron’s claims under the 1995 Settlement Agreement and the 1998 Final

³⁶ See also Reply, fn 2079: “The relief requested herein is not intended to limit the requests for relief made by Claimants in other Memorials, which are incorporated herein by reference to the extent extant and not already granted.”

³⁷ See also Letter from the Respondent to the Tribunal dated 20 October 2025: “For the avoidance of doubt, Respondent’s completeness check was limited to Respondent’s formal written submissions; Respondent did not conduct a review of all other documents submitted in the arbitration record or at various hearings or meetings, or a review of oral presentations. In marking up Enclosure I at the Tribunal’s request, Respondent does not waive any of its requests for relief of any form that are or remain extant for Tracks III and/or IV. Rather, Respondent expressly preserves any and all such requests.”

Release on the merits, should the Tribunal find that Chevron has standing in this Arbitration as a matter of jurisdiction;

[4] Dismiss TexPet’s claims under the 1995 Settlement Agreement on the merits;

[5] Declare specifically that the Respondent has not breached the 1995 Settlement Agreement or the 1998 Final Release;

[6] Dismiss all of Claimants’ claims as they relate to the 1996 Local Settlements, both as a matter of jurisdiction and on the merits;

[7] Declare further that the Respondent is under no obligation to indemnify, protect, defend or otherwise hold Claimants harmless against claims by third parties;

[8] Declare that the 1995 Settlement Agreement has no effect on third parties, and specifically, that the release of liability contained therein does not extend to rights and claims potentially held by third parties or could otherwise bar third-party claims arising from the environmental impact of TexPet’s operations in Ecuador against TexPet or any of the defined Releasees;

[9] Award Respondent all costs and attorneys’ fees in connection with this phase of the proceedings;

[10] Award Respondent any further relief that the Tribunal deems just and proper.

114. In its Track 1 Rejoinder Memorial dated 26 October 2012, the Respondent made the following request for relief (with sub-paragraphs here added for ease of reference):

192. Based on the foregoing, the Republic respectfully requests that the Tribunal issue an Award that:

[1] Denies all the relief and each remedy requested by Claimants in relation to Track 1, including the relief and remedies requested in Paragraph 272 of Claimants’ Reply on the Merits;

[2] Declares that Chevron is not a “Releasee” under the 1995 Settlement Agreement and therefore has no basis to assert claims under Article VI(1)(a) of the Treaty.

[3] Dismisses Chevron’s claims under the 1995 Settlement Agreement and the 1998 Final Release on the merits, should the Tribunal find that Chevron has standing in this Arbitration as a matter of jurisdiction;

[4] Declares that TexPet does not have standing to assert claims under the 1995 Settlement Agreement as a matter of Ecuadorian law;

[5] Dismisses TexPet’s claims under the 1995 Settlement Agreement and the 1998 Final Release on the merits;

[6] Declares specifically that the Respondent has not breached the 1995 Settlement Agreement or the 1998 Final Release;

[7] Dismisses all of Claimants’ claims as they relate to the 1996 Local Settlements, both as a matter of jurisdiction and on the merits;

[8] **Declares further that the Respondent is under no obligation to indemnify, protect, defend or otherwise hold Claimants harmless against claims by, or judgments or other relief obtained by, third parties including the claims filed by the Lago Agrio Plaintiffs, the Lago Agrio Judgment, and the enforcement thereof;**

[9] Declares that the 1995 Settlement Agreement has no effect on third parties, and specifically, that the release of liability contained therein does not extend to rights and claims potentially held by third parties or could otherwise bar third-party claims arising from the environmental impact of TexPet’s operations in Ecuador against TexPet or any of the defined Releasees;

[10] Declares that the Lago Agrio Litigation was not barred by res judicata or collateral estoppel;

[11] Awards Respondent all costs and attorneys’ fees incurred by Respondent in connection with this phase of the proceedings; and that

[12] **Awards Respondent any further relief that the Tribunal deems just and proper.**

115. In its Track 1 Supplementary Counter-Memorial dated 31 March 2014, the Respondent made the following request for relief:

143. Based on the foregoing, together with the Republic’s previous Track 1 submissions and argument and testimony presented in the November 2012 Hearing on the Merits, the Republic respectfully requests that the Tribunal issue an Award that:
- a. **Denies all the relief and each remedy requested by Claimants in relation to Track 1, including the relief and remedies requested in Paragraph 32 of Claimants’ Supplemental Track 1 Memorial;**
 - b. Dismisses on the merits Chevron’s claims under the 1995 Settlement Agreement and the 1998 Final Release;
 - c. Dismisses on the merits TexPet’s claims under the 1995 Settlement Agreement and the 1998 Final Release;
 - d. Declares specifically that the Respondent has not breached the 1995 Settlement Agreement or the 1998 Final Release;
 - e. Dismisses all of Claimants’ claims as they relate to the 1996 Local Settlements, reached between TexPet and local government entities;
 - f. Declares that the Lago Agrio Litigation was not barred by res judicata or collateral estoppel;
 - g. Awards Respondent all costs and attorneys’ fees incurred by Respondent

in connection with this phase of the proceedings; and

- h. **Awards Respondent any further relief that the Tribunal deems just and proper.**

116. In its Track II Counter Memorial on the Merits dated 18 February 2013, the Respondent made the following request for relief:

542. For the aforementioned reasons, the Republic requests that the Tribunal issue a Final Award that grants the following relief:

- a. Declaring that the Tribunal lacks jurisdiction over Claimants’ denial of justice claims, or that it refuses to exercise such jurisdiction because such claims are too remote to any investment.
- b. Alternatively, dismissing Claimants’ denial of justice and Treaty claims due to the failure of Chevron to exhaust local remedies available to it to challenge the Lago Agrio Judgment in Ecuador.
- c. Alternatively, dismissing Claimants’ Treaty and denial of justice claims because the rights that Claimants claim to have under the 1995 Settlement Agreement do not exist or were not breached.
- d. Alternatively, even if the 1995 Settlement Agreement has been breached by the Republic, dismissing all of Claimants’ Treaty claims, inter alia, because Claimants have separately failed to establish that the Republic has violated the effective means clause; the fair and equitable treatment clause; the full protection and security clause; the arbitrary and discriminatory treatment clause.
- e. Alternatively, even if the 1995 Settlement Agreement has been breached by the Republic, dismissing Claimants’ denial of justice claims because Claimants have failed to establish that the Republic has denied justice to Claimants under principles of customary international law.
- f. **Otherwise dismissing all of Claimants’ claims against the Republic in these arbitration proceedings as meritless.**
- g. **Awarding all costs and attorneys’ fees incurred by the Republic in this arbitral proceeding.**
- h. **Any other and further relief that the Tribunal deems just and proper.**

543. To the extent the Tribunal finds the Republic responsible for a violation of international law, the Republic requests that the Tribunal conduct a further phase (Track 3) of the arbitration sufficient to determine Chevron’s actual liability in fact for the claims asserted against it in Lago Agrio and to fashion a final award that takes into consideration such established liability.

544. The Republic reincorporates by reference its Request for Relief in Track I to the extent that such Request remains pending.

545. **The Republic reserves its rights to supplement its pleadings and request for relief.**

117. In its Track II Rejoinder on the Merits dated 16 December 2013, the Respondent made the following request for relief (footnotes here omitted):

387. For the aforementioned reasons, the Republic requests that the Tribunal issue a Final Award, in which the Tribunal:
- a. **Denies all the relief and each remedy requested by Claimants in relation to Track II, including the relief and remedies requested in Paragraph 424 of Claimants’ Amended Track II Reply on the Merits.**
 - b. Declares that it lacks jurisdiction over Claimants’ denial of justice claims, or refuses to exercise such jurisdiction because such claims are too remote to any investment.
 - c. Alternatively, dismisses Claimants’ denial of justice and Treaty claims due to Chevron’s failure to exhaust local remedies available to it to challenge the Lago Agrio Judgment in Ecuador.
 - d. Alternatively, dismisses Claimants’ Treaty and denial of justice claims because the rights that Claimants claim to have under the 1995 Settlement Agreement, the 1998 Final Release, and/or the 1996 Local Settlements do not exist or were not breached.
 - e. Alternatively, even if the 1995 Settlement Agreement, the 1998 Final Release, and/or the 1996 Local Settlements was breached by the Republic, dismisses all of Claimants’ Treaty claims because Claimants have separately failed to establish that the Republic has violated any of the Treaty’s provisions.
 - f. Alternatively, even if the 1995 Settlement Agreement, the 1998 Final Release, and/or the 1996 Local Settlements has been breached by the Republic, dismisses Claimants’ denial of justice claims because Claimants have failed to establish that the Republic has denied justice to Claimants under principles of customary international law.
 - g. Alternatively, even if any of Claimants’ Treaty or denial of justice claims are upheld, declares that the Lago Agrio Judgment is not null and void because nullification is not an available or appropriate remedy under international law and such nullification would unjustly enrich Claimants.
 - h. **Alternatively, even if any of Claimants’ claims are upheld, orders the arbitration proceedings to continue to Track 3, so that the Tribunal may assess what Chevron’s liability should have been for the claims asserted in Lago Agrio so that the Tribunal may fashion a final award that takes into consideration such liability.**
 - i. **Declares further that the Respondent is under no obligation to indemnify, protect, defend or otherwise hold Claimants harmless against claims by third parties.**
 - j. **Declares that the 1995 Settlement Agreement has no effect on the claims brought in the Lago Agrio Litigation.**
 - k. **Otherwise dismisses all of Claimants’ claims against the Republic in these**

arbitration proceedings as meritless.

- l. Orders, pursuant to Article 40 of the UNCITRAL Arbitration Rules, Claimants to pay all costs and expenses of this arbitration proceeding, including the fees and expenses of the Tribunal and the cost of the Republic’s legal representation, plus pre-award and post-award interest thereon.
 - m. **Awards any other and further relief that the Tribunal deems just and proper.**
 388. **The Republic reincorporates by reference its Request for Relief in Track I and in its Track II Counter-Memorial on the Merits to the extent that such Request remains pending.**
 389. **The Republic reserves its rights to supplement its pleadings and request for relief.**
118. In its Track II Supplemental Counter-Memorial dated 7 November 2014, the Respondent made the following request for relief (footnotes here omitted):

481. For the aforementioned reasons, the Republic requests that the Tribunal issue a Final Award:
 - a. Declaring that it lacks jurisdiction over Claimants’ denial of justice and Treaty claims against the Republic.
 - b. Alternatively, assuming the Tribunal finds it has jurisdiction over the denial of justice and Treaty claims, it should dismiss Claimants’ denial of justice and Treaty claims against the Republic as meritless.
 - c. **Declaring that Claimants do not possess the rights they claim to have under the 1995 Settlement Agreement, the 1998 Final Release, and/or the 1996 Local Settlements in connection with the Lago Agrio Litigation.**
 - d. Declaring further that no breach of the 1995 Settlement Agreement, the 1998 Final Release, and/or the 1996 Local Settlements occurred in connection with the Lago Agrio Litigation.
 - e. **Denying all the relief and each remedy requested by Claimants in relation to Track II, including the relief requested in Paragraph 199 of their Supplemental Track II Memorial on the Merits.**
482. Alternatively, if any of Claimants’ claims are upheld, the Republic requests, for the aforementioned reasons, that the Tribunal issue a Partial Award, in which the Tribunal:
 - a. Orders the arbitration proceedings to proceed to Track 3, so that the Tribunal may assess Chevron’s actual liability in respect of the claims asserted against them in the Lago Agrio Litigation so that the Tribunal may fashion a final award that takes into consideration such liability.
 - b. **Declares that the Respondent is under no obligation to indemnify, protect, defend or otherwise hold Claimants harmless against claims by third parties, including but not limited to, Claimants’ request for attorneys’ fees incurred**

in any enforcement action in any jurisdiction.

- c. **Declares that Claimants are not entitled to moral damages.**
 - d. Declares that the Lago Agrio Judgment is not null and void because nullification is not an available or appropriate remedy under international law and such nullification would unjustly enrich Claimants.
483. **In all events, the Republic requests that, pursuant to Article 40 of the UNCITRAL Arbitration Rules, Claimants be ordered to pay all costs and expenses of this arbitration proceeding, including the fees and expenses of the Tribunal and the cost of the Republic’s legal representation, plus pre-award and post-award interest thereon. The Republic also asks that the Tribunal grant it any other and further relief that the Tribunal deems just and proper.**
484. **The Republic incorporates by reference its Request for Relief in Track I and in its Track II Counter-Memorial and Rejoinder on the Merits to the extent that such Requests remain pending.**

119. In its Track II Supplemental Rejoinder on the Merits dated 17 March 2015, the Respondent made the following request for relief (footnotes here omitted):

446. For the aforementioned reasons, the Republic requests that the Tribunal issue a Final Award:
- a. Declaring that it lacks jurisdiction over Claimants’ denial of justice and related treaty claims against the Republic.
 - b. Alternatively, assuming the Tribunal finds it has jurisdiction over the denial of justice and Treaty claims, dismissing Claimants’ denial of justice and related treaty claims against the Republic as not ripe for adjudication under international law in light of Claimants’ failure to exhaust available local remedies, and as otherwise meritless.
 - c. **Declaring that Claimants do not possess the rights they claim to have under the 1995 Settlement Agreement, the 1998 Final Release, and/or the 1996 Local Settlements in connection with the Lago Agrio Litigation.**
 - d. Declaring further that no breach of the 1995 Settlement Agreement, the 1998 Final Release, and/or the 1996 Local Settlements occurred in connection with the Lago Agrio Litigation.
 - e. **Denying all the relief and each remedy requested by Claimants in relation to Track II, including the relief requested in Paragraph 435 of their Supplemental Track II Reply.**
447. Alternatively, if any of Claimants’ claims are upheld, the Republic requests, for the aforementioned reasons, that the Tribunal issue a Partial Award, in which the Tribunal:
- a. Orders the arbitration proceedings to proceed to Track 3, so that the Tribunal may assess Chevron’s actual liability in respect of the claims asserted against them in the Lago Agrio Litigation so that the Tribunal may fashion a final award that takes

into consideration such liability.

- b. **Declares that the Respondent is under no obligation to indemnify, protect, defend or otherwise hold Claimants harmless against claims by third parties, including but not limited to, Claimants’ request for attorneys’ fees incurred in any enforcement action in any jurisdiction.**
 - c. **Declares that Claimants are not entitled to moral damages.**
 - d. Declares that the Lago Agrio Judgment is not null and void because nullification is not an available or appropriate remedy under international law and such nullification would unjustly enrich Claimants.
448. **In all events, the Republic requests that, pursuant to Article 40 of the UNCITRAL Arbitration Rules, Claimants be ordered to pay all costs and expenses of this arbitration proceeding, including the fees and expenses of the Tribunal and the cost of the Republic’s legal representation, plus pre-award and post-award interest thereon. The Republic also asks that the Tribunal grant it any other and further relief that the Tribunal deems just and proper.**
449. **The Republic incorporates by reference its Request for Relief in Track I and in its Track II Counter-Memorial, Rejoinder, and Supplemental Counter-Memorial, to the extent that such Requests remain pending.**

120. In Paragraph 449 of its Track II Supplemental Rejoinder (cited immediately above), the Respondent incorporates by general reference certain pending relief requested in its earlier pleadings submitted under both Track I and Track II, namely, as cited above (i) as to Track I, the Respondent’s Track 1 Counter-Memorial (Paragraph 263), the Respondent’s Track I Rejoinder (Paragraph 192), the Respondent’s Track I Supplemental Counter-Memorial (Paragraph 143); and (ii) as to Track II, the Respondent’s Track II Counter-Memorial on the Merits (Paragraph 542), the Respondent’s Track II Rejoinder on the Merits (Paragraph 387), the Respondent’s Track II Supplemental Counter-Memorial (Paragraphs 481-483).³⁸

121. In its Post-Track II Hearing Memorial on Track I Issues dated 15 July 2015, the Respondent requested relief as there more generally set out, without a formal prayer for relief.

³⁸ For this request, the Respondent indicated “Same as referenced above for Track III and Track IV”.

122. In its Submission on Costs dated 28 November 2018, the Respondent claimed a total of USD 72,825,262.65 for legal fees and costs, while reserving its right to update this amount.

123. In its Counter-Memorial on Damages dated 28 February 2020, the Respondent makes the following request for relief:

1382. For the aforementioned reasons, Respondent requests that the Tribunal issue a Final Award:

- a) **Denying all the relief and each remedy requested by Claimants in paragraph 479 of their Memorial on Damages;**
- b) **Should the Tribunal consider that its Interim Awards have not been superseded by the Second Partial Award on Track II, granting Respondent’s application of 1 March 2013 for “Reconsideration of the First, Second and Fourth Interim Awards”; and**
- c) Pursuant to Article 40 of the UNCITRAL Arbitration Rules, ordering Claimants to pay all costs and expenses of this arbitration proceeding, including the fees and expenses of the Tribunal and the cost of Respondent’s legal representation, plus pre-award and post-award interest thereon.

1383. Respondent also asks that the Tribunal grant it any other and further relief that the Tribunal deems just and proper.

124. In its Response to the Claimants’ Request for a Partial Award dated 19 May 2020, the Respondent makes the following request for relief:

211. In light of the foregoing, Respondent respectfully urges the Tribunal to decline to hear the Request for a Partial Award as a preliminary matter.

212. In the event that the Tribunal is inclined to hear the Request for a Partial Award as a preliminary matter, Respondent respectfully requests the Tribunal decline to hear or consider the issues raised in Question #1 and Question #3 of the Request.

213. In the event that the Tribunal is inclined to hear the Request for a Partial Award as a preliminary matter, Respondent respectfully requests that it not be heard at the Procedural Meeting scheduled for 28-29 May 2020, but at a later date pursuant to a full hearing procedure in accordance with Article 15(2) of the UNCITRAL Rules affording the Parties a full and reasonable opportunity to present their cases.

214. Further, in the event that the Tribunal is inclined to hear the Request for a Partial Award, and to render a partial award, Respondent respectfully requests that such a partial award:

(1) Reject the relief sought in paragraph 175 of the Claimants’ Request for a Partial Award;³⁹

(2) Declare that Respondent’s contentions for reduction of damages based on its “but-for” argument are not precluded by res judicata and/or international law;⁴⁰

(3) Declare that Respondent’s arguments regarding individual claims for individual and collective rights have not been previously determined by the Tribunal in its prior awards and decisions and are, therefore, not res judicata;

(4) Declare that the consideration of Respondent’s but-for argument shall not be limited to evidence in the record of the Lago Agrio proceedings;⁴¹

(5) Declare that Respondent’s arguments regarding Claimants’ failure to mitigate damages by not pursuing local remedies under Ecuadorian law are not precluded by res judicata; and

(6) Award Respondent all of its costs of arbitration, including its cost of representation, in connection with the Request together with interest at a reasonable rate.

125. In its Second Submission on the Claimants’ Request for a Partial Award dated 15 January 2021, the Respondent makes the following request for relief:

283. In light of the foregoing, Respondent requests that, based on the arguments presented by the Parties in connection with Claimants’ Request for a Partial Award, the Tribunal issue a partial award in favor of Respondent on the preliminary questions it agreed to consider in its Procedural Order No. 67, as follows:

(1) Reject the relief sought in paragraph 175 of the Claimants’ Request for a Partial Award and paragraphs 222 and 223 of Claimants’ Second Submission;⁴²

(2) Declare that Respondent’s contentions for reduction of damages based on its “but-for” argument are not precluded by res judicata and/or international law;⁴³

(3) Declare that Respondent’s arguments regarding individual claims for individual and collective rights have not been previously determined by the Tribunal in its prior awards and decisions regarding the scope and effect of the 1995 Settlement Agreement and are, therefore, not precluded by res judicata;

³⁹ For this request for relief, the Respondent stated “Track III – to the extent not resolved by the Tribunal’s Partial Award dated 30 June 2021”.

⁴⁰ For this request for relief, the Respondent stated “Track III – to the extent not resolved by the Tribunal’s Partial Award dated 30 June 2021”.

⁴¹ For this request for relief, the Respondent stated “Track III – to the extent not resolved by the Tribunal’s Partial Award dated 30 June 2021”.

⁴² For this request for relief, the Respondent stated “Track III – to the extent not resolved by the Tribunal’s Partial Award dated 30 June 2021”.

⁴³ For this request for relief, the Respondent stated “Track III – to the extent not resolved by the Tribunal’s Partial Award dated 30 June 2021”.

(4) Declare that the consideration of Respondent’s but-for argument shall not be limited to evidence in the record of the Lago Agrio proceedings;⁴⁴

(5) Declare that Respondent’s arguments regarding Claimants’ failure to mitigate damages by not pursuing local remedies under Ecuadorian law are not precluded by res judicata; and

(6) Award Respondent all of its costs of arbitration, including its cost of representation, in connection with the Request together with interest at a reasonable rate.

284. Respondent respectfully requests further that the Tribunal decline to make determinations with respect to the issues raised by Claimants’ arguments, as identified above, pertaining to the merits of Respondent’s environmental but-for argument and proceed to the consideration of all Track III issues.

126. In its Rejoinder on Damages dated 20 May 2022, the Respondent makes the following request for relief:

1940. For all of the aforementioned reasons, and those set forth in its Counter-Memorial On Damages, Respondent respectfully requests that the Tribunal issue a Final Award:

- a) **Denying all the relief and each remedy requested by Claimants in paragraph 479 of their Memorial on Damages and paragraph 1212 of their Reply;**
- b) **Should the Tribunal consider that its Interim Awards have not been superseded by the Second Partial Award on Track II, granting Respondent’s application of 1 March 2013 for “Reconsideration of the First, Second and Fourth Interim Awards” and vacating those Awards; and**
- c) **Pursuant to Article 40 of the UNCITRAL Arbitration Rules, ordering Claimants to pay all the costs and expenses of this arbitration proceeding, including the fees and expenses of the Tribunal and the costs of Respondent’s legal representation and assistance, plus pre-award and post-award interest thereon.**

1941. Respondent also asks that the Tribunal grant it any other and further relief that the Tribunal deems just and proper.

127. In its Letter to the Tribunal dated 2 September 2022, the Respondent makes the following request for relief:

For these reasons, Respondent requests that the Tribunal strike from the damages claim any fees and costs that Claimants attribute to the Ecuador Legal Team, and in the alternative, draw an adverse inference against Claimants for failing to produce the invoices referenced in Claimants’ Cash Call documents.

* * *

⁴⁴ For this request for relief, the Respondent stated “Track III – to the extent not resolved by the Tribunal’s Partial Award dated 30 June 2021”.

V. OVERVIEW OF THE CLAIMANTS’ CLAIMS IN TRACK III

128. In this Section, the Tribunal provides an general overview of the Claimants’ claims in Track III. In particular, the Tribunal shall describe: (i) certain cross-cutting issues touching upon the legal standards governing the Claimants’ damages claims; (ii) the 16 categories of damages claimed by the Claimants; (iii) the Claimants’ indemnification claim; and (iv) the Claimants’ request for further injunctive relief.

A. GENERAL MATTERS AND LEGAL STANDARDS

129. The Claimants’ damages claims are premised on three legal bases stemming from the Tribunal’s findings in the Track II Award. Namely, the Claimants claim that they incurred damages:

- (i) Starting on 1 January 2004 by virtue of the Respondent’s breach of Article II(3)(c) of the Treaty (the “**Umbrella Clause**”);
- (ii) In respect of the Respondent’s denial of justice starting on 22 August 2006 (when the Claimants assert Ecuador’s wrongful acts began) or, in the alternative, on 1 March 2012 (when the Lago Agrio Judgment was rendered enforceable); and
- (iii) From 1 March 2012 as a result of the Respondent’s breach of the First and Second Interim Awards.⁴⁵

130. Section VI of this Award sets out the Parties’ respective positions on general matters and legal standards cutting across these three legal bases, which include:

- (i) Legal principles on compensation, including the applicable standard of compensation (particularly for legal fees and expenses claimed as damages), causation, the distinction between direct and incidental damages, the determination of the date(s) of the Treaty breaches, and the Respondent’s so-called but-for argument, according to which the Claimants “must prove what the situation would in all probability have been if there had been no Treaty breaches,

⁴⁵ Reply, para. 672.

and what legal expenses and risk of judgment they would in all probability have faced in that situation”;⁴⁶

- (ii) Whether the Respondent’s breaches of the First and Second Interim Awards give rise to compensation (and, relatedly, the Respondent’s request for reconsideration of the First and Second Interim Awards);
- (iii) Whether the Claimants are entitled to compensation for the legal fees and expenses incurred by Chevron’s subsidiaries, whether or not outside of Ecuador, to prepare and defend themselves against the efforts to enforce the Lago Agrio Judgment worldwide;
- (iv) Whether the Claimants fulfilled their duty to mitigate under international law;
- (v) Whether legal fees and expenses allegedly awarded or recovered by the Claimants and their subsidiaries in legal proceedings beyond this Arbitration are recoverable as damages;
- (vi) Certain tax implications arising from the Claimants’ damages claims; and
- (vii) What type of evidence of loss is required to satisfy the Claimants’ burden of proof in respect of their damages claims for the reimbursement of legal fees and expenses.

131. The Tribunal shall address these issues in Section VII of this Award.

B. SPECIFIC DAMAGES CATEGORIES

132. Furthermore, the Claimants independently invoke each of the three legal bases identified in paragraph 129 above to claim damages across 16 distinct damages categories. 13 of those damages categories relate to legal fees and expenses allegedly incurred as a result of the Respondent’s Treaty breaches, with 10 of those categories relating to distinct proceedings outside the present Arbitration. What follows is a concise summary of each of these proceedings:

⁴⁶ Counter-Memorial, para. 940.

- (i) *The Lago Agrio Litigation (Ecuador)*: As described above, the Lago Agrio Litigation started with the filing of the Lago Agrio Complaint on 7 May 2003.⁴⁷ Following the issuance of the Lago Agrio Judgment on 14 February 2011 (with its Clarification Order of 4 March 2011), adverse to Chevron, Chevron initiated three successive appeals against the Judgment, resulting in the Judgments of the Appellate Court (2012), the Cassation Court (2013) and the Constitutional Court (2018).⁴⁸
- (ii) *Ecuador Enforcement Proceedings*: On 1 March 2012, the Lago Agrio Appellate Court declared the Lago Agrio Judgment enforceable; on 3 August 2012, the Lago Agrio Court ordered Chevron to pay the judgment debt within 24 hours; and on 15 October 2012, the Lago Agrio Court ordered that the Lago Agrio Judgment’s execution “be applicable to the entirety of the assets of Chevron Corporation, until such time as the entire obligation has been satisfied.” Hereinafter, the Tribunal shall refer to these proceedings as the “**Ecuador Enforcement Proceedings**”.⁴⁹
- (iii) *Argentina Enforcement Proceedings*: On 5 November 2012, the LAPs commenced embargo proceedings, seeking to attach the assets of certain Chevron subsidiaries in Argentina.⁵⁰ A few days thereafter, on 12 November 2012, the LAPs filed enforcement proceedings in Argentina, seeking recognition of the Lago Agrio Judgment.⁵¹ Hereinafter, the Tribunal shall refer to these proceedings jointly as the “**Argentina Enforcement Proceedings**”.
- (iv) *Brazil Recognition Proceedings*: On 27 June 2012, the LAPs sought recognition of the Lago Agrio Judgment in Brazil.⁵² Hereinafter, the Tribunal shall refer to these proceedings as the “**Brazil Recognition Proceedings**”.

⁴⁷ Track II Award, paras. 4.89-4.94.

⁴⁸ Track II Award, para. 4.94. *See also* Memorial, Appendix 3.

⁴⁹ Track II Award, para. 4.133.

⁵⁰ **C-2656**, *Ex Parte* Motion before Argentina’s National Civil Trial Courts, 5 November 2012.

⁵¹ Track II Award, Part I – Annex 4, paras. 14-16. *See also* Memorial, Appendix 4.

⁵² Track II Award, Part I – Annex 4, paras. 11-13. *See also* Memorial, Appendix 5.

- (v) *Canada Enforcement Proceedings*: On 30 May 2012, the LAPs initiated legal proceedings in Ontario, Canada to enforce the Lago Agrio Judgment against certain local subsidiaries of Chevron.⁵³ Hereinafter, the Tribunal shall refer to these proceedings as the “**Canada Enforcement Proceedings**”.
- (vi) *The RICO Litigation (New York, USA)*: This lawsuit was brought by Chevron on 1 February 2011 before the U.S. District Court for the Southern District of New York (the “**SDNY**”) against Mr Stephen Donziger and the Law Offices of Steven R. Donziger, Mr Pablo Fajardo, Mr Luis Yanza, Stratus Consulting, Mr Douglas Beltman, Ms Anne Maest, 47 of the LAPs and several others. Chevron claimed, as originally pleaded, damages and injunctive relief for a pattern of racketeering activity and violations of 18 USC Section 1962 and New York State law.⁵⁴ Hereinafter, the Tribunal shall refer to these proceedings as the “**RICO Litigation**”.
- (vii) *The Section 1782 Proceedings (USA)*: Beginning in December 2009, Chevron initiated numerous legal proceedings in several U.S. District Courts in the USA under USC Section 1782 in order to obtain discovery for use in the Lago Agrio Litigation, the Criminal Proceedings against Mr Ricardo Reis Veiga and Dr. Rodrigo Pérez Pallares, and this Arbitration. These proceedings were directed to (*inter alia*) Mr Stephen Donziger, Mr Joseph Berlinger, Mr Cristobal Bonifaz, Mr Joseph C. Kohn, Mr Norman Nelson Alberto Wray Espinosa, Dr Charles William Calmbacher, Mr Charles W. Champ Sr., Mr Daniel Rourke, Stratus Consulting Inc., E-Tech and Banco Pichincha. The Respondent, in turn, later initiated legal proceedings in the USA under USC Section 1782 in order to obtain discovery for use in this Arbitration, including Mr John A. Connor.⁵⁵ Hereinafter, the Tribunal shall refer to these proceedings jointly as the “**Section 1782 Proceedings**”.
- (viii) *The Gibraltar Proceedings (Gibraltar, United Kingdom)*: Chevron began legal proceedings in Gibraltar against certain non-party funders of the Lago Agrio

⁵³ Track II Award, Part I – Annex 4, paras. 6-10. *See also* Memorial, Appendix 6.

⁵⁴ Track II Award, paras. 4.109-4.114. *See also* Memorial, Appendix 9.

⁵⁵ Track II Award, paras. 4.106-4.108. *See also* Memorial, Appendices 11-12, 14-42, 44.

Litigation and ostensible beneficiaries of and administrators for recoveries from the enforcement of the Lago Agrio Judgment, including Mr James Russel DeLeon, the Woodsford Group and other defendants.⁵⁶ Hereinafter, the Tribunal shall refer to these proceedings jointly as the “**Gibraltar Proceedings**”.

(ix) *The Criminal Proceedings (Ecuador)*: In 2003, the Respondent’s Comptroller-General initiated criminal proceedings, later to become prosecutions, against (*inter alia*) Mr Ricardo Reis Veiga (a national of the USA) and Dr Rodrigo Pérez Pallares (a national of Ecuador). These Criminal Prosecutions alleged “falsity in a notarial instrument” (later “ideological falsehood”) under Articles 338 and 339 of the Ecuadorian Penal Code, committed by Mr Patricio Rivadeneira (the former Minister of Energy and Mines), Dr Ramiro Gordillo (the former Executive President of PetroEcuador), Mr Luis Alban Granizo (the former Manager of Petroproduccion), Mr Veiga and Dr Pérez (TexPet’s Vice-President and legal representative, respectively). The alleged falsity concerned the 1995 Settlement Agreement (with associated documentation), signed by the Ministry of Energy and Mines, PetroEcuador and TexPet.⁵⁷ Hereinafter, the Tribunal shall refer to these proceedings as the “**Criminal Proceedings**”.

(x) *The Dutch Set-Aside Proceedings (The Hague, the Netherlands)*: As already stated above, to date, the Tribunal has made seven awards in this Arbitration.⁵⁸ With the exception of the Partial Award on Track III, the Respondent applied to annul the Tribunal’s six remaining awards before the Dutch Courts.⁵⁹ Hereinafter, the Tribunal shall refer to these proceedings as the “**Dutch Set-Aside Proceedings**”.

133. In addition to the above 10 damages categories, the Claimants claim damages in respect of three damages categories which, although also related to legal fees and expenses, do not arise directly from specific judicial proceedings:

⁵⁶ Track II Award, para. 4.137. *See also* Memorial, Appendix 7.

⁵⁷ Track II Award, paras. 4.122-4.131. *See also* Memorial, Appendix 13.

⁵⁸ *See* para. 13 above.

⁵⁹ Track II Award, paras. 4.146-4.148. *See also* Memorial, Appendix 10.

- (i) The category “**Costs of Planning Against Potential Enforcement in other Jurisdictions**” concerns the legal fees and expenses the Claimants allegedly incurred to “prepare and implement [Chevron’s] defensive strategy in anticipation of continuing efforts by the LAPs to enforce the fraudulent Lago Agrio Judgment in multiple jurisdictions around the world”.⁶⁰
- (ii) The category “**General Defence**” concerns the legal fees and expenses the Claimants allegedly incurred “in the General Defense against the Lago Agrio fraud and the resulting fraudulent Judgment”.⁶¹
- (iii) The category “**Treaty Arbitration Costs incurred by Non-Counsel of Record**” concerns legal fees and expenses allegedly incurred by non-counsel of record in connection with this Arbitration.⁶² The Claimants’ primary position, however, is that such fees and expenses should be reimbursed as costs of this Arbitration under Article 38 of the UNCITRAL Arbitration Rules.⁶³

134. Lastly, aside from the above 13 damages categories comprising legal fees and expenses, the Claimants seek damages under three additional headings:

- (i) The category “**Embargo Losses in Argentina**” pertains to the losses allegedly suffered by one of Chevron’s subsidiaries as a result of the 6 November 2012 *ex parte* embargo order obtained by the LAPs in the Argentina Enforcement Proceedings, whereby the Argentine Courts attached certain assets owned by Chevron’s Argentine and Danish subsidiaries in Argentina in aid of enforcement of the Lago Agrio Judgment.⁶⁴
- (ii) The category “**Intellectual Property Losses in Ecuador**” pertains to the intellectual property losses the Claimants claim to have incurred in Ecuador,

⁶⁰ Memorial, para. 392; Reply, para. 939, Updated Appendix 2, p. 403; **C-3462**, Indexes of Claimed Invoices by Damage Category (“General R&E” tab). *See also* Memorial, para. 396, where the original amount claimed was USD 27,534,505.48.

⁶¹ Memorial, para. 422; Reply, para. 1007.

⁶² Memorial, para. 414; Reply, para. 981.

⁶³ Memorial, para. 414; Reply, para. 980.

⁶⁴ **C-2349**, Order issued by the National Civil Trial Court No. 61 of Argentina in Aguinda Salazar Maria vs. Chevron Corporation on Preventive Measures, 6 November 2012.

resulting from the 2012 embargo imposed by the Lago Agrio Court of trademarks and other intellectual property owned by three Chevron subsidiaries, which were earmarked for auction and sale for the benefit of the LAPs in aid of enforcement of the Lago Agrio Judgment.⁶⁵

(iii) The category “**Moral Damages**” pertains to the moral damages the Claimants allegedly suffered as a result of the Criminal Proceedings, the Respondent’s media campaign against the Claimants, and the Respondent’s breach of the Tribunal’s Interim Orders and Awards.⁶⁶

135. The details of each of these 16 damages categories and the Parties’ respective positions thereon are addressed in Sections VIII and IX below.

136. In total, the Claimants seek USD 793,879,967.74 for the 13 categories of damages related to legal fees and expenses.⁶⁷ They also request (i) USD 85,315,652 in damages for the Intellectual Property Losses in Ecuador; (ii) USD 13,000,000 in damages for the Embargo Losses in Argentina; and (iii) Moral Damages in the amount that the Tribunal deems just and proper.⁶⁸ In addition, the Claimants claim pre- and post- award interest from the date of occurrence of the damages until the Respondent’s full and final payment.⁶⁹

C. INDEMNIFICATION

137. Aside from the 16 aforementioned damages categories concerning pecuniary damages, the Claimants request under the heading of “Contingent Damages” that the Tribunal order the Respondent to indemnify them for any further damages resulting from pending or future enforcement actions of the Lago Agrio Judgment.⁷⁰ The Claimants clarify that they do not request that the Respondent establish an escrow account to ensure the availability

⁶⁵ Memorial, para. 431; Reply, paras. 1038-1039, 1082.

⁶⁶ Memorial, paras. 150, 447; Reply, paras. 1114, 1122.

⁶⁷ Reply, Updated Appendix 2, p. 1.

⁶⁸ Reply, para. 1212(3).

⁶⁹ Reply, para. 1132.

⁷⁰ Memorial, paras. 154-155.

of funds for indemnification, but reserve the right to do so.⁷¹ The Claimants’ indemnification request is premised on the Tribunal’s declaration in its Track II Award that “any injury to the First Claimant or the Second Claimant caused by the recognition or enforcement of any part of the Lago Agrio Judgment within or without Ecuador (as decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) shall be injuries for which the Respondent is liable to make full reparation under international law”.⁷²

138. The Tribunal shall address the Claimants’ indemnity claim in Section XI below.

D. INJUNCTIVE RELIEF

139. Lastly, the Claimants point to several instances following the issuance of the Track II Award showing that the Respondent refuses to comply with the Track II Award.⁷³ Such instances include (i) declarations made by the Vice-President and the Attorney-General of Ecuador allegedly condemning the Award and stating the aim of avoiding its enforcement; (ii) an order issued by Ecuador’s Ombudsman Office granting a request from Mr Fajardo seeking relief from potential disruptions to the enforcement of the Lago Agrio Judgment; and (iii) the granting of public funds to the ADF (the nominal beneficiary of the Lago Agrio Judgment).⁷⁴ Against this background, the Claimants request further injunctive relief as set out in their prayer for relief “to wipe out all of the consequences of Ecuador’s internationally wrongful acts and to achieve the obligations of result that the Tribunal imposed.”⁷⁵

140. The Tribunal shall address the Claimants’ request for injunctive relief in Section XII below.

* * *

⁷¹ Memorial, para. 155.

⁷² Track II Award, para. 10.11.

⁷³ Memorial, para. 156.

⁷⁴ Memorial, paras. 157-160.

⁷⁵ Memorial, para. 161. *See* Claimants’ Request for Relief in Section IV.A above.

VI. THE PARTIES’ POSITIONS ON GENERAL MATTERS AND LEGAL STANDARDS

A. LEGAL PRINCIPLES ON COMPENSATION

1. General Damages Principles

(a) *The Claimants’ Position*

141. *Standard of compensation:* Noting that the Treaty is silent as to the standard of compensation for breaches of FET (including denial of justice) and its Umbrella Clause, the Claimants submit that customary international law fills the lacuna and provides the governing rules of compensation in this case, with *Chorzów Factory* providing the applicable standard of compensation.⁷⁶ Under *Chorzów Factory*, any award should “as far as possible wipe out all the consequences of the illegal act and re-establish the situation which would in all probability have existed if the act had not been committed.”⁷⁷ Therefore, the Claimants state, restitution is the preferred remedy, to be replaced by compensation for any financially assessable damage when restitution is not available.⁷⁸
142. *Causation:* In respect of causation under international law, the Claimants acknowledge that it is generally understood as encompassing elements of factual and legal causation, including the principles that “the harm must not be too remote” and the breach “must be the proximate cause of the harm”.⁷⁹ The Claimants therefore assert that “the relevant legal test here for proximate causation is whether a reasonable party in Ecuador’s position could foresee that Chevron . . . could pursue the types of defensive and proactive legal

⁷⁶ Memorial, paras. 163-167; **CLA-116**, *ADC Affiliate Limited and ADC and ADMC Management Limited v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, para. 481; **CLA-231**, *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, para. 789.

⁷⁷ Memorial, paras. 168-170; **CLA-116**, *ADC Affiliate Limited and ADC and ADMC Management Limited v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, para. 493; **CLA-406**, *Case Concerning the Factory at Chorzów (Germany v. Poland)*, Judgment, 1928 PCIJ Series A, No. 17, 13 September 1928, p. 47.

⁷⁸ Memorial, paras. 171-176; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Articles 35 and 36.

⁷⁹ Memorial, para. 182; **CLA-463**, *S.D. Myers v. Canada*, Second Partial Award, 21 October 2002, para. 140. See also Track III Hearing Transcript, Day 1 (18 August 2022), p. 133 (Kehoe).

actions that Chevron did in response to Ecuador’s wrongful conduct.”⁸⁰ The Claimants specify that the question refers to the foreseeability of the type of damage, not its quantum.⁸¹

143. In the Claimants’ view, however, the causation analysis may be simplified in circumstances of deliberate harm by the host State, in which case some investment tribunals have found that “there is no question of remoteness or foreseeability of damage”,⁸² and “a deliberate intent to harm . . . is a sufficient basis, by itself, for causation.”⁸³ Citing to the International Law Commission’s Articles on State Responsibility (the “**ILC Articles**”) and Professor Bin Cheng, the Claimants deny the Respondent’s argument that this is an “invented rule”.⁸⁴
144. The Claimants further cite the ILC Articles for the proposition that a State is responsible for harm caused for wrongful conduct, even if other factors contributed to the injury.⁸⁵ Flowing from this, the Claimants assert that Ecuador may not avoid responsibility for the harm resulting from its breaches of the Treaty by pointing to the acts of third parties, such as the LAPs and their representatives.⁸⁶ Rather, the Claimants submit that a State’s responsibility for wrongful actions committed in concert with other actors is consistent with concepts of joint tortfeasor liability.⁸⁷ In turn, the Claimants reject the Respondent’s suggestion that their damages are the product of contributory negligence, which, they note, is a “high bar” under international law and in any event is not met here: relying on

⁸⁰ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 129-130 (Kehoe).

⁸¹ Track III Hearing Transcript, Day 1 (18 August 2022), p. 137 (Kehoe).

⁸² Memorial, para. 183; **CLA-288**, James Crawford, THE INTERNATIONAL LAW COMMISSION’S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT AND COMMENTARIES (2002), pp. 204-205; **CLA-689**, *Ioannis Kardassopoulos v. Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010, paras. 468-469.

⁸³ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 53-54 (Bishop).

⁸⁴ Reply, paras. 236-238; **CLA-682**, Bin Cheng, GENERAL PRINCIPLES OF LAW AS APPLIED TO INTERNATIONAL COURTS AND TRIBUNALS (1953), pp. 251-253; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Article 31, para. 10.

⁸⁵ Memorial, para. 187; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Article 31, para. 12.

⁸⁶ Memorial, para. 188; Reply, paras. 257-272; **CLA-418**, *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, Judgment, 1980 ICJ Report 3, 24 May 1980, paras. 17-18; **CLA-550**, *The Corfu Channel Case (Merits) (United Kingdom v. Albania)*, Judgment, 1949 ICJ Report 4, 9 April 1949, pp. 18-23.

⁸⁷ Reply, paras. 272-277.

the expert opinion of Mr Joseph Ryan and the witness statement of Mr Peter Seley, the Claimants submit that a “reasonable” general counsel would have approached the dispute in a similar way as the Claimants effectively did.⁸⁸

145. The Claimants also assert that the Tribunal’s findings of liability should be understood within the meaning of Article 15 of the ILC Articles as treaty breaches arising out of a composite act, that is, “a series of actions or omissions defined in the aggregate as wrongful when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.”⁸⁹

146. Regarding their claimed losses as direct damages, including legal fees and expenses, the Claimants assert that the Respondent misstates the test for proximate causation.⁹⁰ According to the Claimants, proximate causation is not based on determining whether causal links are “too remote”, but on an analysis of the natural, objectively foreseeable consequences flowing from an international delict.⁹¹ In any event, the Claimants state that proximate causation has already been established because the Tribunal has found that the Respondent deliberately harmed them,⁹² namely:

Much or all of the harm to Chevron was deliberately caused by Ecuador’s refusal as a State to comply with its settlement obligations, by its Executive’s refusal to investigate the evidence of fraud presented to them, by its Judiciary’s refusal to consider or investigate the evidence of fraud presented, by the State’s refusal to comply with this Tribunal’s Interim Orders and Awards, and by the State’s promotion of the enforcement of the Lago Agrio Judgment.⁹³

⁸⁸ Reply, paras. 278-293; Ryan Expert Report, paras. 47-48; Seley Witness Statement, Section III.

⁸⁹ Memorial, para. 189; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Art. 15(1).

⁹⁰ Reply, para. 223.

⁹¹ Reply, paras. 231-235; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Art. 31, para. 10; **CLA-682**, Bin Cheng, GENERAL PRINCIPLES OF LAW AS APPLIED TO INTERNATIONAL COURTS AND TRIBUNALS (1953), pp. 241-253.

⁹² Memorial, para. 185, Section IX; Reply, paras. 237, 239-240.

⁹³ Memorial, paras. 185.

147. For the same reason, the Claimants contend that their damages were not only foreseeable, but actually foreseen by the Respondent.⁹⁴
148. In response to the Respondent’s but-for arguments on causation, the Claimants submit that the full reparation standard does not “require[] a party entitled to reparation to disprove all conceivable alternatives.”⁹⁵ The Claimants contend that the Respondent seeks to impose a stricter causation standard on the Claimants than it does on itself.⁹⁶
149. *Incidental damages*: If the Tribunal decides not to award the Claimants’ legal fees and expenses as direct damages, the Claimants request, in the alternative, that the Tribunal award them as incidental damages, *i.e.*, forms of “reparation [that] include[] sums allowed in respect of expenses incurred by reason of the injury sustained.”⁹⁷ Whether an expense qualifies as an “incidental expense”, the Claimants note, depends on whether it was incurred to “repair damage” or “mitigate loss arising from the breach”.⁹⁸ Further, they submit that incidental expenses that are “reasonably incurred” are recoverable, thus rejecting the Respondent’s “attempts to graft an additional necessity requirement.”⁹⁹ Such “reasonableness”, the Claimants assert, is assessed case-by-case and in context.¹⁰⁰ The Claimants underlines that international law permits claimants to recover incidental expenses “reasonably incurred to prevent foreseeable damages caused by a State’s breach”, including costs incurred *before* a breach in order to prevent or mitigate foreseeable damages.¹⁰¹ According to the Claimants, whether their damages are characterized as direct or indirect does not affect the Respondent’s burden to prove its

⁹⁴ Reply, paras. 242-256.

⁹⁵ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 168-172 (Silbert).

⁹⁶ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 172-174 (Silbert).

⁹⁷ Reply, paras. 294-298; **RLA-702**, Sixth report of the Special Rapporteur, Mr. F.V. García-Amador (13th session of the ILC (1961)), A/CN.4/134 and Add.1 (in Yearbook, 1961, vol. II), para. 166.

⁹⁸ Reply, para. 296; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Art. 36, para. 34.

⁹⁹ Reply, paras. 303-309; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Art. 36, para. 34; **CLA-652**, Sergey Ripinsky and Kevin Williams, DAMAGES IN INTERNATIONAL INVESTMENT LAW (2016), p. 305.

¹⁰⁰ Reply, paras. 310-313.

¹⁰¹ Reply, paras. 360-365; Track III Hearing Transcript, Day 1 (18 August 2022), p. 74 (Bishop).

affirmative defence that Chevron failed to mitigate, but does affect the Claimants’ burden to prove causation by adding a reasonableness test in addition to proximate causation.¹⁰²

150. *Mitigation*: While the Claimants acknowledge that there is a duty to mitigate under international law,¹⁰³ they disagree with the Respondent’s stance that only losses that “could not have been avoided by reasonable action” are recoverable.¹⁰⁴ Rather, the Claimants submit that “in accordance with the doctrine of mitigation recognized in international law, expenses are recoverable provided that they are incurred by the Claimant in reasonably attempting to mitigate its losses.”¹⁰⁵ They add that there must be a causal link between the wrongful acts and the mitigation efforts.¹⁰⁶ The Claimants explain that “the causal link is established if the costs were reasonably incurred in response to either damage or potential loss, and the standard of proof for that, for reasonably incurred, is the proportionality of the Measures that were taken.”¹⁰⁷ In the Claimants’ submission, mitigation efforts are normally granted significant deference by both international tribunals and domestic courts, with decisions on measures taken and costs incurred appraised for whether they were “unreasonable or irrational”.¹⁰⁸ According to the Claimants, respondents bear the burden of demonstrating that an award should be reduced because the claimants unreasonably failed to mitigate.¹⁰⁹
151. *Burden of Proof*: With respect to their alternative claim for incidental damages, the Claimants contend that Ecuador’s argument that Chevron unreasonably over-spent on its litigation is in essence an affirmative defence for failure to mitigate damages.¹¹⁰ Being an

¹⁰² Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3395-3397 (Coriell).

¹⁰³ Track III Hearing Transcript, Day 1 (18 August 2022), p. 85 (Coriell).

¹⁰⁴ Reply, paras. 321-323.

¹⁰⁵ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 86-87 (Coriell).

¹⁰⁶ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 85, 88 (Coriell).

¹⁰⁷ Track III Hearing Transcript, Day 1 (18 August 2022), p. 88 (Coriell).

¹⁰⁸ Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3407-3415 (Coriell).

¹⁰⁹ Reply, paras. 324-330; **CLA-633**, *Himpurna California Energy Ltd v. PT (Persero) Perusahaan Listrik Nagara (PLN)*, Final Award, 4 May 1999, para. 258; **RLA-787**, *Hrvatska Elektroprivreda d.d. v. Slovenia*, ICSID Case No. ARB/05/24, Award, 17 December 2015, para. 386.

¹¹⁰ Reply, paras. 367-380.

affirmative defence, the Claimants submit, Ecuador bears the burden of establishing that Chevron’s litigation costs were unreasonable.¹¹¹

(b) *The Respondent’s Position*

152. *Standard of compensation:* The Respondent agrees that *Chorzów Factory* sets out the applicable customary international law standard for reparation for an internationally wrongful act.¹¹² It considers, however, that the Claimants overlook essential aspects of *Chorzów* – namely, it posits that no losses are recoverable other than those (i) actually suffered by claimants; (ii) directly caused by the breach; (iii) not reasonably avoidable; (iv) incurred after the breach, (v) reasonable and necessary; and (vi) sufficiently proven.¹¹³ These requirements are addressed *seriatim*.
153. *Actual losses:* Citing to Article 36 of the ILC Articles, the Respondent posits that only losses actually suffered by the Claimants are recoverable, meaning that “uncertain, speculative or otherwise unproven losses are not recoverable, even if liability is established against the Respondent.”¹¹⁴ Otherwise, the Respondent notes, the aggrieved party would be put in a better position than the one it would have been in, had the breach not occurred.¹¹⁵ Similarly, the Respondent asserts that only losses suffered by the Claimants, and not third parties, are recoverable, as claimants must “own the asset” they claim to have lost due to the breach.¹¹⁶
154. *Causation:* The Respondent submits that the Claimants must prove proximate causation for both direct and incidental damages.¹¹⁷ The Respondent also distinguishes factual and

¹¹¹ Reply, paras. 367-380. *See also* Track III Hearing Transcript, Day 1 (18 August 2022), p. 48 (Bishop), pp. 89-98 (Coriell).

¹¹² Counter-Memorial, para. 183.

¹¹³ Counter-Memorial, paras. 183-186.

¹¹⁴ Counter-Memorial, paras. 188-189; **RLA-103**, *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentina*, ICSID Case No. ARB/02/1, Award, 25 July 2007, para. 45; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Art. 36, para. 4.

¹¹⁵ Counter-Memorial, para. 190; **RLA-702**, ILC, International Responsibility: Sixth Report by F.V. Garcia Amador, Special Rapporteur, UN Doc. A/CN.4/134 and Add.1, 26 January 1961, para. 178.

¹¹⁶ Counter-Memorial, para. 191; **RLA-768**, *Emmis International Holding, B.V. et al. v. Hungary*, ICSID Case No. ARB/12/2, Award, 16 April 2014, para. 169.

¹¹⁷ Track III Hearing Transcript, Day 2 (19 August 2022), pp. 265-266 (Tsutieva); Day 15 (7 September 2022), pp. 3532-3534 (Tsutieva).

legal elements in causation: “[f]actually, a claimant must prove that but-for the State’s unlawful act, the harm would not have occurred”; “[l]egally, a claimant must show that the injury was proximately caused by the State’s actions, and that it is not merely an indirect or remote consequence of the breach.”¹¹⁸ The Respondent considers the Claimants to have originally posited the correct test for proximate causation, namely, whether alleged losses, in terms of foreseeability from the standpoint of a reasonable person, “are the natural and foreseeable consequence of the State’s treaty breaches”.¹¹⁹

155. The Respondent derives the but-for requirement from *Chorzów*’s requirement to “reestablish the situation which would, *in all probability*, have existed if that act had not been committed.”¹²⁰ This means that even if there was a breach, the Claimants must still show that the harm “would in fact have been averted if the respondent had acted in compliance with its legal obligations”¹²¹ – a showing which, in the Respondent’s view, the Claimants fail to make.¹²²

156. In addition, the Respondent explains that proximate causation “serves to prevent liability for a potentially endless chain of events” by resorting to notions such as “directness, proximity and foreseeability of loss.”¹²³ According to the Respondent, the consequences of failing to prove direct causation can include a finding of international responsibility without incurring an obligation to pay compensation¹²⁴ or the exclusion of specific categories of damages that are too remote or unrelated to a breach.¹²⁵ It is thus wrong, in

¹¹⁸ Counter-Memorial, para. 194.

¹¹⁹ Track III Hearing Transcript, Day 2 (19 August 2022), pp. 270 (Tsutieva).

¹²⁰ Counter-Memorial, para. 195; **CLA-406**, *Case Concerning the Factory at Chorzów (Germany v. Poland)*, Judgment, 1928 PCIJ Series A, No. 17, 13 September 1928, p. 47 (emphasis by the Respondent).

¹²¹ Counter-Memorial, paras. 196-203; **RLA-813**, *William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, para. 110; **CLA-640**, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007, para. 462.

¹²² Counter-Memorial, para. 203; Rejoinder, paras. 186-187.

¹²³ Counter-Memorial, paras. 205-207; **RLA-719**, *Case of Aloeboetoe et al. v. Suriname*, IACHR, Judgment (Reparations and Costs), 10 September 1993, p. 12, para. 48; **RLA-738**, Sergey Ripinsky and Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2008), p. 115.

¹²⁴ Counter-Memorial, para. 208; **CLA-642**, *The Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/2, Award, 6 May 2013.

¹²⁵ Counter-Memorial, para. 209; **CLA-655**, *Autopista Concesionada de Venezuela, C.A. v. Venezuela*, ICSID Case No. ARB/00/5, Award, 23 September 2003, paras. 270-277.

the Respondent’s view, to equate the requirement of legal causation to foreseeability alone, as the Claimants suggest.¹²⁶ Likewise, the Respondent rejects the Claimants’ “invented” rule that the causation analysis may be “simplified” in cases of deliberate harm, as “deliberateness” does not equate to “proximity”.¹²⁷ Regardless, the Respondent states that the Tribunal has not found that Ecuador acted with deliberate intent to harm.¹²⁸

157. The Respondent further stresses that tribunals have deemed intervening acts by third parties to constitute the legal cause of a claimant’s own losses, either because the conduct is the sole cause in the chain of events leading to the loss or because the intervening event renders the State’s wrongful action too remote.¹²⁹ Similarly, the Respondent considers that a claimant’s contribution to its own injury requires the denial or significant reduction of damages.¹³⁰ The Respondent adds that the “chain of causation requires reasonableness throughout the Claimants’ efforts to mitigate.”¹³¹ The Respondent underlines that tribunals have significantly reduced or rejected damages where claimants have failed to establish causation.¹³²

158. *Mitigation*: The Respondent further notes that the Claimants also have a duty to mitigate their damages reasonably, failing which they lose any entitlement to compensation for all damages that could have been avoided.¹³³ Mitigation is relevant to the Respondent’s arguments that the Claimants and their lawyers failed to “exercise billing judgment” and

¹²⁶ Counter-Memorial, para. 210; Rejoinder, paras. 189-199; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Art. 31, para. 10.

¹²⁷ Counter-Memorial, paras. 211-212; Rejoinder, paras. 200-208; **RLA-807**, *UAB E energija v. Latvia*, ICSID Case No. ARB/12/33, Award, 22 December 2017, paras. 1143-1144.

¹²⁸ Track III Hearing Transcript, Day 2 (19 August 2022), pp. 272-273 (Tsutieva).

¹²⁹ Counter-Memorial, paras. 213-214; Rejoinder, paras. 230-239; **CLA-463**, *S.D. Myers v. Canada*, Second Partial Award, 21 October 2002, para. 95; **CLA-614**, *Ioan Micula, Viorel Micula, S.C. European Food S.A., S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania*, ICSID Case No. ARB/05/20, Award, 11 December 2013, paras. 926-927.

¹³⁰ Counter-Memorial, paras. 215-216; Rejoinder, paras. 218-229; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Art. 39, para. 5.

¹³¹ Track III Hearing Transcript, Day 2 (19 August 2022), p. 266 (Tsutieva).

¹³² Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3544-3545 (Tsutieva).

¹³³ Counter-Memorial, paras. 218-222; **CLA-670**, *Case concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, ICJ Reports 1997, 25 September 1997, p. 55, para. 80.

to undertake specific action, as further elaborated in Section VI.D below.¹³⁴ The Respondent asserts that mitigation must be undertaken after the breach to be compensated and that compensable mitigation cannot begin in anticipation of a breach.¹³⁵

159. *Incidental damages*: Recoverable incidental losses, the Respondent submits, are only those incurred after a breach (here, after the Lago Agrio Judgment became final in 2018)¹³⁶ and which were reasonable and necessary.¹³⁷ Citing to Ripinsky and Williams, the Respondent defines incidental expenses as those “which the investor has incurred (or is likely to incur) exclusively as a consequence of [the respondent’s] unlawful conduct” – including legal expenses.¹³⁸ In the Respondent’s view, all of the legal fees and expenses sought by the Claimants are incidental damages, and is critical of the Claimants’ “volte-face” argument in their Reply that all of their claimed legal fees are now direct damages: in its view, the only “direct damage” that conceivably could have been caused by the Treaty breaches would have been payment of the final Lago Agrio Judgment amount.¹³⁹ As a consequence of their status as incidental damages, the Respondent submits that only legal fees incurred after the breach are potentially recoverable, as “incidental damages” are defined as arising from the breach.¹⁴⁰ The Respondent adds that the Claimants must show that their claimed incidental damages were both reasonable and necessary.¹⁴¹ However, they dispute the Claimants’ position that reasonableness can be met by showing proportionality.¹⁴²

¹³⁴ Counter-Memorial, paras. 218, 222.

¹³⁵ Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3537-3543 (Tsutieva).

¹³⁶ Counter-Memorial, paras. 224-227; Rejoinder, paras. 278-287; **CLA-221**, *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, para. 240(ii).

¹³⁷ Counter-Memorial, paras. 228-232; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Art. 36, para. 34.

¹³⁸ Counter-Memorial, para. 223; **RLA-738**, Sergey Ripinsky and Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2008), p. 299.

¹³⁹ Rejoinder, paras. 242-250.

¹⁴⁰ Track III Hearing Transcript, Day 2 (19 August 2022), pp. 259-260 (Tsutieva).

¹⁴¹ Track III Hearing Transcript, Day 2 (19 August 2022), pp. 261 (Tsutieva).

¹⁴² Track III Hearing Transcript, Day 15 (7 September 2022), p. 3535 (Tsutieva).

160. *Burden of proof*: The Respondent submits that the Claimants bear the burden of proving their losses, including “the fact and the amount of loss, . . . the causal link between the respondent’s conduct and the loss”,¹⁴³ as well as, for incidental damages,¹⁴⁴ the reasonableness¹⁴⁵ and the necessity of the loss.¹⁴⁶ The Respondent adds that its affirmative defence of failure to mitigate “doesn’t become relevant until the Claimant first proves that it has incurred damages”, including so-called mitigation expenses.¹⁴⁷ In addition, the Respondent asserts that the Claimants bear the burden to establish but-for causation for their damages.¹⁴⁸ The Respondent rejects the Claimants’ assertion that the Respondent must determine which time entries are unreasonable as such position lies on two faulty assumptions: (i) incorrectly assuming equality of information; and (ii) assuming the integrity of their allocation of specific claimed fees and costs into categories.¹⁴⁹

2. Legal Fees and Expenses as Damages

(a) *The Claimants’ Position*

161. To make the Claimants “whole” and wipe out the consequences of the Respondent’s breaches, the Claimants assert that they are entitled to recover, as a primary head of direct damages, the legal fees incurred in various proceedings as a consequence of the Respondent’s delicts, including the costs and expenses of this Arbitration to which they claim they are separately entitled under the UNCITRAL Arbitration Rules.¹⁵⁰ Such legal fees and expenses, they claim, “are compensable if they were reasonably incurred to repair damage and otherwise mitigate loss arising from the breach”,¹⁵¹ meaning that only

¹⁴³ Counter-Memorial, paras. 234-236; **RLA-738**, Sergey Ripinsky and Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2008), p. 162.

¹⁴⁴ Track III Hearing Transcript, Day 2 (19 August 2022), pp. 261-263 (Tsutieva).

¹⁴⁵ Rejoinder, paras. 251-265.

¹⁴⁶ Rejoinder, paras. 266-277.

¹⁴⁷ Track III Hearing Transcript, Day 2 (19 August 2022), pp. 237-238 (Schwartz).

¹⁴⁸ Track III Hearing Transcript, Day 2 (19 August 2022), p. 275 (Tsutieva).

¹⁴⁹ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3606 (Finsterwald).

¹⁵⁰ Memorial, paras. 177-178. *See* para. 132 *ff* above for a list of the proceedings in respect of which the Claimants claim the reimbursement of legal fees and expenses.

¹⁵¹ Memorial, para. 178; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Art. 36, para. 34.

a causal relationship between the State’s breaches and a claimant’s costs needs to exist.¹⁵² According to the Claimants, awarding such costs in the amount actually incurred, and not any lesser amount, is “necessary to achieve the objective of ‘full compensation’” when those costs were “incurred in the course of defending from the ‘attacks’ of the host country authorities” or “incurred to repair damage and otherwise mitigate loss arising from a breach.”¹⁵³ The Claimants add that “cost-shifting regimes” are irrelevant here as they are “generally designed only to award partial legal costs, not full damages.”¹⁵⁴ Further, the Claimants submit that their sought legal fees and expenses have already been market-tested, in that they have been reviewed and paid by Chevron.¹⁵⁵

162. Should the Tribunal not award legal fees and expenses as direct damages, the Claimants request that they be awarded as incidental damages, as is often sought in accordance with *Chorzów Factory*’s full reparation principle.¹⁵⁶ The Claimants submit that a two-level analysis determines whether the legal costs are direct or indirect damages. First, the causation analysis must consider the measure taken. If the measure “was a natural consequence of Ecuador’s breach or if it was intended by Ecuador or if it was foreseeable, then it’s a direct damage”.¹⁵⁷ If the measure is instead mitigation, then it constitutes incidental damage, and the Claimants must further prove that the measure was “a reasonable effort to mitigate against harm and potential harm”.¹⁵⁸ The second level considers “how much a reasonable measure costs”, where the Claimants submit that Ecuador bears the “burden to prove its affirmative defense of Chevron’s alleged failure to mitigate its legal spend”.¹⁵⁹

¹⁵² Memorial, para. 178.

¹⁵³ Memorial, para. 178; **CLA-652**, Sergey Ripinsky and Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2016), pp. 299-300.

¹⁵⁴ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 49-50 (Bishop), Day 15 (7 September 2022), p. 3480 (Kehoe).

¹⁵⁵ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 49-50 (Bishop).

¹⁵⁶ Reply, paras. 297-302; **CLA-903**, *UP and C.D Holding Internationale v. Hungary*, ICSID Case No. ARB/13/35, Award, 9 October 2018, paras. 541-542.

¹⁵⁷ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3395 (Coriell).

¹⁵⁸ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3395 (Coriell).

¹⁵⁹ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3396 (Coriell).

163. Relying on the expert opinion of Professor Charles Silver, the Claimants posit that incurring legal fees and expenses was necessary to protect their rights and proactively mitigate damages flowing from the Respondent’s Treaty breaches.¹⁶⁰ As to whether such legal fees and expenses were reasonable, the Claimants submit that they are where they meet two criteria: (i) “were those fees and costs paid by a party at a time when it had no assurance that it would be able to recover those costs[?]” and (ii) are the legal costs proportionate to what was at stake in the litigation?”.¹⁶¹ The Claimants offer witness testimony and expert opinion to the effect that their claimed fees and costs were reasonable.¹⁶² Similarly, they also consider their mitigation strategy to be reasonable in view of the extent of the harm threatening Chevron, the urgency created by the threat of the Lago Agrio Judgment, the complexity of the Lago Agrio Litigation and the cost controls implemented by the Claimants.¹⁶³ In any event, the Claimants state that it is for the Respondent to prove its affirmative defence that the Claimants’ acts of mitigation were unreasonable.¹⁶⁴

(a) The Respondent’s Position

164. In the Respondent’s view, the Claimants’ suggestion that the sole criterion for compensability is “whether legal expenses were actually paid” is an attempt to avoid the application of the standards of compensation under international law requiring that compensable legal expenses be proven, reasonable, and necessary in relation to the tasks to be performed.¹⁶⁵ According to the Respondent, it follows from such principles that detailed billing records are required to determine whether legal expenses, being incidental legal expenses, are compensable.¹⁶⁶ The Respondent derives ample recognition for the

¹⁶⁰ Reply, paras. 299-302; Silver Expert Report, paras. 141-152.

¹⁶¹ Track III Hearing Transcript, Day 1 (18 August 2022), p. 49 (Bishop). *See also* the Claimants’ expert Professor Geoffrey Miller’ explanation that the litigation expenditure of a public business corporation should be presumed reasonable unless the contrary is shown. Reply, paras. 312-313; Miller Expert Report, para. 18.

¹⁶² Reply, paras. 314-320; Litvack Expert Report; Lea Expert Report; Ryan Expert Report; Silver Expert Report; Miller Expert Report.

¹⁶³ Reply, paras. 331-359; Silver Expert Report; Miller Expert Report; Ryan Expert Report.

¹⁶⁴ Reply, paras. 367-380; **RLA-884**, *AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Kazakhstan*, ICSID Case No. ARB/01/6, Award, 7 October 2003, para. 10.6.4.

¹⁶⁵ Counter-Memorial, paras. 360-361, 363.

¹⁶⁶ Counter-Memorial, paras. 362-363.

requirement that compensable legal expenses be reasonable and necessary from the decisions of international courts and tribunals.¹⁶⁷ In its view, the Claimants’ attempts to “invent an entirely new standard” are unsupported by the legal authorities upon which they rely.¹⁶⁸ The Respondent is critical, in particular, of the Claimants’ argument that their legal fees and expenses should be presumed reasonable because legal expenses deserve “significant deference”,¹⁶⁹ since: (i) there is no deference for unreasonable expenses under international law;¹⁷⁰ (ii) the risks and amount at stake in the Lago Agrio Litigation do not entitle the Claimants to recover any unreasonable amount of damages;¹⁷¹ and (iii) even in the context of assessing costs of arbitration, tribunals do not presume that the parties’ expenses are reasonable just because they were paid.¹⁷²

165. Similarly, the Respondent posits that major national jurisdictions also require that claimed legal expenses be reasonable and necessary.¹⁷³ In the Respondent’s view, resorting to standards developed by national jurisdictions may be of use in circumstances where “international law has not yet developed its own intellectual tools of assessing whether particular expenditure has been incurred reasonably.”¹⁷⁴ Among others, the Respondent identifies as relevant the standards applied in the United States,¹⁷⁵ Canada,¹⁷⁶ the United

¹⁶⁷ Counter-Memorial, paras. 364-369; **RLA-722**, *The Islamic Republic of Iran v. The United States of America*, IUSCTR, Cases Nos. A15 (IV) and A24-FT, Award No. 590- A15(IV)/A24-FT, 28 December 1998, paras. 57, 71, 120; **RLA-745**, *Case of Handölsdalen Sami Village and Others v. Sweden*, Judgment, ECHR Application No. 39014/04, 30 March 2010, para. 73; **RLA-766**, *Total S.A. v. Argentina*, ICSID Case No. ARB/04/1, Award, 27 November 2013, paras. 188-189; **RLA-817**, *Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary*, ICSID Case No. ARB/17/27, Award of the Tribunal, 13 November 2019, para. 439.

¹⁶⁸ Counter-Memorial, paras. 370-379.

¹⁶⁹ Rejoinder, para. 288.

¹⁷⁰ Rejoinder, paras. 289-292; **RLA-787**, *Hrvatska Elektroprivreda d.d. v. Slovenia*, ICSID Case No. ARB/05/24, Award, 17 December 2015, paras. 215, 400.

¹⁷¹ Rejoinder, paras. 293-296; **RLA-792**, *Peter A. Allard v. Barbados*, PCA Case No. 2012-06, Award, 27 June 2016, paras. 308-309; **CLA-641**, *Libananco Holdings Co. Limited v. Turkey*, ICSID Case No. ARB/06/8, Award, 2 September 2011, paras. 559-569.

¹⁷² Rejoinder, paras. 297-304; **RLA-771**, *European American Investment Bank AG v. Slovakia*, PCA Case No. 2010-17, UNCITRAL, Award on Costs, 20 August 2014, para. 43; **CLA-706**, ICC Commission Report, DECISIONS ON COSTS IN INTERNATIONAL ARBITRATION (2015), pp. 5, 7, 12, 13, paras. 15, 19, 28, 65, 68, 70.

¹⁷³ Counter-Memorial, paras. 380-407.

¹⁷⁴ Counter-Memorial, para. 380; **RLA-738**, Sergey Ripinsky and Kevin Williams, DAMAGES IN INTERNATIONAL INVESTMENT LAW (2008), p. 306.

¹⁷⁵ Counter-Memorial, paras. 381-386; **RE-35**, Leigh Expert Report; **RE-36**, Paige Expert Report.

¹⁷⁶ Counter-Memorial, paras. 387-391; **RE-39**, First Knutsen Expert Report.

Kingdom,¹⁷⁷ other common law jurisdictions such as Australia, New Zealand, Singapore and Gibraltar,¹⁷⁸ Argentina,¹⁷⁹ Brazil¹⁸⁰ and the Netherlands.¹⁸¹

166. Flowing from such standards, the Respondent asserts that legal expenses can be proven to be reasonable and necessary only through contemporaneous and detailed billing records.¹⁸² Without invoices, the Respondent submits, the Tribunal has no basis on which to award damages.¹⁸³ Relying on *Avco v. Iran*, the Respondent also argues that a lack of invoices may lead to a denial of damages outside the legal fees context.¹⁸⁴

167. In the Respondent’s view, the Claimants’ claim for legal fees and expenses falls short of this standard. Relying on the expert report of Ms Mari Henry Leigh, the Respondent states that the lack of information on hours invoiced, fees invoiced, timekeeper identities and related billing narratives makes it impossible to:

- evaluate the appropriate number of hours which would have been spent on a given task;
- multiply such hours by a reasonable rate in a lodestar analysis;
- determine what discrete tasks were even performed in order to get a broad sense of the tangible and intangible work product prepared;
- determine the extent to which the costs were spent on non-legal efforts;
- determine the extent to which various timekeepers’ efforts unnecessarily duplicated the work of other timekeepers in the various actions;

¹⁷⁷ Counter-Memorial, paras. 392-398; **RE-36**, Paige Expert Report.

¹⁷⁸ Counter-Memorial, para. 399; **RE-36**, Paige Expert Report.

¹⁷⁹ Counter-Memorial, paras. 400-401; **RE-38**, First García Pullés Expert Report.

¹⁸⁰ Counter-Memorial, para. 402; **RE-37**, First Souza Godoy Expert Report.

¹⁸¹ Counter-Memorial, paras. 403-406; **RE-47**, Luycks Expert Report.

¹⁸² Counter-Memorial, paras. 408-417; **RLA-722**, *The Islamic Republic of Iran v. The United States of America*, IUSCTR, Cases Nos. A15 (IV) and A24-FT, Award No. 590- A15(IV)/A24-FT, 28 December 1998, para. 102; **RLA-769**, *The Islamic Republic of Iran v. The United States of America*, IUSCTR, Cases Nos. A15 (IV) and A24-FT, Award No. 620- A15(IV)/A24-FT, 2 July 2014, paras. 125, 154, 206-208.

¹⁸³ Counter-Memorial, paras. 410-414; **RLA-764**, *Kiliç İnşaat İthalat İhracat Sanayi Ve Ticaret Anonim Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/1, Award, 2 July 2013, para. 9.2.7; **CLA-313**, *Bronner Case (United States v. Mexico)*, Award, 4 November 1874 in John Basset Moore, HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY (1898), p. 3134; **CLA-665**, *Sylvania Tech. Sys, Inc. v. Iran*, Case No. 64, 8 IUSCTR., 27 June 1985, pp. 25-26.

¹⁸⁴ Counter-Memorial, para. 415; **RLA-713**, *AVCO Corporation v. Iran Aircraft Industries, Iran Helicopter Support and Renewal Company of others*, IUSCTR Case No. 261, Partial Award No. 377-261-3, 18 July 1988, paras. 35-38.

- determine the extent to which excessive efforts were spent on given tasks;
- determine the extent to which the claimed costs include efforts a reasonable attorney would have known to be unfruitful and unnecessary;
- determine the extent to which Claimants improperly utilized attorneys whose hourly rate was not commensurate with the efficient performance of the task;
- determine the extent to which Claimants’ submission includes work for which no additional efforts were needed as the work was previously performed at an earlier time or in conjunction with another work product.¹⁸⁵

168. In this respect, the Respondent rejects the Claimants’ attempt to shift the burden of proving that the incidental expenses they claim were reasonable: it denies the Claimants’ characterisation of those legal fees as mitigation expenses (since many were paid before the Treaty breaches happened and, in its view, would have been paid irrespective of such breaches) and considers that the Tribunal has already placed that burden on the Claimants by its Procedural Order No. 65.¹⁸⁶

169. The Respondent further considers that the Claimants have not proven (and the Tribunal has never held) that Ecuador intended to harm them – much less that it intended to inflict the specific losses claimed in this Arbitration, which is the showing required under international law.¹⁸⁷

3. Date of Breach

170. The Parties disagree regarding the date of breach upon which the Respondent became responsible for the damages caused to the Claimants. In particular, the Parties reach diverging conclusions on the dates of breach applicable to the Respondent’s denial of justice,¹⁸⁸ its breach of the Umbrella Clause by failing to abide by the 1995 Settlement

¹⁸⁵ Counter-Memorial, paras. 416-417; **RE-35**, Leigh Expert Report, paras. 80-89.

¹⁸⁶ Rejoinder, paras. 251-265.

¹⁸⁷ Rejoinder, paras. 209-217; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary on Art. 31, para. 10.

¹⁸⁸ Track II Award, para. 10.6: “The Tribunal declares that the Respondent is liable to make full reparation to the First Claimant and the Second Claimant for denial of justice under the standards both for fair and equitable treatment and for treatment required by customary international law under Article II(3)(a) of the Treaty; and the Tribunal rejects the defences pleaded by the Respondent”.

Agreement¹⁸⁹ and to its breaches of the First and Second Interim Awards,¹⁹⁰ as further explained below.

(a) *Denial of Justice and Umbrella Clause*

1. The Claimants’ Position

171. Based on the premise that the Tribunal’s findings of liability should be understood as treaty breaches arising out of a composite act as defined under Article 15 of the ILC Articles, the Claimants state that the Tribunal must look at “the first of the actions or omissions in the series” for the purposes of establishing a date of breach upon which Ecuador became internationally responsible for each head of the Claimants’ damages.¹⁹¹ They request the Tribunal to consider all losses occurring after this date as fully recoverable in accordance with the *Chorzów Factory* full reparation principle.¹⁹²
172. Applying this rationale, the Claimants identify the following dates of breach: (i) the Respondent’s denial of justice is a composite act that began to occur on 22 August 2006, or, alternatively, 1 April 2008 or 1 March 2012; and (ii) the Respondent’s Umbrella Clause breach began to occur on 1 January 2004 or, alternatively, 14 February 2011 or 1 March 2012.¹⁹³
173. *Date of Denial of Justice Breach:* Relying, among others, on the *travaux préparatoires* of the ILC Articles, *Chevron v. Ecuador I* and *OAo Tatneft v. Ukraine*, the Claimants characterize the Respondent’s denial of justice as a composite act comprised of several

¹⁸⁹ Track II Award, para. 10.9: “The Tribunal declares that the Respondent is liable to make full reparation to the First Claimant and the Second Claimant under Article II(3)(c) of the Treaty for the non-observation of its obligations towards each of them as a “Releasee” under the 1995 Settlement Agreement; and the Tribunal rejects the defences pleaded by the Respondent”.

¹⁹⁰ Track II Award, para. 10.18: “The Tribunal confirms, as declared in its Fourth Interim Award on Interim Measures dated 7 February 2013, that the Respondent violated its First and Second Interim Awards on Interim Measures dated 25 January and 16 February 2012 in breach of Article VI of the Treaty, Art. 32(3) of the UNCITRAL Arbitration Rules and international law.”

¹⁹¹ Memorial, paras. 189-190; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Art. 15(2); **CLA-693**, *Swisslion DOO Skopje v. Macedonia*, ICSID Case No. ARB/09/16, Award, 6 July 2012, paras. 275-276, fn 340.

¹⁹² Memorial, para. 190.

¹⁹³ Reply, para. 163. *See also* Reply, para. 175.

wrongful acts and omissions,¹⁹⁴ rejecting the Respondent’s contrary position.¹⁹⁵ In their submission, the first wrongful act in the chain of events took place on 22 August 2006, when “Judge Yáñez was blackmailed into granting the [LAPs’] improper request to terminate the proceedings”.¹⁹⁶ After that point, the costs incurred by the Claimants “were not in service of defending its position in a fair and impartial proceeding. They rather responded to the series of fraudulent acts that characterized the remainder of the Lago Agrio Litigation.”¹⁹⁷ Citing to the ILC Articles, the Claimants posit that this is the date from which damages begin to accrue, since the duration of a composite breach extends from the first contributing action or omission in the pattern through the action or omission that consummates the breach.¹⁹⁸

174. In this respect, the Claimants reject as contrary to the principle of full reparation the Respondent’s position that, even if its denial of justice is a composite breach, damages could not be predicated on acts or omissions predating the consummation of the breach.¹⁹⁹ In the Claimants’ view, *Chorzów Factory* “logically requires that a State responsible for a composite breach make reparation for the entire breach—the entire series of actions or omissions from beginning to end.”²⁰⁰ The Claimants refer to similar approaches taken in connection with the treatment of genocide and creeping expropriations, which are also composite breaches.²⁰¹

¹⁹⁴ Reply, para. 177.

¹⁹⁵ Reply, paras. 181-187; **CLA-694**, *Chevron Corporation and Texaco Petroleum Corporation v. Ecuador*, PCA Case No. 34877, Interim Award, 1 December 2008, paras. 299-301; **CLA-881**, International Law Commission, Draft Articles on State Responsibility with Commentaries Thereto Adopted by the International Law Commission on First Reading, (1997), Art. 25(3); **CLA-883**, *AO Tatneft v. Ukraine*, PCA Case No. 2008-8, Award on the Merits, 29 July 2014, para. 462; Track II Award, para. 8.76.

¹⁹⁶ Reply, para. 178; Track II Award, para. 4.262.

¹⁹⁷ Reply, para. 193.

¹⁹⁸ Reply, paras. 178-180; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Art. 15(2).

¹⁹⁹ Reply, para. 187.

²⁰⁰ Reply, paras. 188-192; **CLA-913**, *Walter Bau AG (in Liquidation) v. Thailand*, UNCITRAL, Award, 1 July 2009, paras. 9.88, 13.2; **CLA-688**, Alwyn V. Freeman, *THE INTERNATIONAL RESPONSIBILITY OF STATES FOR DENIAL OF JUSTICE* (1973), p. 593.

²⁰¹ Reply, paras. 190-192; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary of Art. 15, para. 2.

175. In the alternative, the Claimants submit that damages should be measured from the other wrongful acts comprising the denial of justice: the Cabrera fraud (1 April 2008), the Zambrano ‘ghostwriting’ (21 December 2010), the issuance of the Lago Agrio Judgment (14 February 2011), or the date on which said judgment became enforceable (1 March 2012).²⁰²
176. Lastly, the Claimants reject the Respondent’s position that its liability began only on the date of the Constitutional Court Judgment (27 July 2018).²⁰³ They assert that the Respondent misrepresents the Tribunal’s finding that the denial of justice breach was consummated “as at 1 March 2012”.²⁰⁴ The Claimants also consider such position to be unsupported by case law²⁰⁵ and inconsistent with (i) the Respondent’s own argument that the Claimants should have mitigated damages before 2018, such as by failing to post a bond in 2011; and, relatedly (ii) the fact that the Claimants, as part of their efforts to mitigate their losses, had to defend themselves in Canada, Argentina and Brazil before local remedies were exhausted.²⁰⁶
177. *Date of Umbrella Clause Breach:* While acknowledging (as determined by the Tribunal in its Decision on Track I(B)) that the 7 May 2003 Lago Agrio Complaint pleaded both individual and diffuse claims,²⁰⁷ the Claimants state that by the close of the evidentiary period on 29 October 2003, the LAPs had failed to present evidence to establish individual damages, meaning that from that point onwards the Lago Agrio Litigation was necessarily limited to diffuse rights.²⁰⁸ Against this background, applying a standard of appropriateness in the circumstances to determine the time required for a “failure to act” to mature into an international wrong, the Claimants suggest that by 1 January 2004 (at the latest) the Ecuadorian government should have intervened to defend their rights under

²⁰² Reply, paras. 194-199; Track II Award, paras. 4.293-4.317, 5.245-5.247, 6.20-6.23, 7.133-7.152.

²⁰³ Reply, paras. 210.

²⁰⁴ Reply, paras. 201-203; Track II Award, paras. 8.59-8.60, 9.53-9.54, 9.75, 10.5.

²⁰⁵ Reply, paras. 207-209.

²⁰⁶ Reply, paras. 205-206.

²⁰⁷ Reply, para. 166; Decision on Track I(B), para. 186(1).

²⁰⁸ Reply, paras. 167-170.

the 1995 Settlement Agreement.²⁰⁹ Since the Respondent failed to do so, the Claimants state that from that point forward they were exclusively incurring costs to defend against diffuse claims already barred by the 1995 Settlement Agreement, “which is precisely what the doctrine of *res judicata* is intended to prevent.”²¹⁰ As such, 1 January 2004, the Claimants’ proposed date of damages for the Umbrella Clause breach, is the date on which the Respondent “acting through its judiciary, began to violate the terms of the [1995 Settlement Agreement] when it refused to give [1995 Settlement Agreement] *res judicata* effect . . . against Chevron’s explicit objection.”²¹¹

178. In the alternative, the Claimants propose that damages for the breach of the Umbrella Clause run from 14 February 2011, the date of issuance of the Lago Agrio Judgment, which the Claimants reiterate was based exclusively on the released diffuse claims.²¹² In the further alternative, the Claimants consider that damages should run from 1 March 2012, when the Lago Agrio Judgment became enforceable.²¹³

2. The Respondent’s Position

179. According to the Respondent, the date of issuance of the Judgment of the Constitutional Court (27 June 2018) is the earliest point at which a denial of justice and Umbrella Clause breach could have been consummated, meaning that the Claimants are not entitled to any legal expenses incurred before that date.²¹⁴
180. First, as support for this proposition, the Respondent recalls the finality requirement of denial of justice, pursuant to which judicial decisions do not constitute breaches of international obligations until they constitute outcomes of the judicial system as a

²⁰⁹ Reply, para. 172; **CLA-418**, *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, Judgment, 1980 ICJ Report 3, 24 May 1980, pp. 30-31; **CLA-550**, *The Corfu Channel Case (Merits) (United Kingdom v. Albania)*, Judgment, 1949 ICJ Report 4, 9 April 1949, pp. 22-23.

²¹⁰ Reply, para. 169.

²¹¹ Reply, para. 164. See **C-72**, *Lawsuit for Alleged Damages filed before the President of the Superior Court of “Nueva Loja,” in Lago Agrio, Province of Sucumbíos; on May 7, 2003, by 48 Inhabitants of the Orellana and the Sucumbíos Province*, Superior Court of Nueva Loja, Chevron Answer to Lago Agrio Complaint, 21 October 2003, p. 5.

²¹² Reply, para. 174.

²¹³ Reply, para. 175.

²¹⁴ Counter-Memorial, Section IV(B)1, 2; Rejoinder, paras. 71-81.

whole.²¹⁵ In turn, the Respondent explains that exhaustion of local remedies is a substantive requirement that underscores the finality requirement: a claimant must have recourse to the court of last resort that is “reasonably available” to it in light of its situation.²¹⁶ In the Respondent’s view, it follows from these principles that nothing preceding the final decision of the system can constitute or have the effects of the breach.²¹⁷ Similarly, the Respondent submits that the requirement of completeness of a breach through the acts of the judiciary also applies to the Tribunal’s finding that the Respondent breached the 1995 Settlement Agreement “by the acts of its judicial branch”.²¹⁸

181. Taking note of these requirements, the Respondent submits that Chevron did not exhaust its local remedies against the Lago Agrio Judgment until the issuance of the Judgment of the Constitutional Court.²¹⁹ It recalls, in this regard, that the claims submitted in Chevron’s petition to the Constitutional Court included the two claims that the Tribunal found resulted in the two Treaty breaches: (i) the alleged procedural fraud throughout the Lago Agrio Litigation; and (ii) the violation through the Cassation Court’s decision of Chevron’s “constitutional right to legal certainty in connection with the alleged existence of res judicata” in relation to the 1995 Settlement Agreement.²²⁰ According to the Respondent, because Ecuador’s legal system includes a constitutional appeal, the Claimants’ resort to the Constitutional Court represents their exhaustion of local remedies: under relevant customary international law and within the paradigm of denial of justice, it is irrelevant whether the remedy is ordinary or special.²²¹ In the Respondent’s

²¹⁵ Counter-Memorial, paras. 254-255; Rejoinder, paras. 61-70; **RLA-307**, *Jan Oostergetel and Theodora Laurentius v. Slovakia*, UNCITRAL, Final Award, 23 April 2012, paras. 272-273; **RLA-651**, *Franck Charles Arif v. Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013, paras. 442-443.

²¹⁶ Counter-Memorial, paras. 256-264; **CLA-44**, *Loewen Group, Inc. and Raymond L. Loewen v. United States*, ICSID Case No. ARB(AF)/98/3, Award, 26 June 2003, para. 154; Track II Award, para. 7.117.

²¹⁷ Counter-Memorial, para. 264.

²¹⁸ Counter-Memorial, paras. 265-267; **RLA-812**, B. Demirkol, JUDICIAL ACTS AND INVESTMENT TREATY ARBITRATION (2018), p. 83; Track II Award, para. 8.8.

²¹⁹ Counter-Memorial, Section IV(B)(2)(a).

²²⁰ Counter-Memorial, para. 274; **C-2409**, Chevron’s Extraordinary Action for Protection, pp. 60-61; **C-2551**, Constitutional Court Case No. 0105-14-EP, p. 67.

²²¹ Counter-Memorial, paras. 268-270; **RLA-812**, Berk Demirkol, JUDICIAL ACTS AND INVESTMENT TREATY ARBITRATION (2018), p. 87; **CLA-321**, Draft Articles on Diplomatic Protection with Commentaries (United Nations 2006), Art. 14(2).

view, the Tribunal adopted such approach in its Track II Award by consistently emphasizing that the Lago Agrio Judgment was left unremedied by the judicial system as a whole.²²² The Respondent applies the same analysis to the Umbrella Clause breach, recalling the Tribunal’s ruling that the violation also occurred through the “acts of [the Respondent’s] judicial branch” and was left unremedied by the Constitutional Court.²²³

182. The Respondent further rejects the Claimants’ argument that the denial of justice and Umbrella Clause breaches consist of a composite act within the meaning of Article 15 of the ILC Articles²²⁴ – an argument which, the Respondent notes, was neither argued by the Parties in the lead-up to the Track II Award nor mentioned by the Tribunal therein.²²⁵ According to the Respondent, as a matter of law, “the term ‘composite act’ refers to obligations which can *only* be breached through a series of measures rather than through an individual act”, such as obligations concerning genocide, apartheid or crimes against humanity.²²⁶ In contrast, the Respondent notes, a denial of justice can occur in a single instance, so long as that instance represents the final outcome of the domestic legal system.²²⁷ The Respondent rejects the Claimants’ suggestion that the *travaux préparatoires* of the ILC Articles support the proposition that denial of justice is a “complex act” – a position which it claims is “predicated on a concept that was jettisoned” by the ILC on second reading.²²⁸
183. Should the Tribunal determine that the denial of justice and Umbrella Clause breaches consist of a composite act, the Respondent submits that damages for such breaches cannot be predicated on elements preceding the consummation of the breach, as Article 15 of the ILC Articles does not address awards of damages, only temporal issues for purposes of

²²² Counter-Memorial, paras. 271-273; Track II Award, paras. 8.26, 8.59-8.60, 8.71, 10.5.

²²³ Counter-Memorial, para. 276; Track II Award, paras. 8.6-8.8.

²²⁴ Counter-Memorial, paras. 277-283; Rejoinder, paras. 82-120.

²²⁵ Rejoinder, para. 84.

²²⁶ Counter-Memorial, paras. 278-279; **RLA-430**, *Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries*, pp. 62-63; **RLA-775**, Scott Vesel, *A ‘Creeping Violation’ of the Fair and Equitable Treatment Standard?*, *ARB. INT’L*, Vol. 30, No. 3, p. 556 (emphasis in original).

²²⁷ Counter-Memorial, paras. 280-282; Rejoinder, paras. 85-96; **RLA-812**, Berk Demirkol, *JUDICIAL ACTS AND INVESTMENT TREATY ARBITRATION* (2018), p. 84.

²²⁸ Rejoinder, paras. 97-107; **CLA-911**, James Crawford, *STATE RESPONSIBILITY* (2013), pp. 269-271.

jurisdiction.²²⁹ The Respondent notes that the “handful” of cases that applied the “composite act” theory to cases involving findings of creeping expropriation “confirm that damages for a breach consisting of a composite act cannot be tied to elements preceding the culminating act or omission in the series.”²³⁰ It notes that there no cases where damages for legal fees and expenses incurred in legal proceedings prior to the culmination of a denial of justice were awarded.²³¹ Similarly, the Respondent rejects the Claimants’ argument that the composite act theory extends back the date for accrual of legal fees to the date of the first act in the chain; rather, damages must be limited to proven legal costs with a requisite degree of certainty that are causally connected to the acts or omissions comprising the precise breach found by the Tribunal.²³²

184. Flowing from the above, the Respondent requests that the Claimants’ claim for legal expenses incurred before the Judgment of the Constitutional Court be dismissed, as compensable loss “cannot be caused before an international delict has come into being.”²³³ According to the Respondent, this is true whether or not the denial of justice is seen as a composite act, as the date on which the breach crystallised remains the same.²³⁴ Claiming damages preceding the breach as “investment expenditures” should also fail, in the Respondent’s view, because defending a litigation is not an investment covered by the Treaty.²³⁵ Similarly, no damages should be recovered for acts that were not part of the Treaty breaches, such as Judge Yáñez’s stopping of the judicial inspections²³⁶ or the Cabrera fraud,²³⁷ which the Tribunal determined were not the cause of the breaches. For the reason that the Ecuadorian Executive had no obligation to intervene in the Lago Agrio Litigation (as already determined in the Track II Award), the Respondent also rejects the

²²⁹ Counter-Memorial, paras. 284-293; Rejoinder, paras. 121-131.

²³⁰ Counter-Memorial, paras. 285-289 (emphasis in the original); **CLA-227**, *Siemens A.G. v. Argentina*, ICSID Case No. ARB/02/8, Award, 6 February 2007, para. 264; **CLA-228**, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentina*, ICSID Case No. ARB/97/3, Award, 20 August 2007, para. 7.5.32.

²³¹ Counter-Memorial, paras. 290-291; Rejoinder, paras. 121-131.

²³² Rejoinder, paras. 136-139; **CLA-693**, *Swisslion DOO Skopje v. Macedonia*, ICSID Case No. ARB/09/16, Award, 6 July 2012, paras. 268, 275-276, 300, 304, 337, 349-350.

²³³ Counter-Memorial, paras. 294-303; Rejoinder, paras. 132-134.

²³⁴ Counter-Memorial, paras. 296-298.

²³⁵ Rejoinder, paras. 174-184.

²³⁶ Rejoinder, paras. 140-147.

²³⁷ Rejoinder, paras. 148-152.

Claimants’ reliance on 1 January 2004 as the date of breach of the Umbrella Clause.²³⁸

The Respondent makes the same observation in respect of the judicial branch’s failure to dismiss the claims for diffuse rights at the outset of the litigation (for which the Tribunal did not fault the Respondent).²³⁹

185. Taking account of the above factors, according to the Respondent’s legal fees expert Ms Leigh, the maximum potential obligation after excluding amounts pre-dating the 2018 Constitutional Court Judgment is expected to be less than USD 13,679,730²⁴⁰ (later updated to USD 10,727,019).²⁴¹

(b) First and Second Interim Awards

1. The Claimants’ Position

186. According to the Claimants, the Respondent’s breach of the First and Second Interim Awards is a continuing act that commenced on 1 March 2012, when the Lago Agrio Judgment was certified as enforceable.²⁴² Citing to the Track II Award,²⁴³ the Claimants recall that such conduct was in breach of (i) the direction in the 25 January 2012 First Interim Award that the Respondent “take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment [against Chevron] in the Lago Agrio case”;²⁴⁴ and (ii) the instruction in the 16 February 2012 Second Interim Award that the Respondent “preclude any certification by the Respondent that would cause the said judgments to be enforceable against the First Claimant.”²⁴⁵

²³⁸ Rejoinder, paras. 153-168; Track II Award, paras. 9.28, 10.8; First Partial Award on Track I, paras. 76, 79.

²³⁹ Rejoinder, paras. 169-173.

²⁴⁰ Counter-Memorial, para. 301; **RE-35**, Leigh Expert Report, paras. 120, 123-133.

²⁴¹ Rejoinder, paras. 132-134; **RE-61**, Second Leigh Expert Report, para. 84.

²⁴² Reply, para. 163.

²⁴³ Reply, para. 214; Track II Award, paras. 7.130, 7.132.

²⁴⁴ Reply, para. 214; First Interim Award, *dispositif*, Section VI(2)(i).

²⁴⁵ Reply, para. 214; Second Interim Award, para. 3.

2. The Respondent’s Position

187. As a threshold issue, the Respondent observes that the Claimants fail clearly to distinguish between breaches of the Treaty and breaches of the Tribunal’s Interim Orders and Awards.²⁴⁶ This notwithstanding, the Respondent maintains that “because separate damages cannot be awarded for the breaches of the Tribunal’s Interim Orders and Awards, those breaches cannot alter the Date of Breach for the Treaty violations and no legal expenses incurred prior to the Constitutional Court Decision can be awarded.”²⁴⁷

4. But-For Scenario

188. In its Counter-Memorial, the Respondent raised for the first time its but-for argument, which it summarized as follows:

Under principles of international law . . . in order to prevail in their damages claims, Claimants must prove what the situation would in all probability have been if there had been no Treaty breaches, and what legal expenses and risk of judgment they would in all probability have faced in that situation. Specifically, Claimants must show what portion, if any, of any otherwise claimable legal expenses Chevron would not have had to incur in Treaty-compliant proceedings to defend against the LAPs’ individual claims that were not settled by the 1995 Settlement Agreement as found by the Tribunal, in light of both the risk of any judgment against them that was reasonably possible and global enforcement of that judgment.

But Claimants have made no such showing. Indeed, Claimants have failed even to address the situation that would in all probability have occurred had the breaches of the Treaty been avoided. This failure is fatal to all of Claimants’ claims. They quite simply have failed to meet their burden of proving this fundamental element of the international law standard for compensatory damages.²⁴⁸

189. In its Partial Award on Track III, the Tribunal decided in a preliminary fashion three questions raised by the Claimants in connection with the Respondent’s but-for argument, namely:

- *Question #1:* Is Ecuador’s request for a reduction in damages based upon a hypothetical “but-for” scenario barred by the Tribunal’s Track II finding that the entire Lago Agrio proceeding was pervaded by a denial of justice comprised of fraud and corruption?
- *Question #2:* Do the Tribunal’s prior rulings regarding the scope and effects of the 1995 and 1998 Settlement and Release Agreements, as well as its rulings on its own

²⁴⁶ Counter-Memorial, para. 1361.

²⁴⁷ Counter-Memorial, para. 1361.

²⁴⁸ Counter-Memorial, paras. 940-941.

jurisdiction, preclude both the claims that Ecuador’s Counter-Memorial on Damages refers to as “collective” claims and any offset based on individual claims?

- *Question #3*: If any hypothetical “but-for” scenario offset were permitted here, would it be limited to the confines of those claims actually pursued by the 48 named Lago Agrio Plaintiffs and to the actual Lago Agrio Litigation record?

190. In respect of these questions, the Tribunal made the following declarations:

- (i) Declares, in respect of Question #1, that there is no finding in the Tribunal’s Track II Award that the entire Lago Agrio proceeding was pervaded by a denial of justice comprised of fraud and corruption;
- (ii) Declares, in respect of Question #2, that its prior rulings do not preclude an offset based on individual claims or collective claims, to the extent that it refers to the legal costs that the Claimants would in all probability have incurred in defending themselves against those claims in a Treaty-compliant Lago Agrio Litigation;
- (iii) Declares in respect of Question #3, that any hypothetical but-for scenario offset should in principle at least be limited to the confines of the claims actually pleaded by the 48 named Lago Agrio Plaintiffs and to the actual Lago Agrio Litigation record. . .²⁴⁹

191. As also memorialized in the Partial Award on Track III, during the Hearing on a Partial Award held in March 2021, Counsel for the Respondent clarified that the Respondent is “not seeking any offset against [the Claimants’] legal costs damages claim for any environmental liability.”²⁵⁰

192. With this preamble, the Parties’ respective positions on the Respondent’s but-for argument are summarized below.

(a) *The Respondent’s Position*

193. The Respondent’s but-for argument is based on the *Chorzów Factory* standard of full reparation, pursuant to which, as already stated above, the Tribunal must not only “wipe out all the consequences of the illegal act” but must also “reestablish the situation which would, in all probability, have existed if that act had not been committed.”²⁵¹ Citing to contemporary cases for the proposition that what would have happened in domestic proceedings but-for the treaty breach must be considered in assessing any damages for

²⁴⁹ Partial Award on Track III, para. 188 (i)-(iii).

²⁵⁰ Partial Award on Track III, para. 185.

²⁵¹ Counter-Memorial, para. 945 (emphasis in the original); **CLA-406**, *Case Concerning the Factory at Chorzów (Merits)* (*Germany v. Poland*), Judgment, 1928 PCIJ Series A, No. 17, 13 September 1928, p. 47.

the judicial system’s conduct,²⁵² the Respondent argues that the Claimants must prove that the legal fees and expenses they incurred exceeded what they would in all probability have incurred had the Treaty breaches been avoided²⁵³ with a sufficient degree of certainty.²⁵⁴ In this connection, the Respondent posits that legal fees and expenses that were incurred to exhaust local remedies in the Lago Agrio Litigation are not compensable.²⁵⁵

194. Further, the Respondent rejects the Claimants’ argument that a but-for analysis is inappropriate in a denial of justice case (a proposition which, it states, was rejected by the Tribunal its Partial Award in Track III)²⁵⁶ and is also critical of the notion that it seeks a “do-over through a second but-for trial”, as a but-for analysis is required under *Chorzów Factory*.²⁵⁷ In particular, the Respondent explains that the Tribunal need not determine “who would have won, but what the litigation would have cost Chevron.”²⁵⁸
195. The Respondent is critical of the Claimants’ failure to meet their burden of proof in respect of the but-for scenario in their Memorial²⁵⁹ and reiterates its position in response to the Claimants’ Reply.²⁶⁰ At the Track III Hearing, the Respondent explained that the but-for principle demonstrates that there can be no compensable damages where possible alternative scenarios evince a lack of a causal link between the breach and the alleged

²⁵² Counter-Memorial, paras. 946-952; **RLA-709**, *Sramek v. Austria*, Judgment, ECHR Application No. 8790/79, 22 October 1984; **RLA-793**, *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Uruguay*, ICSID Case No. ARB/10/7, Award, 8 July 2016, para. 575, fn 838; **RLA-813**, *William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, paras. 110; **CLA-686**, *White Industries Australia Limited v. India*, UNCITRAL, Final Award, 30 November 2011, paras. 14.2.2-14.2.66.

²⁵³ Counter-Memorial, paras. 953-956; **RLA-351**, *Chevron Corporation and Texaco Petroleum Corporation v. Ecuador*, PCA Case No. AA277, Final Award, 31 August 2011, para. 308.

²⁵⁴ Counter-Memorial, paras. 957-962; **RLA-813**, *William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, paras. 168, 276.

²⁵⁵ Rejoinder, paras. 332-338; **RLA-1038**, *Lion Mexico Consolidated L.P. v. Mexico*, ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021, paras. 847-848.

²⁵⁶ Rejoinder, para. 317; Partial Award on Track III, para. 171.

²⁵⁷ Rejoinder, paras. 315-321.

²⁵⁸ Rejoinder, paras. 453-459; **RLA-433**, *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, paras. 198-200.

²⁵⁹ Counter-Memorial, paras. 963-966.

²⁶⁰ Rejoinder, paras. 322-331; **RLA-813**, *William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, para. 110.

damages.²⁶¹ Such burden, the Respondent asserts, cannot be shifted to Ecuador,²⁶² and even if such was the case, the Respondent considers that it has satisfied it.²⁶³

196. In any event, the Respondent asserts that the Claimants cannot meet their burden of proof because “evidence shows that in all probability Chevron would have faced substantial individual claims for non-diffuse rights in the Lago Agrio Proceeding that had a reasonable possibility of prevailing.”²⁶⁴ In particular, the Respondent refers to a scenario where

... had the Ecuadorian courts acted to prevent the defects of the first instance judgment from consummating a Treaty breach, Chevron would still have had to defend against the individual claims of the LAPs for violations of their individual and collective rights as asserted in the Lago Agrio Complaint. A decision of either the Constitutional Court or NCJ to nullify the judgment, as sought by Claimants, due to the improper rendering of the judgment, and the application of the 1995 Settlement Agreement to the LAPs’ diffuse claims, would have avoided the Treaty breaches found by the Tribunal and resulted in litigation and adjudication of those individual claims.²⁶⁵

197. As regards this but-for scenario, the Respondent first argues, relying on the expert opinion of Dr Fabián Andrade, that correction of the Lago Agrio Judgment would have resulted in the remand of the case to the trial court for further adjudication²⁶⁶ (or, in the alternative, either the appellate court or the trial court would have issued a Treaty-compliant judgment).²⁶⁷ In connection with the earlier scenario, the Respondent recalls that, in bringing the Lago Agrio Complaint, the LAPs sought relief not only for violations of diffuse rights under Article 23(6) of the Constitution, but also for their individual claims for non-diffuse rights “violated and threatened by environmental contamination caused by TexPet’s activities.”²⁶⁸ In any event, the Respondent believes that the likelihood of any of these scenarios lies in both the LAPs’ “steadfast determination to vindicate their

²⁶¹ Track III Hearing Transcript, Day 2 (19 August 2022), p. 279 (Tsutieva).

²⁶² Rejoinder, paras. 328-329; **RLA-1034**, *Muhammet Çap and Bankrupt Sehil İnşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan*, ICSID Case No. ARB/12/6, Award, 4 May 2021, para. 728.

²⁶³ Rejoinder, paras. 330-331.

²⁶⁴ Counter-Memorial, paras. 967-1166.

²⁶⁵ Counter-Memorial, para. 967.

²⁶⁶ Counter-Memorial, paras. 971-977; Rejoinder, paras. 372-376; **RE-46**, Fourth Andrade Narváez Expert Report, paras. 13, 27-35.

²⁶⁷ Counter-Memorial, paras. 977-981.

²⁶⁸ Counter-Memorial, para. 978.

rights” and “significant evidence that their individual claims . . . were substantial and litigable”.²⁶⁹

198. As such, the Respondent argues that adjudication of the LAPs’ individual claims resting upon individual rights set out in the Lago Agrio Complaint (which, the Respondent recalls, were outside the scope of the 1995 Settlement Agreement, as confirmed by this Tribunal) could have proceeded, and the Claimants would have needed to defend against them.²⁷⁰ Such individual claims, the Respondent notes, included individual claims based upon *individual* rights and individual claims based upon *collective* rights:²⁷¹

- (i) Individual claims based upon *individual* rights in the Lago Agrio Complaint, the Respondent states, encompassed three sets of individual rights capable of being threatened by environmental contamination: (1) their rights to health and to live in a healthy and ecologically balanced environment; (2) their property rights as individual landowners; and (3) their proprietary rights as owners to assets other than land.²⁷² Citing to the First Partial Award on Track I, the Respondent argues that such individual claims constitute “environmental claim[s] made by an individual in respect of personal harm in respect of that individual’s rights separate and different from the Respondent”, meaning that they were not released by the Respondent in the 1995 Settlement Agreement and thus must form part of the but-for scenario.²⁷³ Likewise, the Respondent denies as impossible under Ecuadorian law the Claimants’ argument that such claims were somehow abandoned.²⁷⁴
- (ii) In turn, individual claims based upon *collective* rights concern, according to the Respondent, the collective rights of each of the Pimampiro, Rumipamba, San Pablo

²⁶⁹ Rejoinder, paras. 382-383.

²⁷⁰ Counter-Memorial, paras. 973-976; Track II Award, para. 10.7: “The Tribunal (by a majority) declares, confirming its Decision on Track IB, that the Lago Agrio Complaint of 7 May 1998, as an initial pleading, included individual claims (for personal harm) resting upon individual rights under Ecuadorian law, not falling within the scope of the 1995 Settlement Agreement and that, therefore, the Lago Agrio Complaint was not wholly barred at its inception by res judicata under Ecuadorian law, by virtue of the 1995 Settlement Agreement.” *See also* First Partial Award on Track I, para. 112(3); Decision on Track I(B), para. 186(1).

²⁷¹ Counter-Memorial, para. 979; Rejoinder, para. 341.

²⁷² Counter-Memorial, paras. 980-984; Rejoinder, paras. 342-344.

²⁷³ Rejoinder, paras. 346-351; First Partial Award on Track I, para. 112(3).

²⁷⁴ Rejoinder, paras. 390-394; 438-452; **RE-48**, Fifth Andrade Narváez Expert Report, paras. 10, 19, 22-23.

de Aguarico and Dureno municipalities to enjoy a healthy and ecologically balanced environment – a right which the Respondent asserts is guaranteed by Articles 23(6) and 88 of the 1998 Constitution.²⁷⁵ Further, the Respondent asserts that those LAPs who are indigenous peoples (the inhabitants of San Pablo de Aguarico and Rumipamba) also made claims regarding rights to which they were entitled as indigenous peoples, including a claim for compensation under Article 15 of ILO Convention No. 169 to remedy the damage caused to their “natural surrounding and the loss of their territories, resources or traditional means of subsistence.”²⁷⁶

(iii) According to the Respondent, such claims for collective rights are distinct from the LAPs’ individual claims for diffuse rights (which, as noted above, could not be adjudicated by a Treaty-compliant Lago Agrio court in the but-for world).²⁷⁷ In the Respondent’s submission, a distinction exists in Ecuadorian law in that a collective right “corresponds to a collectivity identifiable by its group purpose and common interests”, while a diffuse right belongs to “a community of indeterminate people.”²⁷⁸ In any event, the Respondent notes that claims based upon collective rights are claims for personal harm: “a violation of a collective right endangers the particular community’s existence, which necessarily entails a specific harm to the members of a particular community.”²⁷⁹

199. On this basis, the Respondent argues that substantial evidence of contamination injuring the LAPs’ non-diffuse rights would have been available to support their individual claims for non-diffuse rights on remand.²⁸⁰ In its Counter-Memorial, the Respondent reviewed such evidence, which included “analysis conducted by Respondent’s experts during both

²⁷⁵ Counter-Memorial, para. 986; **RE-40**, First Parraguez Ruiz Expert Report, para. 18; **RE-49**, Second Parraguez Ruiz Expert Report, para. 52.

²⁷⁶ Counter-Memorial, paras. 987-989, 991; Rejoinder, paras. 342-344.

²⁷⁷ Counter-Memorial, para. 992; Rejoinder, paras. 342-344.

²⁷⁸ Counter-Memorial, paras. 993-995; Rejoinder, paras. 354-367; **RE-40**, First Parraguez Ruiz Expert Report, paras. 8-9.

²⁷⁹ Rejoinder, paras. 363-367.

²⁸⁰ Counter-Memorial, paras. 997-1125.

Track III and prior phases of this proceeding.”²⁸¹ In its Rejoinder, the Respondent provides an updated analysis, having taken note of the Tribunal’s ruling in the Partial Award on Track III that both the evidence in the Lago Agrio Litigation record and that which “can be expected from the original complaint and surrounding circumstances” should be considered.²⁸²

200. By reference to the Tribunal’s rulings in its Partial Award on Track III, the Respondent denies that a but-for scenario based on claims for violations of non-diffuse rights would render the 1995-1998 Settlement and Release Agreements illusory:²⁸³

Ecuadorian law is clear that merely because the remedies for the types of individual claims pleaded in the Lago Agrio Complaint are similar to those for diffuse rights claims does not convert them into diffuse rights claims or otherwise render the Settlement Agreement illusory. As the Ecuadorian Supreme Court’s decision in Delfina Torres demonstrates, seeking to remedy a “broad scope of environmental harm caused by a defendant’s wrongdoing” through “a claim for relief in the form of remedial works d[oes] not, by [itself], affect the characterisation of a claim as an individual claim under Ecuadorian law.” In light of this reasoning and the Tribunal’s recognition that “[i]f there were to be individual claims for personal harm by the Aguinda or Lago Agrio Plaintiffs (not being diffuse claims) in further legal proceedings,” remediation “in the former concession area” may be an available remedy, the existence of a remedy extending beyond the individual LAPs’ properties in the but-for scenario does not render the Settlement Agreement illusory.²⁸⁴

201. According to the Respondent, the remedies available for the LAPs’ individual claims for non-diffuse rights would have been substantial.²⁸⁵ In its submission, such remedies could have included (*inter alia*): (i) an order to perform a program of environmental remediation and restoration, medical monitoring and pecuniary damages;²⁸⁶ and (ii) a “comprehensive environmental remedy” which would have “likely cost more than USD 1 billion”.²⁸⁷ The Respondent considers that the Claimants’ alternative proposed analysis, based on individual lawsuits litigated by TexPet, cannot establish that Chevron would not have faced significant liability, since the “comparatively low amounts-in-controversy of these

²⁸¹ Counter-Memorial, para. 1006. *See generally* Counter-Memorial, paras. 997-1125.

²⁸² Rejoinder, paras. 399-430; Partial Award on Track III, para. 174.

²⁸³ Rejoinder, paras. 430-433; Partial Award on Track III, para. 164.

²⁸⁴ Rejoinder, para. 432; Track II Award, para. 8.75.

²⁸⁵ Counter-Memorial, paras. 1126-1158.

²⁸⁶ Counter-Memorial, paras. 1130.

²⁸⁷ Counter-Memorial, paras. 1141-1158. *See also* Track III Hearing Transcript, Day 2 (19 August 2022), pp. 288-299 (Ettinger).

lawsuits reflect the fact that the plaintiffs that brought them sought, for the most part, to vindicate limited personal-injury type claims and damages to proprietary rights.”²⁸⁸

202. Based on the above arguments, the Respondent states that, on remand from a higher-instance court, there is a reasonable likelihood that the Lago Agrio Court would have granted the LAPs’ individual claims, since, under relevant Ecuadorian legislation, the Claimants likely would not have been able to meet their burden to disprove harm, an absence of fault or the absence of a causal link according to the theory of sufficient cause.²⁸⁹ Regardless of outcome, the Respondent considers that “litigating this issue would have caused Chevron to incur substantive legal fees”, in particular given the amount Chevron actually spent.²⁹⁰
203. Lastly, the Respondent rejects as “procedurally impossible” the Claimants’ proposed but-for scenario, in which the Lago Agrio Court could have avoided Treaty breaches “by dismissing the LAPs’ entire case by the arbitrarily selected date of 1 January 2004”.²⁹¹ Relying on the expert opinion of Dr Fabián Andrade, the Respondent denies that the court could have terminated the LAPs’ case on that date based on Chevron’s *res judicata* objection; rather, such objection would have been addressed in the normal course when the Lago Agrio Judgment was issued in 2011.²⁹² Even if the early dismissal of the claim in 2004 had been possible, the Respondent believes that it not have been the end of the litigation; instead, the LAPs would have likely continued to press their non-diffuse claims against the Claimants, either in the same or a different lawsuit.²⁹³

²⁸⁸ Rejoinder, paras. 460-465. *See also* Rejoinder, paras. 466-477.

²⁸⁹ Counter-Memorial, paras. 1159-1165.

²⁹⁰ Track III Hearing Transcript, Day 2 (19 August 2022), p. 285 (Salgado). *See also* Track III Hearing Transcript, Day 2 (19 August 2022), p. 285 (Salgado); Day 15 (7 September 2022), pp. 3551-3553 (Ettinger).

²⁹¹ Rejoinder, para. 384.

²⁹² Rejoinder, paras. 384-385; **RE-46**, Fourth Andrade Narváez Expert Report, paras. 89-94.

²⁹³ Rejoinder, paras. 386-387.

(b) *The Claimants’ Position*

204. Citing to the *Chorzów Factory* standard, the Claimants argue that the Respondent is not entitled to any reduction in damages under a hypothetical but-for scenario.²⁹⁴
205. First, the Claimants assert that the Respondent’s proposed but-for analysis finds no roots in *Chorzów Factory* and is inappropriate in a denial of justice case.²⁹⁵ In their view, adopting the Respondent’s approach would remove any incentive for States to abstain from committing denials of justice: “[n]ot only would the victim of the denial of justice have to meet a very high standard for establishing the State’s bad act, but even if the victim succeeds against those odds, the State would then get a do-over before the international tribunal, where the worst that can happen is that the State gets credited for hypothetically acting as it should have all along.”²⁹⁶
206. Second, citing to past cases where the burden of proof was shifted where, as here, “the lack of real-world evidence resulted from the breaching party’s fault”, the Claimants consider that the Respondent has not met its burden of proving their damages in a but-for scenario.²⁹⁷ Among other things, the Claimants state that the Respondent “has never specified the exact claims that would hypothetically be at issue, nor their relationship to the real-world Lago Agrio Litigation.”²⁹⁸
207. Third, and in any event, the Claimants posit that the Respondent’s proposed but-for analysis does not reflect the most likely scenario, as required under *Chorzów Factory*.²⁹⁹ The Claimants consider the Respondent’s but-for scenario to be disconnected from the actual historical record.³⁰⁰ According to the Claimants, the “most likely scenario” must instead be determined by asking “what would have happened in a ‘but for’ world in which

²⁹⁴ Reply, paras. 589-660.

²⁹⁵ Reply, paras. 594-595.

²⁹⁶ Reply, para. 595.

²⁹⁷ Reply, paras. 596-597; **CLA-664**, *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Excerpts of Award, 18 April 2017, para. 224.

²⁹⁸ Reply, para. 597.

²⁹⁹ Reply, paras. 598-605. *See also* Track III Hearing Transcript, Day 1 (18 August 2022), pp. 179-185, 192-195 (Silbert) (arguing that the Respondent’s proposed *but-for* scenario is detached from the historical record and speculative).

³⁰⁰ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 179-185 (Silbert).

Ecuador was in compliance with the Treaty and all other unrelated facts remain the same?”³⁰¹ In their view, such scenario would be as follows:

The LAPs would have filed a Lago Agrio Complaint exactly as they did in the real Lago Agrio Litigation. The LAPs and their representatives would have prosecuted that Lago Agrio Complaint to the same extent, as to the same issues and claims, on the same record, and with the same degree of misconduct as they did in the real Lago Agrio Litigation. The essential difference in the most likely but-for scenario is that the Lago Agrio Court would have dismissed the Lago Agrio Complaint as to the diffuse claims by no later than January 1, 2004; this is the date by which . . . Ecuador ought to have addressed, and given effect to, the 1995 Settlement Agreement. That would have brought an end to the case with negligible litigation costs because, in the real world, the 48 LAPs chose not to pursue individual claims for personal harm.³⁰²

208. Against this scenario, the Claimants criticize the Respondent’s proposed but-for hypothetical because it asks the Tribunal to assume: (i) a world in which the LAPs diligently pursued individual claims for personal harm against Chevron (when, in fact, the opposite happened); and (ii) the LAPs’ team did not commit fraud and corruption (when, in fact, the LAPs’ representatives “chose to go to the ‘dark side’ [] because the evidence developed during the judicial-inspection process disproved their claims against Chevron”).³⁰³
209. Fourth, the Claimants assert that any but-for analysis involving individual claims for personal harm would require the Tribunal to rule on third-party claims and expose the Claimants to potential double liability.³⁰⁴ In the Claimants’ view, such a but-for world would be inconsistent with the Track II Award determination that a decision by the Tribunal on environmental issues could prejudice the determination of those same issues if they are argued anew by the Aguinda or Lago Agrio plaintiffs.³⁰⁵

³⁰¹ Reply, para. 598.

³⁰² Reply, para. 599.

³⁰³ Reply, paras. 602-603.

³⁰⁴ Reply, paras. 606-609.

³⁰⁵ Reply, paras. 607-609; Track II Award paras. 7.13, 8.73; Partial Award on Track III, para. 141.

210. Fifth, in the Claimants’ view, any but-for analysis would be severely limited by the Tribunal’s Partial Award on Track III.³⁰⁶ In particular, the Claimants derive the following implications from such Award:

- (i) Any but-for analysis would be limited to an offset of “legal costs against legal costs”, thus excluding any analysis of hypothetical liability or a hypothetical litigation against third parties.³⁰⁷
- (ii) Environmental issues are outside the scope of Track III and no further environmental evidence is relevant as part of a purported set-off of damages, which is why the Claimants declined to submit further environmental evidence with their Reply.³⁰⁸
- (iii) No but-for scenario will be accepted that renders the 1995-1998 Settlement Agreements “illusory”, including, in particular, a hypothetical where alleged “collective rights for personal harm” are asserted.³⁰⁹
- (iv) Any claims other than those by an individual claiming personal harm are precluded from the but-for world, as there is no such thing as an “individual claim for collective rights” in Ecuadorian law that falls outside of the 1995-1998 Settlement and Release Agreements.³¹⁰ (i) at the time of the Releases, the assertion of non-individual rights belonged exclusively to the State;³¹¹ (ii) “diffuse” and “collective” rights are not “non-individual rights” and are not designed to vindicate individual claims for personal harm;³¹² and (iii) a diffuse right does not lose its character as

³⁰⁶ See Track III Hearing Transcript, Day 1 (18 August 2022), pp. 174-179 (Silbert).

³⁰⁷ Reply, paras. 611-613; Partial Award on Track III, paras. 141, 166.

³⁰⁸ Reply, paras. 614-615; Partial Award on Track III, paras. 186-187. *See also* Track III Hearing Transcript, Day 1 (18 August 2022), pp. 178-179 (Silbert).

³⁰⁹ Reply, paras. 616-621; Partial Award on Track III, para. 164; Track II Award, paras. 5.223-5.224; First Partial Award on Track I, paras. 106-107.

³¹⁰ Reply, paras. 622-631.

³¹¹ Reply, para. 625; Eighth Coronel Jones Expert Report, paras. 9, 10, 18.

³¹² Reply, paras. 626-627; Eighth Coronel Jones Expert Report, paras. 36(ii), 39, 40.

such merely because it is asserted by a claimant who belongs to a defined community.³¹³

- (v) Any but-for scenario is limited to individual claims for personal harm by the 48 named LAPs in the Lago Agrio Complaint and their evidence in the Lago Agrio Litigation record,³¹⁴ in respect of which the Claimants observe the following: (i) the Respondent has failed to articulate the nature and extent of the alleged individual claims for personal harm of the 48 LAPs;³¹⁵ (ii) the Lago Agrio Litigation record is “too suffused with fraud” to be a reliable source of any information;³¹⁶ and (iii) even if it could, such record includes no evidence of specific personal harm to the individual 48 named LAPs.³¹⁷

211. Sixth, the Claimants recall that in the but-for world the Respondent would not be entitled to an offset based on an indemnification order, as “decisively rejected” by the Tribunal in its Partial Award on Track III.³¹⁸

212. Seventh, should the Tribunal decide to undertake a but-for analysis, the Claimants consider that it should be based on the Claimants’ actual litigation costs and other real-world evidence, which, in the Claimants’ view, constitute the proper comparators.³¹⁹ Among other things, the Claimants explain that between 1995 and 2015 TexPet successfully defended against several real lawsuits for individual claims for personal harm allegedly caused by operations in the former concession area (the average amount in controversy was USD 484,114, a figure that could be applied to each of the 48 LAPs, reaching a total set-off of USD 23,237,474).³²⁰ Based on this hypothetical amount in controversy and on the fact that, in the real world, they incurred only 4 to 9 cents in legal costs for each dollar of liability they faced under the Lago Agrio Judgment, the Claimants

³¹³ Reply, para. 628; Eighth Coronel Jones Expert Report, para. 38.

³¹⁴ Reply, paras. 632-646.

³¹⁵ Reply, paras. 634-639.

³¹⁶ Reply, paras. 640-642; Partial Award on Track III, paras. 125, 127,

³¹⁷ Reply, paras. 643-646.

³¹⁸ Reply, paras. 647-648; Partial Award on Track III, para. 142.

³¹⁹ Reply, paras. 650-660.

³²⁰ Reply, paras. 652-655; Claimants’ Second Submission, Appendix of Individual Rights Cases.

estimate that their hypothetical legal fees and expenses to defend themselves in the but-for scenario would be between USD 929,498 and USD 2,091,372 (a “far cry” from the “up to 1.6 billion” offset sought by the Respondent).³²¹ The Claimants further note that the USD 161.5 million they actually spent in legal costs in the Lago Agrio Litigation include the work defending themselves from the Respondent’s Treaty breaches, meaning that their legal fees and expenses defending against hypothetical individual claims for personal harm would have been “orders of magnitude lower” than the funds actually spent.³²² As to the evidence allowed in the hypothetical scenario, the Claimants note that it would be limited to properties owned by the 48 named LAPs (thus excluding the judicial inspection process of the former concession area that took place in the real world) and, even if evidence of personal harm were introduced, the Claimants believe that the scope of the but-for scenario would be significantly limited compared to the scope of the original Lago Agrio Litigation.³²³

213. Eighth, the Claimants submit that the Respondent cannot argue both that Chevron’s real-world legal fees and expenses are excessive, while also stating that it would have spent roughly the same amount in the but-for Treaty-compliant scenario.³²⁴
214. Ninth, and last, the Claimants note that the Respondent’s but-for scenario only pertains to legal fees and expenses Chevron would have spent in a Treaty-compliant Lago Agrio Litigation, and thus applies only to a subset of the Claimants’ claims.³²⁵

B. NON-COMPLIANCE WITH INTERIM AWARDS

215. As already noted above,³²⁶ the Claimants request damages not only in connection with the Respondent’s breach of the Umbrella Clause and its denial of justice, but also as regards the Respondent’s “refusal” to comply with the First and Second Interim Awards.

³²¹ Reply, paras. 656-659.

³²² Reply, para. 658.

³²³ Reply, paras. 659-660.

³²⁴ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 166-167 (Silbert).

³²⁵ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 167-168 (Silbert).

³²⁶ See para. 129(iii) above.

216. In reply, the Respondent posits first that the First and Second Interim Awards have been superseded by the Track II Award.³²⁷ Second, the Respondent maintains that, in any event, any purported breaches of those Awards would not give rise to compensable damages.³²⁸ Third, the Respondent has also re-submitted its request for reconsideration of the First, Second and Fourth Interim Awards, as further described below.³²⁹

1. Non-Compliance

(a) The Claimants’ Position

217. Recalling the Tribunal’s findings in its Fourth Interim Award and Track II Award that Ecuador violated the Tribunal’s First and Second Interim Awards by issuing a certificate of enforceability for the Lago Agrio Judgment on 1 March 2012, the Claimants affirm that they are entitled to damages as a result of such violations.³³⁰ In the Claimants’ view, the Respondent’s breach of those Interim Awards was the natural and foreseeable cause of those damages incurred after the First Interim Award was issued on 25 January 2012,³³¹ meaning that the Claimants’ failure to post a bond could not constitute an intervening cause that would sever the causal link between the breach and the damage.³³²

218. First, the Claimants reject the Respondent’s argument that the Track II Award superseded the First and Second Interim Awards and that, as a result, they “cannot attempt to seek damages for interim measures that are no longer extant”; they cite in this respect the ILC Articles for the proposition that the obligation of reparation “arises automatically” upon breach of an international obligation.³³³ Further, they consider the Respondent’s interpretation to be at odds with the terms of the Track II Award, which imposes the same

³²⁷ Counter-Memorial, paras. 1350-1353; Rejoinder, paras. 1877-1880.

³²⁸ Counter-Memorial, paras. 1354-1364; Rejoinder, paras. 1881-1885.

³²⁹ Counter-Memorial, paras. 1365-1376; Rejoinder, para. 1891.

³³⁰ Memorial, paras. 133-135, 156-161; Reply, paras. 381-395.

³³¹ Reply, para. 393.

³³² Reply, paras. 394-395.

³³³ Reply, paras. 383-384; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Commentary to Art. 31, para. 4.

interim relief in respect of the Respondent’s ongoing violations for the future, and not for the past.³³⁴

219. Second, the Claimants reject the Respondent’s argument that no damages can flow from the breach of the First and Second Interim awards because no arbitral tribunal “has the jurisdiction to enforce compliance with its interim awards”:³³⁵ in their view, such argument is based on an artificial distinction between a breach of an interim award and all other breaches of international law for the purpose of full reparation.³³⁶ They recall that the Tribunal has asked the Respondent “to show cause . . . why [it] should not now compensate the First Claimant for any harm caused by the Respondent’s violations of the First and Second Interim Awards . . .”, meaning that the burden is on the Respondent to establish why full reparation should not be awarded in respect of such violations.³³⁷

(b) The Respondent’s Position

220. As a threshold issue, the Respondent argues that the First and Second Interim Awards have been superseded by the Track II Award, thus rendering moot any claim for damages due to non-compliance with those awards.³³⁸
221. Even if the Tribunal were to find that those Interim Awards have not been superseded, the Respondent submits that the Claimants would still not be entitled to compensation for its breaches of those awards.³³⁹ First, the Respondent asserts that there is no legal basis in the Treaty or international law for the premise that compensation can be awarded for breaches of interim awards: an international arbitral tribunal becomes *functus officio* once an award has been rendered and “has no ongoing legal role in promoting enforcement.”³⁴⁰

³³⁴ Reply, para. 385.

³³⁵ Reply, paras. 386-391.

³³⁶ Reply, paras-387-390; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Art. 31(1).

³³⁷ Reply, para. 391.

³³⁸ Counter-Memorial, paras. 1350-1353; Rejoinder, paras. 1877-1880.

³³⁹ Counter-Memorial, paras.1354-1364.

³⁴⁰ Counter-Memorial, paras. 1356-1361; Rejoinder, paras. 1881-1885, 1918.

222. Second, the Respondent explains that a causal link must be established between a breach and the damages sought,³⁴¹ yet there is none between the Respondent’s failure to prevent the certification of the Lago Agrio Judgment and the Claimants’ alleged damages.³⁴² According to the Respondent, the Claimants’ failure to post a bond with the Lago Agrio Court to prevent the enforcement of the Lago Agrio Judgment “constitutes an intervening cause that severs any chain of causality that might otherwise have existed between Respondent’s breaches of the First and Second Interim Awards and the losses Claimants allege to have suffered in respect to preventing the enforcement of the Lago Agrio Judgment.”³⁴³

223. Third, the Respondent further rejects as contrary to international law any possibility of a merger between the Treaty breaches and the breaches of the Interim Awards.³⁴⁴ To the extent there has been a merger, the Respondent considers that

any overlapping claim for damages for such violations would be subject to many of the same defenses that Respondent has interposed to the claims for damages resulting from the Treaty breaches, including without limitation those relating to principles of causation, mitigation of damages, and Claimants’ failure to establish that the claimed fees and costs were reasonable and necessary or prove any of their other alleged losses.³⁴⁵

224. Lastly, the Respondent submits that it has complied with the Tribunal’s orders in the Track II Award to the extent possible under Ecuadorian law.³⁴⁶ It notes, in particular, that the content of the Track II Award was communicated to the President of the Republic, the Chief Judge of the Constitutional Court and the Chief Justice of the court sitting in Sucumbíos so that they could consider actions to take within the scope of their powers.³⁴⁷ The competent authorities in Canada, Argentina and Brazil were also informed,³⁴⁸ as was the President of the Provincial Court of Sucumbíos (who, in the understanding of the

³⁴¹ Track III Hearing Transcript, Day 2 (19 August 2022), p. 381 (Salgado).

³⁴² Counter-Memorial, paras. 1362-1364; Rejoinder, paras. 1886-1887.

³⁴³ Counter-Memorial, paras. 1362-1364.

³⁴⁴ Rejoinder, para. 1888; **CLA-640**, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2027, 26 February 2007, para. 469.

³⁴⁵ Rejoinder, para. 1889.

³⁴⁶ Rejoinder, paras. 1920-1925.

³⁴⁷ Rejoinder, para. 1920.

³⁴⁸ Rejoinder, para. 1921.

Attorney-General, will not certify any copies of the Lago Agrio Judgment going forward).³⁴⁹

2. The Respondent’s Request for Reconsideration of the First, Second and Fourth Interim Awards

(a) The Respondent’s Position

225. On 1 March 2013, following the issuance of the Fourth Interim Award, the Respondent submitted a request for reconsideration of the First, Second and Fourth Interim Awards on the following grounds:

The First and Second Interim Awards did not explicitly provide that the Respondent would be expected to violate its own Constitution and laws in order to comply;

- the premise of the First and Second Interim Awards (that harm to Claimants cannot be repaired by monetary compensation) is irreconcilable with the determination made in the Fourth Interim Award (that Respondent is now obliged to pay compensation for harm caused by breach of the First and Second Interim Awards);
- the Fourth Interim Award fails to acknowledge Respondent’s consistent position that it is constrained by international law from preventing the enforceability of an otherwise enforceable domestic judgment;
- the Tribunal should revisit its reliance upon international law to conclude that the Respondent cannot invoke Ecuadorian law to excuse non-compliance with the Tribunal’s First and Second Interim Awards;
- the question of whether a State Party has complied with the obligation in Article IV(6) of the Treaty is not justiciable before a tribunal constituted to determine an investment dispute; and
- Article VI(6) of the Treaty cannot be read in conjunction with Article 26 of the UNCITRAL Rules as conferring a legislative power upon an Article VI(3) tribunal to create a new international obligation for State Parties.³⁵⁰

226. Should the Tribunal consider that its Interim Awards have not been superseded by the Track II Award and to have been validly decided, the Respondent maintains its application for reconsideration.³⁵¹

³⁴⁹ Rejoinder, para. 1922.

³⁵⁰ Counter-Memorial, para. 1365.

³⁵¹ Counter-Memorial, para. 1366; Rejoinder, para. 1891.

227. First, the Respondent asserts that the First and Second Interim Awards were based on the wrong premise that there is a “sufficient likelihood that [the] harm to the Claimants may be irreparable in the form of monetary compensation”, and should be vacated for that reason.³⁵² In the Respondent’s view, when first requesting interim relief from the Tribunal against the possibility of enforcement of the Lago Agrio Judgment, the Claimants “complained only of monetary harm and the inconvenience of litigation; the former can be cured by monetary compensation, and the latter the Tribunal has no mandate to shield Claimants from.”³⁵³
228. Second, recalling that an arbitral tribunal cannot mandate that a State violate its internal laws in order to comply with procedural measures, the Respondent reiterates that there is no legal mechanism by which it could have prevented the Lago Agrio Judgment from becoming enforceable.³⁵⁴
229. Third, the Respondent asserts that its alleged breach of the interim awards cannot be interpreted as a breach of the Treaty, since Article VI(6) of the Treaty, providing for the final and binding character of awards, concerns only awards that resolve an “investment dispute”, thus excluding awards on interim measures.³⁵⁵

(b) The Claimants’ Position

230. In the Claimants’ view, the Respondent has failed to substantiate its application for reconsideration.³⁵⁶ First, the Claimants assert that the Respondent could have revoked the Ecuadorian court order that certified the Lago Agrio Judgment as enforceable, and note that the notion that the Respondent had no mechanism by which to render the Judgment unenforceable has been repeatedly rejected by the Dutch courts in set-aside proceedings.³⁵⁷ Second, the Claimants reject the proposition that a breach of the

³⁵² Rejoinder, paras. 1892-1896; Second Interim Award, para. 2.

³⁵³ Rejoinder, para. 1895.

³⁵⁴ Counter-Memorial, paras. 1367-1372; Rejoinder, paras. 1897-1904; **RLA-15**, *Plama Consortium Limited v. Bulgaria*, ICSID Case No. ARB/03/24, Order on Provisional Measures, 6 September 2005, para. 43. *See also*, Track III Hearing Transcript, Day 2 (19 August 2022), pp. 382-383 (Salgado).

³⁵⁵ Counter-Memorial, paras. 1373-1376; Rejoinder, paras. 1909-1915.

³⁵⁶ Reply, paras. 396-399.

³⁵⁷ Reply, para. 397; **C-3147**, *The Republic of Ecuador v. Chevron Corporation et al.*, C/09/570029 / HA ZA 19-268, Judgment, 16 September 2020, paras. 5.24-5.25, 5.44-5.46.

Tribunal’s interim orders and awards does not constitute a breach of the Treaty: they recall that the UNCITRAL Arbitration Rules (which allow interim orders to be converted into interim awards) are incorporated into the Treaty through Article VI(3)(a)(iii), meaning that any such interim award is “final and binding” under Treaty Article VI(6).³⁵⁸

C. INTERNATIONAL SUBSIDIARIES

1. The Claimants’ Position

231. The Claimants consider that they are entitled to compensation for the legal fees and expenses incurred by Chevron’s subsidiaries, inside and outside of Ecuador, to prepare and defend themselves against the efforts to enforce the Lago Agrio Judgment worldwide.³⁵⁹

232. First, according to the Claimants, it is well established that parent-shareholders like Chevron may claim for losses which are incurred directly by wholly-owned subsidiaries and only indirectly by the parent.³⁶⁰ As support for this proposition, the Claimants rely on the text of the Treaty (which defines “investments” as “any type of investment . . . owned directly or indirectly”, including “companies, shares of stock or other interests in companies” and investment arbitral awards.³⁶¹ The Claimants further note that, while Chevron and its subsidiaries are distinct and legally separate entities, the attachment order of the Lago Agrio Court treats all of Chevron’s subsidiaries as the same company. For this reason, the Claimants believe that the Respondent should be estopped from claiming that they cannot also claim damages for the subsidiary targets of the attachment order.³⁶²

233. Second, in the Claimants’ view, the fact that some of the adverse effects of the Lago Agrio Court’s attachment order occurred outside of Ecuador does not diminish the Respondent’s

³⁵⁸ Reply, paras. 398-399; Track II Award, para. 10.18.

³⁵⁹ Memorial, paras. 202-208.

³⁶⁰ Memorial, para. 203.

³⁶¹ Memorial, paras. 203-205; Reply, paras. 406-417; **C-279**, Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment, 11 May 1997, Art. I(1)(a)(ii); **CLA-605**, *Pope and Talbot Inc. v. Canada*, UNCITRAL, Award in respect of Damages, 31 March 2002, para. 80; **CLA-666**, *Eastern Sugar B.V. v. Czech Republic*, SCC Case No. 088/2004, Partial Award, 27 March 2007, para. 367.

³⁶² Memorial, para. 206; Reply, para. 417; Track II Award, paras. 7.111-7.112.

responsibility for them,³⁶³ especially when, as here, the Respondent “used its domestic jurisdiction to inflict a series of transnational damages upon the investor.”³⁶⁴ Relying on *S.D. Myers v. Canada*, the Claimants deny that international law imposes any particular geographical limitation with respect to the location of losses recoverable by an investor.³⁶⁵

234. Third, in respect of the Respondent’s argument that the Claimants are estopped from claiming damages incurred by Chevron’s subsidiaries because they prevailed in the relevant enforcement proceedings by relying on the principle of corporate separateness, the Claimants posit that it was the Respondent’s own judiciary that required it to raise the separateness defence, as the 15 October 2012 attachment order “illegally pierced the veil” of dozens of Chevron’s subsidiaries and affiliates.³⁶⁶ The Claimants further submit that corporate separateness does not mean that they cannot claim loss for the damages Chevron’s international subsidiaries suffered, as the expenses incurred by the subsidiaries were the result of the “corrupt orders” of the Ecuadorian judiciary.³⁶⁷

235. Finally, the Claimants submit that they are entitled to recover for their subsidiaries’ legal costs due to “Ecuador’s breach of the international-law duties of good faith, just as the Tribunal found in Track II”.³⁶⁸

2. The Respondent’s Position

236. The Respondent denies the proposition that the Claimants may under international law claim as damages losses suffered by third-country subsidiaries with separate legal personalities, such as Chevron’s Danish, Argentine, Brazilian or Canadian subsidiaries.³⁶⁹

³⁶³ Memorial, para. 207; Reply, paras. 413-414; Track II Award, para. 7.27.

³⁶⁴ Reply, para. 416.

³⁶⁵ Memorial, paras. 207-208; **CLA-463**, *S.D. Myers v. Canada*, Second Partial Award, 21 October 2002, paras. 117-118.

³⁶⁶ Reply, paras. 418-420.

³⁶⁷ Reply, para. 421.

³⁶⁸ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 77-78 (Bishop).

³⁶⁹ Counter-Memorial, paras. 306-308, 312-315; Rejoinder, paras. 479-481, 494-507; **RLA-778**, *Khan Resources v. Mongolia*, PCA Case No. 2011-09, Award on the Merits, 2 March 2015, para. 388; **RLA-747**, *Gemplus S.A. and others v. Mexico and Talsud S.A. v. Mexico*, ICSID Cases Nos. ARB(AF)/04/3 and ARB(AF)/04/4, Award, 16 June 2010, paras. 12-50; **RLA-811**, *South American Silver v. Bolivia*, PCA Case No. 2013-15, Award, 22 November 2018, para. 800.

In this connection, the Respondent rejects the Claimants’ argument that the *lex specialis* of the Treaty recognizes that damage to a wholly-owned subsidiary “causes indirect equivalent value loss to the parent” because the Treaty’s protections extend only to the Claimants’ in Ecuador.³⁷⁰ This proposition, in its view, is consistent with a bilateral investment treaty’s primary objective to attract foreign investment to a particular host State.³⁷¹ Similarly, the fact that the Lago Agrio Court’s attachment order permitted enforcement outside of Ecuador “does not move the needle”, since those non-U.S. subsidiaries are neither claimants in this proceeding nor the Claimants’ protected investment, meaning that the Tribunal lacks jurisdiction to adjudicate any losses they experienced.³⁷² The Respondent adds that only Chevron and TexPet have standing to assert damages in these proceedings.³⁷³

237. Even if international law permitted such recovery, in the Respondent’s submission, the Claimants have failed to prove that they actually suffered losses as a result of the legal fees and expenses incurred by Chevron’s subsidiaries.³⁷⁴ In particular, the Respondent observes that the Claimants have failed to provide “information on profitability, sales, debt or tax liability . . . that Chevron paid its subsidiaries’ invoices, or had to reimburse them for their expenses,”³⁷⁵ information which the Respondent claims “is easily accessible to them.”³⁷⁶ It adds that the Claimants have not proven who incurred and paid for the expenses indicated in the claimed invoices.³⁷⁷ The Respondent rejects as lacking

³⁷⁰ Counter-Memorial, para. 309; **C-279**, Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment, 11 May 1997, Art. I(1)(a), defining “investment” as “every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party”. *See also* Track II Award, para. 7.70; Third Interim Award, para. 4.15.

³⁷¹ Counter-Memorial, para. 311; Rejoinder, para. 486.

³⁷² Rejoinder, para. 485. *See also*, Track III Hearing Transcript, Day 2 (19 August 2022), p. 303 (Maidman).

³⁷³ Track III Hearing Transcript, Day 2 (19 August 2022), pp. 304-305 (Maidman).

³⁷⁴ Counter-Memorial, paras. 316-319; Rejoinder, paras. 482-483.

³⁷⁵ Counter-Memorial, paras. 319, 324; **CLA-659**, *Unión Fenosa Gas, S.A. v. Egypt*, ICSID Case No. ARB/14/4, Award, 31 August 2018, paras. 10.117-10.118, 10.120.

³⁷⁶ Counter-Memorial, para. 325.

³⁷⁷ Track III Hearing Transcript, Day 2 (19 August 2022), p. 301 (Maidman).

support Mr Kiran Sequeira’s expert testimony that a parent incurs 100% of its subsidiary’s loss.³⁷⁸

238. Similarly, the Respondent asserts that such claim should be dismissed on the basis of judicial estoppel, as it is inconsistent with the Claimants’ position in the relevant enforcement proceedings,³⁷⁹ where Chevron prevailed by relying on the separate legal personalities of its subsidiaries.³⁸⁰ It also rejects as unsupported the Claimants own argument that the Respondent is estopped from denying liability for harm caused to Chevron and its subsidiaries – and, even if such estoppel argument had merit, the Respondent considers that it could not create jurisdiction over the subsidiaries’ losses under the Treaty.³⁸¹

239. Lastly, the Respondent notes that as part of document production the Claimants produced multiple engagement letters between their subsidiaries and law firms (none of which represented the Claimants at all) without indicating who paid those bills.³⁸² To the extent that the Claimants chose to pay other company’s bills, the Respondent considers that such voluntary assumption would constitute a break in the chain of causation.³⁸³

D. FAILURE TO MITIGATE

1. Introduction

(a) The Respondent’s Position

240. According to the Respondent, the Claimants’ own conduct contributed to their increased or exacerbated costs, in breach of their duty to mitigate damages following the Treaty

³⁷⁸ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3629 (Leonetti).

³⁷⁹ Counter-Memorial, paras. 320, 322; Track II Award, para. 7.107; **CLA-435**, *Chevron v. Ecuador*, 638 F.3d at 389 n. 9, p. 15.

³⁸⁰ Counter-Memorial, para. 321.

³⁸¹ Rejoinder, paras. 487-492.

³⁸² Rejoinder, paras. 508-511.

³⁸³ Rejoinder, para. 512; **RLA-1001**, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Ecuador*, ICSID Case No. ARB/06/11, Decision on Annulment of the Award, 2 November 2015, para. 263; Track III Hearing Transcript, Day 2 (19 August 2022), p. 305 (Maidman).

breaches.³⁸⁴ Such instances of an alleged failure to mitigate include the Claimants’ failure to: (i) to recuse Judge Zambrano; (ii) post a bond to suspend the enforceability of the Lago Agrio Judgment; (iii) file an action under the Collusion Prosecution Act (the “CPA”); and (iv) refrain from initiating the RICO Litigation.³⁸⁵

241. In its Partial Award on Track III, the Tribunal decided as a preliminary question whether “the Tribunal’s prior rulings preclude Ecuador’s argument that Claimants failed to mitigate their damages by not pursuing local remedies under Ecuadorian law” (Question #4). The Tribunal answered this question in the negative, thus allowing the Respondent’s mitigation defence to proceed.³⁸⁶

242. In this respect, the Respondent highlights in its Rejoinder the Tribunal’s determination that the standard for exhaustion of local remedies is not the same as the standard for the duty to mitigate, as suggested by the Claimants.³⁸⁷

(b) The Claimants’ Position

243. Generally, the Claimants assert that they fully mitigated their damages by (*inter alia*) obtaining interim orders and awards from the Tribunal requiring the Respondent to prevent the Lago Agrio Judgment from becoming or remaining enforceable.³⁸⁸ They state that the Respondent could have stopped the Lago Agrio Judgment and the LAPs’ enforcement efforts, but to this day has not done so,³⁸⁹ in violation of the Tribunal’s Track II Award.³⁹⁰ Instead, the Claimants tried to mitigate their damages by (i) filing Section 1782 actions to obtain evidence to prevent enforcement of the Judgment; (ii) filing the RICO Litigation to thwart the risk of enforcement in the USA and elsewhere; (iii) filing the Gibraltar Proceedings to cut off enforcement funding; and (iv) preparing to defend

³⁸⁴ Counter-Memorial, para. 1167; **RLA-813**, *William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, para. 204.

³⁸⁵ Counter-Memorial, paras. 1167-1201.

³⁸⁶ Partial Award on Track III, paras. 178-184, 188(iv).

³⁸⁷ Rejoinder, paras. 577-579.

³⁸⁸ Reply, para. 422.

³⁸⁹ Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3383-3384 (Bishop).

³⁹⁰ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3391 (Bishop).

themselves against enforcement in numerous jurisdictions.³⁹¹ Regarding the sums disbursed, the Claimants reject the Respondent’s accusation that Chevron had a motive to overspend.³⁹²

244. In respect of the Respondent’s mitigation defence, the Claimants submit that (i) under international law they are not required to pursue remedies that are ancillary, discretionary or futile;³⁹³ (ii) there is no requirement to exhaust local remedies in the mitigation context under the Treaty or international law;³⁹⁴ and (iii) the Tribunal’s reasons for rejecting Ecuador’s exhaustion arguments apply equally to mitigation – and, relatedly, pursuing any of the Respondent’s proposed remedies, in their view, “would have had the opposite effect of mitigation”.³⁹⁵ The Claimants further assert that the Respondent would have the Claimants mitigate, not in their desired manner (which worked), but rather in Ecuador’s preferred manner (which would not have worked).³⁹⁶

2. Recusal of Judge Zambrano

(a) *The Respondent’s Position*

245. The Respondent points to evidence on record indicating, in its view, that the Claimants’ legal representatives had knowledge in real time about Judge Zambrano’s corruption, including affidavits submitted by Chevron’s lead trial lawyers in the RICO Litigation, the fact that the RICO action was filed two weeks before the Lago Agrio Judgment was issued, and the Claimants’ publicizing of their ghostwriting allegations within hours after the Judgment issued.³⁹⁷ According to the Respondent, as part of its own strategy, Chevron chose to allow the ghostwriting to take place.³⁹⁸ In its view, the Claimants had several

³⁹¹ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 101-104 (Coriell).

³⁹² Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3389-3391 (Bishop).

³⁹³ Reply, paras. 430-433; **RLA-813**, *William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, paras. 206-214.

³⁹⁴ Reply, paras. 434-436; **RLA-813**, *William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, para. 213.

³⁹⁵ Reply, paras. 437-439; Track II Award, paras. 7.123, 7.132-7.135, 7.145, 7.154; Partial Award on Track III, para. 183.

³⁹⁶ Track III Hearing Transcript, Day 1 (18 August 2022), p. 123 (Coriell).

³⁹⁷ Counter-Memorial, paras. 1169-1177; Rejoinder, paras. 582-596.

³⁹⁸ Counter-Memorial, para. 1171.

means at their disposal to try to stop Judge Zambrano from carrying out what they believed to be his scheme and thus avert their alleged damages in their entirety, such as filing a complaint before the Judicial Council of Ecuador to remove Judge Zambrano or moving to recuse him on the basis of alleged corruption.³⁹⁹

(b) The Claimants’ Position

246. The Claimants assert that the Respondent, in arguing that the Claimants should have recused Judge Zambrano, “entirely neglects the context of the Ecuadorian environment in which Chevron found itself in 2009 and 2010 and grossly misrepresents the underlying facts”.⁴⁰⁰ According to the Claimants, any attempt to recuse Judge Zambrano would have been futile and would have only resulted in sanctions for Chevron’s Ecuadorian counsel.⁴⁰¹ To put these arguments into context, the Claimants recall instances of “public and government-sponsored animosity against Chevron” starting in 2009,⁴⁰² as well as instances of Ecuadorian judges as well as the Prosecutor General “turn[ing] a blind eye towards both the evidence Chevron submitted and its requests for a meaningful investigation in Ecuador.”⁴⁰³ In particular, the Claimants assert that the context omitted by the Respondent includes:

(i) the lack of objective evidence of Judge Zambrano’s overtures towards Chevron in 2009; (ii) the public pressure campaign against Chevron and its attorneys; (iii) not knowing that Judge Zambrano would assume jurisdiction over the case after Judge Ordóñez’s recusal; (iv) the lack of objective evidence in 2010 of Judge Zambrano’s agreement with the LAPs to enter a judgment against Chevron (much less of a ghostwriting and bribery scheme); (v) the fact that the ghostwritten Lago Agrio Judgment had not been issued; (vi) the lack of success in getting the Ecuadorian judiciary to investigate prior instances of judicial misconduct; and (vii) the fear of retaliation against Chevron’s attorneys. Against this background, Claimants’ decision not to attempt to recuse Judge Zambrano was reasonable.⁴⁰⁴

³⁹⁹ Counter-Memorial, paras. 1176-1177. *See also* Track III Hearing Transcript, Day 2 (19 August 2022), pp. 384-390 (Schwartz).

⁴⁰⁰ Reply, para. 463.

⁴⁰¹ Reply, paras. 463, 476.

⁴⁰² Reply, paras. 467-470.

⁴⁰³ Reply, paras. 471-475; Track II Award, paras. 8.27, 8.34, 8.38, 8.59; Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3384-3386 (Bishop).

⁴⁰⁴ Reply, para. 478.

247. The Claimants cite Mr Veiga’s assertion that recusing Judge Zambrano would not necessarily have brought an honest just to the case, as they state that at least four presiding judges were dishonest.⁴⁰⁵

248. Lastly, the Claimants request the Tribunal (i) to decline to undertake “a multitude of second-guesses made years [after the fact] applying an absolute standard to the [c]laimant’s conduct with the benefit of hindsight”;⁴⁰⁶ and (ii) not to allow the Respondent to “profit from its own wrongdoing by pointing to Chevron’s decisions taken in difficult circumstances created by Ecuador itself.”⁴⁰⁷

3. Posting of a Bond

(a) The Respondent’s Position

249. The Respondent submits that the Claimants could have delayed the Lago Agrio Court’s certification of the Lago Agrio Judgment for enforcement by posting a bond, as allowed under the Ecuadorian Cassation Appeal Act.⁴⁰⁸ While acknowledging that the Tribunal accepted the Claimants’ contrary position for the purposes of exhaustion of local remedies in its Track II Award,⁴⁰⁹ the Respondent asserts that the Tribunal did not take into account “all the evidence on record relating to potential amounts that Chevron would have to post”, which, in its submission, could have been as low as 0.016 per cent of the lower instance court’s USD 18.6 billion judgment (approximately USD 3 million).⁴¹⁰ As a result, the Respondent states, the LAPs would not have filed recognition proceedings in Canada, Argentina or Brazil until the second half of 2018.⁴¹¹ Whether the proceedings

⁴⁰⁵ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3388 (Bishop).

⁴⁰⁶ Reply, para. 482 (brackets in original); **CLA-659**, *Unión Fenosa Gas, S.A. v. Egypt*, ICSID Case No. ARB/14/4, Award, 31 August 2018, para. 10.132.

⁴⁰⁷ Reply, para. 483.

⁴⁰⁸ Counter-Memorial, paras. 1178-1183; **C-316**, Law on Cassation Arts. 3, 5, 8, 10, and 11, Final Provisions and Sources (*update*), Arts. 10, 11.

⁴⁰⁹ Track II Award, paras. 7.125-7.135.

⁴¹⁰ Counter-Memorial, paras. 1179-1180; Rejoinder, paras. 614-615.

⁴¹¹ Counter-Memorial, paras. 1181-1183.

were “laden with procedural irregularities”, as the Claimants argue, does not, in the Respondent’s submission, excuse their not posting a bond.⁴¹²

(b) The Claimants’ Position

250. The Claimants consider that their decision not to post a bond was reasonable in the circumstances.⁴¹³ They recall in this respect the Tribunal’s findings in the Track II Award that Chevron acted reasonably by not posting a bond because (i) the company was entitled to rely on the Tribunal’s Awards on Interim Measures aimed at ensuring that the Lago Agrio Judgment would not become enforceable;⁴¹⁴ and (ii) in the circumstances prevailing at the time, it would not have been reasonable to require the Claimants to post a bond of the required size (between USD 180 million and USD 14.6 billion) so as to suspend enforcement.⁴¹⁵ Similarly, the Claimants suggest that if they had posted a bond, the Respondent would now be liable also for the amount of the bond, since they would not have satisfied the Judgment upon completion of the appeals process.⁴¹⁶ The Claimants also deny that they had a duty under international law to post “costly financial security” to mitigate damages.⁴¹⁷

4. Collusion Prosecution Act

(a) The Respondent’s Position

251. According to the Respondent, the remedies available to the Claimants under the CPA, had they elected to file an action, would have included full nullification of the Lago Agrio Judgment, as well as damages, imprisonment, and disciplinary proceedings against those involved (including both the lawyers and the judges).⁴¹⁸ The Respondent recalls the Tribunal’s finding in its Track II Award that Chevron had the possibility to pursue its

⁴¹² Rejoinder, para. 616.

⁴¹³ Reply, paras. 440-448.

⁴¹⁴ Reply, para. 441; Track II Award, para. 7.132; First Interim Award, p. 16; Second Interim Award, para. 3.

⁴¹⁵ Reply, paras. 443, 446.

⁴¹⁶ Reply, paras. 444-445; Track II Award, paras. 7.134-7.135.

⁴¹⁷ Reply, para. 445; **CLA-917**, *Cairn Energy PLC and Cairn UK Holdings Limited v. India*, PCA Case No. 2016-07, Final Award, 21 December 2020, para. 1894.

⁴¹⁸ Counter-Memorial, paras. 1184-1185; Rejoinder, paras. 597-598; **RLA-493**, Collusion Prosecution Act, Arts. 4-7.

claims under the CPA, which, while not effective to stop the Judgment from becoming enforceable due to the duration of CPA proceedings, might have still ended the status of enforceability even prior to the date when the LAPs sought its first enforcement in Canada, on 30 May 2012,⁴¹⁹ and would have entailed only a small increase in the Claimants’ alleged fees and expenses.⁴²⁰ The Respondent asserts that the Claimants have recognised that the CPA was a potentially viable means of mitigation.⁴²¹ Instead, the Respondent notes, the Claimants elected to forgo this opportunity and institute the RICO Litigation in the United States, as further discussed below.⁴²²

(b) The Claimants’ Position

252. The Claimants also consider reasonable their decision not to file a case under the CPA “because such action would not have been an appropriate and timely remedy”,⁴²³ as also found by the Tribunal in its Track II Award.⁴²⁴ It was not appropriate, they say, because the Respondent had a duty to investigate the corruption within the court itself and “the State cannot leave remedial action to the efforts of private litigants.”⁴²⁵ Further, in the Claimants’ submission, no timely relief would have been granted because a CPA case is subject to the *ultima ratio* condition (meaning that a CPA claim may only be filed when there is no other mechanism to resolve the matter), because during the pendency of a CPA action the Lago Agrio Judgment would have remained enforceable and because no Ecuadorian court would have granted such discretionary relief to Chevron in 2012.⁴²⁶

5. RICO Litigation

(a) The Respondent’s Position

253. In the Respondent’s view, the Claimants expended enormous resources in the RICO Litigation that did not advance their enforcement-resisting strategy, instead of resisting

⁴¹⁹ Counter-Memorial, paras. 1188-1189; Rejoinder, paras. 606, 608-610.

⁴²⁰ Rejoinder, para. 602.

⁴²¹ Track III Hearing Transcript, Day 2 (19 August 2022), pp. 390-394 (Schwartz).

⁴²² Counter-Memorial, para. 1190.

⁴²³ Reply, paras. 449-461.

⁴²⁴ Reply, paras. 451-452; Track II Award, paras. 7.145-7.148.

⁴²⁵ Reply, para. 452; Track II Award, para. 7.145.

⁴²⁶ Reply, paras. 453-458; Sixth Coronel Jones Expert Report, para. 29; Track II Award, para. 8.28.

enforcement defensively, a “far more effective and less expensive option”.⁴²⁷ Relying on the expert opinion of Professor S.I. Strong, the Respondent asserts that (i) there was little chance *ex-ante* that non-US courts would find a RICO judgment a persuasive authority; (ii) the relief obtained through the judgment (a constructive trust and an injunction against profiting from the Lago Agrio Judgment) “would likely be difficult to enforce outside the United States”; and (iii) within the USA, Chevron would have better been served by waiting to defend against an enforcement action.⁴²⁸

(b) The Claimants’ Position

254. The Claimants’ arguments regarding mitigation as regards the RICO Litigation are addressed in Section VIII.G below.

E. FEES ALLEGEDLY INCURRED IN OTHER PROCEEDINGS

1. The Claimants’ Position

(a) Introduction

255. According to the Claimants, legal expenses incurred in other proceedings are recoverable as damages in this Arbitration to the extent that they are uncollectable in those proceedings, as confirmed in investor-State arbitration practice, commercial arbitration, and even U.S. law.⁴²⁹ The Claimants confirm that they “do not seek and expressly disclaim any double recovery” arising from the damages they might be awarded in connection with those proceedings, while noting that, in any event, such damages are owed due to the Respondent’s Treaty breaches and were not actually litigated or decided in the other cases.⁴³⁰

⁴²⁷ Counter-Memorial, paras. 1191-1192, 1194-1200.

⁴²⁸ Counter-Memorial, paras. 1192-1194; **RE-44**, First Strong Expert Report, paras. 20-23, 81-83, 86, 89.

⁴²⁹ Reply, paras. 486-502; **CLA-605**, *Pope and Talbot Inc. v. Canada*, UNCITRAL, Award in respect of Damages, 31 March 2002, para. 85; **CLA-652**, Sergey Ripinsky and Kevin Williams, DAMAGES IN INTERNATIONAL INVESTMENT LAW (2016), p. 302; **CLA-688**, Alwyn.V. Freeman, THE INTERNATIONAL RESPONSIBILITY OF STATES FOR DENIAL OF JUSTICE (1970), pp. 592-593; **CLA-907**, Final Award in ICC Case No. 14046, published in Albert Jan van den Berg (ed), Yearbook Commercial Arbitration, Volume XXXV, 2010, p. 245; Miller Expert Report, para. 35.

⁴³⁰ Reply, para. 501.

256. Further, the Claimants reject as faulty the Respondent’s proposition that “in cases where Chevron has made a claim for an attorney fee award, it should be estopped from seeking larger damages in this Tribunal”.⁴³¹ Relying on the expert opinion of Professor Geoffrey Miller, the Claimants note that here “Chevron has a low prospect of being paid by some of the parties who have been, or might be, ordered to compensate Chevron for its costs.”⁴³²
257. On the basis that the Respondent is “conflating legal orders”, the Claimants further reject the proposition that this Tribunal is bound by domestic laws or the *res judicata* effect domestic court decisions on legal fees.⁴³³ The Claimants rely on past decisions of investor-State tribunals rejecting reliance on domestic law to reduce damages or interest under international law.⁴³⁴ Similarly, the Claimants argue that *res judicata* does not apply between different legal orders.⁴³⁵
258. The Claimants’ arguments in respect of each ancillary proceeding are addressed *seriatim*.

(b) RICO Litigation

259. As further discussed in Section VIII.G below, the Claimants claim the legal expenses incurred in the RICO Litigation as recoverable damages under international law. For this reason, the Claimants state that cost issues before U.S. courts under the RICO statute have no bearing on the assessment of damages in this case under international law.⁴³⁶ In the alternative, the Claimants argue that they mitigated their damages by not pursuing the damages they seek in this Arbitration before U.S. courts against defendants “who were all individuals, starting with Mr Donziger and the LAPs”, meaning that none of them

⁴³¹ Reply, para. 502.

⁴³² Reply, para. 502; Miller Expert Report, paras. 35-36, 41-42.

⁴³³ Reply, paras. 503-508.

⁴³⁴ Reply, paras. 504-507; **CLA-242**, *Middle East Cement Shipping and Handling Co. S.A. v. Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002, para. 174; **RLA-851**, *Wena Hotels Ltd. v. Egypt*, ICSID Case No. ARB/98/4, Decision (Annulment Proceeding), 5 February 2002, para. 53.

⁴³⁵ Reply, para. 507; **CLA-568**, *Helnan International Hotels A/S v. Egypt*, ICSID Case No. ARB/05/19, Award, 3 July 2008, paras. 123-125; **RLA-81**, *Industria Nacional de Alimentos, S.A. and Indalsa Perú, S.A. (formerly Empresas Lucchetti, S.A. and Lucchetti Perú, S.A.) v. Peru*, ICSID Case No. ARB/03/4, Decision on Annulment, 5 September 2007, para. 87.

⁴³⁶ Reply, para. 523.

would have the assets necessary to honour a multi-hundred million dollar cost order.⁴³⁷ Relying on the testimony of Mr Peter Seley, the Claimants explain that their RICO fee application sought only USD 32 million “in the interest of streamlining the Court’s consideration of [Chevron’s] application.”⁴³⁸

(c) *Enforcement Proceedings*

260. Flowing from their position that *res judicata* cannot apply as between legal orders, the Claimants posit that the question before this Tribunal is whether the damages they seek for the legal expenses incurred in the Argentina and Canada Enforcement Proceedings and the Brazil Recognition Proceedings “qualify as recoverable damages under international law”, which they claim they do.⁴³⁹ In connection with such proceedings, the Claimants reiterate that the analysis and the standard to be applied by those national courts for awarding legal costs and by this Tribunal under international law are different (especially within the context of the Argentina Enforcement Proceedings, where Chevron did not seek a cost order).⁴⁴⁰ The Claimants confirm that any costs that have been collected have been deducted from the amounts claimed in this Arbitration, meaning that no question of estoppel arises.⁴⁴¹
261. In the alternative, to the extent that the Claimants did not pursue the recovery of their legal fees and expenses at the domestic level, the Claimants state that they did so to mitigate damages: they assert that any action to recover fees against the LAPs would have been futile because they did not have assets in those jurisdictions and sought to proceed in those countries *in forma pauperis*.⁴⁴²

(d) *Gibraltar Proceedings*

262. As further explained in Section VIII.I below, the Claimants state that their legal expenses in the Gibraltar Proceedings qualify as recoverable damages because they were necessary

⁴³⁷ Reply, para. 525.

⁴³⁸ Reply, para. 525; Seley Witness Statement, para. 80.

⁴³⁹ Reply, paras. 513-517. *See also* Sections VIII.C, VIII.D, VIII.E below.

⁴⁴⁰ Reply, paras. 513-514.

⁴⁴¹ Reply, para. 515.

⁴⁴² Reply, para. 516.

to mitigate the injury “by targeting third-party funders and funding vehicles that were indispensable to fund the Lago Agrio Litigation and the LAPs’ efforts to enforce the fraudulent Lago Agrio Judgment.”⁴⁴³ They deny the Respondent’s suggestion that Chevron is violating the terms of the Gibraltar court orders awarding costs or confirming the settlement of costs issues by consent, as there is no *res judicata* effect of those court orders in this Arbitration and the settlements in question did not include Ecuador.⁴⁴⁴ The Claimants further note that they have been unable to recover the costs they were awarded in the *Amazonia* Action, meaning that such award raises no issues of double recovery.⁴⁴⁵

(e) *Section 1782 Proceedings*

263. As further elaborated in Section VIII.H below, the Claimants also posit that the legal fees and expenses they incurred in the Section 1782 Proceedings qualify as well as recoverable damages, as “they proved critical in exposing the fraud against Chevron and were necessitated by Ecuador’s internationally wrongful acts.”⁴⁴⁶ Rebutting the Respondent’s argument that Chevron “promised not to seek to recover” in this Arbitration the legal fees and expenses it incurred in connection with the Section 1782 Proceedings, the Claimants refer to a Joint Stipulation filed by the parties in the Weinberg 1782 as evidence that they never undertook before U.S. courts that they would not seek their legal expenses against Ecuador as damages in this Arbitration.⁴⁴⁷

264. Similarly, the Claimants request an award for the legal fees and expenses incurred for Gibson Dunn and Jones Day’s work in developing evidence for the purpose of this Arbitration through the Section 1782 Proceedings and the RICO Litigation.⁴⁴⁸

(f) *Dutch Set-Aside Proceedings*

265. The Claimants further request reimbursement as incidental expenses of the legal fees incurred in two set-aside proceedings in the Netherlands, namely: (i) the Respondent’s

⁴⁴³ Reply, paras. 518-521; Kobre Witness Statement, para. 14.

⁴⁴⁴ Reply, para. 519.

⁴⁴⁵ Reply, para. 519. *See* paras. 1870 *ff* for further information on the *Amazonia* Action.

⁴⁴⁶ Reply, para. 527.

⁴⁴⁷ Reply, para. 527.

⁴⁴⁸ Reply, paras. 531-538.

attempt to set aside the First, Second, Third and Fourth Interim Awards, all of which were rejected as of 12 April 2019; and (ii) the Respondent’s request for annulment of the Track II Award.⁴⁴⁹ They confirm, in this regard, that they are not conflating the set-aside proceedings for this Arbitration with the *Chevron v. Ecuador I* set-aside proceedings.⁴⁵⁰

266. In the Claimants’ view, the Respondent’s litigation in the Netherlands was “frivolous”, largely consisting in “recycl[ing] and repackag[ing]” the jurisdictional arguments made before this Tribunal and in the preceding *Chevron v. Ecuador I* arbitration, which the Claimants characterize as dilatory litigation tactics for the purpose of hindering compliance.⁴⁵¹ The Claimants posit that their legal fees and expenses incurred in connection with those proceedings were reasonable, as well as the foreseeable consequence of the Respondent’s breaches and the subsequent defence of the Tribunal’s awards by the Claimants in set-aside proceedings.⁴⁵²

267. Lastly, noting that they do not seek the double recovery of any amounts, the Claimants withdraw from their damages claim the EUR 13,484.34 that they were granted by the Dutch courts in the Interim Awards set-aside proceedings.⁴⁵³

2. The Respondent’s Position

(a) Introduction

268. The Respondent submits that the Claimants are not entitled to legal fees and expenses incurred in ancillary proceedings in which they could have recovered legal expenses;⁴⁵⁴ in its view, the more appropriate forum to seek legal expenses is the forum in which those expenses were incurred.⁴⁵⁵ The Respondent also requests that the Claimants not be

⁴⁴⁹ Reply, paras. 539-542. See Section VIII.L below.

⁴⁵⁰ Memorial, Appendix 10; Reply, paras. 554-558.

⁴⁵¹ Reply, paras. 545-553.

⁴⁵² Reply, para. 559.

⁴⁵³ Reply, paras. 560-563.

⁴⁵⁴ Counter-Memorial, paras. 327-359; Rejoinder, paras. 517-524; **RLA-774**, *British Caribbean Bank Limited v. Belize*, PCA Case No. 2010-18, Award, 19 December 2014, paras. 110-114, 326; **CLA-219**, *Petrobart Limited v. Kyrgyzstan*, SCC Case No. 126/2003, Award, 29 March 2005, p. 6.

⁴⁵⁵ Counter-Memorial, para. 327.

allowed to recover certain fees and expenses that they promised not to seek to recover, as further detailed below.⁴⁵⁶

269. Additionally, the Respondent requests the Tribunal to be “mindful” of the fees already recovered by the Claimants in other proceedings so as to prevent them from seeking any double recovery. For instance, and as further elaborated below the Respondent alleges that the Claimants have recovered legal expenses before the Gibraltar, Canadian and Dutch Courts, which should be excluded from their damages claim in this Arbitration.⁴⁵⁷ With the exception of those proceedings, the Respondent asserts that the Claimants have failed to identify which fees they and their subsidiaries have, and have not, requested in other proceedings, as well as the fees they have already recovered.⁴⁵⁸

270. In response to the Claimants’ argument that it is conflating legal orders, the Respondent clarifies that it wishes the Tribunal to treat the determinations on costs of such domestic courts as persuasive when establishing whether such costs were reasonable and necessary under international law.⁴⁵⁹

271. The Respondent’s arguments in respect of each ancillary proceeding are addressed *seriatim*.

(b) RICO Litigation

272. The Respondent recalls the Order received by Chevron in the RICO Litigation that it “shall recover of Donziger and the LAP Representatives, and each of them, jointly and severally, the costs of this action.”⁴⁶⁰ Chevron thereafter sought an award of USD 32,334,584 for attorney’s fees that it claimed were “reasonable and necessary”,⁴⁶¹ followed by a supplementary request for an additional USD 3,433,384.30 after the

⁴⁵⁶ Counter-Memorial, paras. 354-357; Rejoinder, paras. 528-532.

⁴⁵⁷ Rejoinder, paras. 534-538.

⁴⁵⁸ Counter-Memorial, para. 358; Rejoinder, para. 533.

⁴⁵⁹ Rejoinder, paras. 525-527.

⁴⁶⁰ Counter-Memorial, para. 337; **C-2134**, Judgment as to Donziger Defendants and Defendants Camacho and Piguaje, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, para. 9; Track II Award, para. 4.483.

⁴⁶¹ Counter-Memorial, para. 338; **R-1603**, *Chevron Corp. v. Steven Donziger*, SDNY. Case 1:11-cv-00691-LAK-RWL, D.E. 1890 Memorandum of Law Applications for Attorneys’ Fees, 18 March 2014.

Claimants’ Track III Memorial was filed.⁴⁶² The Respondent observes that such figures represent a total of 13% of the approximately USD 267 million of RICO fees that the Claimants claim in this proceeding.⁴⁶³ In the Respondent’s view, “Chevron’s decision to request such a drastically reduced sum from the RICO court is compelling evidence that Chevron did not believe that it could recover a greater amount under the ‘reasonable and necessary’ standard that the RICO court must apply.”⁴⁶⁴

(c) *Enforcement Proceedings*

273. Generally, the Respondent asserts that the Claimants should not recover any legal expenses incurred in connection with the enforcement proceedings in Canada, Brazil, and Argentina, as legal expenses in those jurisdictions cannot be claimed as damages; rather, it is for the courts to determine the scope of an award on costs to the extent that such costs were reasonable and necessary:

(i) *Canada*: According to the Respondent, in Canada, the Claimants or their subsidiaries “already recovered what they could reasonably recover”⁴⁶⁵ – legal costs “were dealt with at each step of the proceedings”, as foreseen under Ontario law, and were agreed upon between the parties or fixed by the Canadian courts at the appellate level.⁴⁶⁶ The Claimants or their subsidiaries were awarded approximately CAD 375,000, as opposed to the approximately USD 40 million they seek in this Arbitration in relation to the Canada Enforcement Proceedings.⁴⁶⁷ Relying on the expert opinion of Professor Erik Knutsen, the Respondent argues that the matter of costs in this litigation is closed, meaning that re-opening it would be contrary to the principle of *res judicata*.⁴⁶⁸

⁴⁶² Counter-Memorial, para. 338; **R-1610**, *Chevron Corp. v. Steven Donziger*, SDNY. Case 1:11-cv-00691-LAK-RWL, D.E. 2244 Chevron Memorandum of Law ISO Motion for Attorneys’ Fees, 18 June 2019.

⁴⁶³ Counter-Memorial, para. 338.

⁴⁶⁴ Counter-Memorial, paras. 339-340.

⁴⁶⁵ Counter-Memorial, para. 341.

⁴⁶⁶ Counter-Memorial, para. 341, **RE-39**, First Knutsen Expert Report, pp. 20, 26-27.

⁴⁶⁷ Counter-Memorial, para. 342; **RE-39**, First Knutsen Expert Report, p. 25.

⁴⁶⁸ Counter-Memorial, paras. 343-344; **RE-39**, First Knutsen Expert Report, p. 20.

(ii) *Brazil*: Similarly, the Respondent explains that in Brazil there exists a mechanism for the winning party’s attorneys to recover a success fee directly from the losing party, with such “court-mandated fee” (*sucumbência*) being established by the court.⁴⁶⁹ On this basis, the Respondent says, the Brazilian Superior Court of Justice awarded the attorneys approximately USD 30,000, as opposed to the approximately USD 21 million that the Claimants demand for the Brazil Recognition Proceedings.⁴⁷⁰

(iii) *Argentina*: According to the Respondent, the Claimants’ subsidiaries’ lawyers had the opportunity to seek costs in the first of the Argentina Enforcement Proceedings (concerning the attachment of certain assets), which they won, but they declined to do so.⁴⁷¹ In the expert opinion of Dr García Pullés, the Claimants are now precluded from seeking costs in that litigation, as the statute of limitations has expired, but they may still do so in the separate proceedings concerning the recognition of the Lago Agrio Judgment in Argentina.⁴⁷² In circumstances in which the reasonable amount of recoverable costs should have been decided or can still be decided, the Respondent believes that the Claimants should not be able to recover those same costs in this Arbitration.⁴⁷³

(d) *Gibraltar Proceedings*

274. Noting that Ecuador was not a party to the Gibraltar Proceedings, the Respondent posits that the Claimants should not be able to recover any of their Gibraltar expenses, as they already received significant cost awards from the courts presiding over the *DeLeon* and *Amazonia* Actions – respectively, an award on costs for an amount yet to be determined in *DeLeon* and GBP 17,500 in *Amazonia*, where the court also awarded Chevron certain of its attorneys’ fees incurred in the RICO Litigation in the amount of

⁴⁶⁹ Counter-Memorial, para. 346, **RE-37**, First Souza Godoy Expert Report, paras. 51-52.

⁴⁷⁰ Counter-Memorial, para. 347.

⁴⁷¹ Counter-Memorial, paras. 348-349; **RE-38**, First García Pullés Expert Report, p. 43.

⁴⁷² Counter-Memorial, para. 349; **RE-38**, First García Pullés Expert Report, pp. 11, 35.

⁴⁷³ Counter-Memorial, para. 350.

USD 28,035,219.37.⁴⁷⁴ Similarly, the Respondent observes that the Claimants also settled many of the costs issues in the Gibraltar Proceedings, meaning that it violates the court orders adopting those stipulations by requesting such costs in this Arbitration.⁴⁷⁵

(e) *Section 1782 Proceedings*

275. The Respondent observes that in some of the Section 1782 actions, such as Kohn and MCSquared, Chevron stipulated that each party would bear its own fees and costs for the respective proceedings, and the courts approved such stipulations by entering them as court orders.⁴⁷⁶ Thus, the Respondent requests that the Tribunal decline to award those same fees and costs to the Claimants, as doing so would be in breach of the relevant court orders.⁴⁷⁷

(f) *Dutch Set-Aside Proceedings*

276. According to the Respondent, the Dutch courts also adjudicated all legal expense issues between Chevron and Ecuador based on their own fixed remuneration fee system, pursuant to which the Respondent has already been ordered to pay the Claimants such amounts.⁴⁷⁸ The Respondent considers the Claimants’ claim for set-aside costs as an unprecedented “attack on fundamental principles of international arbitration”, especially when, as here, no assertions were made that the initiation of the set-aside proceedings was abusive or had improper purposes.⁴⁷⁹

⁴⁷⁴ Counter-Memorial, para. 351. *See* paras. 1861 *ff* and 1870 *ff* for further information on the *DeLeon* and *Amazonia* Actions.

⁴⁷⁵ Counter-Memorial, paras. 356-357.

⁴⁷⁶ Counter-Memorial, para. 355; **R-1605**, *In re Application of Chevron Corporation*, E.D. Pa. Case 2:10-mc-00208-JD, D.E. 86 Order of Dismissal, 9 February 2015; **R-1606**, *Chevron Corp. v. MCSquared PR, Inc.*, SDNY. Case 1:14-mc-00392-LAK, D.E. 47 Stipulation of Dismissal, 17 August 2017.

⁴⁷⁷ Counter-Memorial, paras. 355, 357.

⁴⁷⁸ Counter-Memorial, para. 353; **RE-47**, First Luycks Expert Report, paras. 4.4.1-4.4.2.

⁴⁷⁹ Rejoinder, paras. 539-547.

F. TAX IMPLICATIONS

1. The Respondent’s Position

277. The Respondent submits that the Claimants’ damages claim fails to account for certain “tax implications”.⁴⁸⁰ First, according to the Respondent, the Claimants’ alleged damages calculations must, but fail to, account for tax savings they incurred by deducting from their corporate income taxes the legal expenses they now claim.⁴⁸¹ Second, the Respondent asserts that the corporate tax rate that Claimants would pay on a potential award would be lower than the corporate tax rate at the time that they incurred the legal expenses in question; therefore, they “would receive a windfall if they were awarded interest now without adjusting for the lower tax rate environment.”⁴⁸²
278. Regarding the first point, the Respondent emphasizes that international law does not allow recovery beyond actual loss.⁴⁸³ The Respondent underlines that the Claimants admit to deducting the legal fees they claim as damages at the U.S. marginal tax rate for each year allegedly incurred.⁴⁸⁴ Consequently, the Respondent states, the Claimants did not incur the full cost they seek to recover, and awarding their claimed fees without accounting for tax savings would unjustly enrich them.⁴⁸⁵ The Respondent considers the Claimants’ authorities cited to challenge this proposition inapposite,⁴⁸⁶ and considers that the award in *Chevron v. Ecuador I* supports its position.⁴⁸⁷
279. As for the second point, the Respondent contends that granting interest on the amounts that the Claimants saved in taxes would constitute “an impermissible windfall”, as

⁴⁸⁰ Counter-Memorial, para. 1306.

⁴⁸¹ Counter-Memorial, para. 1306.

⁴⁸² Counter-Memorial, para. 1307; Rejoinder, para. 548; **RE-42**, First Flores Expert Report, para. 74 (The U.S. corporate income tax rate decreased from 35% (2003-2018) to 21% (2018 onwards)).

⁴⁸³ Rejoinder, paras. 548, 557-558; **RLA-430**, *Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries*, p. 105; **RLA-702**, ILC, International Responsibility: Sixth Report by F.V. García Amador, Special Rapporteur, UN Doc. A/CN.4/134 and Add.1, 26 January 1961, para. 178.

⁴⁸⁴ Rejoinder, para. 548.

⁴⁸⁵ Rejoinder, para. 549.

⁴⁸⁶ Rejoinder, paras. 558-559.

⁴⁸⁷ Rejoinder, para. 560.

Claimants maintained use of the funds saved.⁴⁸⁸ The Respondent rejects the Claimants’ challenge that the corporate tax rate on the date they collect on the Award is unknown, and submit that the Tribunal, in any event, could state in the Award that “any amount owed by Ecuador must be adjusted to the extent that the tax rate has changed”.⁴⁸⁹

280. The Respondent adds that the “Claimants seek to unfairly take advantage of the decrease in the U.S. corporate tax rate that occurred in 2018.”⁴⁹⁰ Until that change, the Claimants were able to reduce their taxes by 35% of their claimed fees and expenses; now, the Respondent submits, the Claimants will only pay tax on a possible award at 21%, profiting the 14% difference.⁴⁹¹

2. The Claimants’ Position

281. The Claimants submit that the Respondent’s arguments on tax implications are speculative in that Ecuador assumes that the tax rates will not change before the Claimants collect on the Award on an unknown future date.⁴⁹² The Claimants add that the Respondent’s argument is legally incorrect, as “[i]nternational jurisprudence has consistently held that the tax consequences of the Tribunal’s award in the investor’s home country are irrelevant for purposes of determining the amount of compensation owed, and it is improper for the tribunals to make such determinations.”⁴⁹³ The Claimants note that the Respondent cites no authority to the contrary.⁴⁹⁴
282. In addition, the Claimants explain that Ecuador’s argument is distinct from scenarios in which tribunals subtract taxes that would have been owed to the respondent government

⁴⁸⁸ Rejoinder, paras. 551, 561.

⁴⁸⁹ Rejoinder, para. 564.

⁴⁹⁰ Rejoinder, para. 552.

⁴⁹¹ Rejoinder, para. 552.

⁴⁹² Reply, paras. 568-572; Second Sequeira Expert Report, para. 117.

⁴⁹³ Reply, paras. 573-580; **CLA-240**, *Ceskoslovenska Obchodni Banka, A.S. v. Slovakia*, ICSID Case No. ARB/97/4, Award, 29 December 2004, para. 367; **CLA-766**, *Les Laboratoires Servier, S.A.A., Biofarma, S.A.S., Arts et Techniques du Progres S.A.S. v. Poland*, PCA Case No. 2010-12, Final Award, 14 February 2012, para. 666; **RLA-760**, *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum, 22 May 2012, para. 485; **RLA-813**, *William Ralph Clayton, Bilcon of Delaware, Inc. and others v. Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, para. 313.

⁴⁹⁴ Reply, paras. 575, 587.

in a but-for scenario.⁴⁹⁵ The Claimants note that such was the case in *Chevron v. Ecuador I*, in which the Claimants owed tax liabilities to Ecuador (as opposed to the U.S. or California) which would have been due in the but-for scenario.⁴⁹⁶ They further add that the *Chevron v. Ecuador I* tribunal stated that taxes only fall within the ambit of the tribunal’s damages assessment where they can be deducted with certainty, and may be accounted for when there is a provision in an agreement or an established practice.⁴⁹⁷ In the Claimants’ view, none of these criteria is satisfied here.⁴⁹⁸

G. EVIDENCE OF LEGAL FEES AND EXPENSES

1. Introduction

283. *Evidence of Loss accompanying the Memorial on Damages*: As evidence that the Claimants incurred, documented and paid the legal fees and expenses they seek in Track III, the Claimants provided several witness statements and an expert report together with their Memorial on Damages:

(i) Ms Colleen Kent, Senior Business Analyst at Chevron, describes Chevron’s billing procedures and systems as concerns the relevant Ecuador-related costs. She explains:

Most invoices are submitted electronically from outside law firms and other vendors through the “Collaborati” e-billing software which transfers the invoice to the “TeamConnect” software used internally at Chevron for invoice review. . .

Collaborati will reject an invoice outright (and not even migrate it to TeamConnect) if the invoice contains incorrect information, such as unapproved timekeepers, unapproved billing rates, etc. . . .

TeamConnect is an electronic platform designed for electronic review, processing, and approval of invoices. . .

Chevron’s legal analysts will review the invoices and may reject outright, or reduce appropriately, invoices for non-conforming items such as unapproved expenses, excessive hours by individual timekeepers, etc. The legal analyst will

⁴⁹⁵ Reply, paras. 581-587.

⁴⁹⁶ Reply, paras. 582-583; **RLA-351**, *Chevron Corporation and Texaco Petroleum Corporation v. Ecuador*, PCA Case No. AA277, Final Award on the Merits, 31 August 2011, para. 311.

⁴⁹⁷ Reply, para. 583; **RLA-351**, *Chevron Corporation and Texaco Petroleum Corporation v. Ecuador*, PCA Case No. AA277, Final Award on the Merits, 31 August 2011, para. 311.

⁴⁹⁸ Reply, para. 584.

also review to ensure that tasks are performed at the appropriate level of seniority and may reject or adjust amounts accordingly. Chevron also typically will not pay for items such as administrative tasks. In addition, Chevron requires that all expenses be justified, and may reject payment of expenses if either element is missing. . .

Invoices may nonetheless undergo up to three additional levels of internal Chevron review. . .

Chevron implemented cost-saving and cost-control measures for the Ecuador Dispute, including the negotiation of discounts. . .

Once an invoice is approved for payment through TeamConnect, the invoice moves from TeamConnect to the SAP system (Chevron’s electronic payment system) and is placed in line for payment. . .

All the amounts claimed by Chevron in this arbitration were actually paid by Chevron (or its subsidiaries).⁴⁹⁹

- (ii) Mr E.J. Rankin, an eDiscovery Specialist at Chevron, explains that he was instructed to collect the billing data for each outside vendor that billed Chevron for Ecuador-related work for export to FTI Consulting (“FTI”).⁵⁰⁰ To do that, he collected three types of data:

Structured Data, which is maintained in Chevron’s TeamConnect billing system. Mr. Rankin obtained access to this Structured Data from Chevron’s Information Technology group then transferred it to an electronic file transfer (“EFT”) site maintained by FTI. . .

Invoices. These include invoices that were not in Chevron’s possession (for example, where a vendor sent the invoice to an outside law firm, the law firm paid the invoice, and then the law firm sought reimbursement from Chevron through the law firm’s own bill). As with the Structured Data, Mr. Rankin transferred it to FTI’s EFT site. . .

Backup Data. Mr. Rankin also obtained all of the attachments to the invoices and transferred them to FTI’s EFT site.⁵⁰¹

- (iii) David Turner, the leader of FTI’s Data and Analytics Group for the Americas, describes the process of receiving the data described in Mr Rankin’s witness statement, obtaining additional data directly from vendors and compiling all that data into a report titled “Summary of Fees and Costs Report”, which is discussed in

⁴⁹⁹ Kent Witness Statement, paras. 10-12, 14, 19, 23-26, 28, 33-34, 36.

⁵⁰⁰ Memorial, para. 196; Rankin Witness Statement, para. 7.

⁵⁰¹ Memorial, para. 196; Rankin Witness Statement, paras. 9-14.

further detail below.⁵⁰² He explains how FTI then loaded the data into a database accessible to the Claimants’ outside counsel for their review, following which FTI provided the information about the payments that are the subject of the Claimants’ claims to Deloitte.⁵⁰³

- (iv) Steve Stanton of Deloitte describes how Deloitte validated and confirmed that Chevron paid pursuant to its electronic payment system each outside law firm/vendor an amount that equals or exceeds the amount claimed by Chevron as damages in the “Summary of Fees and Costs Report”.⁵⁰⁴ Mr Stanton explains that 93% of the invoices could be validated via electronic matching, while he manually matched the remaining 7%.⁵⁰⁵

284. Mr Turner’s “Summary of Fees and Costs Report”, filed as Appendix 2 to the Memorial, is “a summary of the Claimants’ claimed costs in each proceeding by law firm/vendor and amount, from 1 January 2004 through 9 May 2019.”⁵⁰⁶ In turn, Appendices 3 through 44 to the Memorial are “detailed narrative summaries of each of the litigation proceedings for which Chevron claims legal costs as damages, including discussions of their necessity, value and costs drivers, together with supporting evidence.”⁵⁰⁷

285. *Purported Deficiencies Identified in Counter-Memorial on Damages*: In its Counter-Memorial, the Respondent argued that the Claimants’ showing of compensable legal expenses in their Memorial fell “far short” of the minimum showing required.⁵⁰⁸ More precisely, the Respondent was critical of how the Claimants, “rather than turning all of the relevant billing data and invoices” to the Respondent and the Tribunal for inspection, “used them to construct a thousand-plus page ‘summary’ that is as useless as it is voluminous”, as it “omits crucial information concerning the dates on which services

⁵⁰² Memorial, para. 197, Appendix 2; Turner Witness Statement, paras. 2-18.

⁵⁰³ Memorial, para. 198; Turner Witness Statement, paras. 14-15, 18.

⁵⁰⁴ Memorial, para. 199; Stanton Expert Report, paras. 16-47.

⁵⁰⁵ Memorial, para. 200; Stanton Expert Report, para. 40.

⁵⁰⁶ Memorial, para. 12. An Updated Appendix 2 was enclosed with the Reply.

⁵⁰⁷ Memorial, para. 12.

⁵⁰⁸ Counter-Memorial, paras. 418-462.

were provided and costs incurred, as well as information showing who billed what time, at what rates, for what tasks, and for what purposes.”⁵⁰⁹

286. In particular, the Respondent’s Counter-Memorial identified numerous purported deficiencies in the Claimants’ showing of compensable legal expenses.⁵¹⁰ The Respondent was generally critical of the witness expert and other evidence provided by the Claimants,⁵¹¹ which the Respondent deemed insufficient⁵¹² and, in its view, failed to include “evidence of billing judgment”⁵¹³ and to identify “who actually made payments and who actually received payments”.⁵¹⁴ By “failing to submit the invoices that they allege Chevron paid”, the Respondent argued, “Claimants fail to prove that the legal expenses claimed were reasonable and necessary.”⁵¹⁵

287. The Respondent further noted that the limited evidence produced by the Claimants with their Memorial showed that they had included significant amounts which, in its view, could not be justified.⁵¹⁶ For instance, fees were claimed for:

- (i) “Entire categories of proceedings that were not caused by the breaches found by the Tribunal”, such as the Criminal Proceedings, the Gibraltar Proceedings, the RICO Litigation and categories such as “general defense costs”, the “costs of Chevron’s media war with the LAPs and their supporters” and “planning and preparing costs”,⁵¹⁷

⁵⁰⁹ Counter-Memorial, paras. 15.

⁵¹⁰ Counter-Memorial, para. 418.

⁵¹¹ Counter-Memorial, paras. 418-441.

⁵¹² Counter-Memorial, paras. 446-450.

⁵¹³ Counter-Memorial, paras. 442-443.

⁵¹⁴ Counter-Memorial, paras. 444-445.

⁵¹⁵ Counter-Memorial, paras. 451-462.

⁵¹⁶ Counter-Memorial, paras. 463-594.

⁵¹⁷ Counter-Memorial, paras. 465-473.

- (ii) “Proceedings pursued by Chevron for purposes other than defending against the Lago Agrio Complaint and Judgment”, such as the RICO Litigation and the Section 1782 Proceedings;⁵¹⁸
- (iii) Activities and proceedings the Respondent considers unnecessary, including the RICO Litigation, the Section 1782 Proceedings, certain pre-enforcement work (including for actions that were never filed) and a public relations campaign;⁵¹⁹
- (iv) “Costs that Chevron spent duplicating its own work”, including, prominently, several instances of parallel Section 1782 Proceedings seeking production of the same materials;⁵²⁰
- (v) “Unsuccessful activities”, which, in the Respondent’s view, are by definition not reasonable and therefore not recoverable, such as failed motions in the RICO Litigation and failed Section 1782 Proceedings;⁵²¹
- (vi) Activities unrelated to this Arbitration and to the Claimants’ defence against enforcement of the Lago Agrio Judgment, such as “Chevron’s defense of Veiga and Perez in criminal proceedings in Ecuador”, Chevron’s “media campaign”, and attempts by Chevron to recover costs in the RICO Litigation, as well as “judgment discovery and motion practice against Donziger and third parties in an effort to locate assets to enforce its judgment”;⁵²²
- (vii) “Abandoned activities”, including the abandonment of several of the Section 1782 Proceedings (MCSquared, Netflix, Weinberg Group) and portions of the RICO Litigation;⁵²³
- (viii) “Frivolous activities”, including (1) “sanctionable activities”, such as Chevron “abusing the subpoena process” in the RICO Litigation; (2) “petty activities”,

⁵¹⁸ Counter-Memorial, paras. 474-481.

⁵¹⁹ Counter-Memorial, paras. 482-506.

⁵²⁰ Counter-Memorial, paras. 507-515.

⁵²¹ Counter-Memorial, paras. 516-530.

⁵²² Counter-Memorial, paras. 531-538.

⁵²³ Counter-Memorial, paras. 539-544.

generally characterized by the Respondent as “Chevron’s ‘unfortunate pattern of needlessly attacking other parties’ counsel”; (3) “hopeless activities”, including motions filed in the RICO Litigation, several of the Section 1782 Proceedings and the Lago Agrio Litigation “that never had a chance to succeed”;⁵²⁴ (4) “hypocritical activities”, generally characterized by the Respondent as instances of Chevron taking “inconsistent positions in its litigation matters”;⁵²⁵ (5) “excessive activities”, including instances of “excessive litigation”, “overstaffing”, “excessively large filings”, or “excessive fees billed by Chevron’s U.S. counsel in proceedings in non-US jurisdictions”;⁵²⁶ and

- (ix) “Activities related to alleged abuses and excesses by the LAPs, their counsel, and other parties”, which the Respondent notes it did not commit and constitute intervening acts cutting off the causal link between the Treaty breaches and the Claimants’ losses.⁵²⁷

288. *Subsequent Production and Filing of Additional Evidence*: By its Procedural Order No. 65, the Tribunal (*inter alia*) provided guidance to the Parties as regards as to whether, “in order to satisfy the burden of proof for their claims . . . they must, in addition to the Damages Evidence presented by them . . . also produce the billing records or invoices underlying the said Damages Evidence”.⁵²⁸ Among other things, the Tribunal issued the following guidance:

84. . . . the Tribunal considers that the production of the following documents may be ordered, particularly where they have been relied on by the Claimants’ experts and witnesses and form the basis of the Claimants’ Damages Evidence:

- (i) invoices underlying the claimed fees and costs, along with documents identifying the timekeeper, expert or other vendor (which together form the basis of Appendix 2), as well as a brief narrative of the work done by each person, to be provided through either the production of the actual timesheets or any other document which discloses a brief narrative of the work done;

⁵²⁴ Counter-Memorial, paras. 553-562.

⁵²⁵ Counter-Memorial, paras. 563-567

⁵²⁶ Counter-Memorial, paras. 568-585.

⁵²⁷ Counter-Memorial, paras. 586-592.

⁵²⁸ Procedural Order No. 65, para. 61.

- (ii) documents showing payments of legal fees or costs, including amount, date, payer and payee, to be satisfied with emails, billing records, paid invoices or comparable materials;
- (iii) documents disclosing fee caps, if any, imposed by the Claimants on counsel, expert or vendor fees and costs;
- (iv) case records of the relevant proceedings, including submissions filed and orders and judgments issued;
- (v) any claims for (and rulings on) costs raised in any of the proceedings for which the Claimants are seeking recovery of fees and costs;
- (vi) documents identifying work done in relation to the proceedings prior to the issuance of the Lago Agrio Judgment where a direct causation with the Treaty breach is or could be established;
- (vii) expert reports prepared in connection with the Ecuador dispute; and
- (viii) any documents on the basis of which the expert reports and witness statements tendered in Track III of the proceedings have been prepared.

289. Further, by its Procedural Order No. 66, the Tribunal decided the Parties’ outstanding document production requests set out in the Redfern Schedules filed with the Tribunal on 11 May 2020, including several requests for the production of documents concerning attorneys’ fees and costs.

290. Thereafter, the Claimants filed their Reply and the Respondent filed its Rejoinder, both of which addressed new evidence on damages provided by the Claimants as described above. What follows are the Parties’ positions on the sufficiency of the evidence of loss provided by the Claimants as drawn from those submissions.

2. The Claimants’ Position

291. Generally, the Claimants posit that the evidence they have provided with their submissions shows that their damages were actually incurred, actually paid and reasonable “in the face of the extraordinary harm”.⁵²⁹ Such evidence includes the Claimants’ claimed invoices and time entries,⁵³⁰ the Appendices accompanying the

⁵²⁹ Reply, paras. 677-697.

⁵³⁰ See C-3244 to C-3437, C-3462.

Memorial (and updated versions provided with their Reply),⁵³¹ expert reports and witness statements from the Claimants’ in-house lawyer and external counsel.⁵³² In particular:

- (i) The witness statements accompanying the Reply include the Fourth Witness Statement of **Ricardo Reis Veiga**, dated 29 July 2019; the Witness Statement of **Peter E. Seley**, dated 18 August 2021; the Witness Statement of **Robert A. Mittelstaedt**, dated 18 August 2021; the Witness Statement of **Steven Kobre**, dated 13 August 2021 and the second witness statement of **David Turner**, dated 19 August 2021. As explained by the Claimants, “the three major U.S.-based outside law firms—Gibson, Dunn & Crutcher, Jones Day, and Kobre & Kim—have each provided a witness statement from a partner responsible for that firm’s invoices (respectively, Mr Seley, Mr Mittelstaedt, and Mr Kobre). They explain the work that each firm performed (or supervised, in the case of non-U.S. counsel) and why it was reasonable and necessary to accomplish Chevron’s objectives and ultimately mitigate the harm resulting from Ecuador’s unremedied breaches. In addition, one of the senior decision-makers within Chevron concerning the dispute with Ecuador, Mr Ricardo Reis Veiga, provides a supplemental witness statement explaining the substantial risks that Chevron faced (including a discussion on the vulnerability of Chevron’s assets at the relevant time) and the reasons why Chevron was forced to defend itself and mitigate its harm through each of the claimed actions and their direct causal link to Ecuador’s continuing misconduct. He also describes Chevron’s hiring, case management, and internal review processes during the relevant time period. Finally, Mr David Turner of FTI Consulting provides a brief supplemental statement explaining the changes to Appendix 2 (*i.e.*, the Summary of Fees and Costs) and the USD 30,698,736.03 reduction in Chevron’s damages claim since the first version of Appendix 2 was submitted with Claimants’ Memorial on Damages.”⁵³³
- (ii) The expert reports accompanying the Reply include the Expert Report of **Steven F. Stanton**, dated 20 August 2021 (“who explains the closure of the small variance he

⁵³¹ See Reply, Updated Appendix 2.

⁵³² Reply, para. 686.

⁵³³ Reply, para. 28.

observed in his first report to confirm Chevron’s full payment of all the claimed invoices”); the Second Expert Report of **Kiran Sequeira**, dated 20 August 2021 (“who defends the interest rates used, updates his pre-award interest calculations, provides a dynamic model with “switches” which allows the Tribunal to make various determinations and easily assess the impact on quantum under different scenarios and alternative interest rates, and responds to Ecuador’s critique of his calculation of Chevron’s losses arising from the embargoed Argentine bank accounts”); the Fourth Expert Report of **Weston Anson**, dated 19 August 2021 (“who defends his (unchanged) valuation of Chevron’s embargoed [IP] in Ecuador and responds to the criticisms of it by Ecuador and its counter-expert”); the Expert Report of **José Luis Barzallo Sacoto**, dated 19 August 2021 (“who refutes the erroneous claim of Ecuador and its expert that the embargo of Chevron’s IP was not tantamount to a loss of control over those assets; he demonstrates that the embargo of Chevron’s IP had the effect of limiting Chevron’s right to use, enjoy and sell its property”); the respective Expert Reports of **Joseph P. Ryan**, **Sandy Litvack** and **Clyde Lea**, all dated 20 August 2021 (“three eminent former general or deputy general counsels of large multi-national companies . . . who explain their opinion that, from the perspective of decision-makers faced with the unprecedented risks Chevron faced, the USD 800 million in claimed legal fees and expenses was reasonable”); the Expert Reports of **Charles Silver** and **Geoffrey Miller**, respectively dated 19 August and 20 August 2021 (“renowned experts on attorneys’ fees in the United States [who] observe that, despite the conclusion of Ecuador’s experts that Chevron’s claimed fees are supposedly ‘shockingly high’ and unnecessary, Ecuador’s experts entirely ignore important and relevant considerations such as the success of Chevron’s actions, Chevron’s incentives to contain costs that they had no assurance of ever recovering from Ecuador (and the steps Chevron took to carefully monitor its spending to insure against inefficiency and waste), and the high stakes Chevron was facing”); the Expert Report of **Daniel Slottje**, dated 17 August 2021 (“who provides a statistically valid representative sample of about 400 invoices (to 95% accuracy) from the universe of 7,700-plus claimed invoices, which the experts were then able to review in further support of their conclusions that the fees and costs Chevron incurred were reasonable and lacked any material evidence of duplication, inefficiency, or other waste”); and the

expert report of **Mark A. McGrath**, dated 20 August 2021 (“[a]n expert on legal spend analytics, he applied data analytics on Chevron’s claimed invoices to identify normative factors such as timekeeper rates and staffing leverage and tenure [and] concludes that the claimed invoices bear no unusual indicia and thus are per se consistent with standard billing practices, Chevron had strong processes in place to manage and control its legal spend, and Chevron’s outside law firms and vendors generally exercised care and diligence in their billing practices”).⁵³⁴

292. The Claimants assert that they used a robust billing procedure and accounting system for the dispute, which involved a multi-level process and Chevron’s “Corporation and Affiliate 2007 Guidelines for Outside Counsel” (together with its subsequent versions, “**Chevron’s Guidelines**”), which were routinely followed.⁵³⁵
293. Further, the Claimants consider that the amount of damage incurred and paid was reasonable in the circumstances and proportionate to the risks of the Lago Agrio Litigation (a criterion which, they note, is relevant only with respect to incidental damages, and not direct damages).⁵³⁶ In the Claimants’ view, contrary to the opinion of the Respondent’s fee auditing experts, the Tribunal need not engage in an invoice-by-invoice line review item to reach the conclusion that their damages were reasonable, as those experts never reached the conclusion that Chevron “stood to gain by being profligate” or that “Chevron’s expenditures were exceptional for litigations of this magnitude”.⁵³⁷ In their view, the Tribunal has discretion to assess the reasonableness of their fees and costs in other ways, “such as by reviewing billing and expense summaries, receiving fact and expert testimony, or relying on its members’ experiences, knowledge and first-hand observations of proceedings.”⁵³⁸
294. This notwithstanding, should the Tribunal decide to engage in such a detailed review, the Claimants consider that the expert opinion of Mr McGrath (a “legal and litigation spend

⁵³⁴ See Reply, paras. 29-37.

⁵³⁵ Reply, paras. 678-679; Lea Expert Report, paras. 44-46.

⁵³⁶ Reply, paras. 680-692; Lea Expert Report, paras. 35, 40.

⁵³⁷ Reply, paras. 681-686; Silver Expert Report, paras. 28, 77, 90, 93; Miller Expert Report, para. 35.

⁵³⁸ Reply, para. 683.

management and analytics expert) it would confirm the reasonableness of their claimed fees and costs.⁵³⁹ Similarly the Claimants’ experts Mr Lea, Mr Ryan (both of who are former general counsel) and Professor Miller each reviewed a “statistically valid representative sample of about 400 invoices (to 95% accuracy) from the universe of 7,700-plus claimed invoices” provided by Mr Slottje of FTI (the “**Invoice Sample**”), with each of them confirming that the fees and costs claimed were reasonable.⁵⁴⁰

295. In addition, the Claimants posit that their litigation strategy was reasonable, including their decision to hire multiple law firms to spearhead their different litigation efforts.⁵⁴¹ Among other things, the Claimants state that all law firms involved devised strategies to ensure that litigation efforts were as seamless as possible, with Chevron’s outside counsel actively working with in-house attorneys on a daily basis and ensuring that each firm’s billing practices complied with the company’s expectations.⁵⁴²
296. The Claimants reject the Respondent’s criticisms of a limited number of invoice and time-entry allocations, asserting it disregards context.⁵⁴³ In addition, the Claimants submit that the Respondent’s experts are “unhelpful to this Tribunal” and do not provide a basis for the Tribunal to reduce the Claimants’ damages.⁵⁴⁴

3. The Respondent’s Position

297. According to the Respondent, the Claimants “essentially restarted their case at the Reply stage, but they did not cure their Memorial-state failure to prove that the fees and costs they claim are reasonable and necessary.”⁵⁴⁵ In its view, the Claimants’ Reply failed to address many of the problems that the Respondent identified in the Counter-Memorial: for instance, the Respondent asserts that the Claimants failed to (i) indicate which entities

⁵³⁹ Reply, para. 688; McGrath Expert Report, paras. 1, 26.

⁵⁴⁰ Reply, paras. 36, 690-692; **C-3243**, Representative Invoice Sample; Ryan Expert Report, para. 85; Miller Expert Report, para. 34; Lea Expert Report, para. 47.

⁵⁴¹ Reply, paras. 661-665, 693-698.

⁵⁴² Reply, paras. 694-697; Seley Witness Statement, paras. 12, 15, 18, 20-23.

⁵⁴³ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 201-202 (Silbert), Day 15 (7 September 2022), pp. 3485-3486 (Kehoe).

⁵⁴⁴ Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3486-3494 (Kehoe).

⁵⁴⁵ Rejoinder, para. 619.

paid the invoices underlying their claim;⁵⁴⁶ (ii) explain how they allocated USD 793 million in claimed fees across 13 of their damage categories;⁵⁴⁷ (iii) show whether their outside law firms, vendors and experts established budgets or adhered to them;⁵⁴⁸ (iv) provide an audit of the invoices;⁵⁴⁹ or (v) remove unreasonable time entries from their claims.⁵⁵⁰ Similarly, the Respondent considers that the non-invoice documents that the Claimants produced (which comprise correspondence, spreadsheets exported from Chevron’s billing software TeamConnect and another version of Appendix 2 to the Memorial) fail to demonstrate billing judgment.⁵⁵¹ The Respondent also points out that the Claimants retracted their claim for over USD 30 million when the Tribunal ordered the production of invoices, which would otherwise likely have remained claimed. In the Respondent’s view, this circumstance undermines the Claimants’ stance for deference.⁵⁵²

298. As concerns invoice auditing, the Respondent considers the Claimants’ Invoice Sample to be inadequate from a statistical perspective,⁵⁵³ and criticises the “data analytics” expert opinion of Mr Mark McGrath as “superficial and outdated”.⁵⁵⁴ Instead, the Respondent invites the Tribunal to consider the audit performed by its legal fee expert, Mr John Trunko,⁵⁵⁵ who identified “abundant amounts of unreasonable fees and costs in Claimants’ invoices”,⁵⁵⁶ as also concluded separately by the Respondent upon its own review.⁵⁵⁷ The Respondent offers a few examples of “unreasonable fees and costs and misallocated invoice time entries” that it found in its review, which include (*inter alia*):

⁵⁴⁶ Rejoinder, paras. 627, 648-655.

⁵⁴⁷ Rejoinder, para. 628.

⁵⁴⁸ Rejoinder, paras. 627-632.

⁵⁴⁹ Track III Hearing Transcript, Day 2 (19 August 2022), p. 308 (Finsterwald).

⁵⁵⁰ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3604 (Finsterwald).

⁵⁵¹ Rejoinder, paras. 646-647.

⁵⁵² Track III Hearing Transcript, Day 2 (19 August 2022), p. 308 (Finsterwald).

⁵⁵³ Rejoinder, paras. 657-660; **RE-61**, Second Leigh Expert Report, paras. 51-60; **RE-65**, Lee Expert Report, paras. 9-14, 23-25.

⁵⁵⁴ Rejoinder, paras. 661-678.

⁵⁵⁵ Rejoinder, para. 660; **RE-51**, Trunko Expert Report.

⁵⁵⁶ Rejoinder, paras. 844-846.

⁵⁵⁷ Rejoinder, paras. 847-899.

- (i) “Unrelated activities”, such as fees for working in *Chevron v. Ecuador I*, public relations activities or lobbying;⁵⁵⁸
- (ii) “Abandoned work”, such as an unpursued complaint for declaratory judgment for a Chevron subsidiary in Argentina or work in preparation for a BIT arbitration against PetroEcuador that was never initiated;⁵⁵⁹
- (iii) “Frivolous activities”, such as an iPad bought by a Gibson Dunn attorney or time spent dining by attorneys;⁵⁶⁰
- (iv) “Excessive activities”, generally constituting alleged instances of overbilling or serial motions submitted in the RICO and 1782 Litigations;⁵⁶¹
- (v) “Billing time for working on client billing issues”;⁵⁶²
- (vi) “Administrative/clerical activities”,⁵⁶³ and “Training and background activities”,⁵⁶⁴ which the Respondent claims were billed “chronically” in violation of Chevron’s Guidelines;
- (vii) “Vaguely described activities” in the relevant time entries;⁵⁶⁵
- (viii) “Non-working time and exorbitant travel expenses”;⁵⁶⁶
- (ix) “Time spent not working”;⁵⁶⁷ and

⁵⁵⁸ Rejoinder, paras. 850-869.

⁵⁵⁹ Rejoinder, paras. 870-873.

⁵⁶⁰ Rejoinder, paras. 874-877.

⁵⁶¹ Rejoinder, paras. 878-883.

⁵⁶² Rejoinder, para. 884.

⁵⁶³ Rejoinder, paras. 885-887.

⁵⁶⁴ Rejoinder, para. 888.

⁵⁶⁵ Rejoinder, paras. 889-892.

⁵⁶⁶ Rejoinder, paras. 893-895.

⁵⁶⁷ Rejoinder, para. 896.

(x) “Misallocated fees and costs” among the Claimants’ 13 damages categories pertaining to legal fees and expenses.⁵⁶⁸

299. The Respondent dismisses the Claimants’ admonition to review time entries in context, noting that the context has been redacted.⁵⁶⁹

300. The Respondent further dismisses the witness statement of Ms Colleen Kent, who it notes was at the lowest level of Chevron’s fee review hierarchy and only began reviewing invoices in January 2016.⁵⁷⁰ The Respondent is also critical of the four lawyer witness statements provided by the Claimants in an attempt to prove that their litigation strategy was reasonable and necessary,⁵⁷¹ which include Mr Veiga (formerly of Chevron),⁵⁷² Mr Seley (of Gibson Dunn),⁵⁷³ Mr Mittelstaedt (of Jones Day)⁵⁷⁴ and Mr Kobre (of Kobre & Kim).⁵⁷⁵ Similarly, the Respondent considers that the Claimants’ legal fee experts also fail to demonstrate that the Claimants’ claimed fees and costs are reasonable.⁵⁷⁶ The Respondent adds that, at the Track III Hearing, the Claimants “did not provide testimony from witnesses who analyze and explain the fees and costs set forth in the invoices.”⁵⁷⁷ Rather, the Respondent contends that the evidence available demonstrates that Chevron failed to follow its own billing guidelines and control processes.⁵⁷⁸

* * *

⁵⁶⁸ Rejoinder, paras. 897-899.

⁵⁶⁹ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3604 (Finsterwald).

⁵⁷⁰ Track III Hearing Transcript, Day 2 (19 August 2022), p. 307 (Finsterwald).

⁵⁷¹ Rejoinder, paras. 679-737.

⁵⁷² Rejoinder, paras. 681-709; Fourth Veiga Witness.

⁵⁷³ Rejoinder, paras. 717-718; Seley Witness Statement. *See also* Rejoinder, paras. 719-737.

⁵⁷⁴ Rejoinder, paras. 712-716; Mittelstaedt Witness Statement. *See also* Rejoinder, paras. 719-737.

⁵⁷⁵ Rejoinder, para. 718; Kobre Witness Statement. *See also* Rejoinder, paras. 719-737.

⁵⁷⁶ Rejoinder, paras. 738-840.

⁵⁷⁷ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3599 (Finsterwald).

⁵⁷⁸ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3601 (Finsterwald).

VII. THE TRIBUNAL’S ANALYSIS ON GENERAL MATTERS AND LEGAL STANDARDS

301. In this Section, the Tribunal presents its analysis and determinations on various general matters and legal standards that influence the overall evaluation of the Claimants’ damages claims in Track III. For ease of reference, such matters comprise:

- (i) Causation;
- (ii) Non-compliance with Interim Awards;
- (iii) International Subsidiaries;
- (iv) Failure to Mitigate;
- (v) Fees Allegedly Incurred in Other Proceedings;
- (vi) Tax Implications; and
- (vii) Evidence of Legal Fees and Expenses.

302. In accordance with these standards, the Tribunal shall consider in Sections VIII and IX below each of the 16 categories of damages asserted by the Claimants.

A. CAUSATION

1. Introduction

303. Any analysis of reparation under international law must start with the internationally wrongful conduct leading to the alleged injury. This is a corollary of the principle of customary international law reflected in Article 31(1) of the ILC Articles, pursuant to which “[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act”. It is also a corollary of the applicable full reparation standard set forth in *Chorzów Factory*, pursuant to which full reparation for an international illegal act “must, as far as possible, wipe out all the consequences of the

illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”⁵⁷⁹

304. For ease of reference, the Tribunal recalls that the Claimants claim compensation for:

- (i) Damages purportedly incurred in respect of the Respondent’s denial of justice from 22 August 2006 (when the Claimants assert Ecuador’s wrongful acts began) or, in the alternative, from 1 March 2012 (when the Lago Agrio Judgment was rendered enforceable);
- (ii) Damages purportedly incurred after 1 January 2004 by virtue of the Respondent’s breach of the Umbrella Clause of the Treaty; and
- (iii) Damages purportedly incurred from 1 March 2012 as a result of the Respondent’s breach of the First and Second Interim Awards.⁵⁸⁰

305. For the sake of simplicity, the Tribunal shall hereinafter use the following shorthand terms for the Respondent’s internationally wrongful acts: (i) “**Denial of Justice Breach**” for its declarations in paragraphs 10.4 and 10.5 of the Track II Award concerning the Respondent’s violation of Article II(3)(a) of the Treaty and customary international law for denial of justice; (ii) “**Umbrella Clause Breach**” for its declarations in paragraphs 10.7 and 10.8 of the Track II Award concerning the Respondent’s violation of Article II(3)(c) of the Treaty (Umbrella Clause); and (iii) “**Interim Awards Breach**” for its declaration in paragraph 10.18 of the Track II Award concerning the Respondent’s violation of the First and Second Interim Awards.⁵⁸¹

306. Further, paragraph (2) of Article 31 of the ILC Articles describes the “injury” for the purposes of paragraph (1) as the subject matter of reparation: “Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a

⁵⁷⁹ **CLA-406**, *Case Concerning the Factory at Chorzów (Germany v. Poland)*, 1928 PCIJ Series A, No. 17, Judgment, 13 September 1928, pp. 31-32.

⁵⁸⁰ Reply, para. 672.

⁵⁸¹ See para. 91 above for the full Operative Part of the Track II Award.

State”.⁵⁸² Under this framework of analysis, the Tribunal is required to isolate the “injury resulting from and ascribable to” the Respondent’s internationally wrongful acts from “any and all consequences flowing from” them to determine the extent to which reparation is warranted.⁵⁸³

307. The unusual circumstances of this case turn this causation analysis into a complex inquiry.
308. First, at least two of the Respondent’s Treaty breaches were complex acts spanning multiple years and instrumentalities within the Ecuadorian State. The applicable principles of causation require the Tribunal to identify the appropriate reference point(s) or event(s) within the scope of the Treaty breaches by reference to which the injuries “caused by” those breaches can be identified.
309. Second, from the viewpoint of the injury caused by the Respondent’s internationally wrongful acts, the Tribunal must stress the unconventional nature of the factual pattern it is required to analyse, as already advanced in the Track II Award:

The Lago Agrio Litigation was therefore likely to involve, from its outset, numerous national jurisdictions other than Ecuador. This feature makes the present case unusual. Earlier cases on denial of justice have concerned an alleged wrong and an alleged injury taking place within the same State. Here, the injury to Chevron was always intended to take place, at least in part, in one or more foreign jurisdictions elsewhere than Ecuador, whether by the enforcement of the Lago Agrio Judgment or by an enforced “amicable” settlement. Thus, the Lago Agrio Litigation was transnational in the broadest sense, as confirmed by the multiplicity of foreign lawsuits and arbitrations in the USA, Argentina, Brazil, Canada, the Netherlands and elsewhere following the issuance of the Lago Agrio Judgment.⁵⁸⁴

310. Adding to the complexity of the inquiry before the Tribunal, the injuries for which reparation is sought in Track III to a large extent do not coincide with the injury that is said to have been the originally “intended” or foreseeable result of the wrongful act (*i.e.*, “the enforcement of the Lago Agrio Judgment or . . . an enforced ‘amicable’ settlement” as indicated in the above quote). As stated by the Claimants, “the vast majority of [their] actual damages result from the attorneys’ fees and other costs that Claimants were obliged

⁵⁸² **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (9).

⁵⁸³ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (9).

⁵⁸⁴ Track II Award, para. 7.27.

to incur in defending themselves against the massive fraud perpetrated through the Lago Agrio Litigation and enforcement proceedings and preparing for the defense of additional enforcement proceedings that may be brought in the future.”⁵⁸⁵ Such costs concern dozens of proceedings spanning multiple jurisdictions and occurring over many years, many of them starting *before* the issuance the Lago Agrio Judgment on 14 February 2011. Indeed, for a significant portion of those costs, the Claimants today claim compensation even if the Tribunal finds that they were incurred prior to the crystallisation of the Respondent’s internationally wrongful acts.⁵⁸⁶

2. Track II Findings

311. Notwithstanding this complexity, the Tribunal must recall that many of the proximate causation issues that have been raised in Track III were already analysed and disposed of in the Track II Award. While the Tribunal there assigned for further submissions in Track III all issues as to reparation in the form of *compensation* for any injuries sustained by the Claimants,⁵⁸⁷ it dealt extensively with other forms of reparation⁵⁸⁸ – which, as already noted, must be premised on a finding of injury under international law as a matter of principle. Indeed, the Track II Award includes carefully circumscribed findings regarding the injury flowing from the Respondent’s internationally wrongful acts.
312. The Tribunal will address more fully the connection between each of the Respondent’s Treaty breaches and the Claimants’ injuries in Section VII.A.4 below. In the paragraphs that immediately follow, the Tribunal will limit itself to identifying the Track II findings of injury with which it must remain consistent in this Award on Track III.

⁵⁸⁵ Memorial, para. 144.

⁵⁸⁶ Track III Hearing Transcript, Day 12 (2 September 2022), p. 2788 (Paulsson): “The obligation to make full reparation for an injury caused by an internationally wrongful act does include an obligation to pay damages for costs incurred by the victim prior to the consummation of the breach; and such damages may be characterized either as direct damages or as incidental damages for costs of mitigation.” *See also* Track III Hearing Transcript, Day 12 (2 September 2022), pp. 2794-2800 (Paulsson).

⁵⁸⁷ Track II Award, para. 10.14: “All issues as to reparation in the form of compensation for any injuries sustained by the First or Second Claimant, as claimed by the Claimants and denied by the Respondent, including any assessment of the amount of compensation, moral damages, indemnities, reimbursements, payments, expenses and interest, are currently assigned for further submissions by the Parties to Track III. These issues are not decided in this Award.”

⁵⁸⁸ *See generally* Track II Award, Parts IX and X.

313. At the outset, the Tribunal recalls that the Track II Award ordered reparation in the form of several declarations and orders specifically targeted at wiping out the consequences of the recognition and enforcement of the Lago Agrio Judgment.⁵⁸⁹ Of those measures, the Tribunal said:

As to international law, the Tribunal has decided that the Respondent breached its obligations, by a denial of justice, in issuing the Lago Agrio Judgment, rendering it enforceable and maintaining its enforceability by the Lago Agrio Plaintiffs.

In Part VIII above, as to the right of a party to receive a fair hearing before an impartial tribunal, the Tribunal has already referred to Article 10 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights and Articles 2 and 6 of the UN Basic Principles on the Independence of the Judiciary. The violation of such a right by judicial corruption is proscribed by the UN Convention against Corruption ratified by the General Assembly on 31 October 2003 (to which the Respondent is a Contracting Party). In *World Duty Free* (2006), in the context of corruption by bribery, the tribunal identified, as a matter of international public policy, an international consensus as to universal standards and accepted norms of conduct that must be applied in all fora. It concluded: “In light of domestic laws and international conventions relating to corruption, and in light of the decisions taken in this matter by courts and arbitral tribunals, this Tribunal is convinced that bribery is contrary to the international public policy of most, if not all, States . . .”. In the Tribunal’s view, judicial bribery must rank as one of the more serious cases of corruption, striking directly at the rule of law, access to justice and public confidence in the legal system; and also, as regards the foreign enforcement of a corrupt judgment, at the law of nations. Accordingly, the Tribunal concludes that the Lago Agrio Judgment (with the judgments of the Lago Agrio Appellate, Cassation and Constitutional Courts) violates international public policy. As a matter of international comity, it must follow that the Lago Agrio Judgment should not be recognised or enforced by the courts of other States.

In the Tribunal’s view, the reinstatement of the Claimants’ rights under international law requires of the Respondent the immediate suspension of the enforceability of the Lago Agrio Judgment and the implementation of such other corrective measures as are necessary to “wipe out all the consequences” of the Respondent’s internationally wrongful acts, so as to re-establish the situation which would have existed if those internationally wrongful acts had not been committed by the Respondent.

The Tribunal considers that *these measures, subject to their elaboration in the form of declarations and orders below, are appropriate in the present circumstances of this case.* These circumstances do not require the Tribunal itself to declare the nullity of the Lago Agrio Judgment under international law.⁵⁹⁰

314. Critically, among these measures of reparation as are “necessary to ‘wipe out all the consequences’ of the Respondent’s internationally wrongful acts” is the Tribunal’s declaration that *any injury* caused by the recognition or enforcement of any part of the

⁵⁸⁹ Track II Award, paras. 10.10, 10.11, 10.13.

⁵⁹⁰ Track II Award, paras. 9.15-9.18 (emphasis by the Tribunal).

Lago Agrio Judgment within or without Ecuador warrants reparation under international law:

10.11 The Tribunal declares that *any injury* to the First Claimant or the Second Claimant *caused by the recognition or enforcement of any part of the Lago Agrio Judgment* within or without Ecuador (as decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) shall be *injuries for which the Respondent is liable to make reparation under international law*.⁵⁹¹

315. In the same vein, the Tribunal’s subsequent order to the Respondent to make full reparation *in the form of compensation* is specifically circumscribed to any injuries caused to the Claimants by the unremedied Lago Agrio Judgment,⁵⁹² subject to further determination in this Track III:

10.13 The Respondent shall, to the satisfaction of the Tribunal and as unconditional obligations of result (save where otherwise indicated):

...

(viii) subject to further order of this Tribunal in Track III, make full reparation in the form of compensation for *any injuries caused to the First Claimant and the Second Claimant by the Lago Agrio Judgment* (as also decided by the Lago Agrio Appellate Court, Cassation and Constitutional Courts).⁵⁹³

316. One can extract several conclusions from the above rulings. First, the Tribunal identified the recognition and enforcement of any part of the Lago Agrio Judgment as the specific source of the injury caused by the Respondent’s internationally wrongful acts. Second, any injuries caused to the Claimants by the unremedied Lago Agrio Judgment warrant reparation in the form of compensation in an amount to be determined in Track III. Third, no other forms of injury warranting reparation are identified in Parts IX or X of the Track II Award, the Tribunal having expressly stated that “[s]ave as aforesaid, the requests for relief made by the [Parties] for decision in this Track II are not granted”.⁵⁹⁴

⁵⁹¹ Track II Award, para. 10.11 (emphasis by the Tribunal).

⁵⁹² See Track II Award, para. 8.27: “By the shorthand terms “uncorrected” and “unremedied”, here and elsewhere in this Award, the Tribunal means that the Lago Agrio Judgment (excepting its award of punitive damages) was considered by the Lago Agrio Appellate Court, Cassation and Constitutional Courts, in full knowledge of the complaints of serious procedural impropriety, without appropriate steps being taken to address the allegations of procedural fraud, judicial misconduct and ‘ghostwriting’ raised by Chevron at the time.” Such terms are used with this same meaning in this Award.

⁵⁹³ Track II Award, para. 10.13(viii) (emphasis by the Tribunal).

⁵⁹⁴ Track II Award, para. 10.23.

317. In sum, the Tribunal has already identified the uncorrected Lago Agrio Judgment – and specifically its recognition and enforcement – as the primary source of the Claimants’ injuries caused by the Respondent’s internationally wrongful acts. As such, international law requires that any measure of full reparation implemented in Track III be targeted specifically at wiping out the injuries caused by the recognition and enforcement of the uncorrected Lago Agrio Judgment. Absent a finding of a separate and independent source of injury flowing from the Respondent’s internationally wrongful acts, reparation cannot go beyond this limit.

3. Direct and Incidental Damages

(a) Introduction

318. Having reached this conclusion, the Tribunal is better placed to distinguish the injuries flowing from the Respondent’s internationally wrongful acts that must be categorised as damages proximately caused by those acts (or ‘direct damages’ for shorthand) from those that constitute incidental damages “reasonably incurred to repair damage and otherwise mitigate loss” arising from those wrongs.⁵⁹⁵ The Tribunal already addressed this distinction in Procedural Order No. 65, which, it must be recalled, was issued after the filing of the Respondent’s Counter-Memorial and before the filing of the Claimants’ Reply:

The Tribunal further notes that an assessment of the individual claims under Categories (a)-(m) may be approached differently by it depending on the nature of the causal connection between the Treaty breaches and the alleged losses. In particular, a distinction may be established, at least, among those heads of damages that are proximately caused by the breaches; and those which are incidental, or otherwise incurred as the costs of reasonable mitigation measures. In line with this distinction, the relevant test for reasonableness may vary depending on the nature of each head of damages.

In respect of damages claimed to have been proximately caused by the breaches of the Treaty, the assessment is fundamentally one of proximate causation, not of reasonableness. Yet, the reasonableness of the Claimants’ actions in the face of wrongful conduct may still be relevant to this analysis. As per the commentary to the ILC Articles, “[e]ven the wholly innocent victim of wrongful conduct is expected to act reasonably when confronted by the injury. Although often expressed in terms of a ‘duty to mitigate’, this is not a legal obligation which itself gives rise to responsibility. It is rather that a failure to mitigate by the injured party may preclude recovery to that extent.” Moreover, a certain degree of unreasonable conduct may break the chain of causation altogether or even constitute an

⁵⁹⁵ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 36, Commentary (34).

independent contribution to the injury under Article 39 of the ILC Articles. Reasonableness is not as such an independent, positive element of the test for proximate causation under Article 31 of the ILC Articles.

On the other hand, reasonableness does constitute a specific requirement for the recovery of incidental damages. The Claimants are bound to prove that such costs were “reasonably incurred to remedy or mitigate damage flowing from an internationally wrongful act”.

Accordingly, a reasonableness analysis may not be necessary where direct causation between the breach and the incurred fees and costs is clear and has not been severed (without prejudice to the actual spending having to be proved). It will, however, be necessary for all claims for incidental damages.

As noted above, the Claimants contend that all of their claims under Categories (a)-(m) fall under the primary head of damages. At this stage, it is not entirely clear to the Tribunal whether there are any claims under Categories (a)-(m) and, if so, which are those claims for which the Claimants consider that some form of a reasonableness assessment might be undertaken by the Tribunal. For instance, it is not entirely clear to the Tribunal at this stage, whether the costs and fees pertaining to the Lago Agrio Litigation and the enforcement actions in Ecuador, Argentina, Brazil and Canada, and the Ecuadorian Criminal Proceedings (Categories (a), (d)-(g), and (k)) are claimed exclusively as damages proximately caused by the Respondent’s breaches, potentially subjecting them to a different standard of scrutiny for reasonableness. Conversely, it is not entirely clear to the Tribunal at this stage whether the costs and fees associated with the § 1782 Actions, the RICO Litigation, the planning and preparation to defend against potential enforcement actions in other jurisdictions, and the Gibraltar Litigation (Categories (b)-(c) and (h)-(i)) are claimed alternatively as incidental costs and mitigation measures, potentially subjecting them to different standards. The Tribunal would consider it useful to be further briefed by the Parties on this issue in their second round of submissions in the Track III proceedings.⁵⁹⁶

319. Thereafter, the Claimants confirmed in their Reply and at the Track III Hearing that all of their claimed legal fees and expenses constitute direct damages and are recoverable in the alternative as incidental damages.⁵⁹⁷ The Respondent disputes this, contending that they all constitute incidental expenses.⁵⁹⁸

⁵⁹⁶ Procedural Order No. 65, 10 July 2020, paras. 74-78. “Categories (a)-(m)”, as referenced in this quote, correspond to the Claimants’ claims listed in items (a) through (m) of paragraph 479(2) of their Memorial: “a. US\$ 165,948,547.27 in relation to the Lago Agrio Litigation; b. US\$ 66,286,194.18 in relation to the § 1782 Actions; c. US\$ 328,258,466.65 in relation to the RICO Action; d. US\$ 3,703,465.90 in relation to the Ecuador Enforcement Action; e. US\$ 26,473,951.23 in relation to the Argentina Enforcement Action; f. US\$ 21,682,698.55 in relation to the Brazil Enforcement Action; g. US\$ 40,736,344.94 in relation to the Canada Enforcement Action; h. US\$ 27,534,505.48 in relation to defense against recognition and enforcement in other countries and general recognition and enforcement work; i. US\$ 39,651,933.78 in relation to the Gibraltar offensive actions and other offensive action against co-conspirators; j. US\$ 57,768,063.05 in relation to the general defense against the Lago Agrio fraud and the resulting fraudulent Judgment; k. US\$ 7,065,435.37 in relation to the Ecuadorian Criminal Proceedings; l. US\$ 35,776,712.89 in relation to the BIT Non-Counsel-of-Record Fees; and m. US\$ 3,692,384.48 in relation to the Dutch Set-Aside Proceedings.”

⁵⁹⁷ Reply, para. 17; Track III Hearing Transcript, Day 1 (18 August 2022), pp. 16-17 (Paulsson).

⁵⁹⁸ Counter-Memorial, paras. 223, 228, 364; Rejoinder, paras. 243-251.

320. In accordance with the foregoing, the Tribunal makes preliminary determinations in this Section regarding the proper categorisation of the Claimants’ claimed damages as direct or incidental damages and the showings required to grant compensation in each instance.

(b) Direct Damages

321. The Tribunal addresses first direct damages. Having determined that the uncorrected Lago Agrio Judgment is the primary source of the Claimants’ injuries, the Tribunal can readily categorise any injury caused by the recognition or enforcement of any part of the Lago Agrio Judgment as a form of direct damage flowing naturally from the Respondent’s internationally wrongful acts. Examples of conduct amounting to an enforcement, as identified by the Tribunal in the Track II Award, include, without limitation, “attachment, arrest, interim injunction [or] execution”.⁵⁹⁹ As further explained below, an embargo would also fit this description.⁶⁰⁰ For instance, the arrest of an oil tanker owned by the Claimants premised on the recognition and enforcement of the Lago Agrio Judgment would constitute a form of direct damage.

322. As noted by the Tribunal in Procedural Order No. 65, the assessment of direct damages under international law is fundamentally one of proximate causation, not of reasonableness.⁶⁰¹ Indeed, reasonableness is a measure of the actions undertaken by the injured party when confronted with the injury, not of the injury itself.⁶⁰² In the instant case, the injury as particularized in the preceding paragraph flows naturally from the breach without any intervening action from the Claimants, obviating any need for a reasonableness analysis.

⁵⁹⁹ Track II Award, para. 10.13(ii). *See also* Track II Award, para. 7.25: “Outside Ecuador, however, Chevron, with its large group of associated companies, indirectly owned (and still owns) substantial assets, including ocean-going vessels, bank deposits around the world, and other properties. By their nature, vessels and bank deposits were and remain vulnerable to arrest, attachment or seizure by the Lago Agrio Plaintiffs upon the Lago Agrio Judgment’s enforcement in multiple jurisdictions, especially *ex parte* without prior notice. Even if Chevron were in a position to discharge promptly such an order freezing a bank deposit or arresting a vessel, the damage to Chevron and its associated companies from such repeated actions could have been very significant (as it may still be).”

⁶⁰⁰ *See* Section IX.A below, concerning Embargo Losses in Argentina.

⁶⁰¹ Procedural Order No. 65, 10 July 2020, para. 75; **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (10).

⁶⁰² **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 36, Commentary (10): “It is well established that incidental expenses are compensable if they were reasonably incurred to repair damage and otherwise mitigate loss arising from the breach.”

323. Furthermore, as agreed by the Parties, the onus is on the injured party (the Claimants) to establish proximate causation as regards direct damages.⁶⁰³ However, any failure by the Claimants to mitigate such damage may preclude recovery to that extent.⁶⁰⁴ The burden to prove that the Claimants did not fulfil this duty to mitigate lies with the Respondent.⁶⁰⁵
324. A matter related to the question of burden of proof is the standard of proof and, relatedly, the degree of granularity of the evidence required to establish damages under international law, whether direct or incidental.
325. As to the first question, the Tribunal has been given no reason to apply a different standard of proof to damages other than the generally applicable standard of balance of probabilities.⁶⁰⁶
326. In respect of the question of granularity, the Parties have brought no source to the attention of the Tribunal mandating a specific level of granular analysis of damages under international law.⁶⁰⁷ As such, granularity is better dealt with as a question of sufficiency or adequacy of the evidence on damages.⁶⁰⁸ The Tribunal will address this matter in full in Sections VIII and IX below. As more fully explained there, only three of the 16 damages categories analysed in this Award (Embargo in Argentina, Intellectual Property Losses in Ecuador, and Moral Damages) may be addressed within the purview of direct damages. All other damages categories concern legal fees and expenses and are therefore only compensable as incidental damages, an issue to which the Tribunal now turns.

⁶⁰³ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1479 (Bishop), p. 1492 (Schwartz). *See also* **CLA-617**, *Gold Reserve Inc. v. Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, para. 685.

⁶⁰⁴ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (11).

⁶⁰⁵ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1478 (Bishop), p. 1492 (Schwartz).

⁶⁰⁶ Track II Award, para. 8.42; Track III Hearing Transcript, Day 7 (26 August 2022), p. 1482 (Bishop); Day 8, p. 1753 (Bishop). *See also* **CLA-617**, *Gold Reserve Inc. v. Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, para. 685.

⁶⁰⁷ *See* Letter from the Tribunal to the Parties dated 23 August 2022, Question 8: “What is the degree of granularity required for proof of damages under international law or what principles determine the details that must be proven?”; Track III Hearing Transcript, Day 7 (26 August 2022), pp. 1478-1491 (Bishop), pp. 1491-1503 (Schwartz); Day 8 (29 August 2022), pp. 1752-1765 (Bishop), pp. 1765-1778 (Schwartz).

⁶⁰⁸ *See* Procedural Order No. 65, 10 July 2020, paras. 81-85.

(c) *Incidental Damages*

1. The Requirement of Causation for the Compensation of Incidental Damages

327. The Tribunal turns now to incidental damages. Generally, such damages shall be compensable in this Arbitration if they were “reasonably incurred to repair damage and otherwise mitigate loss” arising from the recognition and enforcement of any part of the Lago Agrio Judgment. Under this framework of analysis, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the enormous anticipated losses that would arise from the recognition and enforcement of the Lago Agrio Judgment will generally fall under the heading of incidental damages.⁶⁰⁹ Building on the example in paragraph 321 above, while the actual arrest of an oil tanker owned by the Claimants premised on the recognition and enforcement of the Lago Agrio Judgment would constitute a form of direct damage, the legal fees and expenses reasonably incurred by the Claimants to anticipate and resist such an arrest, or to overturn the arrest after it has been enforced, would amount to incidental damages.⁶¹⁰
328. As with direct damages, it is the Claimants’ burden to establish causation between any incidental damages for which compensation is sought and the Respondent’s wrongs.⁶¹¹ Within the realm of incidental damages, however, the relevant causation assessment is not whether such damages flow naturally from a breach (*i.e.*, whether they were proximately caused by the breach) but rather whether they were incurred *in reaction* to an *injury* arising from a breach and were geared towards minimizing the effects of such injury (*i.e.*, whether they were “incurred to repair damage and otherwise mitigate loss

⁶⁰⁹ **CLA-652**, Sergey Ripinsky, Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2016), pp. 302-303: “*Professional fees*: Incidental expenses may be incurred in the course of defending from the ‘attacks’ of the host-country authorities”; **CLA-605**, *Pope & Talbot Inc. v. Canada*, UNCITRAL, Award in respect of Damages, 31 March 2002, para. 85; **CLA-655**, *Autopista Concesionada de Venezuela, C.A. v. Venezuela*, ICSID Case No. ARB/00/5, Award, 23 September 2003, para. 275.

⁶¹⁰ The Tribunal observes that this classification as between direct and incidental damages might have required further refinement vis-à-vis discreet components on the Claimants’ damages claims in circumstances where the aim of a recognition and enforcement action was to force an ‘amicable’ settlement on the Claimants and the Claimants made payments to settle the action (*see* para. 309 above). However, none of the Claimants’ damages claims concerns such scenario. Accordingly, the Tribunal considers that its classification is correct for the purposes of this Award and notes that, in any event, any such reclassification would have no significant effect on the determination of the questions currently pending before the Tribunal.

⁶¹¹ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1479 (Bishop), p. 1492 (Schwartz).

arising from the breach”).⁶¹² In other words, incidental damages by definition seek to mitigate some form of direct damage – in this case, the damage arising directly from the recognition and enforcement of the uncorrected Lago Agrio Judgment. As such, incidental damages amount to a *secondary* source of injury, the primary source being any form of direct damage as just described.

329. Accordingly, to the extent they amount to a form of damage caused by the internationally wrongful act of a State, incidental damages also form part of the injury that constitutes the subject matter of reparation under Article 31(2) of the ILC Articles.⁶¹³ By way of example, if a fire is deliberately and unlawfully lit which will directly threaten a neighbouring property when it spreads, the injury can properly be said to arise before the fire actually reaches the neighbouring property, and the costs of reasonable measures to protect against the fire are recoverable.
330. In this respect, the Tribunal must observe that it is uncommon for a damages claim to be centred principally on incidental harm occurring outside the main chain of events of the treaty breach – here, the Lago Agrio Litigation occurring in Ecuador. While such circumstance is explained by the special features of this claim (including primarily the transnational risk of enforcement of the Lago Agrio Judgment),⁶¹⁴ it also raises an inevitable question of remoteness of the damage. Thus, in the Tribunal’s view, the required causal link must be established clearly and in an itemized fashion for each mitigation measure to warrant reparation. Similarly, the Tribunal will bear in mind the need to distinguish between the legal fees and expenses spent to minimize the effects of the Respondent’s Treaty breaches and those which form part of the normal cost of doing business in the host State, which by definition are not recoverable as damages.
331. In reaching this conclusion, the Tribunal has taken note of the Claimants’ argument that damages must be deemed to be caused by the breach when they were deliberately caused

⁶¹² **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 36, Commentary (34).

⁶¹³ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (9) (“Injury includes *any* damage, whether material or moral, caused by the internationally wrongful act of a State”) (emphasis by the Tribunal).

⁶¹⁴ Track II Award, paras. 7.24-7.27.

by the wrongdoer.⁶¹⁵ The Tribunal considers this to be, at most, a factor that must be taken into account when performing a proximate causation analysis and only vis-à-vis direct damages;⁶¹⁶ it cannot serve as a basis to obviate the proximate causation analysis required under international law for the assessment of direct damages or the additional layer of analysis required for the assessment of incidental damages (*i.e.*, whether incidental damages were incurred *in reaction to* some form of direct damage).

2. The Requirement of Reasonableness for the Compensation of Incidental Damages

332. Aside from causation, and unlike direct damages, incidental damages are subject to a requirement of reasonableness – again, the notion of reasonableness implies an assessment of the Claimants’ *reaction* to any direct damage flowing from the Respondent’s internationally wrongful acts.⁶¹⁷ The onus is on the Claimants to prove that any legal costs spent to mitigate the injury were “reasonably incurred”, as already indicated by the Tribunal in Procedural Order No. 65.⁶¹⁸
333. According to the Claimants, however, the allocation of the burden of proof on reasonableness includes an additional layer of analysis. In their submission, once the Claimants have satisfied the burden to establish that a particular *measure* is reasonable, the burden shifts to the Respondent to establish that the *amount of costs* incurred in undertaking such measure is unreasonable. This is so, the Claimants say, because such challenge is tantamount to an affirmative defence of a failure to mitigate damage.⁶¹⁹
334. The Tribunal finds no basis to adopt the twofold analysis proposed by the Claimants. The reasonableness requirement for the compensation of incidental damages is connected to

⁶¹⁵ Track III Hearing Transcript, Day 1 (18 August 2022), p. 35 (Paulsson).

⁶¹⁶ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (10): “There is a further element, associated with the exclusion of injury that is too ‘remote’ or ‘consequential’ to be the subject of reparation. In some cases, the criterion of ‘directness’ may be used, in others ‘foreseeability’ or ‘proximity’. But other *factors* may also be relevant: for example, whether State organs deliberately caused the harm in question, or whether the harm was caused within the ambit of the rule which was breached, having regard to the purpose of that rule.” (emphasis by the Tribunal)

⁶¹⁷ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 36, Commentary (34).

⁶¹⁸ Procedural Order No. 65, 10 July 2020, para. 76.

⁶¹⁹ Track III Hearing Transcript, Day 6 (25 August 2022), p. 1253 (Coriell).

the reasonableness criterion underlying the duty to mitigate but must not be conflated with it. When compensation is sought for incidental damages, reasonableness arises as a requirement for *compensation* under Article 36 of the ILC Articles and as such it must be established by the party requesting compensation. The breaching party may challenge the reasonableness of the amounts sought, but such challenge should not be equated to a failure to mitigate as an affirmative defence against a request for *reparation* (Article 31 of the ILC Articles), which seeks to address the injured party’s failure to act reasonably when confronted by the *injury* and preclude recovery to that extent.⁶²⁰ It is not concerned with the injured party’s failure to mitigate *its own conduct*.

335. Consequently, having claimed compensation for incidental damages, the onus is on the Claimants to prove the reasonableness of both the mitigation measures they undertook and the amounts spent in connection with each of those measures.⁶²¹
336. Lastly, the Parties have also briefed the Tribunal extensively regarding the applicable test for reasonableness as regards incidental damages.⁶²² Having assessed the materials before it, the Tribunal finds no need and no basis to formulate a comprehensive test for reasonableness in the abstract and detached from the factual matrix of the case: no such test has been fully settled yet in international law,⁶²³ and in any event, as already noted elsewhere by the Tribunal, a reasonableness analysis is always context-dependent.⁶²⁴ It is however prepared to accept, as agreed by the Parties, that the test for reasonableness is an

⁶²⁰ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (11): “Even the wholly innocent victim of wrongful conduct is expected to act reasonably when confronted by the *injury*.” (emphasis by the Tribunal).

⁶²¹ See e.g. **RLA-738**, Sergey Ripinsky & Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2008), p. 305, fn 217: “In cases where a claimant seeks recovery of the cost of litigation with third parties, he will have to show that it was reasonable for him to defend in those proceedings, in addition to establishing the reasonableness of the amount of professional costs”; **RLA-722**, *Iran v. United States*, Cases Nos. A15 (IV) and A24-FT, Award No. 590- A15(IV)/A24-FT, 28 December 1998, para. 102: “The Tribunal expects Iran to show in the second phase of these proceedings what expenses it incurred with respect to each specific case and what was the particular justification for the specific sums it spent.”

⁶²² See, *inter alia*, Track III Hearing Transcript, Day 6 (25 August 2022), pp. 1261-1264 (Coriell), pp. 1266-1269 (Tsutieva).

⁶²³ **RLA-738**, Sergey Ripinsky & Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2008), p. 306: “Since international law has not yet developed its own intellectual tools of assessing whether particular expenditure has been incurred reasonably, national experiences will be of use.”

⁶²⁴ Partial Award on Track III, para. 182.

objective one.⁶²⁵ It also accepts necessity as a component of reasonableness, albeit not as an independent requirement of the test under international law, which finds no clear support in the authorities filed by the Parties. Proportionality – which is embedded separately in the test for proximate causation as regards compensation⁶²⁶ – may also be regarded as a component of reasonableness when understood as proportionality between the measures undertaken and the mitigation goals sought by the injured party.⁶²⁷

337. The Tribunal has taken note of other factors suggested by the Parties as pertaining to the reasonableness test when applied to legal fees and expenses conceptualized as incidental damages.⁶²⁸ The key factors or indicia proposed by the Claimants include the following:

- (i) There is a presumption of reasonableness and deference to a claimant’s business judgment.
- (ii) Payment of legal fees and expenses without a guarantee of recovery constitutes strong evidence of reasonableness.
- (iii) Reasonableness is assessed at the relevant time, not with the benefit of hindsight.
- (iv) Consistent success constitutes evidence of reasonableness.
- (v) Reasonableness is a range, not a fixed point.⁶²⁹

⁶²⁵ Track III Hearing Transcript, Day 6 (25 August 2022), p. 1261 (Coriell), p. 1270 (Tsutieva).

⁶²⁶ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 34, Commentary (5): “The issue is whether the principle of proportionality should be articulated as an aspect of the obligation to make full reparation. In these articles, proportionality is addressed in the context of each form of reparation, taking into account its specific character . . . Compensation is limited to damage actually suffered as a result of the internationally wrongful act, and excludes damage which is indirect or remote.”

⁶²⁷ **RLA-738**, Sergey Ripinsky & Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2008), p. 306: “This standard inevitably calls for a case-by-case consideration as to whether the mitigation expenses were reasonably incurred in the circumstances of a particular claim. It appears that the reasonableness of incidental expenses may generally be assessed by examining the *proportionality* of the measures taken in order to achieve the claimants’ legitimate objectives.” (emphasis in original)

⁶²⁸ Track III Hearing Transcript, Day 6 (25 August 2022), pp. 1263-1264 (Coriell), pp. 1264-1276 (Tsutieva).

⁶²⁹ Track III Hearing – Claimants’ Presentation on Question 5 (25 August 2022), Slide 12; Track III Hearing Transcript, Day 6 (25 August 2022) pp. 1263-1264 (Coriell).

338. In turn, the Respondent’s proposed factors include:

- (i) A showing that the Claimants “were reasonably compelled in the prudent defense of their interests to undertake particular decisions”,⁶³⁰ which must be “a reasonable perception in light of the situation prevailing at the time”.⁶³¹
- (ii) Fees must be the product of reasonable billing judgment by lawyers.⁶³²
- (iii) Regardless of actual spending, all fees are subject to scrutiny for reasonableness and necessity.⁶³³
- (iv) It is “ludicrous to treat the spending of hundreds of millions of dollars of legal fees as some kind of market determination that tribunals and courts are not permitted to review.”⁶³⁴

339. The Tribunal will assess these factors in full within the context of each head of damages later in this Award. At this stage it will only share the observations that follow.

340. First, it is common ground between the Parties that reasonableness should be assessed contemporaneously and not with the benefit of hindsight. The Tribunal accepts this proposition as being consistent with Article 36 of the ILC Articles.

341. Accordingly, the Tribunal is prepared to grant a certain level of deference to the Claimants’ decisions as to which specific mitigation measures to undertake in real time,⁶³⁵ particularly so in view of the global risk of enforcement of the Lago Agrio Judgment and the need to coordinate actions in multiple jurisdictions. However, the Tribunal finds no basis in international law for the proposition that the Claimants’ exercise of business

⁶³⁰ Track III Hearing Transcript, Day 6 (25 August 2022), p. 1265 (Tsutieva).

⁶³¹ Track III Hearing Transcript, Day 6 (25 August 2022), p. 1270 (Tsutieva).

⁶³² Track III Hearing Transcript, Day 6 (25 August 2022), p. 1268 (Tsutieva).

⁶³³ Track III Hearing Transcript, Day 6 (25 August 2022), p. 1271 (Tsutieva).

⁶³⁴ Track III Hearing Transcript, Day 6 (25 August 2022), p. 1274 (Tsutieva).

⁶³⁵ **RLA-817**; *Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary*, ICSID Case No. ARB/17/27, Award of the Tribunal, 13 November 2019, para. 427: “Finally and in any event, the Tribunal notes that the record contains ample evidence of the Claimants’ multiple efforts to mitigate the consequences of the loss of access to the land. This is not a surprise as mitigating the loss was primarily in the Claimants’ interest. Absent compelling evidence to the contrary, the Tribunal is not prepared to speculate whether the Claimants should have exercised a better business judgment, for instance, by growing certain crops on specific parcels of land.”

judgment could support a legal presumption of reasonableness. It is, at most, evidence supporting an inference of reasonableness to be weighed along with all other evidence.⁶³⁶

342. Similarly, the Tribunal is also prepared to accept ‘payment without a guarantee of recovery’ and ‘consistent success’ as indicia of reasonableness but not as dispositive factors. Such factors might assist to varying extents the Tribunal’s reasonableness analysis, more so when establishing reasonableness in terms of the measures taken and to a lesser degree at the level of the amounts spent. Faced with the extraordinary figures claimed as incidental damages in Track III,⁶³⁷ the Tribunal must conduct a particularly thorough review to satisfy itself, with sufficient confidence, that the amounts spent were reasonable in the circumstances.⁶³⁸

343. In any event, the Tribunal is wary of accepting any of the above factors as proxies for the causal link required under international law.⁶³⁹ Regardless of the impact of such factors on the question of reasonableness, the Claimants must still establish that any mitigation measures undertaken sought to repair damage and otherwise mitigate loss caused by (the risk of) the recognition and enforcement of the Lago Agrio Judgment.

4. Date of Injury

(a) Introduction

344. The Tribunal will now address a particular point of contention between the Parties regarding temporal limits in compensation: is there a cut-off date (or dates) prior to which

⁶³⁶ **CLA-665**, Separate opinion of Judge Holtzmann, *Sylvania Technical Systems, Inc. v. Iran* (1985) 8 Iran-US C.T.R 298, cited in *ADC Affiliate Limited v. Hungary*, ICSID Case No. ARB/03/16, 2 October 2016, 534.

⁶³⁷ The amount claimed by the Claimants for legal fees and expenses is USD 793,879,967.74 (Reply, Updated Appendix 2, p. 1). The Tribunal takes note of Respondent’s following contention in this regard at Track III Hearing Transcript, Day 2 (19 August 2022), p. 227 (Schwartz): “12 years ago, Chevron’s General Counsel declared: ‘We’re going to fight this until hell freezes over, and then we will fight it on the ice.’ That call to arms pervades every single component of the extraordinary damages claim now before you. This was a holy war for Chevron, and it remains so to this day. In the Lago Agrio Litigation, and in every other proceeding it spawned worldwide, Chevron applied a level of overkill that only a corporate behemoth of its size could afford. It hired armies of lawyers and unleashed them on its adversaries, real and imagined. It threw its guidelines for outside counsel out the window. It empowered its lawyers to spend indiscriminately and, not surprising, that’s exactly what they did. Far from exercising billing judgment, they went on a feeding frenzy, to borrow Professor Paulsson’s phrase.”

⁶³⁸ See para. 549 *ff* below.

⁶³⁹ See para. 328 above.

the Claimants are precluded from claiming damages in respect of each of the Respondent’s internationally wrongful acts?⁶⁴⁰

345. The Respondent answers this temporal question in the affirmative: it submits that the Claimants are not entitled to claim any legal expenses incurred before the breaches found by the Tribunal were consummated by the decision of the Constitutional Court dated 27

⁶⁴⁰ The Tribunal recalls that the Parties were invited to address multiple facets of this question during the Track III Hearing.

First, on 19 August 2022 (Day 2 of the Track III Hearing), the Tribunal requested the Parties to prepare targeted presentations on the following questions: “1) How does each Party reconcile their proposed dates for the breach(es) of the Treaty (or the commencement thereof) with the Tribunal’s decisions in the Operative Part of the Second Partial Award on Track II: a. “that the Respondent, by issuing, rendering enforceable, maintaining the enforceability and executing the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) and knowingly facilitating its enforcement outside Ecuador, wrongfully committed a denial of justice under the standards both for fair and equitable treatment and for treatment required by customary international law under Article II(3)(a) of the Treaty” (paragraph 10.5, emphasis added); b. “that the said Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) decided only diffuse claims as distinct from individual claims for personal harm by the Lago Agrio Plaintiffs, whereby the Respondent violated its obligations towards the First Claimant and the Second Claimant as “Releasees” under the 1995 Settlement Agreement” (paragraph 10.8, emphasis added); and c. “that the Respondent violated its First and Second Interim Awards on Interim Measures dated 25 January and 16 February 2012 in breach of Article VI of the Treaty, Article 32(3) of the UNCITRAL Arbitration Rules and international law” (paragraph 10.18) and that “[t]he Respondent (by its judicial branch), in declaring the Lago Agrio Judgment to be enforceable with the Lago Agrio Appellate Court’s order of 1 March 2012 and the Lago Agrio Court’s enforcement order of 3 August 2012, did not comply with this Tribunal’s Orders and Interim Awards” (paragraph 7.130)? 2) As regards the claimed pre-breach damages: a. Does the “obligation to make full reparation for the [a] injury [b] caused by [c] the internationally wrongful act” under Article 31 of the ILC Articles cover alleged damages having arisen prior to the breach of an international obligation? In other words, can they form part of the “injury” if they precede the internationally wrongful act? b. If so, how should they be characterized? As direct damages, as incidental damages (including mitigation costs), or otherwise? 3) Does the Second Partial Award on Track II provide any guidance as regards whether the Respondent’s denial of justice constitutes a composite act under Article 15(1) of the ILC Articles? What is, if any, the relevance of Article 15(2) of the ILC Articles to the assessment of compensation in this case?” (see Letter from the Tribunal to the Parties dated 19 August 2022).

The Parties made presentations on Questions 3), 1), and 2) in the above quote, respectively, on Days 5, 11 and 12 of the Track III Hearing (see Track III Hearing Transcript, Day 5 (24 August 2022), pp. 971-982 (Paulsson), 983-992 (Tsutieva); Day 11 (1 September 2022), pp. 2600-2614 (Sobota), 2614-2624 (Tsutieva); Day 12 (2 September 2022), pp. 2787-2802 (Paulsson), 2802-2816 (Tsutieva)).

In addition, on Day 12 of the Track III Hearing (2 September 2022) the Tribunal put additional questions to the Parties in order to assist them in preparing their closing statements, including the following: “9) Suppose hypothetically that (i) the acts of the Ecuador courts in accepting the LAPs’ application in 2004 and (ii) the acts of Judge Yáñez in 2006 had been nullified by an appeal court in Ecuador in, say, 2008. Would those acts of 2004 and 2006 now amount to breaches of the Treaty? 10) Suppose hypothetically that Judge Zambrano had been apprehended for judicial bribery on the eve of issuing the Lago Agrio Judgment in 2011. Would the bribery now amount to a breach of the Treaty? 11) Suppose hypothetically that (i) the acts of the Ecuador courts in accepting the LAPs’ application in 2004 and (ii) the acts of Judge Yáñez in 2006, had not been nullified at any time by an appeal court in Ecuador. Would any purported breach of the Treaty on account of those acts arise in 2004, 2006, or when the requirements of the Denial of Justice doctrine have been exhausted without nullification of those acts? From which date would (a) the duty to make reparation, and (b) any duty to pay pre-award interest, arise? 12) Suppose hypothetically that the Lago Agrio Judgment had been overturned by the Cassation Court in 2013. Would the Lago Agrio Judgment now amount to breach of the Treaty?” (see Letter from the Tribunal to the Parties dated 2 September 2022).

June 2018. This is so, the Respondent says, because judicial decisions do not constitute breaches of international obligations until they become final outcomes of the judicial system as a whole.⁶⁴¹

346. In turn, the Claimants consider the Respondent’s “consummation-date theory” to be at odds with “basic principles of causation and damages” and posit that “elementary principles of damages for breach of contract ensure the recoverability of losses caused by the breach, whether past or future.”⁶⁴²
347. The Tribunal considers it inappropriate to apply, without more, principles of contractual damages to the temporal assessment of injuries under international law as suggested by the Claimants, unless such principles find a direct and distinct equivalent within the realm of international law. Similarly, however, the Tribunal considers that the Respondent’s proposed notion of ‘date of breach’ does not provide conclusive answers for the assessment of damages under international law. Article 31 of the ILC Articles makes no reference to the date of breach as a yardstick for the assessment of an injury. Naturally, the date of consummation of a breach remains a relevant heuristic to the extent that the injury must follow from the breach – and will therefore normally be composed of elements that also follow the unfolding of the breach in time. However, the definition of injury and causation under international law is broader than a factual analysis of cause and consequence and cannot be “satisfactorily solved by search for a single verbal formula”.⁶⁴³ The subject of reparation is the *injury* arising from and ascribable to an international wrongful act.⁶⁴⁴ Thus, while causation under international law must be assessed on a case-by-case basis, to the extent that temporal limits may be relevant to this assessment, the date of the *injury* may provide a more accurate basis to ascertain those limits than the date of the *breach*.

⁶⁴¹ Counter-Memorial, para. 243.

⁶⁴² Reply, paras. 152-153.

⁶⁴³ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (10).

⁶⁴⁴ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (9).

348. The foregoing is confirmed by the special features of this case, which, as already stated above, concerns complex acts as treaty breaches and transnational injuries. As also stated, however, the causation analysis required in Track III is substantially simplified in view of the Tribunal’s Track II determination that the recognition and enforcement of any part of the unremedied Lago Agrio Judgment is the primary source of the injury caused by the Respondent’s internationally wrongful acts.
349. The question remains nonetheless as to the appropriate date (or dates) that should act as a reference point from which the damages claimed can be said to have been “caused by” the Respondent’s internationally wrongful acts. In accordance with the above, the Tribunal determines in this Section the applicable ‘dates of injury’ for direct damages and incidental damages, each requiring a distinct analysis.

(b) Date of injury for direct damages

350. The Tribunal can readily determine the appropriate anchor point for direct damages. By necessary implication, the Track II finding that the recognition and enforcement of the Lago Agrio Judgment is the primary source of the Claimants’ injuries leads to the conclusion that the appropriate reference point for proximate causation purposes is 1 March 2012, the date on which the Lago Agrio Judgment became enforceable as a result of the Appellate Court’s judgment and order.⁶⁴⁵ Therefore, prospectively as from that date, any injury caused by the recognition and enforcement of the Lago Agrio Judgment in the proximate causation sense – again, any direct damage – must be repaired by the Respondent as a matter of principle.
351. In this respect, the Tribunal must disagree with the Respondent’s proposition that damages only started to flow from the Respondent’s internationally wrongful acts as from the date of the judgment of the Constitutional Court (27 June 2018), only as of which point the Respondent considers that a breach was consummated. In view of the unusual factual matrix of this case, it would be misguided to conflate the date of crystallisation of

⁶⁴⁵ See Track II Award, para. 4.462: “1 March 2012: By its Order of 1 March 2012, the Lago Agrio Appellate Court denies Chevron’s request of 23 February 2012. It confirms that the Lago Agrio Judgment, as upheld by the Appellate Court, is now enforceable. This Tribunal treats the Order of 1 March 2012 as the certificate of enforceability in Ecuador of the Lago Agrio Judgment by the Respondent. It was issued and maintained in non-compliance with the Tribunal’s several Orders for Interim Measures.”

the Treaty breaches with the date on which the injury caused to the Claimants started to flow from the breaches. Such approach would effectively exclude from a damages award any injury resulting from the enforcement of the “clearly improper and discreditable” Lago Agrio Judgment during the six years that lapsed between the date it became enforceable and the date of the judgment of the Constitutional Court.⁶⁴⁶ In other words, it would leave materially unremedied the prolonged enforcement of a corrupt judgment that violates international public policy – an outcome that would severely undermine the prohibition against denial of justice.⁶⁴⁷

352. Critically, an assessment of the wrongfulness of prior conduct is only possible at this juncture because the Respondent’s internationally wrongful acts have now been fully consummated, giving rise to the Respondent’s obligation of reparation under international law at least in respect of the Denial of Justice and Umbrella Clause Breaches.⁶⁴⁸ While the cause of action for denial of justice does not arise until a wrongful judicial act is combined with the exhaustion of all reasonably available and effective recourses against it, the wrongful conduct encompassed by the prohibition of denial of justice is not limited to the rejection of the final potential local remedy to a wrongful decision. Even more to the point, it does not render somehow licit the unremedied effects of outrageous judicial conduct underpinning a denial of justice.⁶⁴⁹

⁶⁴⁶ Track II Award, para. 8.60.

⁶⁴⁷ See Track II Award, paras. 9.16, 10.10.

⁶⁴⁸ Track II Award, paras. 10.6, 10.9. In respect of the Interim Awards Breach, see Track II Award, paras. 10.18-10.20; para. 377 below.

⁶⁴⁹ Track II Award, para. 9.16: “[A]s to the right of a party to receive a fair hearing before an impartial tribunal, the Tribunal has already referred to Article 10 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights and Articles 2 and 6 of the UN Basic Principles on the Independence of the Judiciary. The violation of such a right by judicial corruption is proscribed by the UN Convention against Corruption ratified by the General Assembly on 31 October 2003 (to which the Respondent is a Contracting Party). In *World Duty Free* (2006), in the context of corruption by bribery, the tribunal identified, as a matter of international public policy, an international consensus as to universal standards and accepted norms of conduct that must be applied in all fora. It concluded: ‘In light of domestic laws and international conventions relating to corruption, and in light of the decisions taken in this matter by courts and arbitral tribunals, this Tribunal is convinced that bribery is contrary to the international public policy of most, if not all, States . . .’ In the Tribunal’s view, judicial bribery must rank as one of the more serious cases of corruption, striking directly at the rule of law, access to justice and public confidence in the legal system; and also, as regards the foreign enforcement of a corrupt judgment, at the law of nations. Accordingly, the Tribunal concludes that the Lago Agrio Judgment (with the judgments of the Lago Agrio Appellate, Cassation and Constitutional Courts) violates international public policy. As a matter of international comity, it must follow that the Lago Agrio Judgment should not be recognised or enforced by the courts of other States.”

353. Within the context of the foregoing analysis, the question whether the Denial of Justice Breach amounts to a ‘composite act’ in the sense of Article 15 of the ILC Articles – a matter that was extensively debated between the Parties – is irrelevant. Accordingly, it will not be addressed by the Tribunal.

(c) Date of injury for incidental damages

354. The Tribunal’s conclusion that 1 March 2012 (the date on which the Lago Agrio Judgment was rendered enforceable) is the starting date for direct damages does not, however, extend to incidental damages, which originate from a different source – *i.e.*, the need to attempt to minimize the injury arising from an internationally wrongful act, as opposed to the injury flowing directly from the act itself – and are thus not coextensive. Put differently, the date on which the LAPs initiated their attempts to have the Lago Agrio Judgment recognized and enforced in multiple jurisdictions need not necessarily coincide with the date on which the Claimants started to incur legal fees and expenses in an attempt to mitigate the injury by thwarting those efforts.

355. The Claimants request compensation for incidental damages starting as early as 1 January 2004 – the date on which, in their submission, the Respondent began to violate the terms of the 1995 Settlement Agreement and thus the Umbrella Clause.⁶⁵⁰ This raises the question of whether incidental damages can pre-date the injury flowing directly from the Respondent’s internationally wrongful acts or even the acts themselves.

356. The appropriate anchor point for incidental damages needs to be ascertained by reference to each of the Respondent’s internationally wrongful acts: the Denial of Justice Breach, the Umbrella Clause Breach, and the Interim Awards Breach. Each is addressed now in turn.

357. *Denial of Justice Breach:* The Tribunal’s declarations pertaining to the Denial of Justice Breach in its Track II Award read:

10.4 The Tribunal declares that material parts of the Lago Agrio Judgment of 14 February 2011 (as clarified by order of 4 March 2011) were corruptly ‘ghostwritten’ for Judge Nicolás Zambrano Lozada, as a judge of the Lago Agrio Court, by one or more of the Lago Agrio Plaintiffs’ representatives in return for a promise by such

⁶⁵⁰ Reply, para. 164.

representative(s) to pay to Judge Zambrano a bribe from the proceeds of the Lago Agrio Judgment’s enforcement by the Lago Agrio Plaintiffs;

10.5 The Tribunal declares that the Respondent, by *issuing, rendering enforceable, maintaining the enforceability and executing the Lago Agrio Judgment* (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) *and knowingly facilitating its enforcement outside Ecuador*, wrongfully committed a denial of justice under the standards both for fair and equitable treatment and for treatment required by customary international law under Article II(3)(a) of the Treaty;

10.6 The Tribunal declares that the Respondent is liable to make full reparation to the First Claimant and the Second Claimant for denial of justice under the standards both for fair and equitable treatment and for treatment required by customary international law under Article II(3)(a) of the Treaty; and the Tribunal rejects the defences pleaded by the Respondent;⁶⁵¹

358. The Tribunal recalls that its declarations regarding denial of justice were carefully circumscribed to specific facts and actors,⁶⁵² as already stated in its Partial Award on Track III:

The Tribunal’s finding of denial of justice is twofold. At paragraph 10.4, the Tribunal makes a factual finding in respect of the Lago Agrio Judgment: material parts thereof were corruptly ‘ghostwritten’ for Judge Zambrano by one or more of the Lago Agrio Plaintiffs’ representatives. At paragraph 10.5, the Tribunal makes a further factual and legal finding: the Respondent’s “issuing, rendering enforceable, maintaining the enforceability and executing the Lago Agrio Judgment” and “knowingly facilitating its enforcement outside Ecuador” constitutes a denial of justice. As such, the ‘ghostwriting’ of the Lago Agrio Judgment and the Respondent’s failure to correct the corrupt Judgment are the factual centrepieces of the Tribunal’s finding of denial of justice. No findings are made there in respect of other aspects of the Lago Agrio Litigation, the Tribunal having expressly stated that “[s]ave as aforesaid, the requests for relief made by the [Parties] for decision in this Track II are not granted”.⁶⁵³

359. The Tribunal there also stated that the actions of third parties had significance only as background elements for the Denial of Justice Breach:

In sum, while the Tribunal deemed proven the improper conduct of the LAPs’ representatives and other related actors in the above excerpts of the Track II Award, it attributed no significance to their actions other than as background elements of the Respondent’s denial of justice; indeed, the Tribunal laid emphasis upon the fact that (i) such individuals “[were] not the object of the exercise required for [the Track II Award] under the Treaty applying international law”; and (ii) their conduct was not the cause of the Claimants’ injuries – it was at most a “necessary condition”. As such, the conduct of those third parties is solely “evidence establishing ‘ghostwriting’”, that is, proven facts upon

⁶⁵¹ Track II Award, paras. 10.4-10.6 (emphasis by the Tribunal).

⁶⁵² Partial Award on Track III, para. 125.

⁶⁵³ Partial Award on Track III, para. 116.

which the Tribunal drew the conclusion that the Lago Agrio Judgment was ‘ghostwritten’, which is the factual underpinning of the Respondent’s Treaty breach.⁶⁵⁴

360. In these paragraphs, the Tribunal confirmed its finding that the conduct of third parties pre-dating the ‘ghostwriting’ of the Lago Agrio Judgment “was not the cause of the Claimants’ injuries”: the earliest instance forming part of the Denial of Justice Breach was the issuance of the ‘ghostwritten’ judgment on 14 February 2011. Thus, as a matter of causation in fact, any events pre-dating the issuance of the Lago Agrio Judgment bear no relevance to the Claimants’ injuries because they do not form part of the Denial of Justice Breach in the first place – they are ‘background elements’, as stated above.
361. Thus, any harm arising before the issuance of the Lago Agrio Judgment cannot constitute loss arising from the Denial of Justice Breach because it cannot be causally connected to any event of the series of the breach, which the Respondent committed “by issuing, rendering enforceable, maintaining the enforceability and executing the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) and knowingly facilitating its enforcement outside Ecuador”.⁶⁵⁵
362. The question is, therefore, whether incidental damages are compensable in principle if they were incurred starting as of the first event in the series of the Denial of Justice Breach: the date of issuance of the Lago Agrio Judgment (14 February 2011). The Tribunal considers that they are. A different conclusion would discourage mitigation efforts in the face of a clear impending injury. As from that date, the risks attached to the enforcement of the Lago Agrio Judgment, already described above, were no longer a matter of hypothesis: the findings of liability in the Lago Agrio Judgment made the potential and extent of its enforcement foreseeable beyond any reasonable doubt. Coupled with the fact that such expenses were incurred within the ambit of the chain of events constituting the Denial of Justice Breach, the Tribunal considers that a sufficient causal link exists as from 14 February 2011 between such expenses and the injury flowing

⁶⁵⁴ Partial Award on Track III, para. 124.

⁶⁵⁵ Track II Award, para. 10.5.

directly from the Denial of Justice Breach to satisfy the causation test for incidental damages under Article 36 of the ILC Articles.⁶⁵⁶

363. For these purposes, it is immaterial whether those incidental expenses were incurred with the purpose of minimizing the loss arising from the enforcement of the Lago Agrio Judgment (“whether by attachment, arrest, interim injunction, execution or howsoever otherwise”),⁶⁵⁷ preventing the Lago Agrio Judgment from becoming enforceable after it was issued in the first place, or, to the extent such efforts were unsuccessful, thereafter seeking to render it unenforceable, as any of these courses of action would have served to mitigate the injury.
364. *Umbrella Clause Breach*: The analysis of incidental damages arising from the Umbrella Clause Breach leads to the same conclusion that the appropriate date of injury for incidental damages is 14 February 2011, the date of issuance of the Lago Agrio Judgment. As explained in the paragraphs that follow, this conclusion flows from the substantial factual overlap between the Denial of Justice Breach and the Umbrella Clause Breach.
365. For context, the Tribunal recalls that the Umbrella Clause Breach as declared in the Track II Award builds on the Tribunal’s rulings in prior decisions and awards.
366. In its Partial Award on Track I, the Tribunal determined that both Claimants are “Releasees” under the 1995 Settlement Agreement and the 1998 Final Release and can therefore invoke their contractual rights thereunder. The Tribunal also determined that while the scope of such releases “does not extend to any environmental claim made by an individual for personal harm in respect of that individual’s rights separate and different from the Respondent”, “it does have legal effect under Ecuadorian law precluding any ‘diffuse claim’” against the Claimants:

- (1) The First Claimant (“Chevron”) and the Second Claimant (“TexPet”) are both “Releasees” under Article 5.1 of the 1995 Settlement Agreement and Article IV of the 1998 Final Release;
- (2) As such a Releasee, a party to and also part of the 1995 Settlement Agreement, the First Claimant can invoke its contractual rights thereunder in regard to the release in

⁶⁵⁶ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 36, Commentary (34). *See also* para. 328 above.

⁶⁵⁷ *See* Track II Award, para. 10.13(ii).

Article 5.1 of the 1995 Settlement Agreement and Article IV of the 1998 Final Release as fully as the Second Claimant as a signatory party and named Releasee;

- (3) The scope of the releases in Article 5 of the 1995 Settlement Agreement and Article IV of the 1998 Final Release made by the Respondent to the First and Second Claimants does not extend to any environmental claim made by an individual for personal harm in respect of that individual’s rights separate and different from the Respondent; but it does have legal effect under Ecuadorian law precluding any “diffuse” claim against the First and Second Claimants under Article 19-2 of the Constitution made by the Respondent and also made by any individual not claiming personal harm (actual or threatened);⁶⁵⁸

367. In its subsequent Decision on Track I(B), a majority of the Tribunal decided that the Lago Agrio Complaint of 7 May 2003, as originally filed, included individual claims going beyond the scope of the releases and thus cannot be read (as the Claimants asserted and the Respondent denied) as pleading “exclusively” or “only diffuse claims”. Accordingly, the Lago Agrio Complaint was not wholly barred at its inception by *res judicata*, under Ecuadorian law, by virtue of the 1995 Settlement Agreement:

- (1) The Lago Agrio Complaint of 7 May 2003, as an initial pleading, included individual claims resting upon individual rights under Ecuadorian law, not falling within the scope of the 1995 Settlement Agreement (as invoked by the Claimants);
- (2) The Lago Agrio Complaint was not wholly barred at its inception by *res judicata*, under Ecuadorian law, by virtue of the 1995 Settlement Agreement (as invoked by the Claimants);⁶⁵⁹

368. A majority of the Tribunal confirmed these findings of the Decision on Track I(B) in the Track II Award as part of the declaration of the Umbrella Clause Breach.⁶⁶⁰ By doing so, it effectively rejected the proposition that the Respondent breached its obligations under the Treaty by assuming jurisdiction over the Lago Agrio Complaint:

⁶⁵⁸ Partial Award on Track I, para. 112 (1)-(3).

⁶⁵⁹ Decision on Track I(B), para. 186 (1)-(2). *See also* Decision on Track I(B), Note of Dissent by Arbitrator Horacio Grigera Naón, paras. 7-9: “For the above reasons, I respectfully disagree with the Decision and its conclusions, including that the Complaint does not fall within the scope of the 1995 Settlement Agreement, consider that it is premature to address in any way at the present stage, on the basis of a limited record, and without simultaneously taking into account the circumstances mentioned in paras. 140-142 of the Decision, whether the Lago Agrio claims are or are not covered by the 1995 Settlement Agreement, and further also consider that the issues raised by the nature or characterization of the Lago Agrio claims and whether they are encompassed or not by the 1995 Settlement Agreement require being addressed in Track 2 of this arbitration in the light of the Parties’ pleadings as to the ‘collective’ or ‘diffuse’ nature of such claims and the factors alluded to in the Decision’s paras. 140-142.”

⁶⁶⁰ Track II Award, paras. 10.7-10.9.

Conversely, the Tribunal has *not* found the Respondent in breach of its obligations under the Treaty from the facts only that: (i) the Lago Agrio Plaintiffs commenced legal proceedings against Chevron before the Lago Agrio Court on 7 May 1993; (ii) the Lago Agrio Plaintiffs pleaded individual claims for personal harm against Chevron in their original Complaint filed in the Lago Agrio Litigation (not being diffuse claims); (iii) the Lago Agrio Court assumed jurisdiction over the Complaint (as regards non-diffuse claims), by reason of the undertaking in favour of Ecuadorian jurisdiction in the Aguinda Litigation; . . .⁶⁶¹

369. Echoing its findings on the Denial of Justice Breach, the Tribunal also declared in the Track II Award that the Lago Agrio Judgment, left materially unremedied by the Lago Agrio Appellate, Cassation and Constitutional Courts, breached the 1995 Settlement Agreement. In its entirety, the Umbrella Clause Breach declaration reads:

10.7 The Tribunal (by a majority) declares, confirming its Decision on Track IB, that the Lago Agrio Complaint of 7 May 1998, as an initial pleading, included individual claims (for personal harm) resting upon individual rights under Ecuadorian law, not falling within the scope of the 1995 Settlement Agreement and that, therefore, the Lago Agrio Complaint was not wholly barred at its inception by *res judicata* under Ecuadorian law, by virtue of the 1995 Settlement Agreement;

10.8 The Tribunal *declares that the said Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) decided only diffuse claims* as distinct from individual claims for personal harm by the Lago Agrio Plaintiffs, *whereby the Respondent violated its obligations towards the First Claimant and the Second Claimant as “Releasees” under the 1995 Settlement Agreement*;

10.9 The Tribunal declares that the Respondent is liable to make full reparation to the First Claimant and the Second Claimant under Article II(3)(c) of the Treaty for the non-observation of its obligations towards each of them as a “Releasee” under the 1995 Settlement Agreement; and the Tribunal rejects the defences pleaded by the Respondent;⁶⁶²

370. Earlier in the Track II Award, the Tribunal identified the same set of facts as the factual underpinning of the Umbrella Clause Breach:

In its First Partial Award, the Tribunal decided that Chevron and TexPet were both “Releasees” under Article 5.1 of the 1995 Settlement Agreement and Article IV of the 1998 Final Release. The Tribunal also decided that Chevron and TexPet could invoke their contractual rights as “Releasees” against the Respondent in regard to “diffuse” claims (as there described).

⁶⁶¹ Track II Award, para. 9.5 (emphasis by the Tribunal).

⁶⁶² Track II Award, paras. 10.7-10.9 (emphasis by the Tribunal).

In the Tribunal’s view, such contractual rights correspond to an ‘obligation’ by the Respondent towards each of Chevron and TexPet within the meaning of the Umbrella Clause in Article II(3)(c) of the Treaty.

In Parts IV and V of this Award, the Tribunal has found that the Lago Agrio Judgment, with the judgments of the Lago Agrio Appellate, Cassation and Constitutional Courts, rests upon finding Chevron liable for diffuse claims in noncompliance with the Respondent’s obligations to release Chevron (with TexPet and Texaco) from such liability under the 1995 Settlement Agreement.

In the Tribunal’s view, by the acts of its judicial branch, attributable to the Respondent under Article 4 of the ILC Articles on State Responsibility, the Respondent violated its obligations under Article II(3)(c) of the Treaty, thereby committing international wrongs towards each of Chevron and TexPet.⁶⁶³

371. In view of the substantial factual overlap between the Denial of Justice and Umbrella Clause Breaches – whereby the same judgment, left unremedied, breached both Treaty standards – the Tribunal considers that the rationale applicable to causation within the ambit of the Denial of Justice Breach is applicable also to the Umbrella Clause Breach. Nothing in the Umbrella Clause Breach alters the conclusion that the Lago Agrio Judgment, once rendered enforceable, became the primary source of direct damage for the Claimants by way of its recognition and enforcement. For the same reason, incidental expenses geared towards mitigating any such harm that were incurred after the issuance of the Lago Agrio Judgment on 14 February 2011 remain compensable under the Umbrella Clause Breach. Lastly, as gleaned from above, the issuance of the Lago Agrio Judgment is the first event in the series of the Umbrella Clause Breach – just as it is for the Denial of Justice Breach – thereby excluding any harm arising before the issuance of the Lago Agrio Judgment from the scope of the compensable injury in this case.

372. *Interim Awards Breach:* Lastly, the Tribunal turns to the Interim Awards Breach. The Tribunal’s declaration in its Track II Award as regards the Interim Awards Breach is as follows:

The Tribunal confirms, as declared in its Fourth Interim Award on Interim Measures dated 7 February 2013, that the Respondent violated its First and Second Interim Awards on Interim Measures dated 25 January and 16 February 2012 in breach of Article VI of the Treaty, Article 32(3) of the UNCITRAL Arbitration Rules and international law;⁶⁶⁴

⁶⁶³ Track II Award, paras. 8.5-8.8 (emphasis by the Tribunal).

⁶⁶⁴ Track II Award, para. 10.18.

373. For full context, the Tribunal in its Track II Award also said:

The Respondent (by its judicial branch), in declaring the Lago Agrio Judgment to be enforceable with the Lago Agrio Appellate Court’s order of 1 March 2012 and the Lago Agrio Court’s enforcement order of 3 August 2012, did not comply with this Tribunal’s Orders and Interim Awards.⁶⁶⁵

374. The Tribunal will address separately below the Respondent’s argument that the First and Second Interim Awards have been superseded by the Track II Award and the Respondent’s request for reconsideration of the First, Second and Fourth Interim Awards. For present purposes, the Tribunal limits its analysis to the issues that follow.

375. First, nothing in the Interim Awards Breach alters the conclusion that the recognition and enforcement of the Lago Agrio Judgment is the primary source of injury warranting mitigation (see paragraph 350 above). Those injuries are also the very harm that the Tribunal sought to prevent through its various orders and awards on interim measures, as noted in its Fourth Interim Award:

The Tribunal determines that the Lago Agrio Judgment was made final, enforceable and subject to execution within Ecuador by the Respondent no later than 3 August 2012 (upon its judiciary’s certifying the Lago Agrio Judgment’s enforceability), in violation of the Tribunal’s First and Second Interim Awards requiring the Respondent, respectively, “to take all measures at its disposal” and “to take all measures necessary” to suspend or cause to be suspended the enforcement and recognition both within and without Ecuador of that Lago Agrio Judgment.

Thereafter, the status accorded by the Respondent to the Lago Agrio Judgment led directly to what the Tribunal was seeking expressly to preclude temporarily by its orders and awards on interim measures, namely the attempted enforcement and execution of the Lago Agrio Judgment against the First Claimant (with its subsidiary companies) by persons acting in the name of the Lago Agrio plaintiffs not only within but also outside Ecuador, currently in the state courts of Canada, Brazil and Argentina and possibly in the near future also in the state courts of other countries.⁶⁶⁶

376. Similarly, nothing in the Interim Awards Breach alters the subsequent conclusion that 1 March 2012 is the appropriate reference date for direct damages. Indeed, in its Track II Award, the Tribunal confirmed such date as the moment of consummation of the Interim Awards Breach:

⁶⁶⁵ Track II Award, para. 7.130.

⁶⁶⁶ Fourth Interim Award, paras. 79-80.

1 March 2012: By its Order of 1 March 2012, the Lago Agrio Appellate Court denies Chevron’s request of 23 February 2012. It confirms that the Lago Agrio Judgment, as upheld by the Appellate Court, is now enforceable. This Tribunal treats the Order of 1 March 2012 as the certificate of enforceability in Ecuador of the Lago Agrio Judgment by the Respondent. It was issued and maintained in non-compliance with the Tribunal’s several Orders for Interim Measures.⁶⁶⁷

377. Second, having already determined that direct damages and incidental damages are compensable in principle under the Denial of Justice and Umbrella Clause Breaches, the Tribunal need not decide whether they are independently compensable in connection with the Interim Awards Breach. While it is faced with multiple violations of the Treaty, the Tribunal is not called upon to assess separately the damages arising from each individual breach and add up those damages to produce a total amount of compensation. Indeed, the Claimants have clarified that they have “three independent legal bases on which to claim each category of damages”, with each base corresponding to the Denial of Justice, Umbrella Clause and Interim Awards Breaches.⁶⁶⁸ For this reason, and also in view of the Tribunal’s finding that the recognition or enforcement of the Lago Agrio Judgment is the ultimate source of all injuries inflicted upon the Claimants, the Tribunal considers it appropriate to establish a single measure of reparation.

5. But-for Scenario

378. The Tribunal’s determinations in the previous sections and in the Partial Award on Track III have simplified the analysis required for the Respondent’s but-for argument, which was extensively debated between the Parties.

379. For ease of reference, the Respondent in its Counter-Memorial summarized its but-for argument as follows:

Under principles of international law . . . in order to prevail in their damages claims, Claimants must prove what the situation would in all probability have been if there had been no Treaty breaches, and what legal expenses and risk of judgment they would in all

⁶⁶⁷ Track II Award, para. 4.462. *See also* Track II Award, para. 7.130, fn 100: “In its Fourth Interim Award, the Tribunal decided that the Lago Agrio Judgment was made “final, enforceable and subject to execution within Ecuador by the Respondent no later than 3 August 2012”. The Tribunal relied (*inter alia*) upon the Respondent’s submissions at the hearing on 11 February 2012 (see February Hearing D1.167ff). For present purposes, the difference of some four months between 1 March and 3 August 2012 is not material.” The Tribunal considers that the difference remains immaterial at this stage in the proceedings and confirms its finding that 1 March 2012 is the date at which the Lago Agrio Judgment became final, enforceable and subject to execution for the purposes of this Arbitration.

⁶⁶⁸ Reply, para. 672.

probability have faced in that situation. Specifically, Claimants must show what portion, if any, of any otherwise claimable legal expenses Chevron would not have had to incur in Treaty-compliant proceedings to defend against the LAPs’ individual claims that were *not settled* by the 1995 Settlement Agreement as found by the Tribunal, in light of both the risk of any judgment against them that was reasonably possible and global enforcement of that judgment.

But Claimants have made no such showing. Indeed, Claimants have failed even to address the situation that would in all probability have occurred had the breaches of the Treaty been avoided. This failure is fatal to all of Claimants’ claims. They quite simply have failed to meet their burden of proving this fundamental element of the international law standard for compensatory damages.⁶⁶⁹

380. Thus, reduced to its essence, the but-for argument as particularized by the Respondent requires that the Tribunal determine the legal costs and expenses that the Claimants would have incurred in hypothetical Treaty-compliant proceedings and reduce the Claimants’ damages to that extent. Otherwise, says the Respondent, the Tribunal would not re-establish the situation which would, in all probability, have existed if that act had not been committed, as required under *Chorzów Factory*, but would rather leave the Claimants in a better position than they would have been absent the Treaty breaches.

381. The Claimants state that the Respondent’s proposed approach finds no basis in *Chorzów Factory* and in any event consider that such but-for analysis is inappropriate in a denial of justice case.⁶⁷⁰

382. In its Partial Award on Track III, the Tribunal decided in a preliminary fashion several questions raised by the Claimants in connection with the Respondent’s but-for argument. It there confirmed that *Chorzów Factory* provides the applicable rule of decision under international law for present purposes:

The Tribunal observes that *Chorzów Factory* did not concern full reparation arising from an international denial of justice within the context of a domestic litigation. Thus, it did not directly address whether the “situation which would, in all probability, have existed” if the denial of justice had not occurred should be circumscribed to the claims as put before the domestic court and the underlying record of the litigation. The Tribunal has been assisted by argument from both sides on this question, but remains convinced that *Chorzów Factory* provides the applicable rule of decision under international law. While the legal authorities cited by the Parties could potentially provide guidance to the Tribunal at the stage of assessing the full merits of the but-for scenario, none of them purports to restate the

⁶⁶⁹ Counter-Memorial on Damages, para. 940.

⁶⁷⁰ Reply, paras. 594-595.

Chorzów Factory standard under the paradigm of denial of justice or articulate an alternative rule by which to assess proximate causation in such a scenario.⁶⁷¹

383. The Tribunal also made certain determinations regarding the scope of the applicable but-for scenario. Among other things, it confirmed that it would not countenance a but-for scenario that involves the protracted assertion against the Claimants of rights that did not survive the 1995-1998 Settlement and Release Agreements as determined in the Tribunal’s previous decisions, or plaintiffs beyond the original 48 LAPs:

Therefore, the question before the Tribunal is whether it should restrict its but-for analysis to the “claims actually pursued by the 48 named Lago Agrio Plaintiffs and to the actual Lago Agrio Litigation record” to establish “the situation which would, in all probability, have existed” if the Treaty had not been breached by the Respondent.

Inevitably, the Tribunal’s but-for analysis must depart from the factual matrix that led to the international delict that did in fact occur, as it provides the vantage point from which the Tribunal can discern that which would ‘in all probability’ have occurred, absent a Treaty breach, from other scenarios that arise only as a matter of possibility. In this case, the filing of the Lago Agrio Complaint, which the Tribunal has determined was not wholly barred at its inception by *res judicata*, is the triggering event of the Lago Agrio Litigation, which culminated in the Respondent’s denial of justice. As such, the Lago Agrio Complaint constitutes a central and irremovable element of the chain of causation of the Treaty breach.

From this standpoint, the Tribunal is not persuaded that a but-for exercise envisaging a complaint of a materially different magnitude than the one that was in fact presented before the Lago Agrio Court is a useful heuristic for proximate causation in this instance. Alternative scenarios envisaging substantially different theories of the case, numbers of plaintiffs or bodies of evidence than those that can be expected from the original complaint and surrounding circumstances pertain to the realm of possibility, but they are not effective depictions of that which would have occurred “in all probability” but-for the Treaty breach as required under *Chorzów Factory*. Such hypotheticals are too far removed from the factual matrix of the case to amount to anything other than speculation unconstrained by the actual historical record. In particular, the Tribunal will not countenance a but-for scenario that involves the protracted assertion of rights that did not survive the Settlement and Release Agreements as determined in the Tribunal’s previous decisions, or plaintiffs beyond the original 48 LAPs.⁶⁷²

384. The Tribunal’s prior determinations in this Award regarding the applicable dates of injury for direct and incidental damages have further reduced the scope of the but-for scenario. As already established, the injury flowing from the Respondent’s internationally wrongful acts began no earlier than 14 February 2011 for the purposes of claiming incidental damages, being the date of issuance of the Lago Agrio Judgment and also the

⁶⁷¹ Partial Award on Track III, para. 171.

⁶⁷² Partial Award on Track III, paras. 172-174.

earliest event in the series comprising the Respondent’s Treaty breaches.⁶⁷³ Accordingly, the date of issuance of the Lago Agrio Judgment is the appropriate departure point for any counterfactual analysis seeking to compare the situation which would in all probability have occurred absent the Treaty breaches from that which unfolded in the real world – and, critically, the legal expenses incurred by the Claimants in either scenario.

385. An analysis of the circumstances at the time of issuance of the Lago Agrio Judgment is thus in order.
386. At the outset, the Tribunal recalls that the Lago Agrio Judgment addressed and decided the LAPs’ claims exclusively as “diffuse” claims only and not as individual claims made by a plaintiff seeking compensation for personal harm.⁶⁷⁴ While, as decided by a majority of the Tribunal, the original Lago Agrio Complaint did include individual claims resting upon individual rights,⁶⁷⁵ such claims were ultimately not adjudicated by the Lago Agrio Court.⁶⁷⁶
387. In respect, first, of these “diffuse” claims, the Tribunal has already held that it will “decide Track III in a manner consistent with its prior determination that the diffuse right under Article 19-2 of the 1998 Constitution was settled in full. It will under no circumstances accept a but-for scenario in which such settlement is rendered illusory.”⁶⁷⁷ Nor will the Tribunal accept, as stated in the quote in paragraph 383 above, a but-for scenario that involves the protracted assertion of “diffuse” claims that did not survive the 1995-1998 Settlement and Release Agreements.⁶⁷⁸ Consistent with these determinations, the Tribunal must therefore reject any but-for scenario in which the Ecuadorian judiciary upholds these “diffuse” claims. Indeed, full reparation for an injury that started to flow in the real world upon the issuance of the findings of liability in the discreditable Lago Agrio Judgment⁶⁷⁹ must be based on a but-for world in which such claims are rejected. That is

⁶⁷³ See paras. 350, 362 above.

⁶⁷⁴ Track II Award, paras. 5.121-5.133.

⁶⁷⁵ Decision on Track I(B), para. 186(1); Track II Award, para. 10.7.

⁶⁷⁶ Track II Award, para. 10.8.

⁶⁷⁷ Partial Award on Track III, para. 164.

⁶⁷⁸ Partial Award on Track III, para. 174.

⁶⁷⁹ See para. 362 above.

what the *Chorzów* formula mandates when it says that reparation “must, as far as possible, wipe out all the consequences of the illegal act”. Any other conclusion would allow part of the injury to persist.

388. The “individual” claims pleaded in the Lago Agrio Complaint merit a separate analysis. The Tribunal has already determined that the Lago Agrio Judgment did *not* adjudicate these claims.⁶⁸⁰ The Parties disagree, however, as to the underlying reason for such omission. The Claimants submit that the LAPs abandoned these individual claims,⁶⁸¹ whereas the Respondent asserts that they remained pending for adjudication, even if the Lago Agrio Judgment ignored them in favour of the “diffuse” claims.⁶⁸²
389. The fact remains that the Lago Agrio Judgment did not adjudicate the individual claims. Whether abandoned or simply ignored, the point of departure of the but-for scenario must thus be a hypothetical Lago Agrio Judgment that does *not* include an adjudication of these individual claims. If the assessment is what would have “in all probability” occurred in the but-for world, the only hypothetical judgment consistent with the prevailing factual matrix at the time of issuance of the Lago Agrio Judgment is one excluding individual claims.
390. Accordingly, the applicable but-for scenario should depart from a hypothetical Lago Agrio Judgment that dismisses the diffuse claims and at best ignores the individual claims.
391. This but-for scenario does not necessarily presume no appeal of the hypothetical Lago Agrio Judgment by the LAPs. However, it remains an open question what appellate level would have been reached in the counterfactual and whether any remaining individual claims would have ultimately been adjudicated by the upper courts (even presuming they were not abandoned at the trial court stage). What is clear, however, is that any appellate proceedings would have been much more limited in terms of scope and stakes than the real-world Lago Agrio Litigation.

⁶⁸⁰ Track II Award, para. 10.8. *See also* fn 659 above regarding Dr Grigera Naón’s dissent on this question.

⁶⁸¹ Reply, para. 602.

⁶⁸² Respondent’s Second Submission on the Request for a Partial Award, para. 176; Rejoinder, para. 442.

392. The Tribunal derives two key implications from this but-for scenario. First, it is improbable that the Claimants would have continued to involve several international firms in the Lago Agrio Litigation when faced with a regular appeal of a hypothetical regular trial court judgment – still a significant litigation, but orders of magnitude removed from the stakes involved in the actual Lago Agrio Judgment. A team of local Ecuadorian counsel would have in all likelihood satisfied any ongoing litigation needs at the appellate stage. In turn, international law firms would have been involved to a much less significant degree and in all probability in a strict supervisory capacity or serving as liaison with the Claimants’ headquarters in the United States.
393. Second, faced with more limited stakes, the fees and expenses of such teams of local and international counsel would have likely been only a portion of those that were effectively generated by the actual Ecuadorian team representing the Claimants in the real-world Lago Agrio Litigation.
394. Accordingly, in the Tribunal’s view, the fees and expenses generated respectively by local and international counsel in the real-world Lago Agrio Litigation can be appropriately be regarded as caps on the fees that the Claimants would have incurred in the but-for world. A portion of those fees represents the amount of legal fees and expenses that the Claimants would have incurred in all probability but-for the Treaty breaches and which should therefore be discounted from the Claimants’ damages award as per *Chorzów Factory*. The Tribunal will determine the exact amount of these discounts as part of its more comprehensive analysis of the Lago Agrio Litigation in Section VIII.A below.
395. In sum, in accordance with the applicable principles of causation under international law as enshrined in *Chorzów Factory*, the Tribunal concludes that the Claimants’ damages claim must be reduced by a portion of the amount of legal fees and expenses generated by local Ecuadorian counsel and international counsel in the real-world Lago Agrio Litigation to re-establish the situation which would, in all probability, have existed if the Respondent’s Treaty breaches had not been committed. Indeed, such costs could be considered as falling within the normal costs of doing business in Ecuador. The determination of this amount is addressed later in this Award.

6. Conclusions on Causation

396. For the foregoing reasons, the Tribunal determines, subject to a showing of proximate causation from the Claimants as examined later in this Award, that any direct damage sustained by the Claimants starting as of 1 March 2012 as a result of the recognition and enforcement of the Lago Agrio Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise, shall in principle be injuries for which the Respondent is bound to make reparation under international law.
397. The Tribunal also determines, subject to showings of causation and reasonableness from the Claimants as examined later in this Award, that any incidental damages sustained by the Claimants starting as of 14 February 2011 seeking to repair damage and otherwise mitigate loss arising from the recognition and enforcement of the Lago Agrio Judgment shall in principle be injuries for which the Respondent is bound to make reparation in the form of compensation under international law.
398. Lastly, the Tribunal determines that the Claimants’ damages claim must be reduced by a portion of the amount of legal fees and expenses generated by local Ecuadorian counsel and international counsel in the real-world Lago Agrio Litigation to re-establish the situation which would, in all probability, have existed if the Respondent’s Treaty breaches had not been committed. The determination of this amount is addressed later in this Award.⁶⁸³
399. The above conclusions are subject to the Tribunal’s further rulings on other matters in dispute as set forth below.

B. NON-COMPLIANCE WITH INTERIM AWARDS

1. Introduction

400. As noted above, the Interim Awards Breach is one of the three alternative bases upon which the Claimants claim compensation in Track III.⁶⁸⁴ Unlike the Denial of Justice and Umbrella Clause Breaches, which were accompanied by declarations specifically

⁶⁸³ See paras. 731-738, 2291(ii) and 2292(iii) below.

⁶⁸⁴ Reply, para. 672.

requiring full reparation for those breaches in the Track II Award,⁶⁸⁵ the Interim Awards Breach rests solely upon a declaration of breach.⁶⁸⁶

401. In Track III, the Respondent raises three issues in connection with the Interim Awards Breach. The Respondent argues, first, that the First and Second Interim Awards, being provisional in nature, have been superseded by the Track II Award. Second, it requests a decision on its application of 1 March 2013 for the reconsideration of the Tribunal’s First, Second and Fourth Interim Awards. Third, it denies that the Interim Awards Breach can give rise to compensation. As the Tribunal understands the Respondent’s submissions, the Respondent’s argument on supersession and its request for reconsideration seek ultimately to render moot any claim for damages for the Interim Awards Breach in Track III.⁶⁸⁷
402. To address the issues raised by the Respondent in Track III in connection with the Interim Awards Breach the Tribunal must first recall the full context of the First, Second and Fourth Interim Awards.
403. By its First Interim Award, dated 25 January 2012 – that is, almost a year after the issuance of the Lago Agrio Judgment on 14 February 2011 – the Tribunal ordered the Respondent “to take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against the First Claimant in the Lago Agrio Case”.⁶⁸⁸ While clarifying that it would remain subject to modification and was without prejudice to the merits of the Parties’ substantive and other procedural disputes, the Tribunal confirmed that the First Interim Award was to take

⁶⁸⁵ Track II Award, paras. 10.6, 10.8.

⁶⁸⁶ Track II Award, para. 10.18.

⁶⁸⁷ Counter-Memorial, para. 1350; Rejoinder, paras. 1873-1876: “The Tribunal should not award any damages for alleged breaches of the interim measures or awards. This is true for several independent reasons. The First and Second Interim Awards lapsed when the Tribunal issued its Track II Second Partial Award; the interim measures are no longer required to avoid “aggravation” of the dispute, which has now been resolved on liability. . . As to any separate damages for “past violations” of the First and Second Interim Awards, Respondent has already shown that there is no authority or precedent for the Tribunal to issue monetary compensation for the violation of its interim measures, and Claimants’ Reply adds nothing to the discussion. Claimants are not entitled to compensation for any such non-compliance, and if the Tribunal disagrees, the interim awards should be reconsidered.”

⁶⁸⁸ First Interim Award, Section (VI), para. 2(i).

effect forthwith as an Interim Award under Articles 26 and 32 of the UNCITRAL Arbitration Rules, “being immediately final and binding upon all Parties as an award”.⁶⁸⁹

404. Shortly following the First Interim Award, by the Second Interim Award of 16 February 2012 the Tribunal ordered *inter alia* the following measures:

- (i) the Respondent (whether by its judicial, legislative or executive branches) to take all measures necessary to suspend or cause to be suspended the enforcement and recognition within and without Ecuador of the judgments by the Provincial Court of Sucumbíos, Sole Division (*Corte Provincial de Justicia de Sucumbíos, Sala Unica de la Corte Provincial de Justicia de Sucumbíos*) of 3 January 2012 and of 13 January 2012 (and, to the extent confirmed by the said judgments, of the judgment by Judge Nicolás Zambrano Lozada of 14 February 2011) against the First Claimant in the Ecuadorian legal proceedings known as “the Lago Agrio Case”;
- (ii) in particular, without prejudice to the generality of the foregoing, such measures to preclude any certification by the Respondent that would cause the said judgments to be enforceable against the First Claimant; and
- (iii) the Respondent’s Government to continue to inform this Tribunal, by the Respondent’s legal representatives in these arbitration proceedings, of all measures which the Respondent has taken for the implementation of its legal obligations under this Second Interim Award;

405. As the First Interim Award, the Second Interim Award had the effect of an interim award, “being immediately final and binding upon all parties as an award”, subject to modification and made strictly without prejudice to the merits of the Parties’ substantive and other procedural disputes.⁶⁹⁰ The Second Interim Award also determined that the First Interim Award would continue to have effect subject to the terms of the Second Interim Award.⁶⁹¹

406. On 7 February 2013, after the Lago Agrio Judgment had been rendered enforceable by the Ecuadorian judiciary by the Order of 1 March 2012,⁶⁹² the Tribunal issued its Fourth

⁶⁸⁹ First Interim Award, Section (VI), paras. 3-6.

⁶⁹⁰ Second Interim Award, paras. 7-9.

⁶⁹¹ Second Interim Award, para. 6.

⁶⁹² Track II Award, para. 4.462. *See also* Track II Award, para. 7.130, fn 100: “In its Fourth Interim Award, the Tribunal decided that the Lago Agrio Judgment was made “final, enforceable and subject to execution within Ecuador by the Respondent no later than 3 August 2012”. The Tribunal relied (*inter alia*) upon the Respondent’s submissions at the hearing on 11 February 2012 (see February Hearing D1.167ff). For present purposes, the difference of some four months between 1 March and 3 August 2012 is not material.” As already noted, the Tribunal considers that the difference remains immaterial at this stage in the proceedings and confirms its finding that 1 March 2012 is the date at which the Lago Agrio Judgment became final, enforceable and subject to execution for the purposes of this Arbitration.

Interim Award. It there re-confirmed the terms and the binding effect of the First and Second Interim Awards under the Treaty, the UNCITRAL Arbitration Rules and international law:

The Tribunal confirms and restates with full force and effect its earlier orders and awards on interim measures. Each of these orders and awards was and remains binding upon the Parties under the Treaty, the UNCITRAL Rules and international law. Under Article VI of the Treaty and Article 32(3) of the UNCITRAL Rules, the Parties undertook to carry out any award without delay, including the First and Second Interim Awards on Interim Measures of 25 January and 16 February 2012.⁶⁹³

407. With the above preamble, the Tribunal declared that, by its judiciary rendering the Lago Agrio Judgment enforceable, the Respondent had violated the First and Second Interim Awards:

As regards the Respondent, these orders and awards were directed not only to the Respondent’s executive branch but to all branches and organs that make up the Respondent as a State, including its judiciary and legislature. Neither disagreement with the Tribunal’s orders and awards on interim measures nor constraints under Ecuadorian law can excuse the failure of the Respondent, through any of its branches or organs, to fulfil its obligations under international law imposed by the Treaty, the UNCITRAL Rules and the Tribunal’s orders and awards thereunder, particularly the First and Second Interim Awards on Interim Measures.

The Tribunal determines that the Lago Agrio Judgment was made final, enforceable and subject to execution within Ecuador by the Respondent no later than 3 August 2012 (upon its judiciary’s certifying the Lago Agrio Judgment’s enforceability), in violation of the Tribunal’s First and Second Interim Awards requiring the Respondent, respectively, “to take all measures at its disposal” and “to take all measures necessary” to suspend or cause to be suspended the enforcement and recognition both within and without Ecuador of that Lago Agrio Judgment.⁶⁹⁴

408. Critically as regards compensation, the Tribunal on this basis ordered the Respondent to show cause why it should not compensate the First Claimant for any harm caused by the Respondent’s violations of the First and Second Interim Awards:

Accordingly, the Tribunal requires the Respondent to show cause to this Tribunal why the Respondent should not now compensate the First Claimant for any harm caused by the Respondent’s violations of the First and Second Interim Awards in regard to the Lago Agrio Judgment’s enforcement and execution, both within and outside Ecuador. The Tribunal intends presently to establish a further procedural timetable to address such compensation

⁶⁹³ Fourth Interim Award, para. 77.

⁶⁹⁴ Fourth Interim Award, paras. 78-79 (*see also* Part IV, para. 1).

(including any issues as to causation and quantification) in consultation with the Parties, by a further procedural order.⁶⁹⁵

409. On 1 March 2013, the Respondent submitted its request for reconsideration of the First, Second and Fourth Interim Awards.⁶⁹⁶ By its Procedural Order No. 16, the Tribunal decided that the “show cause” procedure would also address this request for reconsideration.⁶⁹⁷
410. Lastly, the Tribunal’s Track II Award, dated 30 August 2018, confirmed the Interim Awards Breach and left the “show cause” issues and the Respondent’s request for reconsideration for further submissions in Track III:

10.18 The Tribunal confirms, as declared in its Fourth Interim Award on Interim Measures dated 7 February 2013, that the Respondent violated its First and Second Interim Awards on Interim Measures dated 25 January and 16 February 2012 in breach of Article VI of the Treaty, Article 32(3) of the UNCITRAL Arbitration Rules and international law;⁶⁹⁸

10.19 In accordance with the Tribunal’s said Fourth Interim Award, at Paragraph 2 of Part IV (page 31), the ‘show cause’ issues relating to compensation claimed by the First and Second Claimants for the Respondent’s violations of the said First and Second Interim Awards shall be addressed by the Parties in Track III of these arbitration proceedings;

10.20 The Respondent’s application of 1 March 2013 for the reconsideration of the Tribunal’s First, Second and Fourth Interim Awards shall be further addressed by the Parties in Track III of these arbitration proceedings;

2. The Tribunal’s Analysis

411. Having set out the relevant background for its decision, the Tribunal will now address the issues raised by the Respondent in connection with the Interim Awards Breach. The Tribunal does not consider it necessary for present purposes to decide every aspect of the Respondent’s arguments. It will limit its analysis to the matters that follow.
412. The Tribunal turns first to the Respondent’s argument that the First and Second Interim Awards have been superseded by the Track II Award. Reduced to its essence, the Respondent’s argument is that the First and Second Interim Awards, being interim

⁶⁹⁵ Fourth Interim Award, para. 81 (*see also* Part IV, para. 2).

⁶⁹⁶ Letter from the Respondent to the Tribunal dated 1 March 2013.

⁶⁹⁷ Procedural Order No. 16, 19 March 2013.

⁶⁹⁸ Track II Award, para. 10.18.

measures that are provisional in nature, cannot survive the rendering of the Tribunal’s final award on the merits (the Track II Award), which includes several orders for injunctive relief “to the satisfaction of the Tribunal and as unconditional obligations of result.”⁶⁹⁹ In the Respondent’s submission:

Whether or not the interim measures were violated, at this post-liability stage, any injury allegedly suffered by Claimants as a result of the breaches of the First and Second Interim Awards is now superseded by their claim for monetary damages proximately caused by the Treaty breaches found by the Tribunal. Either Claimants are entitled to damages caused by the Treaty breaches or they are not. The interim measures do not play any part in that determination; time and process have left them behind.⁷⁰⁰

413. The Tribunal is not persuaded by the Respondent’s argument. The Respondent seems oblivious of the Interim Awards Breach, as declared expressly in the Fourth Interim Award and confirmed in the Track II Award. The Tribunal there ruled that by violating the First and Second Interim Awards the Respondent was “in breach of Article VI of the Treaty, Article 32(3) of the UNCITRAL Arbitration Rules and international law”.⁷⁰¹ In other words, the Tribunal declared that the Respondent had committed a self-standing internationally wrongful act, independent of the Denial of Justice and Umbrella Clause Breaches. The rendering of the Tribunal’s Track II Award cannot somehow retroactively “cure” the Interim Awards Breach confirmed in that same award, regardless of whether a series of interim measures form part of its factual background. Whatever legal consequences derive for the Respondent from the Interim Awards Breach, they cannot be negated by the Tribunal’s finding of *other* Treaty breaches or by the fact that the First, Second and Fourth Interim Awards, being interim awards, were subject to the Tribunal’s final determination on the merits of the dispute.

414. Second, the Tribunal turns to the Respondent’s request for reconsideration of the First, Second and Fourth Interim Awards. For ease of reference, the grounds of the Respondent’s request as summarized in its Counter-Memorial are as follows:

⁶⁹⁹ Counter-Memorial, paras. 1351-1353; Rejoinder, paras. 1877-1880.

⁷⁰⁰ Rejoinder, para. 1880.

⁷⁰¹ Track II Award, para. 10.18.

- The First and Second Interim Awards did not explicitly provide that the Respondent would be expected to violate its own Constitution and laws in order to comply;
- the premise of the First and Second Interim Awards (that harm to Claimants cannot be repaired by monetary compensation) is irreconcilable with the determination made in the Fourth Interim Award (that Respondent is now obliged to pay compensation for harm caused by breach of the First and Second Interim Awards);
- the Fourth Interim Award fails to acknowledge Respondent’s consistent position that it is constrained by international law from preventing the enforceability of an otherwise enforceable domestic judgment;
- the Tribunal should revisit its reliance upon international law to conclude that the Respondent cannot invoke Ecuadorian law to excuse non-compliance with the Tribunal’s First and Second Interim Awards;
- the question of whether a State Party has complied with the obligation in Article IV(6) of the Treaty is not justiciable before a tribunal constituted to determine an investment dispute; and
- Article VI(6) of the Treaty cannot be read in conjunction with Article 26 of the UNCITRAL Rules as conferring a legislative power upon an Article VI(3) tribunal to create a new international obligation for State Parties.⁷⁰²

415. The Tribunal has taken note of these arguments. However, to the extent that the Respondent seeks to have the Tribunal reconsider the Interim Awards Breach – again, the Tribunal’s declaration in its Fourth Interim Award, as confirmed in the Track II Award, that the Respondent has violated the First and Second Interim Awards under the Treaty, the UNCITRAL Arbitration Rules and international law – the Tribunal is not in a position to do so. The Tribunal’s Track II Award is immediately final and binding upon all Parties as an award under Article VI of the Treaty, Article 32(2) of the UNCITRAL Arbitration Rules and international law. To reconsider the Interim Awards Breach would be to infringe this basic tenet. Disagreement with the Tribunal’s awards does not alter this conclusion.

416. Notwithstanding the foregoing, and as already stated above, the Tribunal remains mindful that the Respondent’s argument that the First and Second Interim Awards have been superseded by the Track II Award and its request for reconsideration of the First, Second and Fourth Interim Awards seek ultimately to render moot any claim for damages arising

⁷⁰² Counter-Memorial, para. 1365.

from the Interim Awards Breach.⁷⁰³ In view of the Tribunal’s decision in paragraph 377 above to establish a single measure of reparation on the basis of the Denial of Justice and Umbrella Clause Breaches alone, the Tribunal reiterates that it is unnecessary to decide whether compensation is warranted independently on the basis of the Interim Awards Breach. The losses said to have flowed from the Interim Awards Breach are subsumed within the losses flowing from the Denial of Justice and Umbrella Clause Breaches. For this reason, the Tribunal considers it unnecessary to address further the Respondent’s arguments raised in connection with the Interim Awards Breach, to the extent it has not already done so.

3. Conclusions on Non-Compliance with Interim Awards

417. For the foregoing reasons, the Tribunal declines to reconsider and instead re-confirms, as declared in its Fourth Interim Award and confirmed its Track II Award, that the Respondent violated its First and Second Interim Awards on Interim Measures dated 25 January and 16 February 2012 in breach of Article VI of the Treaty, Article 32(3) of the UNCITRAL Arbitration Rules and international law.⁷⁰⁴
418. In view of its decision in paragraph 377 above to establish a single measure of reparation on the basis of the Denial of Justice and Umbrella Clause Breaches alone, the Tribunal considers it unnecessary to decide whether compensation is warranted independently on the basis of the Interim Awards Breach.

C. INTERNATIONAL SUBSIDIARIES

1. Introduction

419. The Claimants’ damages claim is not limited to the losses they (the Claimants) suffered directly as a result of the Respondent’s Treaty breaches. It also extends to the legal costs and expenses incurred by Chevron’s wholly-owned subsidiaries inside and outside of Ecuador “in defending against the consequences of Ecuador’s wrongs”.⁷⁰⁵ Their argument is predicated on several legal theories, including “reflective loss”, good faith,

⁷⁰³ Counter-Memorial, para. 1350; Rejoinder, paras. 1873-1876.

⁷⁰⁴ Track II Award, para. 10.18.

⁷⁰⁵ Reply, para. 400.

estoppel, and the fact that Ecuador allegedly treated Chevron and its subsidiaries as alter egos.⁷⁰⁶

420. The Respondent denies the proposition that the Claimants may under international law claim damages for losses suffered by third-country subsidiaries.⁷⁰⁷ As a matter of fact, the Respondent further asserts that the Claimants have failed to prove that they actually suffered losses as a result of the legal fees and expenses incurred by its subsidiaries.⁷⁰⁸
421. At this stage, the Tribunal will limit its analysis to the question of whether Chevron may under international law claim damages for the losses suffered by its subsidiaries as a result of the Respondent’s internationally wrongful acts. Whether the Claimants have proven such losses is a question of sufficiency of the evidence that will be addressed separately in Sections VIII and IX below.

2. Good Faith

422. As already noted, one of the approaches invoked by the Claimants to address the question of the recoverability of the losses suffered by Chevron’s international subsidiaries is the principle of good faith as applied by the Tribunal in Track II. For the reasons that follow, the application of this principle leads to the conclusion that Chevron may in its own right claim damages for the losses caused to its international subsidiaries by the recognition and enforcement of the unremedied Lago Agrio Judgment.
423. The application of the good faith principle arose in Track II in connection with the Respondent’s jurisdictional objections to Chevron’s claims for lack of any relevant “investment” under Articles I(1), V(1)(a), V(1)(c), II(3)(a) and III(3)(c) of the Treaty.⁷⁰⁹ As there explained by the Tribunal, the Claimants sought to preclude the Respondent from arguing that Chevron never had any assets in Ecuador on the basis that the Lago Agrio Judgment, being a product of the Respondent’s judiciary, amalgamated Chevron

⁷⁰⁶ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 78-79 (Bishop).

⁷⁰⁷ Counter-Memorial, paras. 306-308, 312-315; Rejoinder, paras. 479-481, 494-507.

⁷⁰⁸ Counter-Memorial, paras. 316-319; Rejoinder, paras. 482-483; Track III Hearing Transcript, Day 3 (22 August 2022), pp. 442-451 (Maidman).

⁷⁰⁹ Track II Award, para. 7.79.

and TexPet so as to hold Chevron liable for all wrongs committed by TexPet’s and Texaco’s activities in Ecuador:

As the Claimants contend, the Respondent cannot, in good faith, ‘have it both ways’ as regards Chevron’s “investment” in Ecuador. If the Respondent, through its judicial branch, took the position that Chevron had assets in Ecuador, standing in the shoes of TexPet and Texaco as the Lago Agrio Judgment states, the Respondent cannot now adopt the position that Chevron never had any assets in Ecuador, i.e. that it never had any investments in Ecuador. The Lago Agrio Judgment amalgamates completely Chevron with TexPet and Texaco as result of the “merger”, so as to hold Chevron liable for all wrongs committed by TexPet’s and Texaco’s activities in Ecuador from 1964 onwards. Yet the Respondent in this arbitration now seeks, improperly according to the Claimants, to disassociate Chevron in full from any of TexPet’s and Texaco’s activities in Ecuador (including investments), for tactical jurisdictional purposes.⁷¹⁰

424. The Tribunal there determined that the Arbitration Agreement derived from Article VI of the Treaty⁷¹¹ precludes conduct by any Party in bad faith, calculated to defeat the object and purpose of the arbitration:

⁷¹⁰ Track II Award, para. 7.80.

⁷¹¹ For reference, Article VI of the Treaty provides, *inter alia*, as follows:

Article VI(2): “In the event of an investment dispute, the parties to the dispute should initially seek a resolution through consultation and negotiation. If the dispute cannot be settled amicably, the national or company concerned may choose to submit the dispute, under one of the following alternatives, for resolution:

- (a) to the courts or administrative tribunals of the Party that is a party to the dispute; or
- (b) in accordance with any applicable, previously agreed dispute-settlement procedures; or
- (c) in accordance with the terms of paragraph 3”.

Article VI(3): “(a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b) and that six months have elapsed from the date on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by binding arbitration:

...

(iii) in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); ...”

Article VI(4): “Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national or company under paragraph 3. Such consent, together with the written consent of the national or company when given under paragraph 3 shall satisfy the requirement for:

(b) an “agreement in writing” for purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (“New York Convention”) ...”

The Parties’ obligations to resolve their dispute by consensual arbitration before an international tribunal derive from Article VI of the Treaty, subject to international law (as its applicable law). Under international law, as codified in Article 26 the Vienna Treaty on the Law of Treaties (the “VCLT”), parties are required to act in good faith in the performance of their obligations.

Article 26 of the VCLT provides: “Every treaty in force is binding upon the parties to it and must be performed in good faith”. The International Law Commission stated in its commentary to the VCLT that: “In the case of treaties, . . . there is the special consideration that the parties by negotiating and concluding the treaty have brought themselves into a relationship in which there are particular obligations of good faith.” In *Nuclear Tests* (1974), the International Court of Justice decided: “One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith”. That was decided in regard to unilateral declarations made by a State. In the ILC’s subsequent “Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations” (2006), the first guiding principle declared that the binding character of such unilateral declarations “is based on good faith.”

The Parties’ mutual consent to arbitration derived from Article VI of the Treaty is not, [of] course, a treaty between two States. The Parties’ consent is contained in the separate Arbitration Agreement subject to international law between the Claimants and the Respondent, that was formed upon the Claimants’ written acceptance (by their Notice of Arbitration) of the Respondent’s standing, general offer to arbitrate contained in Article VI of the Treaty. Under international law, the Parties’ Arbitration Agreement, made pursuant to Article VI(2) of the Treaty, is legally autonomous, or “separable”, from other provisions of the Treaty. This is not a State-State arbitration under the Treaty (as to which the Treaty contains a separate provision in Article VII). This investor-State arbitration was therefore commenced by the Claimants in their own right, not deriving from the USA’s espousal of their claims. Moreover, the Parties’ Arbitration Agreement incorporates Article 21(2) of the UNCITRAL Arbitration Rules, which recognises the legal autonomy of an arbitration provision physically, but not legally, contained in a substantive agreement. The Tribunal refers to the legal analysis of Article VI of the Treaty made by the US Court of Appeals for the Second Circuit in its judgment of 17 March 2011 in the New York Stay Legal Proceedings, to the effect that the Parties “have created a separate binding agreement to arbitrate” (see Part IV(G)(6) above).

In the Tribunal’s view, the Parties’ offer and acceptance imported into the Arbitration Agreement an obligation derived from the Treaty requiring all Parties to exercise their rights and to perform their obligations in good faith in the conduct of this arbitration. This obligation of good faith applies both to substantive provisions, such as Articles II(3)(a) and II(3)(c), but also to Article VI of the Treaty. Conversely, the Arbitration Agreement precludes conduct by any Party in bad faith, calculated to defeat the object and purpose of arbitration under Article VI of the Treaty: see, particularly, the Treaty’s Preamble as to “fair and equitable treatment of investment” (set out in Part III(B) above), as interpreted under Article 31(1) of the VCLT. Moreover, where the *lex arbitri* is international law, the

Article VI(5): “Any arbitration under paragraph 3(a) (ii), (iii) or (iv) of this Article shall be held in a state that is a party to the New York Convention.”

Article VI(6): “Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Party undertakes to carry out without delay the provisions of any such award and to provide in its territory for its enforcement.”

obligation of good faith as a general principle of international law (with the meaning of Article 38(1)(c) of the ICJ Statute) applies to the Arbitration Agreement directly.⁷¹²

425. Against this background, the Tribunal then established that the general principle of good faith under international law precludes a party’s inconsistent statements calculated to thwart the integrity of the judicial process for its own benefit and to the other party’s prejudice.⁷¹³ Within the context of this case, the Tribunal decided on the following application of the principle:

Applying Article 26 of the VCLT and customary international law, the Tribunal decides that the Parties are bound to act in good faith in the exercise of their rights and the performance of their respective obligations under the Arbitration Agreement derived from Article VI of the Treaty. That duty of good faith precludes clearly inconsistent statements, deliberately made for one party’s material advantage or to the other’s material prejudice, that adversely affect the legitimacy of the arbitral process. In other words, no party to this arbitration can ‘have it both ways’ or ‘blow hot and cold’, to affirm a thing at one time and to deny that same thing at another time according to the mere exigencies of the moment.⁷¹⁴

426. The Tribunal then noted the inconsistencies between the Lago Agrio Court’s treatment of Chevron – which was treated as legally indistinct from Texaco and TexPet in the Lago Agrio Judgment – and the Respondent’s position in the Arbitration, where it sought to distinguish between the respective legal personalities of Chevron and TexPet:

The Lago Agrio Court, by the Lago Agrio Judgment, treated Chevron following the “merger” with Texaco in 2001, as legally indistinct from Texaco and TexPet (as described in Part V above). In particular, it was there decided (inter alia): “ . . . the obligation to submit to Ecuadorian justice pending on Texaco Inc. was also transmitted to new company Chevron Texaco Corporation, so that consequently Chevron Corp. cannot allege that it never operated in Ecuador to give grounds for lack of a legitimate opposing party” (see Lines 299 to 302 of Annex 7 to Part V, emphasis here supplied). In other words, the Lago Agrio Judgment treated Chevron as if, like TexPet, it had operated in Ecuador from 1964 onwards as a party to the Concession Agreements of 1964 and 1973, with significant assets in Ecuador. Thus, according to the Lago Agrio Judgment (as upheld by the Lago Agrio Appellate and Cassation Courts), Chevron had assets equating [] to investments in Ecuador from 1964 onwards.

These statements were unequivocally made in the Lago Agrio Judgment and left intact by the judgments of the Lago Agrio Appellate, Cassation and Constitutional Courts, forming part of the judicial branch of the Respondent. The acts of its judicial branch are attributable to the Respondent under international law: Article 4(1) of the ILC Articles on State

⁷¹² Track II Award, paras. 7.83-7.86.

⁷¹³ Track II Award, paras. 7.87-7.105.

⁷¹⁴ Track II Award, para. 7.106.

Responsibility. The position of the Respondent by its judicial branch contrasts starkly with the position of the Respondent in this arbitration.

Here, for its jurisdictional objections, the Respondent seeks to distinguish between the respective legal personalities of Chevron and TexPet (as also Texaco). The Respondent then seeks to draw, under Articles I(1), II(3)(a), II(3)(c), VI(1)(a) and VI(1)(c) of the Treaty as regards relevant “investments”, a material difference between Chevron on the one hand and TexPet (with Texaco) on the other. The Respondent contends unequivocally that, unlike TexPet, Chevron never had any presence in Ecuador, with no assets and no relevant investment in Ecuador. As described above, that difference is contradicted in the Lago Agrio Judgment.

It is impossible for the Tribunal to reconcile the statements in the Lago Agrio Judgment as to the “merger” between Chevron, TexPet and Texaco with the submissions made by the Respondent in this arbitration. The Respondent’s jurisdictional objections to Chevron’s claims are manifestly inconsistent with the unequivocal statements made by the Respondent’s own judicial branch in treating Chevron with TexPet and Texaco for all their activities in Ecuador from 1964 onwards.⁷¹⁵

427. On this basis, the Tribunal concluded that the principle of good faith required the Respondent to treat Chevron as ‘standing in the shoes’ of TexPet, consistently with the statements made by the Respondent’s judicial branch in the Lago Agrio Litigation, and accordingly upheld its jurisdiction over Chevron’s claims:

Applying the principle of good faith under international law to the exercise of rights and the performance of obligations under the Arbitration Agreement, the Tribunal decides that it is impermissible for the Respondent to ‘blow hot and cold’ or to ‘have it both ways’, to Chevron’s detriment and to the Respondent’s benefit. In other words, the Respondent cannot now defeat, under the principle of good faith, the object and purpose of the Arbitration Agreement derived from Article VI of the Treaty with a jurisdictional objection under Article 21 of the UNCITRAL Arbitration Rules treating Chevron so differently from TexPet and Texaco as regards assets and, therefore, “investments” in Ecuador from 1964 onwards. The Tribunal concludes that the Respondent is required in this arbitration, as a matter of good faith, to treat Chevron as ‘standing in the shoes’ of TexPet (with Texaco), consistently with the statements made and acted upon by the Respondent’s judicial branch in the Lago Agrio Litigation.⁷¹⁶

428. In the Tribunal’s view, the application of the same principle of good faith under international law requires the Respondent in this Arbitration to treat the assets of Chevron’s subsidiaries as indistinct from those of Chevron for the purposes of Track III.
429. By its order of 15 October 2012, the Lago Agrio Court ordered the execution of the Lago Agrio Judgment (the “**15 October 2012 Order**”). At its outset, in rejecting an

⁷¹⁵ Track II Award, paras. 7.108-7.111 (emphasis in original).

⁷¹⁶ Track II Award, para. 7.112.

interlocutory petition brought by Chevron, the Lago Agrio Court recalls that the legal basis for the order is the doctrine of the piercing of the corporate veil, as already decided in a prior instance:

...the petitioner must be reminded that it is not within the jurisdiction of this court to review, revisit or to give an opinion on what has already been ordered by the lower courts that have heard this case when ruling on the jurisdiction of each judge over the case. This is also the case with regards to the judgment being executed with respect to the exceptional doctrine of the piercing of the corporate veil and the disregard of the separate legal identity, since at this stage of the proceeding, it is not proper to question what has already been decided, but rather to enforce the ruling of the judgment being enforced.⁷¹⁷

430. In the same vein, later in the order the Lago Agrio Court raises the proposition that the judiciary has the duty to correct the “improper and anti-social behaviour” of an “owner of rights and assets” who uses those assets “at its convenience” and at the same time declares those assets to be beyond its reach because they belong to a different another company of its corporate group:

The idea that the owner of rights and assets, capable of invoking the rights and using the assets to its benefit and “at its convenience,” can at the same time declare to the courts that these assets are not accessible to its creditors because supposedly they do not belong to it or are under the control of another company entity, is untenable and lacks an ethical and legal foundation. It is up to the administrators of justice to correct this improper and anti-social behavior, since it leads to the ignoring of orders issued by organs of the judicial branch, and this, after all, would destroy the social order. In this context, the actual possibility of enforcing a judgment (even if forcibly) is a cornerstone not only of the Administration of Justice, but of the Rule of Law, since to do otherwise would turn its decisions into mere recommendations, a useless thing, which would leave society without an effective system of conflict resolution, to open the way for one in which the strongest can impose their will.⁷¹⁸

431. Against this background, and with Chevron being the sole named judgment debtor under the Lago Agrio Judgment,⁷¹⁹ the order stipulates that the execution of the Judgment is “applicable to the entirety of the assets of Chevron Corporation, until such time as the entire obligation has been satisfied.”⁷²⁰ Noting that it targets “a debtor that handles its investments in subsidiaries and affiliate companies, and has declared its refusal to comply with its obligations as set forth in the sentence under enforcement” the order states that

⁷¹⁷ C-1532, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012, pp. 2-3.

⁷¹⁸ C-1532, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012, pp. 2-3.

⁷¹⁹ C-931, Lago Agrio Judgment, p. 187; Track II Award, para. 8.9.

⁷²⁰ C-1532, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012, p. 2.

Chevron’s assets “are composed of all the companies, affiliates and/or subsidiaries, listed in Attachment 21.1, as follows”.⁷²¹ What follows is a list of dozens of Chevron’s worldwide subsidiaries identified by name and place of incorporation, which thereby also became named judgment debtors of the Lago Agrio Judgment.⁷²²

...since we are facing a debtor that handles its investments in subsidiaries and affiliate companies, and has declared its refusal to comply with its obligations as set forth in the sentence under enforcement, this explains the imposition of this enforcement of judgment over all assets owned by Chevron Corporation, with the understanding that these assets are composed of all the companies, affiliates and/or subsidiaries, listed in Attachment 21.1, as follows: Beta Offshore Nigeria Deepwater Limited, incorporated in Nigeria; Cabinda Gulf Oil Company Limited incorporated in Bermuda; Chevron and Gulf UK Pension Plan Trustee Company Limited incorporated in England; **Chevron Argentina S. R. L. incorporated in Argentina**; Chevron Australia Pty Ltd. incorporated in Australia; Chevron Australia Transport Pty Ltd. incorporated in Australia; Chevron (Bermuda) Investments Limited incorporated in Bermuda; Chevron Brasil Petróleo Limitada incorporated in Brazil; **Chevron Canada Finance Limited incorporated in Canada**; **Chevron Canada Limited incorporated in Canada**; Chevron Capital Corporation incorporated in Delaware (USA); Chevron Caspian Pipeline Consortium Company incorporated in Delaware (USA); Chevron Environmental Management Company incorporated in California (USA); Chevron Geothermal Indonesia, Ltd. incorporated in Bermuda; Chevron Global Energy Inc, incorporated in Delaware (USA); Chevron Global Power Company incorporated in Pennsylvania (USA); Chevron Global Technology Services Company incorporated in Delaware (USA); Chevron International (Congo) Limited incorporated in Bermuda; Chevron International Petroleum Company incorporated in Delaware (USA); Chevron Investments (Netherlands) Inc. incorporated in Delaware (USA); Chevron LNG Shipping Company Limited incorporated in Bermuda; Chevron Marine Products LLC incorporated in Delaware (USA); Chevron Mining Inc. incorporated in Missouri (USA); Chevron New Zealand incorporated in New Zealand; Chevron Nigeria Deepwater B Limited incorporated in Nigeria; Chevron Nigeria Deepwater D Limited incorporated in Nigeria; Chevron Nigeria Limited incorporated in Nigeria; Chevron Oil Congo (D.R.C.) Limited incorporated in Bermuda; Chevron Oronite Company LLC incorporated in Delaware (USA); Chevron Oronite Pte. Ltd. Incorporated in Singapore; Chevron Oronite S.A.S. incorporated in France; Chevron Overseas Company incorporated in Delaware (USA); Chevron Overseas (Congo) Limited incorporated in Bermuda; Chevron Overseas Petroleum Limited incorporated in the Bahamas; Chevron Overseas Pipeline (Cameroon) Limited incorporated in the Bahamas; Chevron Overseas Pipeline (Chad) incorporated in the Bahamas; Chevron Pakistan Limited incorporated in the Bahamas; Chevron Petroleum Chad Company Limited incorporated in Bermuda; Chevron Company incorporated in New Jersey (USA); Chevron Petroleum Limited Bermuda incorporated in; Chevron Philippines Inc. incorporated in the Philippines; Chevron Pipe Line Company incorporated in Delaware (USA); Chevron South Natuna B Inc., incorporated in Liberia; Chevron Synfuels Limited incorporated in Bermuda; Chevron Thailand Exploration and Production, Ltd. incorporated in Bermuda; Chevron (Thailand) Limited incorporated in the Bahamas; Chevron Thailand LLC incorporated in Delaware (USA); Chevron Transport Corporation Ltd incorporated in Bermuda; Chevron United

⁷²¹ C-1532, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012, p. 2.

⁷²² C-1532, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012, pp. 2-3.

Kingdom Limited incorporated in England and Wales; Chevron U.S.A. Holdings Inc. incorporated in Delaware (USA); Chevron U.S.A. Inc. incorporated in Pennsylvania (USA); Chevron Upstream and Gas incorporated in Pennsylvania (USA); Four Star Oil & Gas Company incorporated in Delaware (USA); Heddington Insurance Limited incorporated in Bermuda; Insko Limited incorporated in Bermuda; Iron Horse Insurance Co. incorporated in Vermont (USA); Oilfiel Consession [sic] Operator Limited incorporated in Nigeria; PT Chevron Pacific Indonesia incorporated in Indonesia; Saudi Arabian Chevron Inc. Delaware; Texaco Britain Limited England and Wales; Texaco Capital Inc. incorporated in Delaware (USA); Texaco Captain Inc. incorporated in Delaware (USA); Texaco Inc. Delaware; Texaco Overseas Holdings Inc. incorporated in Delaware (USA); Texaco Venezuela Holdings (I) Company incorporated in Delaware (USA); Traders Insurance Limited incorporated in Bermuda; TRMI-H LLC incorporated in Delaware (USA); Union Oil Company of California incorporated in California (USA); Unocal Corporation incorporated in Delaware (USA); Unocal International Corporation incorporated in Nevada (USA); Unocal Pipeline Company incorporated in California (USA); and West Australian Petroleum Pty Limited incorporated in Australia; inasmuch as we consider the declaration that they are all totally owned, directly or indirectly, by Chevron Corporation to be effective.⁷²³

432. In the above quotation, the Tribunal has highlighted in bold those of Chevron’s subsidiaries against whom the LAPs eventually requested the enforcement of the Lago Agrio Judgment.⁷²⁴ In the case of Argentina-based assets, the Lago Agrio Court further ordered the direct seizure of specific assets owned by Chevron’s Argentinean and Danish subsidiaries citing to the Inter-American Convention on the Enforcement of Preventive Measures:

Based on what has been stated as a preliminary measure the seizure of assets indicated by the petitioner, as indicated in the motion is ordered; that is: “A) Ownership interests (“membership interests” in Argentinean law) that CDC ApS and Norberto Priú S.R.L have in their name in Chevron Argentina S.R.L. B) Ownership interests (“membership interests” in Argentinean law) that CDC ApS and CDHC ApS have in their name in Norberto Priú S.R.L.,” consequently, and as the petitioner indicates, in relation to these goods the seizure covers “all economic rights associated with ownership interests or membership interests, as well as its withholding, which includes: The membership interests that CDC ApS, Norberto Priú S.R.L., and/or CDHC ApS have the right to receive and which were issued as a consequence of exchange, capital subscription, exercise of preemptive rights and/or addition rights, supplementary membership interests to be issued according to article 151 of Law 19550 (t.o. 1984), capitalization of irrevocable investments, legal or optional reserves, reevaluation, states of accumulated results or other distributions in released membership interests, distribution of dividends in membership interests, or through mergers or spin-off of CDC ApS, Norberto Priú S.R.L., and/or CDHC ApS by a new issue

⁷²³ **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012, pp. 2-3 (emphasis by the Tribunal).

⁷²⁴ See **C-2349**, *Aguinda v. Chevron Corp.*, Argentine National Trial Court 61, Case No. 91814/2012, Order, 6 November 2012 (for Argentina); **C-1380**, *Yaiguaje et al. v. Chevron Corp. et al.*, Superior Court of Justice, Case No. CV-12-454778, Statement of Claim, 30 May 2012 (for Canada). In the recognition action initiated in Brazil the named defendant was Chevron Corporation (see **C-2815**, *Maria Aguinda Salazar et al. v. Chevron Corporation*, SE nº 8542 / EC (2012/0128296-4), Superior Court of Justice, Docket Sheet).

of membership interests to replace the current interests of CDC ApS, Norberto Priú S.R.L., and/or CDHC ApS, and by any other mechanism that involves any type of corporate restructuring or transformation of CDC ApS, Norberto Priú S.R.L., and/or CDHC ApS, in which case the seizure will cover the interests or any other type of membership interest that replaces membership interests, and/or for any other cause or circumstance, with this list serving only as an example; any amount or quantity payable and/or delivered to CDC ApS, Norberto Priú S.R.L., and/or CDHC ApS as a result of any reduction and/or reintegration of share capital, of irrevocable investments, of original issue or merger and any asset account, redemption, amortization and/or total or partial reimbursement of membership interests, or in final distribution of remaining assets of any type due to finalization of liquidation of CDC ApS, Norberto Priú S.R.L., and/or CDHC ApS. Any amount or quantity payable and/or delivered to CDC ApS, Norberto Priú S.R.L., and/or CDHC ApS as a result of any actual dividend payment made by CDC ApS, Norberto Priú S.R.L., and/or CDHC ApS in regards to the membership interests.” Continuing with the petition, it also asks for the seizure of “(C) Accounts that Chevron Argentina S.R.L. may have open at financial entities in the Republic of Argentina,” and the “(D) Proceeds that Chevron Argentina S.R.L. may have receivable as a result of its crude oil sales operations, conducted or to be conducted in the future, of the following companies: YPF S.A. (. . .), Shell Cía Argentina de Petróleo S.A. . . .), ESSO Petrolera Argentina S.R.L. (. . .), Petrobras Argentina (. . .)” but the official letter that requests the release “to the Central Bank of the Republic of Argentina, to notify the financial institutions that they should seize all accounts, deposits, credits, investments and/or any sum of present and/or future money, in Pesos or in Dollars, which is received for any reason and/or is available to Chevron Argentina S.R.L., and having deposited the frozen/seized sums in the judicial deposits bank, upon order of the intervening judge,” shall be requested and ordered through the competent authority in the Republic of Argentina, in the same way as the “notification of the measure” to the companies indicated in section D) (YPF S.A.: Macacha Güemes 515, Ciudad Autónoma de Buenos Aires, República Argentina – Shell Cía Argentina de Petróleo S.A.: Av. Presidente R. S. Peña 788 2nd floor, Ciudad Autónoma de Buenos Aires, República Argentina – Esso Petrolera ARGENTINA s.r.l.: Carlos María della Paolera 265, 19th floor, Ciudad Autónoma de Buenos Aires, República Argentina – Petrobras Argentina S.A.: Maipú 1, Ciudad Autónoma de Buenos Aires, República Argentina.) and finally, according to what the petitioner has indicated, the seizure also extends to “(E) Funds that Chevron Argentina S.R.L. has receivable in the court proceedings “Chevron Argentina S.R.L. v. Shell Argentina de Petróleo S.A. s-ordinary proceeding,” underway before National Lower Commercial Court 17 – Office of the Secretary 34 (No. 073644, filed on May 22, 2012).”⁷²⁵

433. The majority of these assets were eventually attached by order of the Argentine judiciary in November 2012.⁷²⁶

434. The 15 October 2012 Order of the Lago Agrio Court – an organ of the Respondent’s judiciary – must be attributed to the Respondent in accordance with Article 4 of the ILC Articles.⁷²⁷

⁷²⁵ **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012, pp. 4-5.

⁷²⁶ **C-2349**, *Aguinda v. Chevron Corp.*, Argentine National Trial Court 61, Case No. 91814/2012, Order, 6 November 2012.

⁷²⁷ See Track II Award, para. 7.109.

435. It follows that the Respondent, through the Lago Agrio Court, treated Chevron’s assets as indistinct from those of its international subsidiaries for the purposes of the execution of the Lago Agrio Judgment. Critically, the order of the Lago Agrio Court sought to attach the assets of Chevron’s international subsidiaries worldwide.⁷²⁸ As noted above, the order was followed by enforcement actions in several jurisdictions outside of Ecuador.
436. In Track III, by contrast, the Respondent seeks expressly to preclude the recovery by Chevron of the losses suffered by its international subsidiaries.⁷²⁹ It does so on the basis that the “Claimants have no legal right to Chevron’s subsidiaries’ assets, including claims to recover amounts that Chevron’s subsidiaries spent on legal representation.”⁷³⁰ At this juncture, therefore, the Respondent seeks to draw a stark distinction between Chevron’s assets and those of its subsidiaries to resist a claim for damages arising from the recognition and enforcement of the unremedied Lago Agrio Judgment.
437. Once again, therefore, the Tribunal finds it impossible to reconcile the statements made by the Respondent’s judiciary – this time in the 15 October 2012 Order conflating Chevron’s assets and those of its subsidiaries – with the submissions made by the Respondent in this Arbitration. By virtue of the principle in good faith in international law as applied to the exercise of rights and the performance of obligations under the Arbitration Agreement, the Tribunal concludes that the Respondent is required in this Arbitration, as a matter of good faith, to treat the assets of those of Chevron’s subsidiaries listed in the 15 October 2012 Order of the Lago Agrio Court⁷³¹ as indistinct from those of Chevron, consistently with the statements made and acted upon by the Respondent’s judicial branch in the Lago Agrio Litigation seeking to breach the corporate veil between Chevron and its subsidiaries for the purpose of executing the Lago Agrio Judgment.
438. As a result, the Tribunal concludes that Chevron may in its own right claim compensation in this Arbitration for the injuries to the assets of its subsidiaries listed in the 15 October

⁷²⁸ C-1532, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012, p. 2.

⁷²⁹ Counter-Memorial, paras. 306-308; Rejoinder, paras. 479-481.

⁷³⁰ Counter-Memorial, para. 307.

⁷³¹ C-1532, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012.

2012 Order of the Lago Agrio Court⁷³² caused by the recognition and enforcement of the Lago Agrio Judgment.

439. The Tribunal has taken note of the Respondent’s argument that the same principle of good faith must operate so as to preclude the Claimants’ “new position that they share legal personalities with their subsidiaries for the purposes of damages”, as opposed to the position held by Chevron’s subsidiaries in enforcement proceedings, where they successfully achieved dismissal of enforcement actions against them by arguing that they had separate legal personalities.⁷³³
440. However, unlike the above application of the principle of good faith, which concerned statements made and acted upon by the Respondent through the Lago Agrio Court and statements made by the Respondent in this Arbitration, the Respondent’s estoppel argument seeks to equate statements made by Chevron’s *subsidiaries* in enforcement proceedings with statements made by Chevron *itself* in this Arbitration. What is more, when looked at more closely, the statements are not truly contradictory. Both Chevron and its subsidiaries maintain that treating them as a single entity is contrary to legal principle, even if they draw different consequences from this initial premise. The Tribunal considers these distinctions to be critical and on this basis rejects the Respondent’s argument.
441. In closing, the Tribunal must recall once again for context purposes that the injury to Chevron through the recognition and enforcement of the unremedied Lago Agrio Judgment was always intended to take place outside of Ecuador, with Chevron’s numerous associated companies around the world being the primary target:

(1) *Transnational Enforcement*: Chevron had no significant realisable assets in Ecuador, whether owned directly or indirectly, before and after the “merger” with Texaco in 2001. Before the “merger”, Chevron was a stranger to Texaco and TexPet. Texaco and TexPet had left Ecuador by 1992. Neither Texaco nor TexPet left behind any significant realisable assets in Ecuador. Following the “merger”, therefore, Chevron’s indirect ownership of Texaco and TexPet did not endow Chevron with any significant realisable assets in Ecuador.

⁷³² C-1532, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012.

⁷³³ Rejoinder, para. 490.

Outside Ecuador, however, Chevron, with its large group of associated companies, indirectly owned (and still owns) substantial assets, including ocean-going vessels, bank deposits around the world, and other properties. By their nature, vessels and bank deposits were and remain vulnerable to arrest, attachment or seizure by the Lago Agrio Plaintiffs upon the Lago Agrio Judgment’s enforcement in multiple jurisdictions, especially *ex parte* without prior notice. Even if Chevron were in a position to discharge promptly such an order freezing a bank deposit or arresting a vessel, the damage to Chevron and its associated companies from such repeated actions could have been very significant (as it may still be).

Hence, as confirmed by the “Invictus Memorandum” (see Part IV above), the Lago Agrio Plaintiffs’ representatives always intended that the Lago Agrio Judgment should be enforced in multiple jurisdictions outside Ecuador, not limited to the USA. This Memorandum listed such other foreign jurisdictions expressly, including the Philippines, Singapore, Australia, Argentina, Brazil, Colombia, Venezuela, Canada, Kuwait, Nigeria, Saudi Arabia, South Africa, South Korea, Belgium, Indonesia, the Netherlands, the United Kingdom, Trinidad and Tobago, New Zealand and Russia. It would be possible to add many more jurisdictions to this list.

The Lago Agrio Litigation was therefore likely to involve, from its outset, numerous national jurisdictions other than Ecuador. This feature makes the present case unusual. Earlier cases on denial of justice have concerned an alleged wrong and an alleged injury taking place within the same State. Here, the injury to Chevron was always intended to take place, at least in part, in one or more foreign jurisdictions elsewhere than Ecuador, whether by the enforcement of the Lago Agrio Judgment or by an enforced “amicable” settlement. Thus, the Lago Agrio Litigation was transnational in the broadest sense, as confirmed by the multiplicity of foreign lawsuits and arbitrations in the USA, Argentina, Brazil, Canada, the Netherlands and elsewhere following the issuance of the Lago Agrio Judgment.⁷³⁴

442. Indeed, this is not a case in which a claimant is attempting to circumvent the principle of corporate separateness vis-à-vis its subsidiaries to claim their losses as its own. It concerns the transnational enforcement of a corrupt judgment that is contrary to international public policy against the wholly-owned subsidiaries of an investor,⁷³⁵ with those subsidiaries being the ultimate target of the fraud. While the Tribunal is not deciding the present question from the viewpoint of reflective loss, it must note, in passing, that it cannot obviate the economic impact on Chevron, as the holding company of its corporate group, of the losses incurred by its wholly-owned subsidiaries in defending against said

⁷³⁴ Track II Award, paras. 7.24-7.27.

⁷³⁵ See **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012, p. 2: “All the subsidiaries on the preceding list are totally owned, directly or indirectly, by Chevron Corporation.”; Track III Hearing Transcript, Day 1 (18 August 2022), p. 78 (Bishop): “Now, in addition, Chevron is also entitled to recover under the ‘reflective loss’ principle because all of Chevron Corporation’s subsidiaries are 100 percent owned by it, and therefore damage to its subsidiaries in the form of attorneys’ fees is an equivalent loss to Chevron as the parent.”

corrupt judgment, particularly in view of the global risk of enforcement of the Lago Agrio Judgment and the need to coordinate actions in multiple jurisdictions.⁷³⁶

443. In view of its above conclusions, the Tribunal does not consider it necessary to decide whether the Claimants are also entitled to claim compensation for losses incurred by Chevron’s international subsidiaries under other theories proposed by the Claimants. For reasons of arbitral economy, the Tribunal declines to address them.

3. Conclusions on International Subsidiaries

444. For the foregoing reasons, the Tribunal declares that Chevron, as a matter of principle, is entitled to claim compensation in this Arbitration in its own right for the injuries to those of its subsidiaries listed in the 15 October 2012 Order of the Lago Agrio Court⁷³⁷ caused by the recognition and enforcement of the Lago Agrio Judgment.

D. FAILURE TO MITIGATE

1. Introduction

445. According to the Respondent, the Claimants increased or exacerbated their legal costs by failing to pursue certain measures which, in its view, would have served to avert or at least mitigate the damage arising from the Respondent’s Treaty breaches: (i) by failing to recuse Judge Zambrano; (ii) by failing to post a bond to suspend the enforceability of the Lago Agrio Judgment; (iii) by failing to file an action under the Ecuadorian Collusion Prosecution Act (‘CPA’); and (iv) by initiating the RICO Litigation. The Respondent

⁷³⁶ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 103-104 (Coriell): “Chevron had good reason to prepare itself to defend against enforcement in multiple jurisdictions, not just Argentina, Brazil, and Canada, where the cases were ultimately filed because a lot more were threatened. And so, mitigating against that risk meant looking at Invictus and seeing all of those target jurisdictions that were listed: Philippines, Singapore, Australia, Colombia, Venezuela, Angola, Chad, China--over a dozen more beyond those. All planned by the Lago Agrio Plaintiffs, as you see on screen: A global attachment risk; the threat to disrupt operations of Chevron worldwide; a leverage plan where the Lago Agrio Plaintiffs only have to win in one of 28 named jurisdictions in order to succeed. And by the way, where Chevron, until it defeats 28 possible enforcement actions, still faces the whole of that risks as to disruption of operations, attachments and things of that nature. So, that’s the context. That’s the risk. How can you reasonably expect to be successful in defending against it? How can you make sure that you’ll go 28 for 28? And the answer is, in part, by preparing to defend yourself everywhere they’ve told you that they’re likely to go, to varying degrees, depending on what’s at risk and what’s most likely, of course.”

⁷³⁷ C-1532, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012.

requests that the Tribunal “reject, or at a minimum substantially reduce, Claimants’ damages claim as a result of their failure to take reasonable steps to mitigate.”⁷³⁸

446. The Claimants posit that these arguments fail as a matter of fact and law and state that they fully mitigated their damages by, among other things, obtaining interim orders and awards from the Tribunal ordering the Respondent to prevent the judgment from becoming or remaining enforceable.⁷³⁹

447. The Parties’ arguments raise preliminary questions regarding the content of the duty to mitigate in the present case, the moment at which a duty to mitigate arises, the meaning of the requirement that the injured party act “reasonably” when confronted with the injury, and the burden of proof on failure to mitigate. As further detailed below, these questions are partly dispositive of the Respondent’s arguments. The Tribunal will therefore examine these matters first before addressing specific instances of the Claimants’ alleged failure to mitigate.

448. First, in respect of the content of the duty to mitigate, the Tribunal finds useful guidance in the Commentary to the ILC Articles:

A further element affecting the scope of reparation is the question of mitigation of damage. Even the wholly innocent victim of wrongful conduct is expected to act reasonably when confronted by the injury. Although often expressed in terms of a “duty to mitigate”, this is not a legal obligation which itself gives rise to responsibility. It is rather that a failure to mitigate by the injured party may preclude recovery to that extent. . .⁷⁴⁰

449. A necessary corollary of the requirement that an injured party “act reasonably when confronted by the injury” is that the scope of the Claimants’ duty to mitigate must be determined by reference to the specific injury they faced in this case: the recognition and enforcement of the Lago Agrio Judgment. In other words, in the circumstances of this case, the Claimants’ duty to mitigate required them to take steps to mitigate the injury arising from the recognition and enforcement of the Lago Agrio Judgment. As determined by the Tribunal in paragraph 363 above, the Claimants could have mitigated the injury in

⁷³⁸ Rejoinder, para. 572.

⁷³⁹ Reply, paras. 422-425.

⁷⁴⁰ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (11).

three different ways: (i) by preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, by thereafter seeking to render the Judgment unenforceable; and (iii) by minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.

450. Against this backdrop, it becomes immediately apparent that the Claimants’ decision to initiate the RICO Litigation instead of defending themselves in enforcement proceedings in the United States cannot be properly characterized as a failure to mitigate damage, as the Respondent suggests.⁷⁴¹ As part of the RICO Litigation, the Claimants sought and obtained interim relief restraining the LAPs and their representatives from enforcing the Lago Agrio Judgment before any court in the United States, which is clearly a mitigation measure as defined in the preceding paragraph.⁷⁴² Whether the Claimants “needlessly spent hundreds of millions of dollars on unnecessary and unsuccessful activities”⁷⁴³ by pursuing the RICO Litigation is a separate question impacting upon the recoverability of the legal expenses incurred in that litigation as incidental damages, and, in particular, upon the reasonableness of the Claimants’ choice of measures and the amounts spent in connection with those measures.⁷⁴⁴ It has no bearing on whether the Claimants took *actual* steps to mitigate the damage arising from the recognition and enforcement of the Lago Agrio Judgment as described in the preceding paragraph. Thus, the Tribunal will not address the RICO Litigation under the present heading of failure to mitigate but as part of its analysis of this specific category of damages in Section VIII.G below.

⁷⁴¹ Counter-Memorial, paras. 1191-1201.

⁷⁴² **C-972**, Order, 7 March 2011 (responding to Plaintiffs’ motion, RICO Dkt., ECF No. 4): “For the foregoing reasons, Chevron’s motion [DI 4] for a preliminary injunction is granted . . . All defendants . . . be and they hereby are enjoined and restrained, pending the final determination of this action, 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 in *Maria Aguinda y Otros v. Chevron Corporation*, No. 002-2003, in the Provincial Court of Justice of Sucumbios, Ecuador (hereinafter the “*Lago Agrio Case*”), 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 (collectively, a “*Judgment*”), or for prejudgment seizure or attachment of assets, outside the Republic of Ecuador, based upon a Judgment.”

⁷⁴³ Counter-Memorial, para. 1201.

⁷⁴⁴ See para. 335 above.

451. Second, a question related to the scope of the Claimants’ duty to mitigate is the date on which such duty arises. In this respect, the authorities filed by the Parties support the notion that the duty to mitigate arises only following the emergence of the injury, and more particularly when the victim of wrongful conduct is, in the words of the ILC, “confronted by the injury”.⁷⁴⁵ The Tribunal agrees with this proposition. While a claimant’s failure to take effective steps to prevent a treaty breach may be relevant in other contexts, such as determining liability, it has no bearing on the question of the duty to mitigate. In sum, in the context of reparation under international law, the notion of duty to mitigate requires that the injured party take steps to minimize the *effects* of the breach, rather than to prevent the breach itself.⁷⁴⁶
452. This conclusion is immediately dispositive of the Respondent’s argument that the Claimants failed to mitigate damages by failing to recuse Judge Zambrano. Under this heading, the Respondent points to several instances in the course of the Lago Agrio Litigation when, in the Respondent’s view, the Claimants could have acted on their knowledge that Judge Zambrano was willing to accept a bribe from the LAPs by seeking to have him removed from office, thus averting the ‘ghostwriting’ of the Lago Agrio Judgment and as a consequence the entirety of the Claimants’ damages.⁷⁴⁷ However, all of these purported omissions pre-date the issuance of the Lago Agrio Judgment on 14 February 2011, which, as already determined by the Tribunal, is both the first event in the series of the Denial of Justice and Umbrella Clause Breaches and the earliest date on which the injury arising from the Respondent’s internationally wrongful acts began to flow.⁷⁴⁸ Thus, prior to the issuance of the Lago Agrio Judgment there was no injury requiring mitigation efforts from the Claimants. Nor was there any Treaty breach from

⁷⁴⁵ **RLA-813**, *William Ralph Clayton, Bilcon of Delaware, Inc. and others v. Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, para. 204: “The duty to mitigate applies if: (i) a claimant is unreasonably inactive following a breach of treaty; or (ii) a claimant engages in unreasonable conduct following a breach of treaty.”; **RLA-787**, *Hrvatska Elektroprivreda d.d. v. Slovenia*, ICSID Case No. ARB/05/24, Award, 17 December 2015, para. 386: “In the Commentary to Article 31 of the Articles on State Responsibility, the International Law Commission writes that ‘[e]ven the wholly innocent victim of wrongful conduct is expected to act reasonably when confronted by the injury.’ As that passage makes clear, the victim must act reasonably when confronted by injury; in other words, at the time of the wrong.”

⁷⁴⁶ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (11).

⁷⁴⁷ Counter-Memorial, paras. 1169-1177; Rejoinder, paras. 588-602.

⁷⁴⁸ See para. 362, 371 above.

which the injury could be said to flow. The Claimants’ conduct pre-dating the issuance of the Lago Agrio Judgment is therefore not germane to a failure-to-mitigate analysis.

453. Third, the Parties have debated at length the element of reasonableness embedded in the duty to mitigate under international law, which requires that the injured party “act reasonably when confronted by the injury”.⁷⁴⁹ Because the Parties’ submissions under this heading centre principally on the use of certain remedies under Ecuadorian law, the Parties have focused on whether the Tribunal’s conclusions on exhaustion of local remedies in its Track II Award – addressing those same remedies⁷⁵⁰ – can be transposed to its analysis of the Claimants’ duty to mitigate, particularly in view of the fact that both standards are subject to a requirement of reasonableness.
454. For context, the Tribunal recalls that the Track II Award examined the question whether the Claimants had exhausted local remedies as a requirement for asserting a claim for denial of justice:

In the Tribunal’s view, it is well settled that a claimant asserting a claim for denial of justice committed by a State’s judicial system must satisfy, whether as a matter of jurisdiction or admissibility, a requirement as to the exhaustion of local remedies or, as now better expressed, a substantive rule of judicial finality. Even the grossest misconduct by a lower court or manifest unfairness in its procedures is not by itself sufficient to amount to a denial of justice by a State, unless the judicial remedies that exist in that State either do not correct the deficiencies in the lower court’s judgment (once exhausted by the foreign national) or are such that none affords to the foreign national any reasonable prospect of correcting those deficiencies in a timely, fair and effective manner.

...

The Respondent contends that Chevron failed reasonably to pursue its effective legal remedies within the Ecuadorian legal system, particularly (as regards the alleged denial of justice) under the Ecuadorian Collusion Prosecution Act (the “CPA”). The Respondent also contends that Chevron’s failure to request the Lago Agrio Appellate Court to fix the amount of a bond and to pay such bond, so as to suspend the enforceability of the Lago Agrio Judgment, led to the alleged injury of which the Claimants complain. It was, according to the Respondent, “an intervening direct and immediate cause of the enforceability of the Judgment, breaking the ‘causal nexus’ required for a showing of denial of justice”⁷⁵¹

⁷⁴⁹ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (11).

⁷⁵⁰ Track II Award, paras. 7.116-7.148.

⁷⁵¹ Track II Award, paras. 7.117, 7.120.

455. As noted by the Tribunal in the above paragraphs, the requirement of judicial finality may be fulfilled if none of the judicial remedies that exist in a State affords to the foreign national any *reasonable* prospect of correcting the deficiencies complained of in a timely, fair and effective manner. The Tribunal then applied this test to the present case as follows:

For the present case, the Tribunal considers that the crucial part of the statements in *Loewen*, is that the availability of a local remedy “is not a standard to be determined or applied in the abstract. It means reasonably available to the complainant in light of its situation. . .” As also stated above, the local remedy must be available as “an effective and adequate appeal within the State’s legal system.” It clearly does not include any ineffective or inadequate or, equally, any untimely remedy. The test is similarly expressed in the later awards in *Jan de Nul* (2008) and *Pantechniki* (2009).

In the Tribunal’s view, the overall test for such availability is that of reasonableness applied to the complainant, assessed at the relevant time. Applied to the present case, it would be wrong in principle to require Chevron to have pursued at the time any local remedy in Ecuador that lacked any reasonable prospect of a timely, effective and adequate protection against the enforcement of the Lago Agrio Judgment within and, especially, without Ecuador. As with all its allegations, the legal burden of proving such ineffective protection, once a potential procedure has been identified by the Respondent, rests upon Chevron under Article 24(1) of the UNCITRAL Arbitration Rules.⁷⁵²

456. In its Partial Award on Track III, the Tribunal addressed the potential overlap between the above analysis and the assessment of reasonableness in a mitigation context:

According to the Claimants, the standards applicable to exhaustion of local remedies and to mitigation of damages in this case are the same, seeing that they both refer to the same remedies and depend on the same single element: “whether it was ‘reasonable’ to expect Chevron to engage any of the mechanisms that Ecuador suggests would have remedied the harm or mitigated the damage from that harm.”

In the Tribunal’s view, it would be misguided to conflate the standards for mitigation and exhaustion of local remedies as the Claimants suggest. While it is true that both standards contain a requirement of reasonableness, a determination of what conduct can be considered reasonable is always context-dependent. It is informed, amongst other things, by the objective pursued by the conduct in question. Exhaustion of local remedies requires that reasonable steps be taken to remedy a judicial wrong – in this case, to prevent the finality and enforceability of the Lago Agrio Judgment within and without Ecuador. Mitigation, on the other hand, requires the wronged party not to exacerbate the damage (here, the incurring of legal costs) and to take positive steps to minimize its effects. Conduct reasonably geared towards preventing the enforcement of a fraudulent judgment may also be deemed a reasonable means to reduce the legal costs arising from the threat of such enforcement, but not necessarily. There may be substantial overlap between the two analyses, but they remain legally distinct questions and are not coextensive. Whereas the

⁷⁵² Track II Award, paras. 7.122-7.123.

exhaustion of local remedies focuses on avoiding the consummation of the wrongful conduct itself, mitigation of damages focuses on minimizing its effects.

It is thus not possible for the Tribunal to conclude in the abstract that its findings on exhaustion of local remedies and judicial finality apply without more to the Respondent’s mitigation defence. It will be necessary to hear the Parties’ arguments on mitigation in full before reaching a decision. The Tribunal does not exclude, however, that certain factual and logical parallels between its decisions on judicial finality and the mitigation defence may inform its analysis of the latter, including in respect of what conduct may be deemed reasonable under the applicable mitigation standard.⁷⁵³

457. In sum, at this juncture the Tribunal is required to determine whether, in light of all relevant circumstances, it would have been reasonable for the Claimants to pursue certain local remedies in Ecuador (*i.e.*, the posting of a bond and filing an action under the CPA) to minimize the injury arising from the recognition and enforcement of the Lago Agrio Judgment – and, conversely, whether their failure to do so was unreasonable. While the Tribunal’s Track II rulings on the exhaustion of local remedies are not dispositive of this question, certain factual and logical parallels between its rulings and the Respondent’s duty to mitigate defence may inform the present analysis.

458. Fourth, and last, the Parties agree that the onus of proving that the Claimants failed to mitigate their damages is with the Respondent.⁷⁵⁴ Indeed, a distinction must be drawn between the burden of proof on incidental damages incurred to mitigate loss – which, as addressed above, lies with the party seeking the recovery of those damages⁷⁵⁵ – and a failure to mitigate as an affirmative defence, for which the onus lies on the party pleading such defence.⁷⁵⁶

459. With this preamble, the Tribunal turns to the two instances of alleged failure to mitigate that have not yet been addressed by the Tribunal: the Claimants’ failure to post a bond to suspend the enforceability of the Lago Agrio Judgment and file an action under the CPA.

⁷⁵³ Partial Award on Track III, paras. 181-183.

⁷⁵⁴ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1478 (Bishop), p. 1492 (Schwartz).

⁷⁵⁵ See paras. 327-343 above.

⁷⁵⁶ **RLA-884**, *AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Kazakhstan*, ICSID Case No. ARB/01/6, Award, 7 October 2003, para. 10.6.4(4).

2. Posting of a Bond

460. According to the Respondent, by posting a bond under the Ecuadorian Cassation Appeal Act – resulting in the suspension of the enforcement of the Lago Agrio Judgment – the Claimants could have avoided all fees and expenses incurred defending enforcement proceedings until at least the issuance of the Judgment of the Cassation Court on 12 November 2013.⁷⁵⁷ The question before the Tribunal at this juncture is whether it would have been reasonable for the Claimants to post a bond so as to minimize the injury arising from the recognition and enforcement of the Lago Agrio Judgment.
461. In its Track II Award, the Tribunal determined the relevant sequence of events surrounding the Claimants’ failure to post a bond, which resulted in the declaration of enforceability of the Lago Agrio Judgment:

The enforcement of the Lago Agrio Judgment was suspended pending Chevron’s appeal to the Lago Agrio Appellate Court. The Appellate Court issued its judgment, dismissing Chevron’s appeal from the Lago Agrio Judgment, on 3 January 2012. It issued its Clarification Order on 13 January 2012. On 20 January 2012, Chevron filed a cassation appeal with the Appellate Court (of some 176 pages). Chevron there requested the Appellate Court (inter alia) to suspend the enforcement of its judgment (thereby continuing the suspension of the Lago Agrio Judgment’s enforcement) and to declare that there was no requirement for Chevron to post a bond to suspend the Appellate Court’s Judgment.

On 17 February 2012, the Appellate Court refused Chevron’s request to suspend the enforcement of its judgment pending Chevron’s cassation appeal. The Appellate Court decided also that its judgment would have been suspended pending the cassation appeal (thereby suspending the enforcement of the Lago Agrio Judgment) if Chevron had requested the posting of a bond and had posted a bond, which it had not done. On 24 February 2012, Chevron requested the Appellate Court to revoke its order of 17 February 2012. By order of 1 March 2012, the Appellate Court rejected Chevron’s request, confirming the non-suspension of its judgment. It thereby declared the enforceability of the Lago Agrio Judgment.⁷⁵⁸

462. The Tribunal there laid emphasis upon the fact that, notwithstanding the Claimants’ failure to post a bond, the Ecuadorian judiciary’s declaration of enforceability of the Lago Agrio Judgment was in breach of the Tribunal’s orders and Interim Awards:

By the time of the Lago Agrio Appellate Court’s order of 1 March 2012, this Tribunal, in order to preserve the rights of the Parties pending its decision on the merits, had already issued interim measures requiring the Respondent (including its judicial branch) not to permit the enforceability of the Lago Agrio Judgment: see its Orders and Interim Awards

⁷⁵⁷ Counter-Memorial, paras. 1178-1183; Rejoinder, paras. 619-622.

⁷⁵⁸ Track II Award, paras. 7.125-7.126.

on Interim Measures of 28 January 2011, 9 February 2011, 16 March 2011, 25 January 2012 and 16 February 2012. As already indicated above, the Tribunal had secured Chevron’s cross-undertaking in damages for these interim measures with an order that the Claimants pay US\$ 50 million to the PCA, which was duly paid by the Claimants and is held to the order of the Tribunal in this arbitration.

One of the grounds invoked by Chevron in support of its application of 20 January 2012 to the Lago Agrio Appellate Court was that the effect of this Tribunal’s orders and awards, particularly its Order of 9 February 2011, was that the enforcement of the Lago Agrio Judgment was “currently suspended” by the Tribunal. . .

On 30 May 2012, consistent with the order of the Lago Agrio Appellate Court of 1 March 2012, the Lago Agrio Plaintiffs began enforcement proceedings in Canada, followed by enforcement proceedings in Brazil on 27 June 2012. On 3 August 2012, the Lago Agrio Court (i.e. the enforcement judge) ordered the enforcement of the Lago Agrio Judgment in the total amount of US\$ 19,041,414,529.00, payable by Chevron within 24 hours.

The Respondent (by its judicial branch), in declaring the Lago Agrio Judgment to be enforceable with the Lago Agrio Appellate Court’s order of 1 March 2012 and the Lago Agrio Court’s enforcement order of 3 August 2012, did not comply with this Tribunal’s Orders and Interim Awards.⁷⁵⁹

463. Against the background of the Respondent’s Interim Awards Breach, the Tribunal relied upon three factors to conclude that, in the circumstances prevailing at the time, it would not have been reasonable to require Chevron to post a bond so as to suspend the enforcement of the Lago Agrio Judgment. First, it noted that the Respondent should not be allowed to profit from its decision knowingly not to comply with the Tribunal’s orders:

The Tribunal recognised at the time of its orders and awards (as it does still) that national courts have legal responsibilities to discharge under their State’s laws and constitution; that the exercise of such responsibilities may impinge upon the rights of third parties; and that in this new world of interaction between international tribunals and national courts, there is a need to proceed with mutual respect and sensitivity to each other’s functions. Nonetheless, when the State has chosen to establish procedures in parallel to its national court system (as it has here under the Treaty), it is incumbent on the State to ensure that the commitments that it has agreed are not defeated or subverted by actions of its national agencies, including its judicial branch.

Before 1 March 2012, as already indicated, this Tribunal had ordered the Respondent, under its several orders and awards on interim measures, not to declare the Lago Agrio Judgment enforceable. Chevron was entitled to rely upon those orders and awards, which were legally binding upon the Respondent under the Arbitration Agreement to which the Respondent had decided to commit itself. Moreover, given that the Respondent (by its judicial branch) knowingly did not comply with these orders and awards, it would inappropriate for the

⁷⁵⁹ Track II Award, paras. 7.127-7.130.

Respondent now to profit from its own wrong under the general principle of international law known by its Latin maxim: *nullus commodum capere de sua injuria propria*.⁷⁶⁰

464. Second, the Tribunal noted that there were insufficient prospects of favourable relief on Chevron’s appeal to the Cassation Court:

The Tribunal also relies upon two further factors. First, at the time (after the Lago Agrio Appellate Court’s judgment), there were insufficient prospects of favourable relief on Chevron’s appeal to the Cassation Court. Such a cassation appeal could not be a full appeal addressing Chevron’s multiple complaints regarding the Lago Agrio Litigation and Lago Agrio Judgment. Apart from relief against punitive damages ordered by the Lago Agrio Judgment, this was later to prove to be the case.⁷⁶¹

465. Lastly, the Tribunal laid emphasis on the expected amount of the bond, which would have been “so high as to amount to a practical denial of access to the Cassation Court by Chevron”:

Second, the amount of the bond would, on the case advanced by both the Claimants and the Respondent, have been so high as to amount to a practical denial of access to the Cassation Court by Chevron. Dr Coronel testified that the amount of the bond would have been between US\$ 1.9 billion and US\$ 14.6 billion. At the Track II Hearing, the Respondent’s Counsel stated that the amount of the bond would have been fixed in an amount between 1% and 5% of the amounts at stake. Applied to the Lago Agrio Judgment, as affirmed by the Appellate Court in the total sum of US\$ 18 billion, the amount of the bond would have been between US\$ 180 million and US\$ 14.6 billion. These are not trifling amounts.

In the circumstances prevailing at the time, the Tribunal does not consider it reasonable to require Chevron to have posted a bond of this size so as to suspend the enforcement of the Lago Agrio Judgment, as affirmed by the Lago Agrio Appellate Judgment. Moreover, upon the exhaustion of Chevron’s appellate remedies with the Constitutional Court’s Judgment of 27 June 2018, the failure to post a bond has now no legal significance: such a bond could only have suspended the enforcement of the Lago Agrio Judgment pending the completion of the appellate process; and the failure to exhaust a local remedy does not extinguish the underlying international wrong.⁷⁶²

466. Having assessed all relevant circumstances, in the Tribunal’s view, these same factors lead to the conclusion that it would have been unreasonable to require Chevron to post a bond in the amount required by Ecuadorian law to minimize the injury arising from the recognition and enforcement of the Lago Agrio Judgment. The contrary conclusion would result in the Respondent profiting from its own wrong – the Interim Awards Breach – by

⁷⁶⁰ Track II Award, paras. 7.131-7.132.

⁷⁶¹ Track II Award, para. 7.133.

⁷⁶² Track II Award, paras. 7.134-7.135.

way of a reduction in the Claimants’ damages claim based on a failure to mitigate. Similarly, as already found by the Tribunal, Chevron’s cassation appeal offered limited prospects of favourable relief, further underscoring the very limited usefulness of the posting of a bond ranging in the hundreds of millions to billions of dollars to suspend the enforcement of the Lago Agrio Judgment for an approximate period of a year and a half (between February 2012 and November 2013, as stated above).

467. For these reasons, the Tribunal rejects the Respondent’s mitigation defence as regards the posting of a bond after the issuance of the Lago Agrio Appellate Judgment to suspend the enforcement of the Lago Agrio Judgment.

3. Collusion Prosecution Act (CPA)

468. In the Respondent’s submission, another way in which the Claimants could have mitigated their damages is by initiating proceedings under the CPA seeking to nullify the fraudulently procured Lago Agrio Judgment.
469. The relevant provisions of the CPA are set out in full in Part III of the Track II Award.⁷⁶³ As more succinctly described by the Tribunal in its analysis on the exhaustion of local remedies:

Under Article 6 of the Collusion Prosecution Act (CPA), a party claiming to be the victim of collusive legal proceedings before an Ecuadorian Court may impugn the resulting judgment. It provides: “If the grounds for the claim are confirmed, measures to void the collusive proceeding will be issued, invalidating the act or acts . . . and redressing the harm caused. . . and, as a general matter, restoring the things to the state prior to the collusion”. Articles 4 and 5 of the CPA permit the complaining party to present evidence and participate in a hearing under the CPA; and Articles 6 and 7 specify the CPA’s remedies, including the judgment’s nullification, damages against and imprisonment of the miscreants.⁷⁶⁴

470. As part of its analysis, the Tribunal made several determinations regarding the CPA remedy. First, an action under the CPA would have comprised one or more collateral proceedings independent of the Lago Agrio Litigation.⁷⁶⁵ Second, “there was no possibility of interim measures under the CPA protecting Chevron’s position during the

⁷⁶³ Track II Award, paras. 3.68-3.71.

⁷⁶⁴ Track II Award, para. 7.136.

⁷⁶⁵ Track II Award, paras. 7.137-7.139, 7.145.

pendency of any CPA proceedings and subsequent appeals.”⁷⁶⁶ Third, noting the Respondent’s indication that CPA proceedings take between 17 and 18 months on average to result in a judgment (excluding appeals and/or enforcement proceedings), the Tribunal ruled that “the timing of any CPA proceedings made them ineffective as a remedy for Chevron against the enforceability of the Lago Agrio Judgment.”⁷⁶⁷ As further elaborated by the Tribunal:

As regards timing, it was essential that the risk of enforcement of the Lago Agrio Judgment, which could have been disastrous for Chevron (as envisaged in the *Invictus* Memorandum), be removed whilst the serious allegations of gross procedural and judicial improprieties in the Lago Agrio Court were addressed within the Ecuadorian legal system. That was not possible, given the fact that the Lago Agrio Judgment became enforceable under Ecuadorian law and, thus, enforceable outwith Ecuador on 1 March 2012. . . There was, therefore, insufficient time to complete any CPA proceedings (including one or more appeals) before the Lago Agrio Judgment became enforceable, with enforcement proceedings beginning shortly thereafter on 30 May 2012.⁷⁶⁸

471. Critically, the Tribunal also rejected the proposition that private litigants should be required to undertake remedial action in the face of judicial misconduct:

. . .collusive action cases may be appropriate where it is alleged that there is collusion between parties, witnesses or legal representatives; but where the complaint raises procedural fraud, judicial misconduct and corruption within the Court itself, the State cannot leave remedial action to the efforts of private litigants – the State has its own responsibility to act by its several investigatory, prosecutorial and judicial agencies.⁷⁶⁹

472. For the above reasons, the Tribunal concluded that it would not have been reasonable to require the Claimants to pursue an action under the CPA to suspend the enforcement of the Lago Agrio Judgment:

There is therefore no reason to assume, assessed objectively at the time, that any collateral (or parallel) relief under the CPA could have protected Chevron from the enforcement of the Lago Agrio Judgment in a sufficiently timely, effective and adequate manner. The Tribunal also notes the statement, in *Pantechniki*, that it may not be necessary for a claimant to resort to “oblique or indirect applications to parallel jurisdictions”.

In the circumstances prevailing at the time, the Tribunal does not consider it reasonable to require Chevron to have begun collateral proceedings under the CPA in an attempt to

⁷⁶⁶ Track II Award, para. 7.144.

⁷⁶⁷ Track II Award, paras. 7.143, 7.145.

⁷⁶⁸ Track II Award, para. 7.146.

⁷⁶⁹ Track II Award, para. 7.145.

suspend the enforcement of the Lago Agrio Judgment, as affirmed by the Lago Agrio Appellate Judgment.⁷⁷⁰

473. The Respondent asserts that these findings have no bearing on the present mitigation analysis. Recalling that the above conclusions were reached in the context of exhaustion of local remedies, the Respondent observes, first, that the issue in Track III “is not whether a CPA action would have been reasonably likely to prevent the Lago Agrio Judgment from becoming enforceable in the first instance [but rather] whether a successful CPA action would upon its conclusion have rendered the Judgment a nullity and thus unenforceable *going forward*.”⁷⁷¹ Second, the Respondent rejects the relevance, for present purposes, of the Tribunal’s finding that the “State has its own responsibility to act” in the face of alleged misconduct, as “[t]he focus of the mitigation of damages defense is by definition on Claimants’ omissions, not Respondent’s.”⁷⁷²
474. While the Tribunal acknowledges the distinction drawn by the Respondent between the rulings in the Track II Award and the present mitigation analysis, the Tribunal considers that the implications of the above findings still weigh heavily in favour of rejecting the Respondent’s failure-to-mitigate defence based on the CPA. In particular, the Tribunal must underscore once again the inappropriateness of a State requiring a private litigant to initiate action against a situation of alleged judicial misconduct and corruption of which the State is aware – a duty that should lie primarily with investigatory, prosecutorial and judicial agencies of that State.
475. Even more crucially, as already observed above in the context of its analysis regarding the posting of a bond, the fact is that the Claimants did pursue mitigation measures by requesting this Tribunal to order the Respondent not to declare the Lago Agrio Judgment enforceable. The Claimants had a right to rely on the Tribunal’s ensuing orders and awards, which would have had the effect of annulling the injury arising from the recognition and enforcement of the Lago Agrio Judgment until the Tribunal’s determination on the merits had the Respondent complied with them.

⁷⁷⁰ Track II Award, paras. 7.147-7.148.

⁷⁷¹ Rejoinder, para. 616 (emphasis by the Respondent).

⁷⁷² Rejoinder, para. 617.

476. Thus, the Claimants complied with their duty of mitigating the injury by requesting interim relief from the Tribunal, in relation to a matter that the Respondent had the power and the responsibility to investigate and if necessary remedy, in an attempt to prevent the Lago Agrio Judgment from becoming enforceable. Considering all of the above circumstances, the Tribunal cannot determine that it was somehow unreasonable for the Claimants to request interim relief from the Tribunal and *not* to initiate proceedings under the CPA instead, in breach of their duty to mitigate.

4. Conclusion on Failure to Mitigate

477. For the above reasons, the Tribunal dismisses the Respondent’s defences based on the Claimants’ failure to mitigate (i) by failing to recuse Judge Zambrano; (ii) by failing to post a bond to suspend the enforceability of the Lago Agrio Judgment; (iii) by failing to file an action under the CPA; and (iv) by initiating the RICO Litigation.

E. FEES ALLEGEDLY INCURRED IN OTHER PROCEEDINGS

1. Introduction

478. The Respondent requests that the Tribunal deny all of the Claimants’ requests for fees and costs incurred in proceedings in which they recovered, or could have recovered, legal expenses.⁷⁷³ Those proceedings include the RICO Litigation; the Argentina and Canada Enforcement Proceedings; the Brazil Recognition Proceedings; several of the Gibraltar and Section 1782 Proceedings; and the Dutch Set-Aside Proceedings.⁷⁷⁴

479. The Claimants, in turn, posit that all fees and costs from these proceedings are recoverable as damages, whether or not they were awarded in those proceedings, if they were not in fact collected. In the Claimants’ view, the recoverability of the fees and costs in this Arbitration does not depend on their recoverability under domestic law in those other proceedings.⁷⁷⁵

⁷⁷³ Counter-Memorial, para. 359.

⁷⁷⁴ See Counter-Memorial, paras. 336-358; Rejoinder, paras. 528-547.

⁷⁷⁵ Reply, para. 485.

480. As a threshold issue, the Tribunal must once again stress the distinction between a claim for the reimbursement of legal costs and a claim for legal expenses claimed exclusively as damages caused by the Respondent’s Treaty breaches.⁷⁷⁶ As noted above, the Tribunal must assess the Claimants’ damages claims from the perspective of international law, ensuring full reparation for the Respondent’s breaches as per *Chorzów Factory*.⁷⁷⁷ More specifically, the legal fees and expenses incurred by the Claimants in domestic proceedings will generally be compensable as damages in Track III if they were reasonably incurred to repair damage and otherwise mitigate loss arising from the recognition and enforcement of the unremedied Lago Agrio Judgment – in other words, if they qualify as incidental damages.⁷⁷⁸
481. This is the applicable test. The fact that the Claimants had the ability to recover legal costs in domestic proceedings in no way requires the Tribunal to import domestic cost-shifting standards to rule on the Claimants’ damages claims seeking the reimbursement of legal costs. These claims must still be assessed through the lens of the usual standards for damages applicable under international law.⁷⁷⁹ Thus, for the purposes of Track III, any circumstances arising in domestic proceedings, including the Claimants’ acts or omissions in seeking the recovery of attorney’s fees before local courts, must be assessed as part of an overarching analysis on damages.
482. As a result, the Tribunal will generally not be bound by any determinations on costs made by local courts in domestic proceedings because, among other things, those determinations address an entirely different subject matter – *i.e.*, the allocation of costs in

⁷⁷⁶ See Procedural Order No. 65, 10 July 2020, para. 71: “As a first point, the Tribunal considers it useful to clarify that the Claimants’ claims for legal fees and costs under Categories (a)-(m), whether characterized as primary damages or incidental expenses, are not akin to a claim for legal costs in these proceedings. The Claimants’ claims under Categories (a)-(m) consist of the legal fees and costs incurred by the Claimants in various legal proceedings conducted beyond this arbitration, and, which, according to the Claimants, arise out of the Respondent’s Treaty breaches. These claims are properly characterized as claims for damages and not a claim for costs incurred in this arbitration, the latter being governed by Articles 38-40 of the UNCITRAL Rules.” For an explanation on Categories (a)-(m), see fn 596 above.

⁷⁷⁷ **CLA-406**, *Case Concerning the Factory at Chorzów (Germany v. Poland)*, 1928 PCIJ Series A, No. 17, Judgment, 13 September 1928, pp. 31-32.

⁷⁷⁸ See paras. 327-343 above.

⁷⁷⁹ Procedural Order No. 65, 10 July 2020, para. 73: “Accordingly, the Tribunal considers that the claims referred to under Categories (a)-(m) are to be analysed through the lens of the usual evidentiary standards for damages applicable under international law.” For an explanation on Categories (a)-(m), see fn 596 above.

local proceedings, which are inevitably influenced by questions of local law and policy, as opposed to the Claimants’ entitlement to incidental damages under the Treaty and international law.

483. Similarly, even when domestic cost-shifting standards incorporate an assessment of reasonableness – as in the case of the RICO Act⁷⁸⁰ – the determinations made by local courts in application of those standards will be of limited relevance for the Tribunal’s present analysis, which will be examined under a distinct standard under international law, *i.e.*, not the reasonableness of the legal fees and expenses in the context of individual local proceedings, but whether the legal fees and expenses incurred by the Claimants in the various legal proceedings served reasonably to mitigate the injury flowing from the Respondent’s Treaty breaches. In other words, these assessments are distinct, and fixating on any overlap in these evaluations is more likely to be misleading than helpful.
484. With these caveats, the Tribunal turns now to the specific matters raised under the present heading. While the Respondent’s arguments encompass many of the proceedings from which the Claimants’ damages claims arise, when reduced to their essence they raise distinct questions cutting across those proceedings – namely, whether the Claimants should be entitled to recover in this Arbitration (i) legal fees and expenses they have already collected from opposing litigants in those proceedings; (ii) legal fees and expenses that have been awarded, but not collected; (iii) legal fees and expenses in addition to those that have already been awarded or collected; and (iv) legal fees and expenses incurred in proceedings in which the Claimants reached a settlement on costs that was later entered as a court order.
485. In this section, the Tribunal will address the four issues identified in the preceding paragraph as matters of principle only. The impact of the Tribunal’s conclusions in this Section on each specific category of damages will be assessed in Section VIII below.

⁷⁸⁰ **RLA-704**, 18 U.S.C. § 1964(c): “Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee. . .”

2. Costs Collected in Other Proceedings

486. The first question before the Tribunal under the present heading is whether the Claimants may recover as damages legal fees and expenses already *collected* in domestic proceedings.
487. The Parties agree on the principle that fees already collected by the Claimants in local proceedings should be excluded from the Claimants’ damages claim. Indeed, the Claimants have confirmed that they “do not seek and expressly disclaim any double recovery”,⁷⁸¹ while also noting that “[a]ny costs that have been collected have been deducted from the amounts claimed in this arbitration; if they have not been collected, no such deduction has been made.”⁷⁸² The Respondent, however, is critical of the Claimants’ purported failure to “account for any such deductions, whether present or future” and to disclose “what specific amounts should be deducted”. In the Respondent’s view, “[b]y concealing this information, Claimants have failed to meet their burden to state their claim, much less prove it.”⁷⁸³
488. The Tribunal concurs with the proposition that any fees collected by the Claimants or their subsidiaries in local proceedings must be deducted from the final amount of compensation to prevent any double recovery. Whether such deductions have been properly accounted for by the Claimants is an evidentiary question that will be addressed in respect of each specific category of damages in Section VIII below.

3. Costs Awarded but not Collected in Other Proceedings

489. Whether fees *awarded* to the Claimants by local courts, but ultimately *not collected*, should be reimbursed as incidental damages merits a separate analysis. The Claimants draw a distinction between “obtaining an award of fees and actually being able to collect them. If they are uncollectable, they can still form part of the damages suffered by the Claimants.”⁷⁸⁴ The Respondent rejects this approach: “Claimants cannot argue both that

⁷⁸¹ Reply, para. 501.

⁷⁸² Reply, para. 515.

⁷⁸³ Rejoinder, para. 533.

⁷⁸⁴ Reply, para. 486.

they pursued the ancillary proceedings to mitigate damages and that they passed up the chance to recover their legal expenses for those proceedings to mitigate damages.”⁷⁸⁵

490. In the Tribunal’s view, the question of whether the Claimants should have sought to recover costs awarded in local proceedings must be addressed from the viewpoint of the Claimants’ duty to mitigate. Under this duty, the Claimants had the obligation to pursue the collection of legal costs where there were reasonable chances of success so as to reduce their damages – on the assumption, however, that the expected yield was higher than the expenses of collection. If the Claimants unreasonably failed to carry out this duty, any amounts awarded as incidental damages should be reduced by the amount of the hypothetical yield of the Claimants’ collection efforts, net of expenses.⁷⁸⁶
491. By the same token, however, it was appropriate for the Claimants to refrain from taking steps to collect costs that had been awarded but not paid, to the extent such attempts would have been in vain: any expenses associated with collection efforts known to be futile would have been unreasonably spent, thus precluding the recovery of any such expenses as incidental damages in these proceedings.⁷⁸⁷
492. It is clear, therefore, that the Claimants’ choice between pursuing the collection of costs awarded by local courts and refraining from doing so is not as clear-cut as suggested by the Respondent. Indeed, while the Claimants were required to exercise reasonable judgment in deciding whether to attempt to collect costs, as already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants’ choice of mitigation measures under the circumstances then prevailing.⁷⁸⁸
493. Furthermore, while the Claimants are required to explain the reasons for their decision to refrain from attempting to collect on these costs awards, having raised a question of failure to mitigate the burden to prove that the Claimants’ decision *not* to seek collection

⁷⁸⁵ Rejoinder, para. 531.

⁷⁸⁶ See para. 323 above. See also **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (11): “Although often expressed in terms of a ‘duty to mitigate’, this is not a legal obligation which itself gives rise to responsibility. It is rather that a failure to mitigate by the injured party may preclude recovery *to that extent*.” (emphasis by the Tribunal)

⁷⁸⁷ See para. 327 above.

⁷⁸⁸ See para. 341 above.

was unreasonable lies with the Respondent as the injuring party.⁷⁸⁹ The Tribunal will determine whether the Respondent has satisfied this burden in respect of each of the relevant proceedings in Section VIII below.

494. Lastly, to the extent that the Tribunal allows the reimbursement as damages of legal costs awarded and not collected by the Claimants later in this Award, the Tribunal’s determinations shall remain strictly subject to the Claimants’ express commitment against any double recovery.⁷⁹⁰ Any such amounts collected by the Claimants after the issuance of this Award in local proceedings must be excluded from the final amount of compensation.

4. Costs In Addition to Those Awarded or Collected in Other Proceedings

495. The ensuing question is whether the Claimants may be reimbursed any legal costs *in addition* to those already awarded or collected in local proceedings. The Respondent answers this question in the negative, among others, in respect of the Enforcement Litigation in Canada, where the Claimants were awarded approximately CAD 375,000 for all phases of the proceeding, as compared to the more than USD 40 million they seek to recover as damages in relation to that litigation. In the Respondent’s view, “[a]llowing Claimants to recover any further amount for the Canadian proceedings in this arbitration would be contrary to Canadian law, and the principles of *res judicata* and estoppel. It would enable the Claimants to bypass Canadian procedure, and to disregard the Canadian courts’ assessment of their reasonable legal fees.”⁷⁹¹
496. The Tribunal is not persuaded by the Respondent’s argument. As already noted, the exercise required for this Award under international law is full reparation for the Respondent’s Treaty breaches, not a confirmation of the determinations on costs reached by local courts on the basis of domestic cost-shifting norms.⁷⁹² Under the standard of full reparation, if the Claimants incurred what the Tribunal considers to have been established as a matter of international law to be reasonable legal costs in domestic proceedings, in

⁷⁸⁹ See para. 323 above.

⁷⁹⁰ Reply, para. 501.

⁷⁹¹ Counter-Memorial, para. 344.

⁷⁹² See paras. 480-483 above.

excess of the costs that they were awarded or were able to collect through the domestic court procedures, they are entitled to the resulting shortfall in this Arbitration to the extent required to make them whole for the Respondent’s international wrongs. Full reparation requires in this context only that the Tribunal exclude from its award on incidental damages any amounts *collected* by the Claimants in local proceedings so as to avoid any double recovery, as explained above.

5. Costs Settled in Other Proceedings

497. The final question before the Tribunal under this heading is whether the Claimants should be entitled to recover legal costs that were *settled* in local proceedings, particularly when the settlement was confirmed by way of a court order. In the Respondent’s view, by requesting those same amounts as damages, the Claimants materially breach their agreements with the defendants in those proceedings and violate the court orders adopting those stipulations.⁷⁹³
498. At the outset, the Tribunal recalls that the Claimants withdrew their claim for damages in respect of the Kohn and MCSquared Section 1782 Actions in their Reply.⁷⁹⁴ These are the only two domestic proceedings in which *Ecuador* was a party and settled costs with Chevron.⁷⁹⁵ This has narrowed the ambit of the question before the Tribunal: the only determination required at this stage is whether the Claimants may recover legal costs that were settled in local proceedings in which the Respondent was not a party.
499. To the extent Ecuador was not a party to the costs settlements at issue, the Tribunal finds no basis to conclude that the Claimants are violating those agreements – or the ensuing court orders – by requesting the reimbursement of the costs that were settled in those proceedings as damages in this Arbitration. The Tribunal notes that costs settlements, by their nature, will normally operate *inter partes*, such that each party waives the right to

⁷⁹³ Counter-Memorial, para. 357.

⁷⁹⁴ Reply, fn 1063: “Claimants are no longer seeking damages for legal fees and costs incurred in the MCSquared and Kohn 1782s.”

⁷⁹⁵ See Counter-Memorial, para. 355; Reply, paras. 518-521; 526-527; **R-1606**, *In re Application of Chevron Corporation*, E.D. Pa. Case 2:10-mc-00208-JD, D.E. 85 Stipulation of Dismissal, 5 February 2015; **R-1605**, *In re Application of Chevron Corporation*, E.D. Pa. Case 2:10-mc-00208-JD, D.E. 86 Order of Dismissal, 9 February 2015; **R-1925**, *Chevron Corp. v. MCSquared PR, Inc.*, S.D.N.Y. Case 1:14-mc-00392-LAK, D.E. 47 Stipulation of Dismissal, 17 August 2017.

request the reimbursement of costs *from the other party*. It would be highly unusual for an agreement of this nature to display effects *erga omnes* or to include a forfeiture of claims against third parties such as Ecuador.

500. Indeed, the Tribunal has verified that none of the instruments confirming the settlement agreements at issue contains language of this nature. All of the relevant orders in the Gibraltar Proceedings include language to the effect that all costs orders in the action, or all costs obligations, were acknowledged as fully satisfied between the parties.⁷⁹⁶ The settlement on costs included in the Joint Stipulation for Voluntary Dismissal in the Weinberg Section 1782 Action is circumscribed in a similar manner: “[t]he Parties agree that all costs and expenses related to this action shall be borne solely by the party incurring the same and that neither party will file any applications for costs in the 1782 proceeding.”⁷⁹⁷

501. Crucially, none of the instruments referenced in the preceding paragraph includes a waiver by the Claimants of their claims for incidental damages arising from the Respondent’s Treaty breaches, nor an acknowledgement that the Claimants have been made whole for those international wrongs or an agreement that the Claimants will be reimbursed any portion of their costs in those proceedings by the opposing parties – meaning that as of yet the Claimants have not recovered any of those costs. The

⁷⁹⁶ See **C-2970**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012- C-232, Supreme Court of Gibraltar, Consent Order, 18 February 2015: “It is ordered by consent that: 1 There shall be no order as to costs on discontinuance. 2 All existing costs orders made in these proceedings . . . shall stand as fully satisfied and there shall be no further proceedings for the assessment of costs or for the enforcement of any costs order.”; **C-2985**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Consent Order, 18 February 2015: “It is ordered by consent that: 1 There shall be no order as to costs on the discontinuance of the claim against the Sixth Defendant. 2 All existing costs orders made in these proceedings between the Claimant and the Sixth Defendant shall stand as fully satisfied and there shall be no further proceedings for the assessment of costs or for the enforcement of any costs order.”; **C-2989**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Consent Order, 4 May 2015: “It is ordered by consent that: 1 There shall be no order as to costs on discontinuance. 2 All existing orders made in these proceedings between the Claimant and the Second Defendant shall stand as fully satisfied and there shall be no further proceedings for the assessment of costs or for the enforcement of any costs order between the Claimant and the Second Defendant.”; **C-3021**, *Chevron v. TC Payment Services (International) Limited*, Claim No. 2014-C-113, Supreme Court of Gibraltar, Consent Order, 3 March 2015: “It is ordered by consent that: . . . 5 There shall be no order as to costs. 6 All existing costs orders made in this Claim shall stand as fully satisfied and there shall be no further proceedings for the assessment of costs or for the enforcement of any costs order.” See also **C-2967**, Settlement Agreement Between Chevron and DeLeon Parties, 13 February 2015, paras. 14, 15, 17; **C-2988**, Woodsford’s Executed Settlement Agreement with Chevron, 1 May 2015, paras. 10, 11, 13, 18.5.

⁷⁹⁷ **R-1587**, *Chevron Corp. v. Weinberg Group*, D.D.C. Case 1:11-mc-00030-CKK, D.E. 46 Joint Stipulation for Voluntary Dismissal, 15 October 2012, p. 3.

Claimants’ claim for damages in the present proceedings is thus entirely outside the scope of these settlement agreements and court orders.

502. As a result, the Claimants may in principle recover their legal costs in this Arbitration, even if were settled in local proceedings with third-party litigants, insofar as they qualify as incidental damages under the Treaty and international law.
503. This conclusion is subject, however, to the same caveat as above for costs awarded but not collected. If the Claimants unreasonably settled claims for legal costs where there were reasonable chances of success on those claims and the expected yield was higher than the expenses of prosecuting such claims, they may have violated their duty to mitigate damages and may be precluded from claiming incidental damages in these proceedings to the extent of the failure to abide by this duty.
504. The Tribunal will determine whether the Respondent has proven such a failure to mitigate in respect of each of the relevant settlements in Section VIII below.

6. Conclusion on Fees Recovered in Other Proceedings

505. For the foregoing reasons, the Tribunal declares the following:
- (i)* The Claimants are not entitled to recover as damages in this Arbitration any legal costs effectively collected in domestic proceedings.
 - (ii)* The Claimants are precluded from recovering as damages any legal costs awarded, but not collected, in domestic proceedings only to the extent that the Claimants unreasonably failed to pursue the collection of those costs in breach of their duty to mitigate under international law. The burden of proof regarding the Claimants’ failure to mitigate lies with the Respondent. To the extent the Tribunal allows the recovery of such costs in this Award, any amounts collected by the Claimants after the issuance of this Award in local proceedings must be excluded from the final amount of compensation.
 - (iii)* The Claimants may recover as damages in this Arbitration reasonable legal costs in addition to those awarded or collected in domestic proceedings, to the extent those

additional legal costs qualify as incidental damages under the Treaty and international law.⁷⁹⁸

- (iv) The Claimants may recover their reasonable legal costs in this Arbitration, even if they were settled in local proceedings with third-party litigants, insofar as they qualify as incidental damages under the Treaty and international law and such settlements do not breach their duty to mitigate under international law. The burden to prove such a breach of the duty to mitigate falls once again upon the Respondent.

F. TAX IMPLICATIONS

506. The Respondent requests that the Tribunal consider certain “tax implications” when assessing the Claimants’ claim for the reimbursement of legal costs as damages. The Respondent’s argument is predicated on the undisputed fact that the Claimants took a tax deduction for the legal fees they claim as damages in this Arbitration at the published marginal tax rate prevailing in the United States at the relevant times – which was 35% between 1993 and 2018 and 21% from 2018 onwards.⁷⁹⁹ As acknowledged by the Claimants, this means that the Claimants reduced the amount of corporate income tax they owed by paying these costs.⁸⁰⁰ According to the Respondent, those “tax savings” affect both the loss and the interest components of compensation.⁸⁰¹

507. In respect, first, of the “loss” component, based on the premise that the Claimants will only have to pay taxes on any award they collect at the current 21% tax rate, the Respondent argues that the Claimants will be unjustly enriched by gaining an extra profit as a result of the change in the tax rate.⁸⁰² In the Respondent’s view, this would be contrary to the full reparation principle, which “does not permit Claimants to profit in any way from tax deductions at Respondent’s expense.”⁸⁰³ Accordingly, the Respondent requests that “[a]ny damages awarded must be reduced by at least the difference between

⁷⁹⁸ See paras. 327-343 above.

⁷⁹⁹ Counter-Memorial, para. 1306; Reply, para. 567; Rejoinder, para. 548.

⁸⁰⁰ Reply, para. 567.

⁸⁰¹ Rejoinder, paras. 548-556, **RE-42**, First Flores Expert Report, para. 70.

⁸⁰² Rejoinder, para. 552.

⁸⁰³ Rejoinder, para. 555.

the marginal U.S. corporate tax rate when the applicable fees were deducted and the marginal tax rate when the damages award is paid.”⁸⁰⁴

508. Second, for the purposes of determining the amount of an interest award, the Respondent requests that the Tribunal calculate any interest on the Claimants’ losses net of tax savings, not on the full amounts spent as legal costs.⁸⁰⁵

509. Generally, the Claimants consider the Respondent’s “tax savings theory” to be “legally incorrect” and also highly speculative, as the corporate tax rate that will be in effect whenever the Claimants are able to collect on this Award is unknown.⁸⁰⁶

510. The question of whether interest should be calculated on losses net of tax savings will be addressed as part of the Tribunal’s more comprehensive analysis on interest in Section IX.B below. In this section, the Tribunal will only analyse the first component of the Respondent’s argument, relating to the impact of these “tax considerations” on the determination of the final amount of compensation.

511. First, the Tribunal observes that the Respondent has failed to bring to the attention of the Tribunal any authority specifically supporting the proposition that compensatory awards must be “net of taxes”. According to the Respondent, the assessment of the Claimants “tax savings” is required by the principle of full reparation, pursuant to which “a claimant is limited to recovering no more than its actual losses to ensure that it is not unjustly enriched”.⁸⁰⁷

512. The Tribunal is not persuaded by this argument. As noted by several investment tribunals, the determination of the tax treatment of a compensatory award is consequential to the determination of compensation and thus cannot affect it.⁸⁰⁸ For the same reason, tax deductions such as the ones at issue in this case must also remain outside the realm of the

⁸⁰⁴ Rejoinder, para. 565.

⁸⁰⁵ Counter-Memorial, para. 1306.

⁸⁰⁶ Reply, para. 567.

⁸⁰⁷ Rejoinder, para. 548.

⁸⁰⁸ **RLA-351**, *Chevron Corporation and Texaco Petroleum Corporation v. Ecuador*, PCA Case No. 2007-02/AA277, UNCITRAL, Final Award on the Merits, 31 August 2011, para. 311; **CLA-240**, *Ceskoslovenska Obchodni Banka, A.S. v. Slovak Republic*, ICSID Case No. ARB/97/4, Award, 29 December 2004, para. 367.

compensation analysis: whether those deductions will effectively translate into “tax savings” for the injured party will only be known after the amount of tax payable on the compensatory award is determined by the competent fiscal authorities.⁸⁰⁹

513. The instant case must be distinguished from others in which investment tribunals were required to analyse the issue of taxes as part of the calculation of the quantum of damages. For instance, the *Chevron v. Ecuador I* tribunal was required to take into account the fact that the claimants would have incurred taxes in Ecuador irrespective of the respondent’s international wrongs – in other words, as part of its compensation analysis, the tribunal was required to assess the effect of Ecuadorian taxes in the but-for world:

The Tribunal’s approach follows from the principles enunciated in the *Chorzów Factory* decision, which both sides agree to be controlling authority: “. . .reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.” In essence, the Tribunal’s “but for” analysis must undo not only the damages that have arisen for the Claimants but for the wrong, but must also restore the liabilities that were avoided but for the wrong.

In this case, the Tribunal has been informed by the experts as to the extent of the Claimants’ significant tax liabilities that would have arisen upon the issuance of a judgment in TexPet’s favor by the Ecuadorian courts. Moreover, the Respondent has shown that the tax liabilities on Claimants’ direct damages were simultaneously contractual obligations under the very agreements invoked by the Claimants in their lawsuits and were regularly withheld by the Ecuadorian Central Bank from payments made to TexPet in the normal course of the Consortium’s operations. *The Tribunal must therefore assess the effect of Ecuadorian taxes as part of the situation that would have prevailed if the unlawful act had not been committed.*⁸¹⁰

514. Crucially for the present analysis, the *Chevron v. Ecuador I* also said:

The above reasoning does not detract from the general rule that taxes are consequential to the compensation awarded. In order to fall within the ambit of the Tribunal’s assessment of damages, the taxes to be deducted must be determined with certainty and must be sufficiently connected to the same legal relationship between the parties that is the subject of the arbitration. Taxes may thus be taken into account when there exists a specific

⁸⁰⁹ See, albeit in the context of a requested award gross-up, **CLA-766**, *Les Laboratoires Servier, S.A.A., Biofarma, S.A.S., Arts et Techniques du Progres S.A.S. v. Poland*, PCA Case No. 2010-12, UNCITRAL, Final Award, para. 666: “Although the Tribunal has considered the possible tax ramifications of this Award, it can find no reason to speculate on the appropriateness, one way or another, of any proposed ‘gross-up’ to take into account potential tax liability, whether in Poland or in France. The ultimate tax treatment of an award representing the ‘real value’ of an investment must be addressed by the fiscal authorities in the investor’s home jurisdiction as well as the host state.”

⁸¹⁰ **RLA-351**, *Chevron Corporation and Texaco Petroleum Corporation v. Ecuador*, PCA Case No. 2007-02/AA277, UNCITRAL, Final Award on the Merits, 31 August 2011, paras. 308-309 (emphasis by the Tribunal).

provision in an agreement or an established practice between the parties relating to their allocation, collection, or withholding.⁸¹¹

515. In contrast with *Chevron v. Ecuador I*, the tax deductions at issue under the present heading only materialized as a result of the Claimants’ spending of legal costs to mitigate the injury flowing from the Respondent’s Treaty breaches. As such, these deductions are consequential to the Respondent’s wrongs and therefore do not form part of the but-for scenario in this case.
516. Second, the specific circumstances of this case confirm the speculative nature of the exercise that the Respondent requests the Tribunal to perform.
517. In essence, the Respondent requests that the Tribunal gross down its award on damages to account for the fact that the Claimants deducted legal costs in their tax returns at a higher rate than that which will apply to the amount of compensation for those legal costs fixed in this Award, resulting in a windfall for the Claimants. As yet, however, the amount of this windfall cannot be established. While the Respondent has provided the U.S. marginal tax rates that have applied to the Claimants’ historical taxable income – and corresponding deductions –⁸¹² the precise tax liability that will apply to any amounts collected by the Claimants on the basis of this Award will only be known at the time of enforcement. The Parties disagree on the likelihood that the applicable corporate income tax rate in the United States will increase in future years, but there is no dispute on the basic fact that the rate is subject to change.⁸¹³ As such, the amount of the Claimants’ purported “tax savings” – or even whether any “tax savings” will materialize at all at the time of collection – is uncertain. The Tribunal therefore lacks a reliable basis on which to determine the amount of these “tax savings” and to exclude them *ex ante* from the final amount of compensation.
518. To address this circumstance, the Respondent proposes that the Tribunal issue an award “that any amount owed by Ecuador must be adjusted to the extent that the tax rate as

⁸¹¹ **RLA-351**, *Chevron Corporation and Texaco Petroleum Corporation v. Ecuador*, PCA Case No. 2007-02/AA277, UNCITRAL, Final Award on the Merits, 31 August 2011, para. 311 (emphasis by the Tribunal).

⁸¹² Counter-Memorial, para. 1307; Reply, paras. 565-567; **RE-42**, First Flores Expert Report, para. 74; Second Sequeira Expert Report, para. 112.

⁸¹³ Reply, para. 568; Rejoinder, paras. 563-564.

changed, up or down, as of the time of collection”.⁸¹⁴ The Tribunal must reject this approach: it is not prepared to reduce the determination of the tax liability of this Award to a simple arithmetical exercise as suggested by the Respondent, particularly without having had the benefit of evidence from tax experts on this particular matter.⁸¹⁵ Such determination may be subject to ramifications that are not yet apparent, including potential tax liabilities arising from the enforcement of this Award in jurisdictions other than the United States. The Tribunal also considers that it has not been sufficiently informed on the full impact of the Treaty breaches on the Claimants’ overall tax situation during the relevant period, which may well have affected the Claimants’ tax liability in numerous ways other than by way of tax deductions.

519. In sum, for the foregoing reasons, the Tribunal rejects the Respondent’s request that the Tribunal reduce its damages award on account of the Claimants’ purported “tax savings”.

G. EVIDENCE OF LEGAL FEES AND EXPENSES

1. Introduction

520. One of the questions lying at the heart of Track III is the sufficiency of the evidence filed by the Claimants to prove their claims for the reimbursement of legal fees and expenses as damages – which, as already stated, encompass the vast majority of the Claimants’ compensation claims.⁸¹⁶
521. As more fully detailed in Section VI.G above, this question has been addressed multiple times and to varying extents during the present phase of the Arbitration owing, among other things, to the voluminous pool of invoices and billing information underlying the Claimants’ claim for USD 793 million in legal fees and expenses incurred over 15 years, as well as the difficulties that have arisen when collecting, producing, and analysing such unprecedented amount of data.⁸¹⁷ At this juncture, the Tribunal faces analogous practical challenges in its analysis of the evidence.

⁸¹⁴ Rejoinder, para. 564.

⁸¹⁵ See First Sequeira Expert Report, para. 5; RE-42, First Flores Expert Report, para. 1.

⁸¹⁶ See para. 310 above.

⁸¹⁷ See para. 530 below.

522. In this Section, the Tribunal will first recount the process by which this corpus of evidence on legal fees and expenses became part of the record of the Arbitration, including the reasons underlying the Tribunal’s order that the Claimants produce the relevant billing information to the Respondent. The Tribunal will then describe the Parties’ proposed methodologies for the Tribunal’s analysis of this evidence and the tailor-made damages models prepared by their experts to assist the Tribunal with this exercise. Against this background, and bearing in mind its conclusions on other general matters set out in Sections VII.A-F above, the Tribunal will establish the methodology it will apply in its analysis of each of the Claimants’ main heads of damages corresponding to legal fees and expenses.

523. For context, the Tribunal recalls that the Claimants’ claims for Moral Damages and for other types of pecuniary damages (*i.e.*, Intellectual Property Losses in Ecuador and Embargo Losses in Argentina) are outside the scope of the Claimants’ legal fees and expenses claim.⁸¹⁸ While the Tribunal may make limited references to such claims in its below analysis, the conclusions reached in the present Section shall apply only to the Claimants’ damages claims seeking the reimbursement of legal fees and expenses.

2. Evidence of Litigation Costs

524. The evidence on legal fees and expenses initially submitted by the Claimants together with their Memorial on Damages included several witness statements and an expert report describing (i) Chevron’s billing procedures; (ii) the collection of the billing data for each outside vendor that billed Chevron; (iii) the compilation of that data into a report titled “Summary of Fees and Costs Report” filed as Appendix 2 to the Memorial; and (iv) the process of validating the payment of all invoices against Chevron’s electronic payment system.⁸¹⁹ In its Counter-Memorial, the Respondent argued that this evidence fell “far

⁸¹⁸ See para. 134 above. See also Track III Hearing Transcript, Day 7 (26 August 2022), pp. 1501-1502 (Schwartz): “Then there are the intellectual property damages and the alleged damages for intellectual property and the alleged damages for the bank losses. All of that can be determined independent of any fee issues. Everything we have been talking about with regard to practical and effective means of claim resolution, really applies to the fees. These categories are of a nature more like what you see in other types of investment arbitration disputes.”

⁸¹⁹ See paras. 61, 63 and 283 above.

short” of the minimum showing required – noting, in particular, that the Claimants had failed to provide all of the underlying billing data and invoices.⁸²⁰

525. By its Procedural Order No. 65, the Tribunal provided guidance to the Parties on whether “in order to satisfy the burden of proof for their claims . . . they must, in addition to the Damages Evidence presented by them . . . also produce the billing records or invoices underlying the said Damages Evidence”.⁸²¹ The Tribunal there declined to address the issue of the adequacy of the Claimants’ damages evidence pending a full presentation on the Parties’ positions:

As regards the issue of the adequacy of the Claimants’ Damages Evidence . . . the Tribunal does not consider it appropriate for it to address this issue at this stage of the proceedings pending a full presentation of the Parties’ positions on this matter. It is for the Claimants to consider whether they wish to produce contemporaneous evidence in support of their damages claims under Categories (a)-(m), also in view of the Tribunal’s clarification in ¶ 73 above that the evidentiary threshold that must be satisfied by the Claimants in support of these claims is that of damages and not arbitration costs. The Tribunal considers it sufficient to note at this stage that the Claimants’ Damages Evidence does not appear to be contemporaneous evidence of the incurrence and reasonableness of the claimed legal fees and costs.⁸²²

526. While the Tribunal did not make any findings in Procedural Order No. 65 regarding the sufficiency of the Claimants’ damages evidence, it addressed the distinct question of whether the Claimants should be required to *produce* further evidence on damages to the Respondent. Indeed, while the Respondent’s Track III document production requests were only properly decided thereafter in Procedural Order No. 66,⁸²³ in Procedural Order No. 65 the Tribunal laid out certain preliminary considerations regarding the relevance, materiality and necessity of the billing data and invoices for which the Respondent had requested production from the Claimants.⁸²⁴ *Inter alia*, the Tribunal determined that the Claimants were required to produce the invoices underlying their damages claims for

⁸²⁰ Counter-Memorial, paras. 15, 418-594.

⁸²¹ Procedural Order No. 65, 10 July 2020, para. 61.

⁸²² Procedural Order No. 65, 10 July 2020, para. 81. For an explanation on Categories (a)-(m), *see* fn 596 above.

⁸²³ Procedural Order No. 66, 16 July 2020.

⁸²⁴ Procedural Order No. 65, 10 July 2020, paras. 82-85.

legal fees and expenses to the extent they had been relied upon by the Claimants, their witnesses, or their experts:

As regards the relevance and necessity of the invoices underlying the Claimants’ claims under Categories (a)-(m), the Tribunal recalls its determinations in ¶¶ 64 and 65 above that the Claimants must provide the Respondent with the invoices underlying their claims for legal fees and costs under Categories (a)-(m) to the extent that the said invoices have been relied on by the Claimants or have been relied on by the Claimants’ experts and witnesses in their expert reports and witness statements presented by the Claimants in these Track III proceedings. In view of this determination, the Tribunal does not consider it necessary to separately assess at this stage of the proceedings whether the production of the invoices by the Claimants is also necessary from the perspective of meeting the Claimants’ burden of proof requirements.⁸²⁵

527. On this basis, the Tribunal also provided a list of categories of documents for which production may be ordered, without opining on whether the production of all categories of documents would be required in order to prove each head of damages:

The relevance and materiality of the documents whose production is sought by the Respondent may depend on the particular basis or bases of the claim for damages and the applicable legal test or tests, to the extent that such distinction has been drawn by either side in relation to the various categories of the claims. However, in principle, the Tribunal considers that the production of the following documents may be ordered, particularly where they have been relied on by the Claimants’ experts and witnesses and form the basis of the Claimants’ Damages Evidence:

- (i) invoices underlying the claimed fees and costs, along with documents identifying the timekeeper, expert or other vendor (which together form the basis of Appendix 2), as well as a brief narrative of the work done by each person, to be provided through either the production of the actual timesheets or any other document which discloses a brief narrative of the work done;
- (ii) documents showing payments of legal fees or costs, including amount, date, payer and payee, to be satisfied with emails, billing records, paid invoices or comparable materials;

⁸²⁵ Procedural Order No. 65, 10 July 2020, para. 82. *See also id.*, paras. 64, 66: “The Tribunal concurs with the Respondent that the Claimants must produce the invoices underlying their claims for legal fees and costs under Categories (a)-(m) to the extent that the said invoices have been relied on by the Claimants or have been relied on by the Claimants’ experts and witnesses in their expert reports and witness statements presented in these Track III proceedings. . . For the purposes of the Tribunal’s [prior] observation[] . . . it is not relevant whether or not the Tribunal considers that “[f]or these Track III Proceedings . . . the Tribunal need[s] to review each of the 7,440 invoices and approximately 700,000 time entries line-by-line . . . The pertinent question is whether the Respondent has the right to test the Claimants’ Damages Evidence. The Tribunal concurs with the Respondent that it has the right to test the Claimants’ Damages Evidence, for which the production of the invoices underlying Appendix 2 and the witness statements and expert reports presented by the Claimants is necessary. The Tribunal also concurs with the Respondent that its right to defend itself against the Claimants’ damages claim outweighs any burden that producing the invoices might impose on Claimants.”

- (iii) documents disclosing fee caps, if any, imposed by the Claimants on counsel, expert or vendor fees and costs;
- (iv) case records of the relevant proceedings, including submissions filed and orders and judgments issued;
- (v) any claims for (and rulings on) costs raised in any of the proceedings for which the Claimants are seeking recovery of fees and costs;
- (vi) documents identifying work done in relation to the proceedings prior to the issuance of the Lago Agrio Judgment where a direct causation with the Treaty breach is or could be established;
- (vii) expert reports prepared in connection with the Ecuador dispute; and
- (viii) any documents on the basis of which the expert reports and witness statements tendered in Track III of the proceedings have been prepared.

The above list does not imply that production of all the mentioned categories of documents will be required in order to prove each head of damages, or that the relevant categories of documents to prove damages are limited to what is stated in such list. As already noted, the Tribunal’s specific determinations as to document production will be issued in a separate order, on the basis of both Parties’ respective requests.⁸²⁶

528. Following the issuance of Procedural Orders Nos. 65 and 66, the Claimants withdrew “a portion (approximately 3%) of their pecuniary damages claim”, reflecting both the removal of entire invoices and the removal or reduction of individual time entries and/or costs, and thereafter submitted a Revised Appendix 2 reflecting the reduced amounts.⁸²⁷

529. Thereafter, the Claimants filed their Reply and the Respondent filed its Rejoinder, both of which addressed new evidence on damages provided by the Claimants as described above. The Parties’ respective positions on the sufficiency of such evidence are fully set out in Section VI.G above.

530. The relevant evidence on legal fees and expenses presently on record consists of approximately 6,800 invoices and 495,000 fee and expense entries corresponding to the

⁸²⁶ Procedural Order No. 65, 10 July 2020, paras. 84-85.

⁸²⁷ See Procedural Order No. 70, 13 November 2020, paras. 3-5; Letter from the Claimants to the Tribunal, 23 November 2020. As background for their decision to withdraw a portion of their claims, the Claimants referred to “serious concerns about providing Ecuador and those aligned with it (*i.e.*, Donziger, the Lago Agrio Plaintiffs, and their associates) access to Claimants’ communications with their outside counsel and counsel’s work product as reflected in years of attorney (and other vendor) invoices”, noting that the Respondent had “violated confidentiality orders in the past”. For its part, the Respondent rejected these contentions as unsubstantiated and observed that there is no evidence suggesting that the Respondent’s legal team would disregard the confidentiality obligations set out in Procedural Order No. 67. See Procedural Order No. 70, 13 November 2020, fn 1.

services provided by over 50 different law firms and nearly 100 various other experts and vendors, totalling more than USD 793 million in fees and costs. Within this body of evidence, the time records submitted by the Claimants contain nearly 1.2 million hours and represent over USD 600 million in fees billed by over 2,000 different timekeepers.⁸²⁸

3. The Parties’ Proposed Methodologies

531. During Track III, the Tribunal had the benefit of expert evidence and extensive briefing from the Parties touching upon the sufficiency of the Claimants’ damages evidence to prove their claims for legal fees and expenses, as well as the degree of granularity that the Tribunal should apply in its evidentiary analysis to determine the appropriate measure of compensation.

532. In particular, at the Track III Hearing the Parties made targeted presentations on the Tribunal’s “Question 8”, which framed the matters under the present heading as follows:

Considering the voluminous evidence offered in the present case and, at the same time, the Respondent’s criticism of the adequacy of the Claimants’ damages evidence:

- a. Who bears the burden(s) of proof on the various aspects involved in the quantification of the Claimants’ damages?
- b. What is the relevant standard of proof under international law?
- c. What is the degree of granularity required for proof of damages under international law or what principles determine the details that must be proven?
- d. What are the consequences of a failure to meet the burden(s) or standard(s) of proof in respect of all or part of the claim? For instance, would it lead to (i) a dismissal of the claim; (ii) an opportunity to reformulate the claim and/or to adduce additional materials; (iii) any remedy that the Tribunal deems appropriate in its discretion; or (iv) any other consequence?
- e. May the Arbitral Tribunal, without purporting to [*sc.*, act] *ex aequo et bono*, nevertheless determine the amount of compensation on an equitable or practical basis (for instance, by assessing the margin of error that all claimed costs were not “reasonable or necessary”, “reasonable”, or “proximate”, without, however, undertaking a line-by-line analysis of each claimed cost)? If so, which circumstances are to be taken into consideration?

⁸²⁸ Mc Grath Expert Report, para. 37; **RE-51**, Trunko Expert Report, paras. 5-7; Track III Hearing, Day 10 (31 August 2022), pp. 2316-2317 (Trunko); Day 11 (1 September 2022), p. 2548 (McGrath).

- f. What is the impact of paragraph 81-85 of Procedural Order No. 65, and in particular paragraph 84 thereof, on the answers to each of the foregoing questions?⁸²⁹

533. The Parties’ proposed methodologies for the Tribunal’s evidentiary analysis, corresponding to their answers to Question 8(e) above, differ widely. In essence, the Claimants propose that the Tribunal determine compensation on a practical basis by reference to a “commercial reasonableness test”, which would obviate the need for a line-by-line analysis of the billing data and invoices on the record:

Now, the fifth question [Question 8(e) in the quote in paragraph 532 above]--and I’ll take a little more time on this question--it’s in two parts. First: May the Arbitral Tribunal determine the amount of compensation on an equitable or practical basis? And then, the second question: If so, what are the circumstances to be taken into account?

Well, the answer to the first question is, yes. You can determine compensation on a practical basis. The Tribunal can apply a practical test to make that assessment and does not need to undertake a line-by-line analysis of 6,800 invoices or 495,000 time entries.

Now, the answer to the second question is that the most principled and objective way to assess the reasonableness of attorneys’ fees and expenses when they’re claimed as damages, is to apply the commercial reasonableness test, which was discussed by Professor Silver.

And to summarize the relevant factors under that test, first of all, if a sophisticated corporate client has actually paid all of the legal bills with no assurance at the time it paid them, that it would be able to recover them, and it’s used a reasonable process to avoid unnecessary or excessive costs, and the amount spent is proportionate in the aggregate to the overall stakes of the litigation, then the costs can be found to be reasonable on that basis alone, without undertaking a painstaking review of every invoice.⁸³⁰

534. Before providing their answer to Question 8, the Claimants had also cautioned the Tribunal against performing a “fee audit”, particularly in view of the ultimate success of the Claimants’ mitigation efforts:

And let’s be honest. We know where we would be if Chevron had not spent this money, had not achieved this success. We would be hearing today, and that’s an area that I just gave where we pay the \$9.5 billion Judgment or it’s enforced against us, we would be hearing today from Ecuador, my goodness, why didn’t you mitigate? So much was at stake?

So, this . . . really shows you . . . why this . . . shouldn’t be a fee audit. Think about the logic of Ecuador’s approach. Chevron has to justify every dollar spent after the fact, based

⁸²⁹ Letter from the Tribunal to the Parties dated 23 August 2022. For a description of paragraphs 81-85 of Procedural Order No. 65 *see* paras. 525-527 above.

⁸³⁰ Track III Hearing Transcript, Day 7 (26 August 2022), pp. 1487-1488 (Bishop). *See generally* Silver Expert Report.

purely on the line items in the invoices that Chevron actually reviewed, evaluated and paid out of its own pocket years ago, invoice by invoice, line by line, dollar by dollar.

Now, set aside the massive irony of how much legal spend that process would involve, it’s just not the standard. If it were, I could spend today walking through the invoices that they complain about, the time entries one by one. We could spend hours pointing out that when, for example, they criticize Ms. Neuman for watching a movie, the movie was *Crude*; could point out that when they criticize a lawyer for renting a bicycle to get around town for meetings, that lawyer had no taxi expenses that would have cost more, that’s how they were getting around town on a bicycle for the meetings. And we could go on and on.

And, of course, throughout this Hearing, we’re happy to answer any questions that the Tribunal might have about particular invoices of concern. But the key point is that that’s not the exercise. Claimants’ legal spend mitigated against 12, or actually, 24 times as much in damages.⁸³¹

535. The Respondent, in turn, proposes a multi-tier inquiry ensuring that each category of damages is subject to “a particularized review at an appropriate level of detail”:

So, the question is: May the Tribunal, without purporting to act *ex aequo et bono*, nevertheless determine compensation in some equitable or practical manner? Our answer is “yes,” but we don’t think you have unbridled discretion to do that. We think you can do that, but only in a structured manner that addresses the legal issues impacting multiple categories first, and then ultimately ensures that each category is subject to a particularized review at an appropriate level of detail, and that particularized review and level of detail needs to be right-sized to each of the particular categories because while some bear some similarities, there are many differences between and among them.⁸³²

536. As a first step of the inquiry, the Respondent proposes that the Tribunal determine legal issues that impact multiple categories, such as the issues of date of breach, the Claimants’ purported failure to mitigate the injury or the but-for scenario.⁸³³

537. Second, the Respondent proposes that the Tribunal determine whether there are heads of damages that are entirely non-compensable and remove them from its analysis. More circumscribed components within those categories of damages may also be non-compensable, according to the Respondent, and thus should also be removed.⁸³⁴

⁸³¹ Track III Hearing Transcript, Day 1 (18 August 2022), pp. 121-122 (Coriell).

⁸³² Track III Hearing Transcript, Day 7 (26 August 2022), pp. 1496-1497 (Schwartz). *See also* Track III Hearing Transcript, Day 8 (29 August 2022), pp. 1777-1778 (Schwartz); Respondent’s Disclaimers to the Parties’ Damages Models, 18 November 2022, para. 4.

⁸³³ Track III Hearing Transcript, Day 7 (26 August 2022), pp. 1497-1498 (Schwartz).

⁸³⁴ Track III Hearing Transcript, Day 7 (26 August 2022), pp. 1498-1501 (Schwartz).

538. Third, after excluding all non-compensable categories and components from the compensation inquiry, the Respondent proposes that the Tribunal rely on the audit work performed by its expert, Mr John Trunko, to reduce the residual compensable costs “without going through every single line of the [c]laim that remains”.⁸³⁵
539. According to Mr Trunko, his audit of the law firm fees claimed by the Claimants as damages reveals “numerous problematic issues reflecting unreasonable fees and costs”, including “block billing”, “vague billing”, “administrative and clerical activities”, “getting up to speed and training”, “media and public relations activities”, “nondefense related activities”, “multiple attendance”, “duplicative activities”, “long billing days and excessive time”, “double billings”, and “inadequately documented fees”.⁸³⁶ Against this background, Mr Trunko opines that “significant reductions are warranted to Claimants’ claimed fees and costs”,⁸³⁷ which should be particularized as an across-the-board percentage reduction to the residual fees to account for the “pervasive issues” identified in his review. Based on his experience when addressing similar issues in U.S. litigations, Mr Trunko noted: “[o]ften these percentage reductions will be around 30 percent or in some cases even higher”.⁸³⁸
540. As an alternative to Mr Trunko’s proposed approach, the Respondent invited the Tribunal to consider the appointment of a Tribunal expert who could opine on reasonableness and necessity with regard to the residual costs still under consideration.⁸³⁹
541. Fourth, and last, the Respondent noted that the Claimants’ claimed damages for the embargo of intellectual property and Chevron’s bank accounts in Argentina could be examined independently of the above determinations, which apply only to legal fees and expenses as damages.⁸⁴⁰

⁸³⁵ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1501 (Schwartz).

⁸³⁶ **RE-51**, Trunko Expert Report, para. 8.

⁸³⁷ **RE-51**, Trunko Expert Report, para. 56.

⁸³⁸ Track III Hearing Transcript, Day 10 (31 August 2022), p. 2338 (Trunko).

⁸³⁹ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1502 (Schwartz); Day 8 (27 August 2022), p. 1775 (Schwartz).

⁸⁴⁰ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1501 (Schwartz).

4. The Parties’ Damages and Interest Models

542. The Parties’ damages experts (Mr Kiran Sequeira of Secretariat and Mr Daniel Flores of Quadrant Economics) each submitted dynamic Microsoft Excel damages models together with their expert reports.⁸⁴¹ The models are derived from the same dataset reflecting the billing information supporting the Claimants’ damages claims for legal fees and expenses – not so for other types of pecuniary damages.⁸⁴² Among several other functionalities, both models include “switches” enabling the user to set parameters for the calculation of the amount of compensation, such as the start date for the inclusion of fees and costs in respect of each category of damages or the applicable rate of interest.
543. Following discussions with the Parties and their respective damages experts at the Track III Hearing, by its Procedural Order No. 83 the Tribunal invited the Parties to agree on a joint model for the calculation of damages and interest based on the models already on record.⁸⁴³ The Parties were directed to include a series of additional features and “switches” in the joint model that the Tribunal may require at the time of performing its damages analysis.⁸⁴⁴ The Parties were also invited to attempt to agree on a final list of

⁸⁴¹ Second Sequeira Expert Report, **Appendix G.1; RE-56**, Second Flores Expert Report, **QE-50**, Updated Interest Calculations.

⁸⁴² Track III Hearing, Day 13 (5 September 2022), pp. 3081-3082 (Flores).

⁸⁴³ Procedural Order No. 83, 14 October 2022.

⁸⁴⁴ Procedural Order No. 83, 14 October 2022, para. 4. The features requested by the Tribunal included: “(i) a switch to apply a nominal amount discount to any given category of damages; (ii) a switch to apply a percentage discount to any given category of damages; (iii) a switch to limit the calculation of damages and interest for a given category of damages to a tailored date range (as opposed to a single cut-off/starting date); (iv) the option to use the dates work was performed, payment dates or invoice dates for purposes of implementing starting dates or date ranges; (v) a switch to include/exclude and/or apply nominal amount or percentage discounts to any particular law firm or vendor; (vi) a cross-reference to the data compiled by the Respondent’s expert, Mr. John L. Trunko (reconciled, to the extent possible, as per the Claimants’ observations and the Respondent’s responses regarding duplication and other numerical adjustments), with respect to certain disputed billing practices and other elements, in order to be able to perform a percentage reduction on an invoice level to the principal amount of each or all such element(s); (vii) switches that would permit the Tribunal, insofar as possible, to itemize and apply percentage discounts corresponding to the principal amounts of each additional discrete component or element that is contested by the Respondent; (viii) fixing the apparent discrepancy between the two existing models in the calculation of interest based on weighted average cost of capital or, alternatively, explaining the reason for the discrepancy and including a switch in respect thereof; (ix) built-in options for any alternative interest rates canvassed by Dr. Flores but not included in the existing models. . . ; (x) the possibility to apply granular (at least 0.1%) adjustments to the premium, or the negative adjustment, on benchmark interest rates; (xi) a switch to independently apply the two types of tax implications mentioned by the Respondent . . . ; (xii) an indication of the damages and interest calculation underlying each Party’s main positions (either through an additional switch, if technically and practically feasible, or through a chart or screenshot reflecting the relevant combination of switch selections); (xiii) a reset button that restores the Joint Model to its original version as submitted to the Tribunal;

“components” and “elements” divided by category to be implemented in the joint model.⁸⁴⁵

544. Ultimately, the Parties were unable to submit an agreed joint model. Instead, each submitted a model prepared on the basis of the Tribunal’s instructions set out in Procedural Order No. 83, with accompanying disclaimers and video tutorials (respectively, the “**Claimants’ Damages Model**” and the “**Respondent’s Damages Model**”).⁸⁴⁶

5. The Tribunal’s Methodology

545. As gleaned from the above, the Tribunal is required to decide the Claimants’ incidental damages claims for USD 793 million in legal fees and expenses⁸⁴⁷ based on a volume of evidence that is unprecedented for a claim of this sort in the investment arbitration context. The task before the Tribunal is to determine an appropriate methodology for the assessment of this corpus of evidence guided by the applicable principles of international law governing the resolution of the Claimants’ claims.

546. The point of departure in the determination of the Tribunal’s methodology is Article 25(6) of the UNCITRAL Arbitration Rules, which reads: “The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.” This provision grants ample discretion to the Tribunal as regards all evidentiary matters, including the assessment of the evidence underlying the Claimants’ claims.

(xiv) a user manual for the Joint Model (including, if appropriate, a video tutorial). . . ; (xv) a private helpdesk system for the Tribunal to be able to consult confidentially and jointly with Mr. Sequeira and Dr. Flores for troubleshooting purposes or to verify the proper functioning of the Joint Model; and (xvi) any additional switch or feature that the Parties may agree upon.”

⁸⁴⁵ Procedural Order No. 83, 14 October 2022, para. 9.

⁸⁴⁶ Letter from the Claimants to the Tribunal dated 2 November 2022; Letter from the Respondent to the Tribunal dated 2 November 2022; Letter from the Claimants to the Tribunal dated 18 November 2022; Respondent’s Disclaimers to the Parties’ Damages Models, 18 November 2022; E-mail from the Respondent to the Tribunal dated 10 December 2022.

⁸⁴⁷ The Claimants request the reimbursement of USD 793,879,967.74 for legal fees and expenses claimed as damages (Reply, Updated Appendix 2, p. 1). In addition, the Tribunal recalls that they also request (i) 85,315,652 for Intellectual Property Losses in Ecuador; (ii) USD 13 million for the Embargo in Argentina; and (iii) Moral Damages in the amount that the Tribunal deems just and proper (Reply, para. 1212(3)).

547. The Parties agree on the fact of the Tribunal’s discretion but disagree on the manner in which it should be applied in the circumstances of this case. As explained above, the Claimants favour the application of a high-level “commercial reasonableness test”, while the Respondent requests that the Tribunal apply its discretion in a “structured manner that addresses the legal issues impacting multiple categories first, and then ultimately ensures that each category is subject to a particularized review at an appropriate level of detail”.⁸⁴⁸
548. In envisaging a methodology for the assessment of damages, the Tribunal must exercise its discretion in a manner consistent with its above determinations that (i) the onus is on the Claimants to prove every element of their damages claim,⁸⁴⁹ and (ii) the applicable standard of proof is the balance of probabilities.⁸⁵⁰ One of the implications derived from these determinations is that the Claimants are not required to prove their damages with absolute precision: it is sufficient for the Claimants to show that it is more likely than not that they suffered the damages they claim and that such damages are not speculative or uncertain. By the same token, the Tribunal is only required to exercise *reasonable* precision in the assessment of damages, particularly if achieving absolute precision would be disproportionately burdensome when compared with the margin of error.⁸⁵¹

⁸⁴⁸ Track III Hearing Transcript, Day 7 (26 August 2022), pp. 1487-1488 (Bishop); pp. 1497-1498 (Schwartz).

⁸⁴⁹ See paras. 328, 335 above.

⁸⁵⁰ See para. 325 above.

⁸⁵¹ While the proposition that investment treaty tribunals must only exercise reasonable precision in the assessment of damages has been applied chiefly in circumstances where tribunals were required to apply valuation methods to ascertain future losses – such as the ‘discounted cash flow’ method or ‘DCF’ – the Tribunal considers that the same proposition applies with equal force in circumstances where, as here, the fact of the loss is certain and the amount and complexity of the damages evidence on record is of such magnitude that a line-by-line analysis could not conceivably yield a scientifically precise result. For a description of the evidence on legal fees and expenses on record see para. 530 above. See also **CLA-617**, *Gold Reserve Inc. v. Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, para. 686: “Because of this element of imprecision, it is accepted that tribunals retain a certain amount of discretion or a ‘margin of appreciation’ when assessing damages, which will necessarily involve some approximation”; **RLA-789**, *Crystallex International Corporation v. Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, para. 871: “Arbitral tribunals have been prepared to award compensation on the basis of a reasonable approximation of the loss, where they felt confident about the fact of the loss itself”; **CLA-228**, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentina*, ICSID Case No. ARB/97/3, Award 20 August 2007, para. 8.3.16: “The fact that damages cannot be fixed with certainty is no reason not to award damages when a loss has been incurred. In such cases, approximations are inevitable; the settling of damages is not an exact science”; **CLA-659**, *Unión Fenosa Gas, S.A. v. Egypt*, ICSID Case No. ARB/14/4, Award, 31 August 2018, para. 10.101: “The assessment of compensation is rarely a science or an exercise of arithmetical precision by an arbitration tribunal. Complex factual, legal and expert issues of compensation, dividing the disputing parties and their expert witnesses, can require a margin of appreciation by a

549. The Tribunal’s prior decisions concerning the requirements for the compensation of incidental damages define the meaning of ‘reasonable precision’ in the circumstances of this case. Chief among them are the Tribunal’s determinations that (i) the required causal link must be established clearly and in an itemized fashion for each mitigation measure to warrant reparation;⁸⁵² and (ii) the onus is on the Claimants to prove the reasonableness of both the mitigation measures they undertook and the amounts spent in connection with each of those measures.⁸⁵³ These determinations require the Tribunal to adopt a reasonably detailed level of review and will also inform the Tribunal’s determination of the level of detail required for such exercise.
550. In view of these findings, the Tribunal rejects as disproportionately onerous a line-by-line analysis of the billing data and invoices on the record – which, in any event, the Parties agree is not required in the instant case.⁸⁵⁴ Similarly, however, the Tribunal must reject the Claimants’ proposed “commercial reasonableness test” as being insufficiently precise for present purposes.
551. Having considered all of the above factors, the Tribunal sets out below the methodology it will follow in Section VIII for the assessment of the Claimants’ damages claims for legal fees and expenses. As part of its assessment, the Tribunal will be assisted by the models prepared by the Parties’ respective damages experts, both of which permit a detailed analysis of the evidence on record.

tribunal. . .”; **CLA-116**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, para. 521: “However the Tribunal feels bound to point out that the assessment of damages is not a science . . . But at the end of the day, the Tribunal can stand back and look at the work product and arrive at a figure with which it is comfortable in all the circumstances of the case”; **RLA-717**, *Southern Pacific Properties (Middle East) Limited v. Egypt*, ICSID Case No. ARB/84/3, Award, 20 May 1992, para. 215: “This determination necessarily involves an element of subjectivism and, consequently, some uncertainty. However, it is well settled that the fact that damages cannot be assessed with certainty is no reason not to award damages when a loss has been incurred”; **CLA-660/RLA-433**, *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, para. 246: “Once causation has been established, and it has been proven that the in bonis party has indeed suffered a loss, less certainty is required in proof of the actual amount of damages; for this latter determination Claimant only needs to provide a basis upon which the Tribunal can, with reasonable confidence, estimate the extent of the loss.”

⁸⁵² See para. 330 above.

⁸⁵³ See para. 335 above.

⁸⁵⁴ Track III Hearing Transcript, Day 7 (26 August 2022), pp. 1487-1488 (Bishop); pp. 1497-1498 (Schwartz).

552. For the purposes of this methodology, the Tribunal will use certain shorthand terms appearing in Procedural Order No. 83 with the same meaning stated therein,⁸⁵⁵ namely:

- (i) “**Categories**” shall mean “each of the main heads of damages listed in items (a) through (m) of paragraph 479.2 of the Claimants’ Memorial on Damages, dated 31 May 2019”;⁸⁵⁶
- (ii) “**Components**” shall mean “distinguishable subcategories of costs or actions that are specific to each category or main proceeding for which damages are claimed (e.g., count IX of the RICO proceedings, each of the § 1782 actions, etc.)”;⁸⁵⁷ and
- (iii) “**Element**” shall mean “any other cost subsets that may be present in several categories, and the recoverability of which is disputed on the basis of the nature of the expenditure, the observation of pathological or allegedly inadequate billing practices or other reasons (e.g., block billing, public relations, etc.)”⁸⁵⁸

(a) *First Step: Analysis of Incidental Damages “Categories”*

553. Each of the damages categories in the instant case is connected with varying degrees of remoteness to legal proceedings. Certain categories relate to costs incurred directly within the context of legal proceedings, such as the Lago Agrio or RICO Litigations. The category “General Defence” relates to costs attributable to furthering and coordinating Chevron’s overall defence against the Lago Agrio Judgment.⁸⁵⁹ In turn, the category “Costs of Planning Against Potential Enforcement in Other Jurisdictions” concerns costs incurred in anticipation of enforcement actions that were not ultimately filed.⁸⁶⁰

554. Determining, without more, whether each of these heads of damages is compensable would be inconsistent with the requirement that the Tribunal assess the existing evidence on damages at an appropriate level of detail. However, there is room for the Tribunal to

⁸⁵⁵ Procedural Order No. 83, 14 October 2022, para. 8.

⁸⁵⁶ See para. 558 below for a full list of all “Categories”.

⁸⁵⁷ See para. 568 below for a full list of all “Components”.

⁸⁵⁸ See para. 574 below for a full list of all “Elements”.

⁸⁵⁹ Reply, para. 1008.

⁸⁶⁰ Reply, para. 939.

exclude individual categories involving legal fees and expenses from further analysis if any such category, in the terms in which it has been particularized by the Claimants, fails to meet the requirements of causation and reasonableness for the compensation of incidental damages under international law.

555. First, the notion of causation as regards incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under each of the Claimants’ main heads of damages, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment.⁸⁶¹ The Tribunal has already determined three possible ways in which the Claimants could have mitigated the injury: (i) by preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, by thereafter seeking to render the Judgment unenforceable; and (iii) by minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.⁸⁶² The costs incurred in connection with each category, considered globally, must have pursued one of these three objectives for a causal link to be established.
556. Incidental damages are subject to an additional requirement of reasonableness: to warrant compensation, legal fees and expenses must have been *reasonably* incurred to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment.⁸⁶³ The determination required at this first level of analysis, however, is one of reasonableness of the mitigation *measures* undertaken by the Claimants, not of the *amounts* spent, which require a more particularized review as further described below. As such, the test for reasonableness as regards categories must also centre upon the goals sought by the Claimants when taking a particular course of action; in other words, the question that will be addressed by the Tribunal is whether the Claimants’ choice of measures was a reasonable means by which to mitigate the injury.

⁸⁶¹ See para. 328 above.

⁸⁶² See para. 363 above.

⁸⁶³ See para. 332 above.

557. Any categories that fail to meet the requirements of causation and reasonableness as described in the preceding paragraphs will be excluded from the Tribunal’s analysis going forward. In turn, where the Claimants have established that a particular category of damages meets these requirements, the Tribunal will treat all legal fees and expenses within that category as compensable, except where the Respondent has raised additional arguments or objections concerning matters falling under that category – such as questions on the compensability of a specific component included in that category – which the Tribunal shall then address. In adopting this approach, the Tribunal acts consistently with the applicable standard of proof (balance of probabilities),⁸⁶⁴ as well as the Parties’ agreement that it may adopt a practical approach to the determination of damages.⁸⁶⁵
558. For ease of reference, the 13 damage categories identified by the Parties involving legal fees and expenses are set out below. Where the Parties have referred to a category by a name different from that adopted by the Tribunal in this Award, the Tribunal has noted such difference below. Going forward, the Tribunal shall employ only the defined terms for each category indicated in paragraphs 132-133 above. The list that follows reflects the order in which the Tribunal will consider each category in this Award, rather than the order in which they were presented by the Parties.
- (i) Lago Agrio Litigation (Ecuador) (previously defined as “Lago Agrio Litigation”);
 - (ii) Enforcement Litigation in Ecuador (previously defined as “Ecuador Enforcement Proceedings”);
 - (iii) Enforcement Litigation in Argentina (previously defined as “Argentina Enforcement Proceedings”);
 - (iv) Enforcement Litigation in Brazil (previously defined as “Brazil Enforcement Proceedings”);

⁸⁶⁴ See para. 325 above.

⁸⁶⁵ See paras. 533, 535, 546-547 above.

- (v) Enforcement Litigation in Canada (previously defined as “Canada Enforcement Proceedings”);
- (vi) Costs of Planning Against Potential Enforcement in Other Jurisdictions;
- (vii) RICO Litigation (USA) (previously defined as “RICO Litigation”);
- (viii) Section 1782 Litigations (USA) (previously defined as “Section 1782 Proceedings”);
- (ix) Gibraltar Proceedings;
- (x) General Defence;
- (xi) Criminal Proceedings (Ecuador) (previously defined as “Criminal Proceedings”);
- (xii) Dutch Set-Aside Proceedings; and
- (xiii) Treaty Arbitration Costs Incurred by Non-Counsel of Record.⁸⁶⁶

(b) *Second Step: Analysis of Incidental Damages “Components”*

559. Having determined which categories fulfil the requirements of causation and reasonableness in the terms described in the preceding section, as a second step the Tribunal will determine, within each damages category, whether the Claimants have established the requirements for each individual costs “component” to qualify as incidental damages.

560. In this respect, the Tribunal recalls again its determination that the required causal link must be established clearly and in an itemized fashion for each mitigation measure to warrant reparation.⁸⁶⁷ In the Tribunal’s view, performing this assessment by reference to components – not overarching categories – is a sufficiently granular form of review in the circumstances of this case.

⁸⁶⁶ Letter from the Respondent to the Tribunal dated 21 October 2022; Letter from the Claimants to the Tribunal dated 22 October 2022, Attachment A.

⁸⁶⁷ See para. 330 above.

561. In identifying components, the Tribunal will draw guidance from the lists of components submitted by the Parties together with their respective damages models, but will also preserve flexibility to make more detailed causation assessments on other aspects of the Claimants’ claims when the circumstances so require.⁸⁶⁸ For the avoidance of doubt, the Tribunal also clarifies that its determination that a line-by-line analysis of the billing data and invoices on the record is disproportionately onerous⁸⁶⁹ should not be read to preclude the Tribunal from analysing certain invoices or entries of interest to the extent it considers it necessary to assess any particular component.
562. In addition, the Tribunal will assess the factors governing the question of reasonableness as regards incidental damages set out in Section VII.A.3 above vis-à-vis each individual component and also more circumscribed aspects to the extent it is required.⁸⁷⁰ In practice, however, the determination of reasonableness may be contextual, meaning that several components may need to be considered jointly to perform that assessment. For instance, where the Tribunal is required to assess the reasonableness of hiring of a specific law firm as a “component”, the Tribunal may determine that it was reasonable for the Claimants to retain that law firm to defend themselves against attempts to enforce the Lago Agrio Judgment in a particular jurisdiction and at the same time conclude that hiring additional law firms for the same purpose was unreasonable in the circumstances.
563. The Tribunal further observes that many of the components identified by the Parties concern activities that have also been identified as cross-cutting “elements” impacting multiple categories (*e.g.*, activities relating to media and public relations, activities relating to government relations, non-defence-related activities, administrative and clerical activities. . . etc.).⁸⁷¹ The Tribunal will therefore defer its assessment of many of these activities to its analysis of cross-cutting “elements” in Section VIII.N below to the extent it considers it appropriate in each specific instance.

⁸⁶⁸ Letter from the Respondent to the Tribunal dated 21 October 2022; Letter from the Claimants to the Tribunal dated 22 October 2022, Attachment A.

⁸⁶⁹ *See* para. 550 above.

⁸⁷⁰ *See* paras. 339-343 above.

⁸⁷¹ *See* para. 574 below.

564. As explained above, the onus of proving the reasonableness of the mitigation *measures* that were taken by the Claimants and also of the *amounts* spent in connection with each measure/component lies with the Claimants.⁸⁷² Thus, when addressing components of the Claimants’ damages claim, the Tribunal will also assess the reasonableness of the amounts claimed in connection with each individual component, albeit only to the extent it can perform a targeted assessment at this stage of analysis. In this respect, the Tribunal observes that many of the factors potentially impacting upon the reasonableness of the amounts claimed by the Claimants have also been identified by the Parties as cross-cutting “elements” impacting multiple categories (*e.g.*, block billing, double billing, vague billing entries, multiple attendance at events, excessive billing days and excessive time. . . etc.).⁸⁷³ As more fully explained in section VII.G.5(c) below, these “elements” can only be addressed by the Tribunal *after* the Tribunal has addressed all components identified by the Parties. In other words, it is not possible for the Tribunal to perform a full assessment of the reasonableness of the amounts claimed by the Claimants at this stage of analysis. The Tribunal will thus defer many aspects of such assessment to Section VIII.N below.
565. For these reasons, the Tribunal will often refrain from making express determinations on the reasonableness of the amounts corresponding to individual components and sub-components at this intermediate stage of analysis. This approach is also required in view of the fact that specific amounts or invoices will often fall, in full or in part, within the scope of multiple components identified by the Parties, meaning that any determinations made regarding a certain component may indirectly reduce the amounts that may still be recovered in connection with other components. By way of example, by determining that the legal fees charged by a specific law firm as a whole are not compensable, the Tribunal may also be indirectly excluding from compensation certain amounts claimed in connection with other components concerning activities performed by that same law firm.

⁸⁷² See para. 335 above.

⁸⁷³ See para. 574 below.

566. In sum, the Tribunal’s analysis of components should not be deemed to exhaust its assessment of the reasonableness of the amounts spent by the Claimants in connection with each of those components.
567. Lastly, at this stage of analysis, the Tribunal will also factor in (i) the exclusion of legal fees and expenses incurred prior to the date of issuance of the Lago Agrio Judgment, as explained in Section VII.A.4 above;⁸⁷⁴ (ii) the exclusion of fees collected, awarded or settled in other proceedings from the Claimants’ damages claims described in Section VII.E above;⁸⁷⁵ and (iii) the implications of the Tribunal’s conclusions on the Respondent’s but-for argument, set out in Section VII.A.5 above.⁸⁷⁶ The Tribunal will also address other arguments raised by the Parties in connection with specific aspects of each damages category that have not been expressly identified as a component.
568. For ease of reference, the components identified by the Parties within each damages category are set out below. Where the Parties were unable to agree on the name to be assigned to a specific component, the Claimants’ and the Respondent’s respective given names for that component are marked “(CLA)” or “(RES)”, as applicable. The list that follows reflects the order in which the Tribunal will consider each category and component in this Award, rather than the order in which they were presented by the Parties.

(i) Lago Agrio Litigation

- i. PR Firms (Creative Response Concepts; Benjamin Ortiz Brennan);
- ii. Adrian Briggs; Autonomy – Introspect; Fernando Morales; Fernando Sierra; Gus R Lesnevich Inc.; Harris Corp Government Communication System; Jan Paulsson (billed through Freshfields); RICOH USA Inc/Formerly IKON;
- iii. Lago Agrio WestLaw/Lexis charges;

⁸⁷⁴ See para. 362 above.

⁸⁷⁵ See para. 503 above.

⁸⁷⁶ See paras. 395, 398 above.

- iv. (CLA) Lago Agrio fees and costs allegedly relating to administrative and clerical activities / (RES) Lago Agrio fees and costs relating to administrative and clerical activities; and
- v. Lago Agrio charges relating to translation.

(ii) Ecuador Enforcement Proceedings

- i. (CLA) Expenses alleged to be for temporary employees / (RES) Temporary employee expenses.

(iii) Argentina Enforcement Proceedings

- i. (CLA) Fees and costs before the LAPs’ enforcement strategy became known to Claimants / (RES) Fees and costs before the Invictus Memorandum became known to Chevron (January 2011);
- ii. Fees for services rendered by Arslanian and Asociados and Emilio Jorge Cardenas not accompanied by *facturas*;
- iii. (CLA) Fees solely related to media and public relations / (RES) Fees for media and public relations;
- iv. Fees and costs incurred before November 5, 2012, the date the Argentine proceedings were filed;
- v. (CLA) Fees incurred solely for monitoring service, dockets, and service refusal activities / (RES) Fees for monitoring service, dockets, and service refusal activities;
- vi. (CLA) Fees incurred solely in connection with the challenge to the LAPs’ *in forma pauperis* status / (RES) Fees incurred in connection with the challenge to the LAPs’ *in forma pauperis* status;
- vii. (CLA) Fees incurred solely in connection with unsuccessful challenges of judges / (RES) Fees incurred in connection with unsuccessful challenges of judges; and

- viii. Fees incurred in carrying out activities alleged to be prohibited under Argentine law.

(iv) Brazil Recognition Proceedings

- i. (CLA) Fees and costs before the LAPs’ enforcement strategy became known to Claimants / (RES) Fees and costs before the Invictus Memorandum became known to Chevron (January 2011);
- ii. (CLA) Fees incurred solely in connection with the challenge to the LAPs’ *in forma pauperis* status / (RES) Fees incurred in connection with the challenge to the LAPs’ *in forma pauperis* status;
- iii. Media and public relations;
- iv. Government relations;
- v. Amounts billed by the Mattos Firms under the matters “Ecuador Decision–PGPA [Policy, Government, and Public Affairs]” and “Relações Governamentais [Governmental Relations]”;
- vi. Fees and costs incurred before the date the Brazilian proceeding was filed;
- vii. Costs of Portuguese/English translations between May 2013 and July 2015;
- viii. Costs of English/Spanish translations; and
- ix. (CLA) Law firms that represented Chevron’s Brazilian subsidiary (Mattos Engelberg Advogados; Mattos Muriel Kestener Advogados) / (RES) Law firms that purportedly represented Chevron’s Brazilian subsidiary (Mattos Engelberg Advogados; Mattos Muriel Kestener Advogados).

(v) Canada Enforcement Proceedings

- i. (CLA) Fees and costs before the LAPs’ enforcement strategy became known to Claimants / (RES) Fees and costs before the Invictus Memorandum became known to Chevron (January 2011);

- ii. (CLA) Amount awarded by the Canadian courts, allegedly adjusted for full indemnity / (RES) Amount awarded by the Canadian courts, adjusted for full indemnity;
- iii. (CLA) Fees Chevron argued were reasonable under domestic rules governing costs applications in the Canadian courts / (RES) Fees Chevron argued were reasonable in Canadian courts;
- iv. Pre-filing fees;
- v. Fees and Costs of U.S. Law Firms: Gibson, Dunn & Crutcher LLP; Stern Kilcullen & Rufo LLC; Jones Day; Boies Schiller & Flexner LLP; Gardere Wynne Sewell; Covington & Burling LLP;
- vi. (CLA) Alleged coordination of moots / (RES) Coordination of moots; and
- vii. (CLA) Law firms that represented Canadian subsidiaries (Goodmans; Lax O’Sullivan) / (RES) Law firms that represented the non-Claimant Canadian subsidiaries (Goodmans; Lax O’Sullivan).

(vi) Costs of Planning Against Potential Enforcement in Other Jurisdictions

- i. (CLA) Fees and costs before the LAPs’ enforcement strategy became known to Claimants / (RES) Fees and costs before the Invictus Memorandum became known to Chevron (January 2011);
- ii. (CLA) Fees incurred solely for monitoring dockets in jurisdictions where no action was ever filed / (RES) Fees for monitoring dockets in jurisdictions where no action was ever filed; and
- iii. (CLA) Fees incurred solely for drafting pleadings in jurisdictions where no action was ever filed / (RES) Fees for drafting pleadings in jurisdictions where no action was ever filed.

(vii) RICO Litigation

- i. (CLA) Fees Exceeding US\$ 32,334,584 / (RES) Fees Exceeding US\$ 32,334,584 (amount requested in fee application);

- ii. (CLA) Work relating solely to Count IX (including Preliminary Injunction) / (RES) Work relating to Count IX (including Preliminary Injunction);
- iii. Work related to bringing a Complaint Against NY State Comptroller DiNapoli;
- iv. Work related to opposing John Keker’s *pro hac vice* application;
- v. (CLA) Work related solely to the Second Amended Complaint / (RES) Work related to the Second Amended Complaint;
- vi. (CLA) Work relating solely to Unjust Enrichment / (RES) Work relating to Unjust Enrichment;
- vii. Work dedicated to withdrawn demand for money damages;
- viii. Fees and costs claimed for period prior to filing complaint;
- ix. (CLA) Work related solely to pursuing civil contempt proceedings against Donziger / (RES) Work related to pursuing civil contempt proceedings against Donziger;
- x. Kobre & Kim LLP;
- xi. Rivero Mestre LLP;
- xii. Covington & Burling LLP;
- xiii. Stern Kilcullen & Rufolo LLC;
- xiv. Barros Letelier & Compania Abogados;
- xv. Gardere Wynne Sewell LLP;
- xvi. Jan Paulsson (billed through Freshfields);
- xvii. Three Crowns LLP;
- xviii. Bullard, Falla & Ezcurra Abogados;

- xix. Boies Schiller & Flexner LLP;
- xx. Asesorias Bofill Escobar;
- xxi. Kroll Associates;
- xxii. Daniel Cooperman; and
- xxiii. Anil Shivdasani.

(viii) Section 1782 Proceedings

- i. (CLA) Work related solely to pursuing sanctions against the LAPs’ law firms / (RES) Pursuing sanctions against the LAPs’ law firms;
- ii. (CLA) Fees and costs billed by Rivero Mestre and Covington & Burling in connection with their representation of Perez and Veiga (Rivero Mestre and Covington & Burling) / (RES) Fees and costs billed by Perez and Veiga’s law firms (Rivero Mestre and Covington & Burling); and
- iii. “Defensive” 1782s.

(ix) Gibraltar Proceedings

- i. Fees and expenses allegedly incurred before Gibraltar strategy was launched;
- ii. Fees and expenses from firms other than Kobre & Kim and Attias & Levy;
- iii. Fees and expenses related to work in non-Gibraltar jurisdictions or to Complaints that were never filed; and
- iv. (CLA) Fees and expenses from Kobre & Kim allegedly related to global oversight / (RES) Fees and expenses from Kobre & Kim related to global oversight.

(x) General Defence

- i. Work relating to Government Relations;
- ii. Work relating to Media and PR;

- iii. (CLA) Allegedly Nondefense-Related Activities, Including Shareholder Relations / (RES) Nondefense-Related Activities, Including Shareholder Relations.

(xi) Criminal Proceedings (no components identified by the Parties)

(xii) Dutch Set-Aside Proceedings

- i. Costs awarded by Dutch court; and
- ii. Any amount in excess of what the Dutch court awarded as costs.

(xiii) Treaty Arbitration Costs Incurred by Non-Counsel of Record

- i. Fees and expenses incurred prior to the Notice of Arbitration;
- ii. NautaDutilh N.V.; and
- iii. Three Crowns LLP.⁸⁷⁷

(c) Third Step: Analysis of Cross-Cutting “Elements”

569. After fixing a preliminary amount of compensation for incidental damages, as a third step the Tribunal will analyse in Section VIII.N below certain “elements” or issues potentially impacting multiple categories of incidental damages. Because of their cross-cutting nature, these elements cannot be addressed in a self-standing manner as components of the Claimants’ claims; rather, they affect the global assessment of the amount of compensation.

570. For instance, some of the elements identified by the Parties and both sides’ experts include potential instances of block billing, excessive billing, time billed for non-work travel or time billed for training-related activities.⁸⁷⁸ Depending on their prevalence and overall significance, these elements may impact, to varying extents, the causal link between the

⁸⁷⁷ Letter from the Respondent to the Tribunal dated 21 October 2022; Letter from the Claimants to the Tribunal dated 22 October 2022, Attachment A.

⁸⁷⁸ See McGrath Expert Report, para. 26; RE-51, Trunko Expert Report, para. 8; Letter from the Respondent to the Tribunal dated 21 October 2022; Letter from the Claimants to the Tribunal dated 22 October 2022.

Claimants’ claimed costs and the injury flowing from the Respondent’s Treaty breaches, the reasonableness of these costs, or the satisfaction of the Claimants’ burden of proof.

571. Other issues in dispute between the Parties are also likely to impact multiple categories. For instance, the Respondent is critical of the evidence submitted by the Claimants to prove that Chevron paid all of the costs the Claimants claim as damages in this Arbitration.⁸⁷⁹ Another transversal question requiring a ruling from the Tribunal is whether date range limitations for the compensation of incidental damages should be based on the date on which the underlying services were performed, the date of issuance of the corresponding invoice, or the date of payment.⁸⁸⁰
572. In the Tribunal’s view, the implications of these cross-cutting elements for the Claimants’ damages claims for legal fees and expenses must be addressed only after an itemized review of the categories, components and other aspects of the Claimants’ claims as described above, as the impact of some of these elements may have been partly addressed by the Tribunal in prior steps of its analysis.
573. Having assessed these elements in full, the Tribunal will decide how they should affect the amount of compensation due for the Claimants’ damages claims for legal fees and expenses, whether by way of an across-the-board percentage reduction as suggested by Mr Trunko or otherwise.⁸⁸¹
574. For ease of reference, the elements identified by the Parties are set out below. Where the Parties were unable to agree on the name to be assigned to a specific element the Claimants’ and the Respondent’s respective given names for that element are marked “(CLA)” or “(RES)”, as applicable.
- (i)* (CLA) Fees That Allegedly Would Have Been Incurred But-For The Treaty Breaches / (RES) Fees That Would Have Been Incurred But-For The Treaty Breaches;

⁸⁷⁹ Track III Hearing Transcript, Day 8 (29 August 2022), pp. 1775-1777 (Schwartz).

⁸⁸⁰ Letter from the Claimants to the Tribunal dated 18 November 2022, p. 6.

⁸⁸¹ Track III Hearing Transcript, Day 10 (31 August 2022), p. 2338 (Trunko).

- (ii)** Claimants’ Alleged Failure to Mitigate (Zambrano Recusal, Collusion Prosecution Act, Appeal Bond);
- (iii)** (CLA) Subsidiaries – PDF invoices addressed to Non-Claimant Chevron Corp. subsidiaries / (RES) Subsidiaries – PDF invoices addressed to Non-Claimants;
- (iv)** (CLA) Activities allegedly relating to Media and Public Relations / (RES) Activities relating to Media and Public Relations;
- (v)** (CLA) Activities allegedly relating to Government Relations (including but not limited to USTR) / (RES) Activities relating to Government Relations (including but not limited to USTR);
- (vi)** (CLA) Allegedly Nondefense-Related Activities / (RES) Nondefense-Related Activities;
- (vii)** (CLA) Alleged Block Billing / (RES) Block Billing;
- (viii)** (CLA) Allegedly Vague Billing Entries / (RES) Vague Billing Entries;
- (ix)** (CLA) Alleged Administrative and Clerical Activities; (RES) Administrative and Clerical Activities;
- (x)** (CLA) Alleged Getting Up to Speed and Training / (RES) Getting Up to Speed and Training;
- (xi)** Multiple Attendance at Events;
- (xii)** (CLA) Alleged Excessively Long Billing Days and Excessive Time; (RES) Excessively Long Billing Days and Excessive Time;
- (xiii)** (CLA) Alleged Double Billing Entries; (RES) Double Billing Entries;
- (xiv)** Veiga / Perez Criminal Proceedings;
- (xv)** Cash Calls; and

(xvi) King & Spalding/Three Crowns Amounts Claimed as Damages.⁸⁸²

(d) *Fourth Step: Determination of Amount of Compensation based on the Parties’ Damages Models*

575. As a fourth and final step, in Section VIII.O below the Tribunal will input its determinations derived from prior steps of its analysis into the Parties’ respective damages models to determine the amount of compensation due for the Claimants’ damages claims for legal fees and expenses. At this stage, the Tribunal will address any divergences between the outcomes of each model – to the extent that they arise – having regard to all relevant circumstances.

576. The determination of the interest rate that shall apply to the Tribunal’s compensatory award for legal fees and expenses will be addressed separately in Section IX.B below.

* * *

⁸⁸² Letter from the Respondent to the Tribunal dated 21 October 2022; Letter from the Claimants to the Tribunal dated 22 October 2022, Attachment A.

VIII. DAMAGES CATEGORIES CONCERNING LEGAL FEES AND EXPENSES

577. In this Section, the Tribunal shall address individually each of the 13 categories of damages relating to legal fees and expenses that the Claimants allegedly incurred as a result of the Respondent’s Treaty breaches.

578. For ease of reference, the Tribunal indicates in the table below the order in which it will address these categories, as well as the amount requested by the Claimants in connection with each category, excluding interest.

§	Category	Amount Claimed
A.	Lago Agrio Litigation	USD 161,525,161.89
B.	Ecuador Enforcement Proceedings	USD 3,582,889.44
C.	Argentina Enforcement Proceedings	USD 25,695,438.12
D.	Brazil Recognition Proceedings	USD 20,668,398.44
E.	Canada Enforcement Proceedings	USD 39,798,158.90
F.	Costs of Planning Against Potential Enforcement in Other Jurisdictions	USD 26,166,897.09
G.	RICO Litigation	USD 323,180,099.51
H.	Section 1782 Proceedings	USD 62,363,592.93
I.	Gibraltar Proceedings	USD 38,421,547.26
J.	General Defence	USD 47,213,917.33
K.	Criminal Proceedings	USD 6,933,905.69
L.	Dutch Set-Aside Proceedings	USD 3,676,711.53
M.	Treaty Arbitration Costs Incurred by Non-Counsel of Record	USD 34,653,249.61
Grand Total Claimed		USD 793,879,967.74

[see Reply, Updated Appendix 2, p. 1]

579. After addressing each of the above damages categories, the Tribunal shall address certain cross-cutting “elements” potentially impacting multiple categories in Section VIII.N.

Lastly, in Section VIII.O below the Tribunal shall determine the amount of compensation due to the Claimants in connection with each of the above damages categories.

* * *

A. LAGO AGRIO LITIGATION

1. The Claimants' Position

(a) Description of the Proceedings⁸⁸³

580. Recalling its scope, magnitude, and duration, the Claimants submit that the Lago Agrio Litigation caused Chevron to spend “an inordinate amount of resources” and that it should have never been filed or allowed to proceed because, *inter alia*, it was against the “wrong party” and under a purported expedited procedure unfit for the complexity and nature of the underlying claims.⁸⁸⁴ The Claimants claim that the Lago Agrio Litigation was tainted almost from its inception with grave procedural irregularities, leading to a judgment “obtained by fraud, coercion, bribery, extortion, and collusion”.⁸⁸⁵ This notwithstanding, the Claimants argue, all six judges who presided over the trial phase and the issuance of the Lago Agrio Judgment ignored Chevron’s claims and evidence regarding its constitutional and due process rights, as did the appellate judges, who were irregularly appointed and failed to conduct a *de novo* review of the record as required.⁸⁸⁶
581. The case then followed two parallel tracks. On the one hand, Chevron filed a “Cassation” appeal before the National Court of Justice, which issued a decision on 12 November 2013 striking down the punitive damages portion of the Lago Agrio Judgment but otherwise sustaining the ruling and stating (unlawfully, in the Claimants’ view) that neither that court nor the lower courts had jurisdiction to consider Chevron’s fraud allegations.⁸⁸⁷ Chevron then filed an Extraordinary Action for Protection before Ecuador’s Constitutional Court, which was denied on a similar basis on 27 June 2018,

⁸⁸³ For a detailed description of the full chronology of these proceedings, *see generally* Memorial, Appendix 3.

⁸⁸⁴ Memorial, paras. 210-211.

⁸⁸⁵ Memorial, paras. 211-212; Track II Award, paras. 8.59, 10.5.

⁸⁸⁶ Memorial, paras. 213-215; **R-299**, Lago Agrio Appeals Court, Appellate Decision Clarifying the Appellate Judgment, 13 January 2012 at 8:57 a.m., pp. 3-4; **R-982**, Direct Testimony of Adolfo Callejas Ribadeneira, filed in RICO, *Chevron v. Donziger*, Case No. 11 Civ. 0691 (LAK) (SDNY), 9 October 2013, Exh. A, paras. 20, 74; **C-879**, Lago Agrio Court Order at point 10, 9 November 2010 at 5:32 p.m., Record pp. 109, 210; **C-991**, First-Instance Appellate Decision by the Lago Agrio Appeals Court., 3 January 2012 at 4:43 p.m., p. 10.

⁸⁸⁷ Memorial, para. 217; **C-288**, Constitution of the Republic of Ecuador (2008), Art. 76; **C-1068**, Chevron’s Cassation Appeal, Provincial Court of Justice of Sucumbíos (Lago Agrio appellate proceedings), 20 January 2012 at 8:50 a.m.; **C-1975**, Ecuador National Court of Justice, Cassation Judgment, 12 November 2013 at 3:00 p.m., pp. 95, 97-98.

allegedly “under pressure” from the council in charge of evaluating the performance of the judges of the Court at the time.⁸⁸⁸

582. On the other hand, the Claimants explain, the LAPs sought enforcement of the Lago Agrio Judgment within Ecuador, as well as orders from the Ecuadorian enforcement court which would later be submitted to foreign courts.⁸⁸⁹

(b) Costs Incurred

583. The Claimants posit that the costs incurred by Chevron in the Lago Agrio Litigation reflect the intricacy and duration of the case, as well as the necessary work performed by Chevron’s lawyers, environmental experts and vendors to defend it adequately from the LAPs’ claims (allegedly including “diffuse” claims) and to challenge, investigate, and present evidence of the LAPs’ fraud.⁸⁹⁰ In particular, the Claimants note that the Lago Agrio Litigation required many thousands of lawyer-hours in briefing the case through all levels of the judicial system and significant experts’ costs arising from the judicial inspections.⁸⁹¹

584. In sum, the legal fees and expenses allegedly incurred by the Claimants between February 2004 and August 2018 in the Lago Agrio Litigation amount to USD 161,525,161.89, consisting of (i) USD 88,817,244.23 in legal fees; (ii) USD 25,592,719.87 in costs incurred by different law firms; (iii) USD 25,730,278.83 in experts’ costs; and (iv) USD 21,384,918.96 in vendors’ costs.⁸⁹²

⁸⁸⁸ Memorial, para. 218; **C-2409**, Chevron’s Extraordinary Action for Protection, 23 December 2013; **C-2551**, Ecuadorian Constitutional Court, Decision on Chevron’s Extraordinary Action for Protection, 27 June 2018; **C-2653**, Chevron Motion filed with the Ecuadorian Constitutional Court, 22 May 2018; **C-2654**, *Amicus Curiae* filed with the Ecuadorian Constitutional Court, 15 November 2017 at 12:59 p.m.

⁸⁸⁹ Memorial, para. 219.

⁸⁹⁰ Memorial, para. 221.

⁸⁹¹ Memorial, para. 222.

⁸⁹² Reply, para. 699; Appendix 2, Updated Summary of Chevron’s Fees and Costs Claimed as Damages in Track III, 4 August 2021; **C-3462**, Indices of Claimed Invoices by Damage Category. The Claimants also rely on the witness statements of Ms Kent, Mr Rankin, and Mr Turner, and the expert report of Mr Stanton. *See also* Memorial, para. 226.

(c) Request for Full Reparation of Direct Damages

585. The Claimants contend that the Respondent's breaches of its obligations under international law "are the natural and foreseeable cause" of the legal fees and expenses they incurred in connection with the Lago Agrio Litigation, as those costs would not have been incurred had the Respondent complied with its obligations under the 1995-1998 Settlement and Release Agreements.⁸⁹³ These costs, the Claimants add, greatly increased with the extensive procedural misconduct and fraud of the Ecuadorian judicial system, such that it was foreseeable that Chevron would be forced to expend significant resources to defend its rights in those proceedings.⁸⁹⁴
586. For these reasons, the Claimants submit that they are entitled to full reparation for all legal fees and expenses incurred after 1 January 2004 in connection with the Lago Agrio Litigation as direct damages by virtue of the Respondent's Denial of Justice and Umbrella Clause Breaches.⁸⁹⁵
587. The Claimants reject the Respondent's contrary position for three main reasons.⁸⁹⁶ First, the Claimants contend that Chevron's expenses in the Lago Agrio Litigation were the natural, foreseeable, proximate, and direct consequence of the Respondent's breaches of international law, which include: (i) allowing the Lago Agrio Litigation to vindicate exclusively diffuse rights that had been previously settled; (ii) failing to investigate the wrongdoing of the various Ecuadorian judges who corrupted the proceedings; (iii) affirmatively issuing the certificate of enforceability of the Lago Agrio Judgment; and (iv) allowing the Lago Agrio Judgment to become enforceable internationally by issuing letters rogatory and apostilling the judgment.⁸⁹⁷ According to the Claimants, these acts and omissions of Ecuador required Chevron's lawyers, environmental experts, and vendors to spend thousands of hours developing legal pleadings and robust technical

⁸⁹³ Memorial, para. 224; Reply, para. 700.

⁸⁹⁴ Memorial, para. 225.

⁸⁹⁵ Reply, paras. 701, 739. *See also* Memorial, paras. 223, 225.

⁸⁹⁶ *See* Reply, paras. 702-703.

⁸⁹⁷ Reply, paras. 703-704.

evidence both to defend Chevron and to respond to the LAPS’ “antics”, including at the appellate level.⁸⁹⁸

588. The Claimants further assert that the Tribunal (i) never “blessed” the Lago Agrio proceeding; (ii) found that the Claimants had no liability or responsibility for environmental impact regarding the exact issue in the Lago Agrio Litigation; and (iii) concluded that Petroecuador’s liability for environmental impact was a real and continuing issue.⁸⁹⁹ With respect to the Respondent’s argument that many of the Claimants’ expenses were unrelated to its misconduct, the Claimants argue that (i) the but-for scenario according to which they would have incurred substantial expenses to defend against individual claims does not meet *Chorzów*’s “in all probability” standard, the hypothetical “individual claims for collective rights” being just “repackaged” diffuse claims barred by the 1995-1998 Settlement and Release Agreements; and (ii) Ecuador is responsible for the misconduct of its judiciary and for failing to stop the Lago Agrio Litigation through its executive and judiciary on numerous occasions, causing Chevron to incur further litigation expenses.⁹⁰⁰

589. Second, the Claimants insist that they have proven that they incurred and paid the legal fees and expenses they claim, noting, with regard to the Respondent’s purported ignorance over the identity of Chevron’s attorneys, that every motion submitted before the Lago Agrio Court and the appellate courts identifies the attorney(s) submitting the motion.⁹⁰¹ The Claimants add that Ecuador “publicly singled out and attacked” Chevron’s Ecuadorian attorneys for many years, while it also knows the identity of the timekeepers at the international law firms engaged by Chevron through the Section 1782 proceedings, the official dockets, and the privilege logs and motions for costs filed before U.S.

⁸⁹⁸ Reply, para. 705.

⁸⁹⁹ Reply, para. 706; Track II Award, paras. 4.71, 9.5(iii), 9.25-9.26.

⁹⁰⁰ Reply, paras. 707-712; **C-931**, First Instance Judgment by the Lago Agrio Court, *Aguinda v. Chevron*, 14 February 2011, pp. 33, 138; Second Partial Award on Track II, paras. 5.229, 8.7; Partial Award on Track III, para. 174.

⁹⁰¹ Reply, paras. 714-716, 724; **R-1545**, Copy of the Lago Agrio Record provided to P. Juola to review prior to submitting 27 January 2013 report; **R-1545A**, Supplement to the Lago Agrio Record provided to P. Juola. The Claimants further note that they have no burden to prove that the Lago Agrio Litigation expenses (which are claimed in the first instance as direct damages) were “reasonable and necessary”, although they claim they were.

courts.⁹⁰² The Claimants further explain that, as in any litigation, fees and costs varied each month depending on the events taking place in the Lago Agrio Litigation, such that, for instance, law firm expenses would be higher during those times when the firm was preparing for submissions, oral argument, or other key events in the case.⁹⁰³ Based on the witness statements of Mr Ricardo Reis Veiga and Mr Robert. A. Mittelstaedt, as well as the opinion of several experts, the Claimants assert that Chevron’s fees in the Lago Agrio Litigation are reasonable.⁹⁰⁴

590. Third and last, the Claimants deny having engaged in “abusive litigation tactics”, restating that their overall defence strategy against the threat of enforcement of the Lago Agrio Judgment was entirely reasonable and that, in any event, reasonableness is only relevant for incidental damages or when unreasonable conduct breaks the causal chain.⁹⁰⁵ The Claimants opine that the Respondent has no basis to complain about Chevron’s litigation efforts and tactics considering that it was required to defend itself in a proceeding lacking in due process and fairness, and assert that Chevron’s attorneys in Ecuador did their best to represent the company amidst open hostility against it, including personal attacks on its lawyers.⁹⁰⁶

591. Contrary to the Respondent’s criticism, the Claimants observe that Chevron required extensions of deadlines at various stages to give effect to its constitutional right to be heard, which is not a form of unreasonable behaviour that would amount to a failure to mitigate, a break in the chain of causation or an independent contribution to the injury.⁹⁰⁷

⁹⁰² Reply, paras. 717-718; **R-300**, Chevron’s Appendix to Its Privilege Logs, filed in *Chevron Corp. v. Salazar* (S.D.N.Y.); **R-982**, Direct Testimony of Adolfo Callejas Ribadeneira, filed in RICO, *Chevron v. Donziger, Case*, No. 11 Civ. 0691 (LAK) (S.D.N.Y.), 9 October 2013, para. 1; **C-1966**, Presidential Address, 28 September 2013; **C-2947**, *In re the Application of the Republic of Ecuador [Borja]*, No. 3:10-mc-80225 (N.D. Cal.), Docket, 10 September 2010. In any event, the Claimants argue that this contention is moot because the Respondent has now received all relevant invoices.

⁹⁰³ The Claimants refer to the “*alegatos*” filed by Chevron on 16 September 2010 and 6 January 2011 as examples of events leading to a higher amount of billed fees. Reply, paras. 719-722. See Memorial, Appendix 2, Appendix 3.

⁹⁰⁴ Reply, para. 723; Fourth Veiga Witness Statement, 29 July 2021, para. 102; Mittelstaedt Witness Statement, 18 August 2021, Section V.

⁹⁰⁵ Reply, paras. 725-726.

⁹⁰⁶ Reply, paras. 727-730; **R-982**, Direct Testimony of Adolfo Callejas Ribadeneira, filed in RICO, *Chevron v. Donziger, Case*, No. 11 Civ. 0691 (LAK) (S.D.N.Y.), 9 October 2013, paras. 110-111.

⁹⁰⁷ Reply, para. 731.

The Claimants underscore that “Chevron did not secure a fraudulent military report” with regard to the Guanta judicial inspection, and that Chevron, justifiably and reasonably, took all available measures to protect its Ecuadorian counsel and team members from harm by the LAPs and Ecuador.⁹⁰⁸ Similarly, the Claimants contend that Chevron was entitled to file essential error petitions under Ecuadorian law, and indeed filed at least 26 of these petitions by 2010 to preserve its right to defend against the falsified or otherwise irregular technical data in the LAPs’ expert reports.⁹⁰⁹ The Claimants posit that the remainder of the Respondent’s criticisms are “contrivances with the benefit of hindsight”, including purported limitations of Ecuadorian law and procedure, and that none of them justifies a finding that Chevron behaved unreasonably to the degree required to break the chain of causation.⁹¹⁰

592. In the alternative, the Claimants submit that they are entitled to recover USD 134,948,000 for Lago Agrio Litigation legal fees and expenses incurred as direct damages after 22 August 2006 (*i.e.*, the order terminating the judicial inspections), on the basis that Ecuador’s failure to investigate the corrupt and fraudulent conduct of its judiciary between 2006 and 2010 forms part of its composite denial of justice.⁹¹¹

593. In the second alternative, the Claimants submit that they are entitled to recover USD 55,526,000 for the Lago Agrio Litigation legal fees and expenses incurred as direct damages after 1 March 2012 as a natural and foreseeable result of Ecuador’s breaches of the Treaty and, in particular, the Tribunal’s First and Second Interim Awards (*i.e.*, due to its failure to prevent the Lago Agrio Judgment from becoming enforceable).⁹¹²

(d) Request for Full Reparation of Incidental Damages

594. In the event that any portion of the Claimants’ Lago Agrio Litigation expenses are not considered direct damages, the Claimants submit that they are entitled to them as

⁹⁰⁸ Reply, paras. 732-735; **R-982**, Direct Testimony of Adolfo Callejas Ribadeneira, filed in RICO, *Chevron v. Donziger*, Case, No. 11 Civ. 0691 (LAK) (S.D.N.Y.), 9 October 2013, paras. 94, 98, 102.

⁹⁰⁹ Reply, para. 736; **C-34**, Ecuadorian Civil Code (*update*), 24 June 2005, Art. 258.

⁹¹⁰ See Reply, paras. 737-738.

⁹¹¹ Reply, paras. 740-741; Track II Award, paras. 4.262, 10.5.

⁹¹² Reply, paras. 742-743.

incidental damages under the principle of full reparation.⁹¹³ Indeed, the Claimants argue that the legal fees and expenses incurred in the Lago Agrio Litigation (i) served to mitigate and repair the damage that had already been suffered; and (ii) were reasonable, as they intended to achieve the legitimate purpose of pre-empting, mitigating, and remediating the losses caused by the Respondent’s anticipated and then materialized Treaty breaches.⁹¹⁴

2. The Respondent’s Position

595. The Respondent submits that the Claimants have not provided adequate proof that their expenditures in the Lago Agrio Litigation are reasonable, necessary, or related to a Treaty breach, and hence they are not recoverable and should be denied in their entirety.⁹¹⁵ Overall, the Respondent criticizes the “excess” in these expenditures and the Claimants’ efforts to “over-complicate” the proceeding, some of which are not related to or did not advance the Lago Agrio Litigation at all – noting that, where not intentional, such excesses occurred through negligent acceptance of invoices with no meaningful cost oversight.⁹¹⁶
596. The Respondent insists that the Claimants must show that their fees and costs were directly caused by its Treaty breaches, recalling that the Tribunal (i) specified that the Lago Agrio Litigation itself and the assumption of jurisdiction by the Lago Agrio Court did not amount to a Treaty breach; (ii) made clear that the Lago Agrio Complaint contained both diffuse and individual claims; (iii) refused to declare that the Claimants had “no liability or responsibility for environmental impact”; and (iv) emphasized that the conduct of the LAPs’ representatives was “not attributable to the Respondent under international law”.⁹¹⁷

⁹¹³ Reply, paras. 744, 747.

⁹¹⁴ Reply, paras. 745-747.

⁹¹⁵ Counter-Memorial, paras. 595, 610, 673; Rejoinder, paras. 901, 907. *See also* Counter-Memorial, paras. 600-602.

⁹¹⁶ Counter-Memorial, paras. 597-599; Rejoinder, paras. 900-906.

⁹¹⁷ Accordingly, the Respondent says, the Treaty breaches did not become final until the ruling of the Ecuadorian Constitutional Court on 27 June 2018, meaning that the Claimants can only recover damages incurred after that date. Counter-Memorial, para. 596; Track II Award, paras. 5.229, 9.5(iii), 9.25-9.26, 9.68-9.70, 10.4; Decision on Track IB, para. 181.

597. In the alternative, the Respondent submits that the Tribunal must “massively” discount the Claimants’ damages claim, noting that any ambiguity in the presentation of their alleged expenditures should be resolved against the Claimants.⁹¹⁸

(a) The Ecuador Legal Team

598. The Respondent posits that the Tribunal should deny recovery for all costs related to the group of Chevron’s local attorneys known as the “Ecuador Legal Team”⁹¹⁹ (USD 47,697,340.66 in fees and costs allegedly paid from 2004 to 2019), because the Claimants have failed to carry their burden of proof and their evidence provides no information regarding the cause, reasonableness, or necessity of the activities of the Team.⁹²⁰

599. The Respondent observes that the 167 documents supporting the claim for legal fees and expenses charged by the Ecuador Legal Team are requests for advance payments to cover a list of estimated expenses for the following month, labelled as “cash calls”.⁹²¹ However, it argues that these “cash calls” do not substantiate whether the expenses claimed are reasonable, necessary, or related to the Treaty breaches, noting that about a third of them contain only a cover page. In several cases a second page is available, providing a breakdown of the expense items, but without the accompanying receipts.⁹²²

600. Referring to the Tribunal’s document production orders, the Respondent contends that the “cash calls” do not disclose the relevant timekeepers or what work they did, and are impossible to correlate to the Claimants’ high-level summary of the legal fees and expenses charged by the Ecuador Legal Team.⁹²³ In the Respondent’s view, the “cash calls” suggest the existence of a retainer agreement for a lump sum that is unrelated to the

⁹¹⁸ Rejoinder, para. 908.

⁹¹⁹ The Claimants have explained that the payments related to the “Ecuador Legal Team” were sent by Chevron “to the attention of three individuals over the course of the dispute [*i.e.*, the Lago Agrio Litigation]—Adolfo Callejas, Rodrigo Perez Pallares, and Eduardo Borja—and were used to pay for fees and costs in Ecuador”. See Reply, para. 874; **C-3459**, Claimants’ Letter to Ecuador, 4 November 2020.

⁹²⁰ Rejoinder, paras. 910-914; **RE-51**, Trunko Expert Report, para. 39, **SM L-1**.

⁹²¹ Rejoinder, para. 915. See *e.g.* **C-3418**, CVX-Track III-20014634.

⁹²² The Respondent claims that Chevron regularly rejected this sort of evidence in other contexts in the Lago Agrio Litigation. Rejoinder, paras. 915-920; **C-3418**, CVX-Track III-20014638.

⁹²³ Rejoinder, paras. 921-923; Procedural Order No. 65, para. 84; **C-3459**, Claimants’ Letter to Ecuador, 4 November 2020, p. 4; Fourth Veiga Witness Statement, paras. 103-105. See also Counter-Memorial, para. 604.

work performed, notwithstanding the Claimants’ “substitute explanation” and the fact that no corresponding agreements, contracts, or letters of engagement have been produced.⁹²⁴ The Respondent adds that the “cash calls” do not include the information on invoices required under Chevron’s Guidelines, and that studying the signature blocks of the motions submitted in the Lago Agrio Litigation would not indicate which attorneys actually performed the work.⁹²⁵

601. In addition, the Respondent asserts that many of the expenses described in the “cash-calls” are unrelated to the Lago Agrio Litigation and have no link to any Treaty breaches, such as general overhead expenses and public relations, the payment of which is not standard practice under Chevron’s Guidelines.⁹²⁶ The Respondent disputes the Claimants’ claim for the “enormous expenditures” that Mr Veiga allegedly approved without requiring detailed backup, and insists that, if any kind of retainer agreement existed regarding the Ecuador Legal Team, the Claimants should have provided it.⁹²⁷ The Respondent is also critical of (i) several instances in which the Claimants seek an amount that exceeds the actual expenses amount shown on the “cash call”; (ii) the reductions in the amounts claimed after they were ordered to produce the underlying invoices; and (iii) the dramatic variation in the alleged non-hourly retainer amounts by month.⁹²⁸
602. Lastly, the Respondent contends that the Ecuador Legal Team “engaged in excessive and abusive litigation tactics to slow down the proceedings and overburden the Lago Agrio Court”, which escalated the costs of the Lago Agrio Litigation and should not be

⁹²⁴ Counter-Memorial, para. 604; Rejoinder, paras. 923-928; Memorial, Appendix 2: Summary of Fees and Costs, p. 173; Claimants’ Updated Appendix 2, p. 145; **R-3459**, Claimants’ Letter to Ecuador, 4 November 2020; **R-2129**, Claimants’ Letter to Ecuador, 4 November 2021, p. 2.

⁹²⁵ Rejoinder, paras. 930-933; **C-3230**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00016929—CVX-Track III-00016961), 2007, Sections 8.3-8.4. The Respondent further criticizes that the Claimants’ latter argument represents an inversion of the burden of proof. *See* Rejoinder, para. 934.

⁹²⁶ Rejoinder, paras. 935-940; **RE-58**, Sixth Andrade Expert Report, para. 13(d); **C-3230**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00016929—CVX-Track III-00016961), 2007, section 2.2; **C-3418**, CVX-Track III-20014634, CVX-Track III-20014669.

⁹²⁷ Rejoinder, paras. 941-948; Fourth Veiga Witness Statement, paras. 105, 133, 135; Lea Expert Report, para. 47(d).

⁹²⁸ Counter-Memorial, para. 604; Rejoinder, paras. 949-954.

compensated.⁹²⁹ The Respondent identifies the following examples of “procedural misconduct”:

- (i) excessive and duplicative evidentiary petitions and other motions, which often challenged irrelevant aspects of court orders or were unnecessarily fragmented;⁹³⁰
- (ii) multiple requests for extensions, many of which were “clearly unreasonable”;⁹³¹
- (iii) a large number of motions to correct minor clerical or spelling mistakes in court orders, as well as other “[f]rivolous” and unnecessary efforts;⁹³²
- (iv) a “fraudulent” military report secured and submitted to request the postponement of a judicial inspection, which was allegedly drafted “as a personal favour” and without military endorsement, and eventually led to another lawsuit filed by the indigenous Cofan people against Chevron;⁹³³
- (v) pursuing appeals and other vertical judicial review mechanisms in contravention of Ecuadorian law and procedure;⁹³⁴ and
- (vi) numerous attempts to annul the proceedings by challenging the LAPs’ signatures and ratification of the complaint and powers of attorney, which were excessively expensive and, in any event, not viable under Ecuadorian law.⁹³⁵

⁹²⁹ Rejoinder, paras. 955-956, 976. *See generally* Counter-Memorial, paras. 611-673.

⁹³⁰ Counter-Memorial, paras. 633-653; Rejoinder, paras. 957-961. *See* Track II Hearing, Day 3 (23 April 2015), pp. 620-622 (Guerra); **C-991**, First-Instance Appellate Decision by the Lago Agrio Appeals Court, 3 January 2012, p. 15.

⁹³¹ Counter-Memorial, paras. 612, 619; Rejoinder, paras. 962-963.

⁹³² Counter-Memorial, paras. 649-650, 654-660; Rejoinder, para. 964.

⁹³³ Counter-Memorial, paras. 612-618; Rejoinder, paras. 965-969; **R-475**, Chevron Letter to the Lago Agrio Court, Lago Agrio Record at 81426, 18 October 2005; **R-477**, Intelligence Report, Lago Agrio Record at 81410, 18 October 2005; **R-479**, Reports filed with and Letters to the Lago Agrio Court, Lago Agrio Record at 93031-37, 3-8 February 2006; **R-2051**, “Indigenous Group Sues Chevron for Defamation Over Bogus Military Report,” 14 November 2007, *available at* <https://chevroninecuador.org/news-and-multimedia/2007/1114-indigenous-group-sues-chevron-for-defamation>.

⁹³⁴ Counter-Memorial, paras. 629-631.

⁹³⁵ Counter-Memorial, paras. 661-672; Rejoinder, paras. 970-975; **RE-46**, Fourth Andrade Expert Report, paras. 95-113.

(b) *US Law Firms*

603. The Respondent generally questions the necessity of retaining eight U.S. law firms for the Claimants' representation before Ecuadorian courts in addition to the Ecuador Legal Team. The Respondent further submits that the Claimants have failed to prove that the legal fees and expenses allegedly incurred by those law firms (amounting to USD 60,563,756.70) were necessary, reasonable, or traceable to any Treaty breaches, and, accordingly, they are not compensable.⁹³⁶
604. First, the Respondent notes that the Claimants have not presented a detailed review of all of their own invoices and fees as would be necessary.⁹³⁷ Further, the Respondent contends that the "representative sample" the Claimants rely upon is neither representative nor supportive of their claims.⁹³⁸ The Respondent explains that the Claimants' invoices reveal many "dubious" time entries for work that did not advance the Lago Agrio Litigation, including with regard to (i) procedures or concepts foreign to the Ecuadorian legal system; (ii) charges for a repository to locate filings and decisions in U.S. federal court cases; (iii) the arbitral proceedings in *Chevron v. Ecuador I* (Commercial Cases); and (iv) other activities of no relevance to the issues at the heart of the Lago Agrio Litigation.⁹³⁹
605. The Respondent further argues that the Claimants cannot recover the legal fees and expenses incurred for work that is unrelated to the Treaty breaches found by the Tribunal, including on (i) a potential defamation lawsuit and other "offensive steps" against the LAPs or their counsel; and (ii) searching for potential legal actions against the prosecutor who brought the Criminal Proceedings against Chevron's employees Mr Veiga and Mr Pérez Pallares.⁹⁴⁰ The same approach would apply, the Respondent says, to the legal fees and expenses for activities (i) to pressure the Ecuadorian government; and (ii) related

⁹³⁶ Counter-Memorial, paras. 581, 584-585, 605; Rejoinder, paras. 977-979; **RE-51**, Trunko Expert Report, **SML-1**.

⁹³⁷ Rejoinder, para. 980.

⁹³⁸ Rejoinder, paras. 980-981, 1007-1009.

⁹³⁹ Rejoinder, paras. 982-991. *See also* Counter-Memorial, para. 606-607.

⁹⁴⁰ Rejoinder, paras. 993-1001; Track II Award, paras. 5.229, 5.241, 8.17(iv); **C-3287.002**, Gibson, Dunn & Crutcher LLP (Member) – 2010.xlsx; **C-3303.001**, Jones Day (Member) – 2008.xlsx; **C-3303.002**, Jones Day (Member) – 2009.xlsx; **C-3303.005**, Jones Day (Member) – 2012. *See also* Counter-Memorial, para. 607.

to other proceedings in which Chevron engaged in response to the Lago Agrio Litigation.⁹⁴¹

606. Second, the Respondent refers to “non-legal work” conducted by the Claimants’ U.S. counsel which did not represent any reasonable effort to advance Chevron’s position in the Lago Agrio Litigation and hence does not arise from the Treaty breaches.⁹⁴² This work concerns (i) various public relations and media outreach activities to raise doubts regarding Chevron’s environmental responsibility in Ecuador; and (ii) lobbying activities.⁹⁴³
607. Third, the Respondent challenges the fees sought by the Claimants with regard to translation services, noting that (i) the information provided is incomplete, as it does not describe the work performed or include the underlying invoices; (ii) some claims pertain to matters other than the Lago Agrio Litigation; and (iii) some entries raise double-billing concerns.⁹⁴⁴
608. Fourth, the Respondent asserts that the U.S. firms were not merely playing a coordinating role with respect to the Ecuador Legal Team, and that their work was sufficiently central in the Lago Agrio Litigation as to amount to the unauthorized practice of law in a foreign jurisdiction, which is not compensable.⁹⁴⁵ As stated by the Respondent’s expert, Dr Fabián Andrade, the U.S. firms seem to have regularly drafted and edited court filings, which constitutes the practice of Ecuadorian law that only attorneys enrolled with the bar in Ecuador are authorized to undertake.⁹⁴⁶ Moreover, the Respondent contends, the U.S. firms’ practice of Ecuadorian law was excessive, unnecessary and a significant part of

⁹⁴¹ Rejoinder, paras. 1002-1006.

⁹⁴² Rejoinder, para. 1010.

⁹⁴³ The Respondent further recalls that the Tribunal did not find that Ecuador’s political statements amounted to a denial of justice or were the cause of any of the Claimants’ injuries. Rejoinder, paras. 1011-1023; Track II Award, paras. 8.68-8.69. *See e.g.* **C-3303.001**, Jones Day (Member) - 2008.xlsx; **C-3303.003**, Jones Day (Member) - 2010.xlsx; **C-3287.004**, Gibson, Dunn & Crutcher LLP (Member) - 2012.xlsx; **C-3260.005**, Boies Schiller & Flexner LLP (Member) - 2014.

⁹⁴⁴ Rejoinder, paras. 1024-1030. *See, e.g.*, **C-3303.002**, Jones Day (Member) - 2009.xlsx; **C-3303.004**, Jones Day (Member) - 2011.xlsx; **C-3303.005**, Jones Day (Member) - 2012.xlsx; **C-3303.009**, Jones Day (Member) - 2016.

⁹⁴⁵ Rejoinder, paras. 1031-1032.

⁹⁴⁶ Rejoinder, paras. 1033-1036; **RE-58**, Sixth Andrade Expert Report, paras. 13(a), 73-80.

Chevron’s “abusive” practices in the Lago Agrio Litigation, in particular through the regular abuse of two procedural mechanisms: (i) “essential error petitions”, which serve only to correct technical mistakes of expert reports that are material to the outcome of the proceedings, but were instead improperly used to raise “repetitive” legal arguments, also leading to further related costs; and (ii) requests to have the LAPs’ experts render judicial confessions, even if under Ecuadorian law only the parties to a proceeding can render them.⁹⁴⁷

609. Fifth and last, the Respondent submits that the time entries corresponding to the U.S. firms do not meet the standards described by the Claimants’ experts and witnesses, since they do not enable an understanding of the work performed or its relationship to the Lago Agrio Litigation, and they often lack key supporting documentation or violate Chevron’s Guidelines.⁹⁴⁸ The Respondent mentions several examples of the U.S. firms’ time entries that, according to it, “fall far short” of the activity description required by Chevron’s Guidelines, which shows the company’s “lack of oversight”.⁹⁴⁹ The Respondent contends that this renders the corresponding fees non-compensable, and could even hide further issues such as double billing or unreasonable or unnecessary work.⁹⁵⁰

610. The Respondent highlights the following deviations from Chevron’s Guidelines:

- (i) the corresponding invoices for the temporary employees hired by Jones Day between 2008 and 2018 have not been provided, while some of their time entries

⁹⁴⁷ Counter-Memorial, paras. 145-146, 601, 622-628; Rejoinder, paras. 1037-1052; **RE-46**, Fourth Andrade Expert Report, Section 7.6.2, paras., 62-63, 65-66, 76-77, 103-105, 110-113; **RE-58**, Sixth Andrade Expert Report, para. 85. *See e.g.* **C-3287.001**, Gibson, Dunn & Crutcher LLP (Member) – 2009.xlsx; **C-3287.002**, Gibson, Dunn & Crutcher LLP (Member) – 2010.xlsx; **C-3303.003**, Jones Day (Member) - 2010.

⁹⁴⁸ Rejoinder, paras. 1053-1057; Lea Expert Report, paras. 43, 45, 47; Mittelstaedt Witness Statement, paras. 20-24; Kent Witness Statement, para. 21.

⁹⁴⁹ Rejoinder, para. 1058.

⁹⁵⁰ Rejoinder, paras. 1058-1067; **C-3230**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00016929—CVX-Track III-00016961), 2007, Section 8.3; **RE-58**, Sixth Andrade Expert Report, para. 83. *See e.g.* **C-3287.004**, Gibson, Dunn & Crutcher LLP (Member) – 2012.xlsx; **C-3303.004**, Jones Day (Member) - 2011.xlsx; **C-3303.011**, Jones Day (Member) - 2018.

show “unexplained extravagances” suggesting that Chevron “abandoned effective oversight wholesale”;⁹⁵¹

- (ii) the U.S. firms’ travel expenses demonstrate non-compensable excessive expenses, as many entries fail to provide sufficient information or are incompatible with any reasonable effort to contain travel costs;⁹⁵²
- (iii) the Claimants seek to recover various types of overhead costs of the U.S. law firms that are not reimbursable under Chevron’s Guidelines;⁹⁵³
- (iv) many entries show services billed at higher rates despite being performable at a lower level of seniority and billing rate;⁹⁵⁴
- (v) many entries did not follow the prescribed format, which required each activity to be separated and time to be stated in hourly increments;⁹⁵⁵ and
- (vi) other deviations from Chevron’s Guidelines, such as spending an excessive amount of time on certain activities, fees and expenses being claimed for activities performed by non-timekeepers or for recruitment and training, and legal research time entries not providing the required information.⁹⁵⁶

⁹⁵¹ Rejoinder, paras. 1068-1075; **C-3240**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00017738—CVX-Track III-00017800), 2017, Section 8.3. *See e.g.* **C-3303.001**, Jones Day (Member) - 2008.xlsx; **C-3303.002**, Jones Day (Member) - 2009.xlsx; **C-3303.010**, Jones Day (Member) - 2017.

⁹⁵² Rejoinder, paras. 1076-1080; **C-3233**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00017065—CVX-Track III-00017119), 2010, Section 9.1. *See e.g.* **C-3287.004**, Gibson, Dunn & Crutcher LLP (Member) – 2012; **C-3287.005**, Gibson, Dunn & Crutcher LLP (Member) – 2013; **C-3303.003**, Jones Day (Member) - 2010.xlsx; **C-3303.006**, Jones Day (Member) - 2013.

⁹⁵³ Rejoinder, paras. 1081-1083; **C-3240**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00017738—CVX-Track III-00017800), 2017, Sections 2.2, 8.4; **RE-51**, Trunko Expert Report, **SM L-6**. *See e.g.* **C-3303.002**, Jones Day (Member) - 2009.xlsx; **C-3303.003**, Jones Day (Member) - 2010.

⁹⁵⁴ Rejoinder, paras. 1084-1088; **C-3233**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00017065—CVX-Track III-00017119), 2010, Section 2.2; Mittelstaedt Witness Statement, para. 23; Kent Witness Statement, para. 23. *See e.g.* **C-3303.002**, Jones Day (Member) - 2009.

⁹⁵⁵ Rejoinder, paras. 1091-1093; **C-3233**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00017065—CVX-Track III-00017119), 2010, Section 8.7. *See e.g.* **C-3303.002**, Jones Day (Member) - 2009.

⁹⁵⁶ Rejoinder, paras. 1089-1090, 1094-1099. *See e.g.* **C-3287.004**, Gibson, Dunn & Crutcher LLP (Member) – 2012; **C-3303.003**, Jones Day (Member) - 2010.xlsx; **C-3303.005**, Jones Day (Member) - 2012.

(c) *Additional Ecuadorian and Foreign Firms*

611. The Respondent submits that the legal fees and expenses of the additional firms based in Ecuador, Chile, and the British Virgin Islands (amounting to USD 6,148,866.74) are not recoverable, since the invoices the Claimants provided fail to meet the burden of proof, and the underlying activities are otherwise frequently unrelated to the Lago Agrio Litigation and not necessary, reasonable responses to the Treaty breaches.⁹⁵⁷
612. First, the Respondent observes that many of the documents produced by the Claimants to support their claim, such as *proformas*, do not meet the necessary requirements to establish an expense in Ecuador.⁹⁵⁸ Many of the invoices produced, the Respondent adds, do not show how the charges are related to the Lago Agrio Litigation, since they are incomplete and often suggest the existence of more detailed documents which have not been provided, such as retainer agreements.⁹⁵⁹
613. Second, the Respondent warns that the Claimants seek to recover a variety of fees and expenses for activities that are entirely unrelated to the Lago Agrio Litigation, including work on (i) the criminal proceedings against Mr Pérez, Mr Veiga, and Dr Calleja, which were not related to any Treaty breaches; (ii) other cases and matters; and (iii) intellectual property matters by Dr Alfredo Corral.⁹⁶⁰
614. Third, the Respondent states that Chevron's additional Ecuadorian counsel engaged in a significant amount of non-legal work, especially regarding public relations.⁹⁶¹
615. Fourth, the Respondent reiterates that Chevron's additional law firms resorted to "unreasonable, vexatious, and otherwise excessive legal tactics", as these firms (i) were

⁹⁵⁷ Rejoinder, paras. 1100-1102, 1134; **RE-51**, Trunko Expert Report, **SM L-1**.

⁹⁵⁸ Rejoinder, paras. 1103-1105; **RE-58**, Sixth Andrade Expert Report, Section 8.1.2, paras. 13, 63-72; **C-3243**, CVX-Track III-20014998; **C-3245**, CVX-Track III-20008955.

⁹⁵⁹ Rejoinder, paras. 1106-1111; **RE-58**, Sixth Andrade Expert Report, paras. 13(a), 72; **C-3396**, CVX-Track III-20008863; CVX-Track III-20008891; **C-3401**, CVX-Track III-20018189.

⁹⁶⁰ Rejoinder, paras. 1112-1120; **RE-58**, Sixth Andrade Expert Report, para. 81(b); Track II Award, paras. 4.339, 5.241; **C-3245**, CVX-Track III-20015462; **C-3401**, CVX-Track III-20010440, CVX-Track III-20010486, CVX-Track III-20010587. *See also* Counter-Memorial, para. 607.

⁹⁶¹ Rejoinder, paras. 1121-1123; **C-3245**, CVX-Track III-20015498.

sometimes hired well before their purported work would reasonably have begun; and
(ii) engaged in activities prohibited by Ecuadorian law.⁹⁶²

616. Fifth and last, the Respondent argues that many of the invoices provided by the Claimants lack basic information or contain ambiguous descriptions, showing that Chevron's Guidelines were not enforced as required by the relevant retainer agreements.⁹⁶³

(d) Experts and Vendors

617. The Respondent contends that the Claimants have failed to meet their burden of proof that they are entitled to USD 47,115,197.79 in costs and expenses allegedly paid to 31 experts and vendors in connection with the Lago Agrio Litigation.⁹⁶⁴

618. On the one hand, the Respondent posits that the vendor invoices produced for this category provide little or no information on the work that they performed, which is in direct contravention of Chevron's Guidelines – and often the underlying engagement letters – and makes it impossible to determine whether such work was reasonable, necessary, or caused by a Treaty breach.⁹⁶⁵

619. On the other hand, the Respondent states that the invoices of the experts and vendors also show examples of fees requested for non-compensable categories, such as travel and overhead costs, as well as unrecoverable fees paid towards public relations consulting.⁹⁶⁶

⁹⁶² Rejoinder, paras. 1124-1129; Mittelstaedt Witness Statement, para. 33; Fourth Veiga Witness Statement, para. 115, fn 126; **RE-58**, Sixth Andrade Expert Report, Section 8.2.1, para. 85(b).

⁹⁶³ Rejoinder, paras. 1130-1133; **R-2070**, Retainer Agreement of Dr. Ricardo Vaca Andrade with Claimants, CVX-Track III-20018404 (14 October 2011); **C-3245**, CVX-Track III-20010280; **C-3396**, CVX-Track III-20008894.

⁹⁶⁴ Rejoinder, para. 1135. See **RE-51**, Trunko Expert Report, **SM L-3**.

⁹⁶⁵ Rejoinder, paras. 1136-1145; **C-3231**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00016962—CVX-Track III-00016999), 2008, Section 8.4.1; **C-3232**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00017000—CVX-Track III-00017043), 2009, Sections 8.4.2, 8.4.4; **C-3354**, CVX-Track III-20000253; **C-3367**, CVX-Track III-20002289, CVX-Track III-20002558. See also Counter-Memorial, paras. 608-609.

⁹⁶⁶ Rejoinder, paras. 1146-1149; **C-3387**, CVX-Track III-20005339.

3. The Tribunal's Analysis

(a) Introduction

620. The Claimants' damages claim in Track III includes three different categories concerning separate yet related chains of events taking place in parallel in Ecuador. Under the present heading, the Tribunal will address only the Claimants' claim for reimbursement of the legal fees and expenses disbursed in connection with the Lago Agrio Litigation. The Claimants' damages claim for the reimbursement of the legal fees and expenses disbursed in connection with the Ecuador Enforcement Proceedings is addressed separately in Section VIII.B below, while the Claimants' claim concerning the embargo of Chevron's trademarks in Ecuador will be addressed separately in Section IX.B below.
621. The Lago Agrio Litigation was formally initiated with the LAPs' filing of the Lago Agrio Complaint against Chevron on 7 May 2003.⁹⁶⁷ Following years of proceedings before various courts within the Ecuadorian judicial system, the Lago Agrio Litigation concluded with the judgment of the Constitutional Court on 27 June 2018.⁹⁶⁸ During this 15-year period, the proceedings generated a court file of over 237,000 pages, including dozens of legal submissions and expert reports, multiple hearings, judicial inspections, and other procedural matters.⁹⁶⁹
622. Before addressing the main factual aspects of the Lago Agrio Litigation, the Tribunal must recall its earlier finding that any harm arising before the issuance of the Lago Agrio Judgment on 14 February 2011 cannot constitute loss arising from the Respondent's internationally wrongful acts, and is hence excluded from the scope of the compensable injury in this case.⁹⁷⁰ It is thus unnecessary for the Tribunal to recount here the trial stage of the Lago Agrio Litigation (2003-2011), which culminated in the Lago Agrio Judgment.⁹⁷¹

⁹⁶⁷ **C-71**, *Lawsuit for Alleged Damages filed before the President of the Superior Court of "Nueva Loja," in Lago Agrio, Province of Sucumbios; on May 7, 2003, by 48 Inhabitants of the Orellana and the Sucumbios Province*, Superior Court of Nueva Loja, Complaint, 7 May 2003.

⁹⁶⁸ See **C-2551**, Constitutional Court Case No. 0105-14-EP, 27 June 2018; para. 636 below.

⁹⁶⁹ See Track II Award, para. 5.11.

⁹⁷⁰ See paras. 361, 364, 371 above; see also paras. 644-645 below.

⁹⁷¹ See paras. 644-645 below.

623. As previously explained, the Lago Agrio Judgment was issued on 14 February 2011 by the Lago Agrio Court.⁹⁷² The Judgment partially upheld the LAPs’ complaint, ordering Chevron to pay the costs of various reparation measures including (i) USD 600,000,000 for groundwater remediation; (ii) USD 5,396,160,000 for soil remediation; (iii) USD 200,000,000 for the recovery of flora, fauna and aquatic life; (iv) USD 150,000,000 for drinking water remediation; (v) USD 1,400,000,000 for delivery of healthcare; (vi) USD 100,000,000 for cultural damage to indigenous people; and (vii) USD 800,000,000 for related cancer cases.⁹⁷³ In addition, the Lago Agrio Court awarded punitive damages equal to 100% of this sum (*i.e.*, an additional USD 8,646,160,000) which “may be replaced, at the defendant’s option, by a public apology in name of Chevron Corp., offered to those affected by [TexPet]’s operations in Ecuador”, to be “published at the latest within 15 days”.⁹⁷⁴ Finally, the Lago Agrio Judgment ordered Chevron to pay 10% of the awarded amount (*i.e.*, USD 864 million or, potentially, USD 1.82 billion) to the ADF as additional reparation for damages.⁹⁷⁵
624. On 17 February 2011, Chevron filed a motion arguing that the Lago Agrio Judgment lacked sufficient and precise reasoning and requesting the expansion and clarification of several issues.⁹⁷⁶ On 4 March 2011, the Lago Agrio Court issued a Clarification Order, which expanded and clarified the Lago Agrio Judgment to a limited extent without altering the compensation order against Chevron.⁹⁷⁷

⁹⁷² See para. 87 above.

⁹⁷³ **C-931**, First Instance Judgment by the Lago Agrio Court, *Aguinda v. Chevron*, 14 February 14, 2011, at 8:37 a.m., pp. 179-184.

⁹⁷⁴ The Court considered that this public apology “if fulfilled, shall be considered a symbolic measure of moral redress and of recognition of the effects of its misconduct, as well as a guarantee of no repetition”. **C-931**, First Instance Judgment by the Lago Agrio Court, *Aguinda v. Chevron*, 14 February 14, 2011, at 8:37 a.m., pp. 184-186.

⁹⁷⁵ The Judgment ordered the establishment of a trust with the ADF as beneficiary to hold the sums awarded by the Judgment. The Court also awarded costs in favour of the LAPs. **C-931**, First Instance Judgment by the Lago Agrio Court, *Aguinda v. Chevron*, 14 February 2011, at 8:37 a.m., pp. 186-188.

⁹⁷⁶ **C-970**, Chevron’s Motion to clarify and amplify, 17 February 2011 at 8:00 a.m.

⁹⁷⁷ **C-1367**, Lago Agrio Clarification Order of the Judgment, 4 March 2011 at 3:10 p.m. See also **R-1193**, Lago Agrio Clarification Order of the Judgment (Revised English translation of C-1367, p. 4).

625. Thereafter, the proceedings within the Lago Agrio Litigation following the issuance of the Lago Agrio Judgment and the Clarification Order involved three distinct motions at three levels of the Ecuadorian judiciary.
626. First, on 9 March 2011, Chevron filed a 198-page appeal against the Lago Agrio Judgment and the Clarification Order (the “**First Instance Appeal**”) before the Provincial Court of Justice of Sucumbíos (the “**Appellate Court**”). Specifically, Chevron requested that the Lago Agrio Judgment be revoked and declared null and void, seeking as its principal petition the “[n]ullity of the entire proceeding” on various grounds related to “errors” that purportedly impaired the validity of the proceeding.⁹⁷⁸ As subsidiary petitions, Chevron requested, alternatively, (i) a partial nullification of at least those proceedings subsequent to 26 August 2010; (ii) that the court recuse itself and abstain from deciding on the merits; (iii) that the Lago Agrio Judgment be revoked and that the complaint be dismissed on the grounds that the Lago Agrio Plaintiffs lacked standing; and/or (iv) that the Lago Agrio Judgment be revoked and that the lawsuit be dismissed on the grounds of lack of evidence.⁹⁷⁹ The submission was signed by Dr Adolfo Callejas Ribadeneira as Legal Counsel of Chevron, and also authorized Mr Enrique Carvajal Salas, Mr Patricio Campuzano Merino, Mr Alberto Racines Enríquez, and Mr Diego Larrea Alarcón to intervene in the proceedings on behalf of the company.⁹⁸⁰
627. Aside from the First Instance Appeal, the proceedings before the Appellate Court included, *inter alia*, the following submissions and procedural events:
- (i) motions whereby Chevron restated its main arguments and requests for relief, and proffered additional evidence (including various expert reports) of the LAPs’ alleged fraud and ‘ghostwriting’ of the Lago Agrio Judgment,⁹⁸¹

⁹⁷⁸ C-1178, Chevron’s Appeal of the Lago Agrio Judgment, 9 March 2011 at 4:05 p.m., pp. 186-187.

⁹⁷⁹ See C-1178, Chevron’s Appeal of the Lago Agrio Judgment, 9 March 2011 at 4:05 p.m., pp. 188-191.

⁹⁸⁰ C-1178, Chevron’s Appeal of the Lago Agrio Judgment, 9 March 2011 at 4:05 p.m., pp. 191-192.

⁹⁸¹ C-1155, Chevron’s Motion, 19 September 2011 at 1:15 p.m.; C-1412, Chevron’s Appellate *Alegato*, submitted to the Substitute Judges of the Provincial Court of Sucumbios, 5 May 2011 at 10:50 a.m.

- (ii) a partial appeal filed by the LAPs against the Lago Agrio Judgment, whereby the LAPs sought additional damages that had not been granted by the first instance ruling;⁹⁸²
- (iii) attempts by Chevron to challenge the designation of the appellate panel and to recuse one of the judges based on an alleged conflict of interest;⁹⁸³ and
- (iv) further written submissions from both Chevron and the LAPs on Chevron's Appeal and fraud allegations.⁹⁸⁴

628. On 3 January 2012, the Appellate Court denied Chevron's First Instance Appeal almost in its entirety and ratified the Lago Agrio Judgment.⁹⁸⁵ On 13 January 2012, and further to a request of the LAPs for the clarification and expansion of the ruling, the Appellate Court issued an order clarifying, *inter alia*, that Chevron's "accusations with respect to irregularities in the preparation of the trial court judgment . . . ha[d] been considered, but no reliable evidence of any crime ha[d] been found".⁹⁸⁶

⁹⁸² Specifically, the LAPs' appeal was based on the following categories of damages: "(1) the economic losses incurred by the plaintiffs; (2) Damage involving the ancestral lands of the indigenous nationalities of the area; (3) damage generated by Texaco's spraying of crude oil on the roads, as well as damage to other structures and lands" (Claimants' translation). **C-1231**, Motion to the Lago Agrio Court, 5 April 2011 at 8:40 a.m.; **C-2640**, Lago Agrio Plaintiffs' Motion, 17 February 2011 at 5:05 p.m..

⁹⁸³ **C-1299**, Chevron's Nullity Motion Addressing the Appellate Panel, 30 March 2011 at 5:31 p.m.; **C-1302**, Chevron's Motion for Recusal against Judge Orellana, 27 September 2011, at 4:40 p.m.; **C-1303**, Chevron's Motion for Recusal against Judge Orellana, 13 April 2011 at 5:12 p.m. The recused judge had apparently acted as counsel for another individual in a different proceeding against Chevron. While the recusal was dismissed a few months later, the judge had previously resigned upon acceptance of another public position. *See* **C-1304**, Decision Regarding the Recusal of Substitute Judge Orellana, 9 November 2011 at 4:00 p.m.

⁹⁸⁴ *See, e.g.*, **C-2642**, Lago Agrio Plaintiffs' Motion, 8 July 2011; **C-2643**, Chevron's Motion to the Lago Agrio Appellate Court, 26 July 2011 at 5:48 p.m.; **C-2898**, Lago Agrio Plaintiffs' Motion to the Lago Agrio Appellate Court, 14 November 2011 at 11:40 a.m.; **C-2911**, Lago Agrio Plaintiffs' Motion to the Lago Agrio Appellate Court, 6 December 2011 at 4:40 p.m., Record at 14,830 (appellate); **C-2912**, Lago Agrio Plaintiffs' Motion to the Lago Agrio Appellate Court, 6 December 2011 at 4:42 p.m., Record at 14,831 (appellate); **C-2913**, Chevron's Motion to the Appellate Court, 6 December 2011 at 4:47 p.m., Record at 17,367; **R-1285**, Lago Agrio Court Record at 18,069-86, Chevron's Letter to the Appellate Court, 21 December 2011 at 4:28 p.m.

⁹⁸⁵ **C-991**, First-Instance Appellate Decision by the Lago Agrio Appeals Court, 3 January 2012 at 4:43 p.m., p. 16.

⁹⁸⁶ The Appellate Court further noted that "it stay[ed] out of these accusations, preserving the parties' rights to present formal complaint to the Ecuadorian criminal authorities or to continue the course of the actions that have been filed in the United States of America". **R-299**, Lago Agrio Appeals Court, Appellate Decision Clarifying the Appellate Judgment, 13 January 2012 at 8:57 a.m., pp. 3-4. *See also* **C-1066**, Plaintiff's Request for Clarification, Provincial Court of Justice of Sucumbios (Lago Agrio appellate proceedings), 6 January 2012; **R-1289**, Chevron's Response to the Plaintiffs' Request for Clarification of the Appellate Court Decision, 12 January 2012.

629. Shortly thereafter, on 20 January 2012, Chevron filed a 175-page cassation appeal against the judgment and clarification and expansion order of the Appellate Court (the “**Cassation Appeal**”).⁹⁸⁷ In the Cassation Appeal, Chevron requested that the nullity of the proceeding be declared and, alternatively, that the Lago Agrio Judgment be quashed and that the Lago Agrio Complaint be dismissed “as having no basis in the facts or in law”.⁹⁸⁸ In addition, Chevron requested the suspension of the enforcement of the Lago Agrio Judgment pending resolution of the present Arbitration.⁹⁸⁹ The submission was signed by Dr Adolfo Callejas Ribadeneira as Legal Counsel for Chevron, as well as by Dr Santiago Andrade Ubidia, Dr Juan Carlos Andrade Dávila, and Dr José Meythaler Baquero as co-defence counsel.⁹⁹⁰
630. Around the same time of the filing of the Cassation Appeal, the LAPs requested that Chevron be required to post a bond to suspend the enforcement of the Lago Agrio Judgment, failing which the Judgment would become “fully enforceable”.⁹⁹¹ Chevron opposed the LAPs’ request, insisting that the Appellate Court should abide by this Tribunal’s First Interim Award.⁹⁹² Eventually, on 17 February 2012, the Appellate Court issued an order whereby it (i) confirmed that the Cassation Appeal fulfilled the relevant formal requirements; and (ii) refused to stay the recognition and enforcement of the Lago

⁹⁸⁷ **C-1068**, Chevron’s Cassation Appeal, Provincial Court of Justice of Sucumbíos (Lago Agrio appellate proceedings), 20 January 2012 at 8:50 a.m.

⁹⁸⁸ Chevron also requested that the LAPs be ordered to pay court costs, including Chevron’s attorneys’ fees. **C-1068**, Chevron’s Cassation Appeal, Provincial Court of Justice of Sucumbíos (Lago Agrio appellate proceedings), 20 January 2012 at 8:50 a.m., pp. 159-160.

⁹⁸⁹ **C-1068**, Chevron’s Cassation Appeal, Provincial Court of Justice of Sucumbíos (Lago Agrio appellate proceedings), 20 January 2012 at 8:50 a.m., pp. 160-162.

⁹⁹⁰ **C-1068**, Chevron’s Cassation Appeal, Provincial Court of Justice of Sucumbíos (Lago Agrio appellate proceedings), 20 January 2012 at 8:50 a.m., p. 163.

⁹⁹¹ **C-1037**, Pablo Fajardo’s Submission to Provincial Court of Justice of Sucumbíos (Lago Agrio appellate proceeding), 17 January 2012, at 9:00 a.m.; **C-1038**, Pablo Fajardo’s Submission to Provincial Court of Justice of Sucumbíos (Lago Agrio appellate proceeding), 25 January 2012, at 4:22 p.m., p. 5.

⁹⁹² Mittelstaedt Witness Statement, **RM-3**, Provincial Court of Justice of Sucumbios, Case No. 106-2011-S-CPJS, Chevron’s Motion, 3 February 2012 at 4:39 p.m. In its First Interim Award, the Tribunal, *inter alia*, ordered the Respondent “to take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against the First Claimant in the Lago Agrio Case”. *See* para. 403 above.

Agrio Judgment, noting, *inter alia*, that it did “not find it fitting to impose the [First Interim Award] above prevailing human rights obligations”.⁹⁹³

631. In addition, the Cassation Appeal proceedings included, *inter alia*, the following submissions:

- (i) motions filed by Chevron providing further evidence of the LAPs’ alleged fraud, including additional expert reports and affidavits, as well as submissions of both parties on these evidence and allegations;⁹⁹⁴
- (ii) submissions of Ecuador’s Attorney General regarding the ongoing developments in the present Arbitration; and⁹⁹⁵
- (iii) multiple additional written submissions from both Chevron and the LAPs on the legal merits of the Cassation Appeal.⁹⁹⁶

632. As already noted, on 1 March 2012 the Lago Agrio Court certified the Lago Agrio Judgment as enforceable, and ordered its execution on 15 October 2012. The full description of the Ecuador Enforcement Proceedings is set out in Section VIII.B below.

633. On 12 November 2013, the National Court of Justice of Ecuador (the “**Cassation Court**”) partially quashed the Judgment of the Appellate Court (the “**Cassation Judgment**”), nullifying the punitive damages imposed for Chevron’s omission to apologise publicly

⁹⁹³ First Paulsson Expert Report; **Paulsson-16**, Clarification Order in Proceedings No 2011-0106 of the Sole Division of the Sucumbíos Provincial Court in the matter of *Aguinda, et al v Chevron Corporation*, 17 February 2012, p. 3 (Claimants’ translation). The Cassation Appeal was admitted for consideration on 22 November 2012. See **C-2644**, Order issued by the National Court of Justice, 22 November 2012 at 10:30 a.m.

⁹⁹⁴ See **C-2435**, Cassation *Alegato* on fraud, 3 May 2013 at 2:30 p.m.; **C-2956**, Chevron’s Cassation *Alegato*, 30 May 2013 at 1:39 p.m. Among other things, the LAPs argued that the discovery proceedings pursued by Chevron in the United States violated their human rights, which led to further submissions on this matter. **C-2436**, Cassation *Alegato* on fraud, 3 September 2013 at 9:22 a.m. (referring to an additional submission by the LAPs of 29 May 2013). See also **C-2957**, Order issued by the National Court, 31 May 2013 at 5:30 p.m.

⁹⁹⁵ See **C-2953**, Attorney General’s Motion, 6 February 2013 at 11:32 a.m.; **C-2955**, Attorney General’s Motion, 27 February 2013 at 8:14 a.m.

⁹⁹⁶ See **C-2121/C-2137**, Lago Agrio Plaintiffs’ Cassation *Alegato*, 29 November 2012 (the LAPs’ initial submission opposing the Cassation Appeal, which was 227 pages long); **C-2306**, Chevron’s Cassation *Alegato*, 3 May 2013; **C-2410**, Chevron Cassation *Alegato* regarding due process violations, 24 May 2013; **C-2307**, Chevron Cassation *Alegato*, 12 September 2013 (referring to an additional submission by the LAPs of 6 August 2013). See also **C-2958**, Order issued by the National Court, 27 June 2013 at 9:30 a.m.; **C-2959**, Order issued by the National Court, 12 August 2013 at 8:50 a.m.; **C-2960**, Order issued by the National Court, 20 September 2013 at 11:30 a.m.

(as required by the Lago Agrio Judgment) and hence reducing the damages awarded to USD 8,646,160,000, plus 10% of this amount as additional reparation in favour of the ADF.⁹⁹⁷ No litigation costs were awarded with respect to the Cassation Appeal.

634. On 23 December 2013, a few weeks after the issuance of the Cassation Judgment, Chevron filed an extraordinary action for protection before the Constitutional Court of Ecuador (the “**Constitutional Action**”).⁹⁹⁸ In its petition, Chevron requested that the Constitutional Court (i) declare that the Cassation Judgment, to the extent that it had confirmed the rulings of the Lago Agrio Court and the Appellate Court, had violated various constitutional rights; and (ii) order “full redress” of Chevron’s rights, including that the Cassation Judgment be left without effect and that the proceedings go back to the state corresponding to the earliest violation of Chevron’s constitutional rights.⁹⁹⁹ Again, the submission was signed by Dr Adolfo Callejas Ribadeneira, as Legal Counsel of Chevron, and by Dr Santiago Andrade Ubidia, who was also authorized to make filings in these proceedings.¹⁰⁰⁰
635. The Constitutional Court admitted Chevron’s action as compliant with the relevant formal requirements on 20 March 2014.¹⁰⁰¹ The proceedings before the Constitutional Court included, *inter alia*, the following submissions and procedural events:

- (i) submissions by the LAPs and *amici curiae*,¹⁰⁰²

⁹⁹⁷ **C-1975**, Ecuador National Court of Justice, Cassation Judgment, 12 November 2013 at 3:00 p.m, p. 222. *See generally* Track II Award, paras. 5.172-5.179.

⁹⁹⁸ The petition was accompanied by an Annex on the alleged “fraud” of the LAPs. **C-2409**, Chevron’s Extraordinary Action for Protection, 23 December 2013.

⁹⁹⁹ **C-2409**, Chevron’s Extraordinary Action for Protection, 23 December 2013, p. 108. The constitutional rights invoked by Chevron included, *inter alia*, the right to due process, the right to defence, the right to equality and non-discrimination, and the right to a sanction that is proportional to the violation. **C-2409**, Chevron’s Extraordinary Action for Protection, 23 December 2013, pp. 6-7.

¹⁰⁰⁰ **C-2409**, Chevron’s Extraordinary Action for Protection, 23 December 2013, pp. 1, 109.

¹⁰⁰¹ **C-2647**, Order by the Constitutional Court, 20 March 2014.

¹⁰⁰² *See* **C-2551**, Constitutional Court, Case No. 0105-14-EP, 27 June 2018, pp. 30-41; **C-2654**, *Amicus Curiae* filed with the Constitutional Court, 15 November 2017 at 12:59 p.m.

- (ii) submissions by Ecuador’s Attorney General with respect to the ongoing developments in the present Arbitration;¹⁰⁰³
- (iii) two public hearings;¹⁰⁰⁴ and
- (iv) requests from Chevron that the judges of the Constitutional Court temporarily refrain from hearing the case due to an alleged conflict of interest.¹⁰⁰⁵

636. On 27 June 2018, the Constitutional Court of Ecuador rejected Chevron’s extraordinary action for protection, declaring that there had been no violation of any constitutional rights.¹⁰⁰⁶ This ruling brought an end to the Lago Agrio Litigation since, following its issuance, Chevron effectively had “no judicial remedy under the Ecuadorian legal system against the enforcement and execution of the Lago Agrio Judgment under Ecuadorian law”.¹⁰⁰⁷

637. Before beginning its analysis of the Claimants’ damages claim in respect of the Lago Agrio Litigation, the Tribunal recalls the Claimants’ position that all of their claimed legal fees and expenses incurred in connection with these proceedings constitute direct damages and are recoverable in the alternative as incidental damages.¹⁰⁰⁸ As explained in

¹⁰⁰³ **C-2649**, Motion by Ecuador’s Attorney General, 15 July 2015; **C-2650**, Motion by Ecuador’s Attorney General, 21 July 2015. Representatives of Ecuador’s Attorney General’s Office also participated in the Track III Hearing in this Arbitration.

¹⁰⁰⁴ See **C-2648**, Certificate from the Constitutional Court Regarding Hearing, 16 July 2015; **C-2551**, Constitutional Court, Case No. 0105-14-EP, 27 June 2018, pp. 35, 43. A second hearing (to be held in a plenary session) was scheduled “given the context of the case and the length of time that ha[d] passed between submission of the draft [judgment] and [then]”. See **C-2652**, Order by the Constitutional Court, 25 July 2017 (Claimants’ translation). See also **C-2651**, Clerk Certification, 2 October 2015; Mittelstaedt Witness Statement, paras. 61-62.

¹⁰⁰⁵ See **C-2653**, Chevron Motion filed with the Constitutional Court, 22 May 2018; **C-2655**, Chevron Motion filed with the Constitutional Court, 5 June 2018. Chevron’s request was based on the fact that the judges were then being evaluated by the Transitional Citizen Participation and Public Oversight Council, an organ presided and comprised by individuals who, allegedly, had previously acted against Chevron and/or supported the LAPs. Chevron’s motion was later rejected. The judges of the Constitutional Court were eventually removed a few weeks after the issuance of the decision on the Constitutional Action. See Mittelstaedt Witness Statement, **RM-4**, CPCCS-T ratifies removal of Constitutional Court Judges and resolves to start a Selection Process, Transitional Citizen Participation and Public Oversight Council Press Release No. 193, 31 August 2018.

¹⁰⁰⁶ **C-2551**, Constitutional Court, Case No. 0105-14-EP, 27 June 2018, p. 148. See generally Track II Award, paras. 5.180-5.224.

¹⁰⁰⁷ Track II Award, para. 5.216. The reasons why the Tribunal does not consider an action under the Collusion Prosecution Act (CPA) to be a reasonable recourse against the Lago Agrio Judgment are set forth in Section VII.D.3 above.

¹⁰⁰⁸ Reply, para. 699.

paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages, *not* as *direct* damages. The costs incurred by the Claimants on account of any other form of harm or geared towards any other goal are *not* compensable in these proceedings.¹⁰⁰⁹

638. To the extent that they arose within the main chain of events of the Treaty breaches, the Tribunal acknowledges that the legal fees and expenses incurred by the Claimants in connection with the Lago Agrio Litigation are more closely connected to the source of the Claimants' injuries than the Claimants' other damages categories addressed in this Award. However, this does not affect the proper characterization of these costs as incidental damages, as opposed to direct damages. In particular, the legal fees and expenses claimed under the present heading did not flow naturally from the recognition and enforcement of the uncorrected Lago Agrio Judgment (whether by attachment, arrest, interim injunction, or execution) without any intervening action from the Claimants.¹⁰¹⁰ Rather, these alleged losses, as particularised by the Claimants, were incurred in reaction to the injury arising from the Respondent's internationally wrongful acts with direct intervening action from the Claimants, who decided to exercise their right to challenge the Lago Agrio Judgment before the Ecuadorian courts and retained legal representation – as well as other expertise and services – for that purpose.¹⁰¹¹ As such, the Tribunal reiterates that the legal fees and expenses claimed under the present heading are only compensable as incidental damages under international law.

¹⁰⁰⁹ See para. 317 above.

¹⁰¹⁰ See paras. 321-322 above.

¹⁰¹¹ See para. 328 above. "Chevron was forced to continue its legal battle in Ecuador through three different appeal levels all the way to the National Court of Justice and then to the Constitutional Court". Fourth Veiga Witness Statement, para. 54 Mr Veiga declares that he "oversaw the day-to-day defense of the Lago Agrio Litigation" from 2003 to 2009, and later became a member of the committee "which supervised, and made the key decisions relating to this dispute". Fourth Veiga Witness Statement, para. 9. See also Third Veiga Witness Statement, para. 12; Track III Hearing Transcript, Day 1 (18 August 2022), pp. 63-64 (Bishop).

639. Accordingly, whether the Claimants were “forced” to pursue the Lago Agrio Litigation after the issuance of the Lago Agrio Judgment is a separate question impacting only upon the questions of causation and reasonableness for the assessment of incidental damages.
640. With this preamble, following the methodology laid out in Section VII.G.5 for the assessment of incidental damages in this case, the Tribunal finds that the Claimants’ claim for compensation in respect of the Lago Agrio Litigation must be granted for the reasons and to the extent set out below.

(b) First Step: Analysis of Incidental Damages “Category”

641. As a first step of its analysis, the Tribunal must determine whether the Lago Agrio Litigation category of damages meets the requirements of causation and reasonableness for the compensation of incidental damages under international law.
642. First, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555 above, the Claimants’ efforts must have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.
643. Second, as noted in paragraph 556 above, incidental damages are subject to an additional requirement of reasonableness: to warrant compensation, legal fees and expenses must have been *reasonably* incurred to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. At this level of analysis, the Tribunal’s determination concerns the reasonableness of the mitigation *measures*

undertaken by the Claimants, not of the *amounts* they spent, which will be examined in a subsequent step of the analysis.¹⁰¹²

644. As a preliminary matter, the Tribunal notes that the costs claimed by the Claimants under this category were incurred starting in 2004, *i.e.*, shortly after the initiation of the Lago Agrio Litigation.¹⁰¹³ However, as explained earlier, the Tribunal has already determined that incidental damages are only compensable in principle in this Arbitration if they were incurred starting as of 14 February 2011, the date of issuance of the Lago Agrio Judgment. This was the date upon which the risks connected to the enforcement of the Judgment became foreseeable and was thus also the date as of which the Claimants' mitigation efforts could be said to respond to the injury arising from the recognition and enforcement of that Judgment – *i.e.*, the injury flowing from the Respondent's internationally wrongful acts. Whatever harm the Claimants may have suffered by undertaking work before 14 February 2011 to engage in the Lago Agrio Litigation and oppose the Lago Agrio Complaint was not caused by the Respondent's Treaty breaches and therefore falls outside the scope of the compensable injury in these proceedings.¹⁰¹⁴
645. Accordingly, the Tribunal clarifies that its analysis of this damages category will be limited to the costs incurred by the Claimants in connection with the Lago Agrio Litigation *after* the issuance of the Lago Agrio Judgment. It is unnecessary for the Tribunal to address the trial stage of the Lago Agrio Litigation.
646. The Lago Agrio Litigation following the issuance of the Lago Agrio Judgment comprised proceedings before three different levels of the Ecuadorian judiciary. Each is addressed consecutively in the paragraphs that follow.
647. First, the Tribunal refers to the First Instance Appeal. By filing this appeal, Chevron sought the nullity of the Lago Agrio Judgment and of the entire proceedings leading to it as its main request for relief.¹⁰¹⁵ Chevron's subsidiary petitions likewise sought a partial

¹⁰¹² See para. 556 above.

¹⁰¹³ See para. 621 above; Reply, paras. 699-700.

¹⁰¹⁴ See paras. 362, 368, 373, 397 above.

¹⁰¹⁵ See para. 626 above; **C-1178**, Chevron's Appeal of the Lago Agrio Judgment, 9 March 2011 at 4:05 p.m., pp. 186-188.

nullification of the proceedings from a moment prior to the issuance of the Judgment, or that the Lago Agrio Court dismiss or abstain from deciding the Lago Agrio Complaint.¹⁰¹⁶ If granted, any of these requests would have resulted in the reversal of the Lago Agrio Judgment, and, as such, they were suitable to prevent the Lago Agrio Judgment from becoming enforceable as described in item (i) in paragraph 642 above.

648. As for the reasonableness of filing the First Instance Appeal, the Tribunal notes that appealing the Lago Agrio Judgment before the very Ecuadorian court that issued the ruling was, quite possibly, the most natural, immediate, and accessible way to prevent the Lago Agrio Judgment from becoming enforceable. Consequently, pursuing the First Instance Appeal was a reasonable measure in the circumstances then prevailing.
649. Second, the Tribunal turns to the Cassation Appeal, whereby Chevron again sought the nullity of the proceedings leading to the Lago Agrio Judgment or, alternatively, that the Judgment be quashed and that the Lago Agrio Complaint be dismissed.¹⁰¹⁷ Thus, for the same reasons that are applicable to the First Instance Appeal, the Cassation Appeal, had it been fully granted, could have prevented the Lago Agrio Judgment from becoming enforceable after its issuance. In particular, the Cassation Appeal requested specifically that the enforcement of the Lago Agrio Judgment be suspended, which further confirms that this measure was suitable to prevent the Lago Agrio Judgment from becoming enforceable as described in item (i) in paragraph 642 above. Accordingly, this Appeal meets the causation requirements for the compensation of incidental damages.
650. The Tribunal is also persuaded that it was reasonable for Chevron to pursue the Cassation Appeal. While the outcome is not determinative for assessing reasonableness, the Tribunal considers that the reasonableness of pursuing the Cassation Appeal is confirmed, *inter alia*, by the fact that the Cassation Judgment nullified the punitive damages imposed on Chevron, removing half of the damages awarded in the Lago Agrio Judgment.¹⁰¹⁸

¹⁰¹⁶ See para. 626 above; **C-1178**, Chevron's Appeal of the Lago Agrio Judgment, 9 March 2011 at 4:05 p.m., pp. 188-191.

¹⁰¹⁷ See para. 629 above; **C-1068**, Chevron's Cassation Appeal, Provincial Court of Justice of Sucumbios (Lago Agrio appellate proceedings), 20 January 2012 at 8:50 a.m., pp. 159-160.

¹⁰¹⁸ **C-1975**, Ecuador National Court of Justice, Cassation Judgment, 12 November 2013, p. 222.

651. Third, and last, the Tribunal refers to the Constitutional Action, which sought that the Cassation Judgment (and, ultimately, the Lago Agrio Judgment) be left without effect.¹⁰¹⁹ Unlike in the case of Chevron’s First Instance and Cassation Appeals, the Lago Agrio Judgment had already become enforceable by the time the Constitutional Action was filed on 23 December 2013.¹⁰²⁰ However, this does not alter the fact that the Constitutional Action, if granted, would have required the Lago Agrio Litigation to re-start from a stage prior to the issuance of the Lago Agrio Judgment.¹⁰²¹ As such, the Constitutional Action also amounts to a measure capable of rendering the Judgment unenforceable in the sense described in item (i) in paragraph 642 above.
652. It was also reasonable for Chevron to explore all these available remedies to challenge the Lago Agrio Judgment, including the Constitutional Action, in the very jurisdiction where it came into existence. Considering the existing circumstances and the nature of the Action (which was based on an alleged violation of various fundamental rights), the Tribunal finds no reason to conclude that pursuing the Constitutional Action was unreasonable.
653. Having determined that the Claimants’ pursuit of the First Instance Appeal, the Cassation Appeal, and the Constitutional Action meets the requirements of causation and reasonableness for the compensation of incidental damages under international law, the Tribunal concludes that the Lago Agrio Litigation category of damages as a whole (as of 14 February 2011) meets these requirements. In this respect, the Tribunal recalls that the Respondent has not *per se* disputed the reasonableness of pursuing these appeals, and has in fact suggested that Chevron should have “pursued remedies under Ecuadorean law to nullify the [Lago Agrio Judgment] based on the evidence of fraud”.¹⁰²²
654. In reaching this conclusion, the Tribunal remains mindful that Chevron filed numerous ancillary submissions in support of the First Instance Appeal, the Cassation Appeal, and the Constitutional Action. While some of these motions might not have had the direct and

¹⁰¹⁹ See para. 634 above; **C-2409**, Chevron’s Extraordinary Action for Protection, 23 December 2013, p. 108.

¹⁰²⁰ See para. 630 above; **C-1114**, Providencia issued by the Lago Agrio Appellate Court, 1 March 2012 at 8:42 a.m. See also Track II Award, para. 4.462.

¹⁰²¹ See para. 634 above.

¹⁰²² See Counter-Memorial, para. 1202.

immediate objective of leaving without effect the Lago Agrio Judgment – thus rendering it unenforceable – they are ancillary in nature to these three actions. Accordingly, these supplemental motions do not affect the Tribunal’s conclusion that Chevron’s pursuit of the First Instance Appeal, the Cassation Appeal and the Constitutional Action, when considered as a whole, was a reasonable means of mitigating the injury arising from the recognition and enforcement of the Lago Agrio Judgment.

655. The Tribunal will address several of the abovementioned supplemental motions as part of its analysis of the components of the present category of damages to the extent they are relevant to that analysis. However, having already ascertained that the requirements of causation and reasonableness for the reimbursement of incidental damages are met as regards the Lago Agrio Litigation damages category as a whole as of 14 February 2011, the Tribunal does not consider it necessary to make a particularized assessment of each individual motion filed by the Claimants during those proceedings. Moreover, it would not be appropriate for the Tribunal to apply hindsight to the legal strategies employed by the Claimants in the course of the Lago Agrio Litigation.¹⁰²³

(c) Second Step: Analysis of Incidental Damages “Components”

656. As a second step of its analysis, the Tribunal must determine, within the Lago Agrio Litigation category, whether the Claimants have established the requirement for each individual costs “component” identified by the Parties to qualify as incidental damages. The Tribunal must also examine other issues raised by the Parties in connection with this particular damages category to determine whether any other portion of the legal fees and expenses claimed under the present heading should be excluded from the final amount of compensation.¹⁰²⁴

657. The Parties have identified five components involving the legal fees and expenses incurred by the Claimants in the Lago Agrio Litigation in Ecuador, which are addressed *seriatim* below. Other issues raised by the Parties in connection with this damages category but not expressly identified by them as components are addressed immediately thereafter. Lastly, the Tribunal will address the implications that its conclusions regarding

¹⁰²³ See para. 340 above.

¹⁰²⁴ See paras. 559-565 above.

the Respondent’s but-for argument may have on the assessment of the damages to be awarded for this category.¹⁰²⁵

1. PR Firms (Creative Response Concepts; Benjamin Ortiz Brennan)¹⁰²⁶

658. The Respondent argues that the Claimants are not entitled to recover USD 676,331.13 for the work performed by two public relations consultants, Creative Response Concepts and Benjamin Ortiz Brennan, since the Claimants’ choice to hire public relations firms to “burnish their image” is not reasonable, necessary or connected to a Treaty breach.¹⁰²⁷
659. As a preliminary matter, the Tribunal observes that all costs pertaining to Benjamin Ortiz Brennan (USD 165,900.94 in total) were incurred in 2004, that is, before the issuance of the Lago Agrio Judgment.¹⁰²⁸ In light of the Tribunal’s earlier finding that any harm suffered prior to 14 February 2011 was not caused by the Respondent’s Treaty breaches, the Tribunal concludes that the costs claimed with regard to Benjamin Ortiz Brennan are not compensable in this Arbitration.¹⁰²⁹
660. The same conclusion applies to the costs pertaining to Creative Response Concepts that were incurred between November 2008 and December 2010.¹⁰³⁰ As for the remaining costs related to this vendor – which were incurred between March and December 2011 – ¹⁰³¹the Tribunal reserves its decision for a later stage of its analysis. Indeed, given that the issue of media and public relations impacts multiple damages categories, the question of whether fees related to such activities are generally recoverable in this Arbitration will be addressed as part of the Tribunal’s analysis of cross-cutting “elements” in Section VIII.N below.
661. Although not expressly included under this component, the Tribunal takes note that the Respondent has also questioned further media and public relations work allegedly

¹⁰²⁵ See para. 398 above.

¹⁰²⁶ For an explanation of the names assigned to components see para. 568 above.

¹⁰²⁷ Rejoinder, para. 1149; **RE-51**, Trunko Expert Report, **SM L-3**; Reply, Updated Appendix 2, pp. 299-320.

¹⁰²⁸ See Reply, Updated Appendix 2, pp. 299-320.

¹⁰²⁹ See paras. 622, 644 above.

¹⁰³⁰ See Reply, Updated Appendix 2, pp. 309-313.

¹⁰³¹ See Reply, Updated Appendix 2, pp. 314-316.

performed by the Claimants’ lawyers in the Lago Agrio Litigation, arguing that any fees arising from such activities should not be recoverable. In particular, the Respondent has identified spending related to activities regarding, *inter alia*, “public relations and newspaper publications”, participation in a “legal media committee”, the preparation of “media statements even for events that did not occur”, “human rights” outreach, a “media campai[gn]”, and “lobbying”.¹⁰³² The Respondent also contests that the Claimants should be reimbursed for the legal fees and expenses incurred in relation to activities to pressure the Ecuadorian government, such as research on purported “human trafficking violations” by the government.¹⁰³³

662. For the reasons stated in paragraph 660 above, to the extent that the Claimants request compensation for fees and expenses related to media and public relations work (and comparable activities) in the Lago Agrio Litigation that were not charged by the two vendors falling under the present component (and which were incurred after the issuance of the Lago Agrio Judgment), the Tribunal will also address them as part of its analysis of cross-cutting “elements” in Section VIII.N below.

2. Adrian Briggs; Autonomy – Introspect; Fernando Morales; Fernando Sierra; Gus R Lesnevich Inc.; Harris Corp Government Communication System; Jan Paulsson (billed through Freshfields); RICOH USA Inc/Formerly IKON

663. The Respondent argues that the Claimants have not met their burden of proof with respect to their claim for USD 47,115,197.79 in costs and expenses allegedly paid to 31 experts and vendors in connection with the Lago Agrio Litigation.¹⁰³⁴ According to the Respondent, the invoices produced by the Claimants for these costs “provide little to no insight into the work conducted”, making it impossible to draw any solid connection between the work done and any Treaty breach.¹⁰³⁵ This lack of detail in the vendor and

¹⁰³² Rejoinder, paras. 940, 1010-1023, 1121-1123; **C-3260.005**, Boies Schiller & Flexner LLP (Member) - 2014.xlsx; **C-3303.003**, Jones Day (Member) - 2010.xlsx; **C-3303.005**, Jones Day (Member) - 2012.xlsx; **C-3401**, CVX-Track III-20010587.

¹⁰³³ Rejoinder, paras. 1002-1004.

¹⁰³⁴ Rejoinder, para. 1135; Reply, Updated Appendix 2, pp. 271-320; **RE-51**, Trunko Expert Report, **SM L-3**.

¹⁰³⁵ Rejoinder, paras. 1136-1143; Track III Hearing Transcript, Day 2 (19 August 2022), p. 328 (Ettinger).

expert invoices, the Respondent says, also directly contradicts Chevron’s Guidelines and, in many instances, the engagement letters concluded with the vendors themselves.¹⁰³⁶

664. For their part, the Claimants generally explain that

Chevron’s lawyers, environmental experts, and vendors were required to spend thousands of hours in developing legal pleadings and robust technical evidence both to defend Chevron and to respond to the LAPs’ antics, preparing for oral arguments at judicial inspections, drafting appellate pleadings, preparing expert reports, and performing the underlying analysis necessary to defend against diffuse claims ¹⁰³⁷

665. The Claimants add that “Chevron also strategically used lower cost vendors when it was confident that work could be managed consistent with Chevron’s larger strategic concerns”.¹⁰³⁸

666. While this component, as described by the Parties, only covers eight experts and vendors,¹⁰³⁹ the Respondent appears to dispute the Claimants’ right to recover all fees and expenses allegedly incurred by the 31 experts and vendors involved in the Lago Agrio Litigation.¹⁰⁴⁰ The Tribunal will therefore address the legal fees and expenses of all of these experts and vendors in this section, except for Benjamin Ortiz Brennan and Creative Response Concepts, which have already been covered as part of the “PR Firms” component.¹⁰⁴¹

667. At the outset, the Tribunal notes that the costs pertaining to, at least, the following experts and vendors were incurred in their entirety before 14 February 2011: ERM Peru S.A. –

¹⁰³⁶ Rejoinder, paras. 1144-1145; **C-3231**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00016962—CVX-Track III-00016999), 2008, Section 8.4.1; **C-3232**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00017000—CVX-Track III-00017043), 2009, Sections 8.4.2, 8.4.4; **R-2048**, Arrangement Letter between King & Spalding and CH2M HILL International, Ltd., CVX-Track III-00018305, 8 September 2005; **R-2049**, Arrangement Letter between King & Spalding and Geomatrix Consultants, Inc., CVX-Track III-00018318, 31 January 2006.

¹⁰³⁷ Reply, para. 705.

¹⁰³⁸ Reply, para. 697; Mittelstaedt Witness Statement, para. 22.

¹⁰³⁹ Letter from the Respondent to the Tribunal, 21 October 2022, p. 16; Letter from the Claimants to the Tribunal, 22 October 2022, Attachment A, p. 21.

¹⁰⁴⁰ See Rejoinder, para. 1135; Track III Hearing Transcript, Day 2 (19 August 2022), p. 328 (Ettinger).

¹⁰⁴¹ See paras. 658-660 above.

IP,¹⁰⁴² The RETEC Group, Inc.,¹⁰⁴³ Fernando Morales (billed through Simon Bolivar University),¹⁰⁴⁴ Fernando Sierra,¹⁰⁴⁵ Douglas Southgate,¹⁰⁴⁶ Transperfect Translations,¹⁰⁴⁷ and TestAmerica.¹⁰⁴⁸ In line with the Tribunal's previous findings, as these costs could not have been incurred in response to the injury arising from the recognition and enforcement of the Lago Agrio Judgment, they fall outside of the scope of compensable injury in these proceedings.¹⁰⁴⁹

668. The Tribunal further notes that several other experts and vendors incurred the majority of their costs prior to the issuance of the Lago Agrio Judgment.¹⁰⁵⁰ These costs also fall outside the scope of compensable injury in these proceedings.

669. In relation to the costs claimed post 14 February 2011 by the experts and vendors referred to in paragraph 668 above and other experts and vendors at issue,¹⁰⁵¹ based on the invoices submitted by the Claimants, these experts and vendors appear to have provided a variety

¹⁰⁴² See Reply, Updated Appendix 2, pp. 271-320.

¹⁰⁴³ See Reply, Updated Appendix 2, pp. 271-220.

¹⁰⁴⁴ See Reply, Updated Appendix 2, pp. 271-320. This does not include the costs of Fernando Morales that were billed separately, which will be addressed in paragraphs 669-674 below.

¹⁰⁴⁵ See Reply, Updated Appendix 2, pp. 271-320.

¹⁰⁴⁶ See Reply, Updated Appendix 2, pp. 271-320.

¹⁰⁴⁷ See Reply, Updated Appendix 2, pp. 271-320.

¹⁰⁴⁸ See Reply, Updated Appendix 2, pp. 271-320.

¹⁰⁴⁹ See paras. 622, 644 above.

¹⁰⁵⁰ This is the case, for instance, with the two highest-billing vendors (AMEC Geomatrix and CH2M Hill), which are the subject of criticism by the Respondent. See Reply, Updated Appendix 2, pp. 299-317; Rejoinder, paras. 1137-1145. A similar pattern may be observed with regard to other high-billing experts and vendors, such as GSI Environmental Inc., Cardno Entrix or URS Corporation. See *generally* Reply, Updated Appendix 2, pp. 271-320.

¹⁰⁵¹ This concerns the following experts and vendors: GSI Environmental Inc.; AMEC Geomatrix; CH2M Hill; Cardno Entrix; URS Corporation; Newfields Companies LLC; Ellis GeoSpatial; Exponent, Inc.; Gus R Lesnevich Inc; RICOH USA Inc/Formerly IKON; Autonomy – Introspect; Integrated Science & Technology, Inc.; Harris Corp Government Communication System; Di Paolo Consulting; Fernando Morales; Hargis + Associates, Inc.; Jan Paulsson (billed through Freshfields); Adrian Briggs; Audio Forensic Center; Aninat Schwencke y Cia, Ltda; Pedro J. Alvarez; and Guthrie T. Abbott. The Tribunal notes that the last claim of costs for two of these experts in the Lago Agrio Litigation (Newfields Companies LLC and Hargis + Associates, Inc.) apparently took place in February 2011. For purposes of determining whether these costs fall under the scope of compensable injury the Tribunal will determine whether the date range limitations for the compensation of incidental damages is based on the date on which the underlying services were performed, the date of invoice, or the date of payment in Section VIII.N.2(b) below). In any event, the Tribunal confirms that whether this portion of the Claimants' claim is considered to have been incurred before or after 14 February 2011 does not affect the Tribunal's analysis that follows regarding this component.

of services, including scientific, environmental, economic, forensic and legal advice; as well as information technology, technical, secretarial and other kind of litigation support.¹⁰⁵² Considering the complexity and subject matter of the Lago Agrio Litigation (which involved issues of environmental law and evidence and forensic queries regarding the LAPs’ alleged fraud, among other matters, in the context of a very voluminous case record), the Tribunal considers that these services contributed to Chevron’s attempts to overturn the Lago Agrio Judgment in Ecuador.

670. However, the Tribunal notes that while Chevron submitted multiple expert reports over the course of the Lago Agrio Litigation, including by some of the experts included under this component,¹⁰⁵³ the Claimants have otherwise not detailed the specific role of these experts and vendors, particularly during the period following the issuance of the Lago Agrio Judgment.¹⁰⁵⁴ In this connection, the Tribunal recalls that the required causal link must be established clearly and in an itemized fashion for each mitigation measure to warrant reparation.¹⁰⁵⁵ While the Tribunal is persuaded that some of these services formed part of Chevron’s mitigation efforts in the Lago Agrio Litigation, it agrees with the Respondent that the invoices provided often lack sufficient information to determine precisely the content of the work performed by each expert and vendor. In examining the relevant experts’ and vendors’ billing documentation during the relevant time period (from February 2011 onwards) the Tribunal has noted that it generally lacks detailed written accounts or itemization of the activities carried out specifically in relation to the Lago Agrio Litigation. Indeed, many invoices contain no detailed breakdowns, or enclose

¹⁰⁵² See e.g. **C-3245**, CVX-Track III-20000752; **C-3375**, CVX-Track III-20003953; **C-3358**, CVX-Track III-20001119; **C-3367**, CVX-Track III-20002511; **C-3379**, CVX-Track III-20004304; **C-3387**, CVX-Track III-20005840; **C-3388**, CVX-Track III-20005982; **C-3423**, CVX-Track III-20016199.

¹⁰⁵³ See **C-1412**, Chevron’s Appellate *Alegato*, submitted to the Substitute Judges of the Provincial Court of Sucumbios, 5 May 2011, p. D5 (referring to an annexed Declaration of Mr Gus Lesnevich); **R-1738**, Chevron’s motion of 25 July 2011 at 3:10 pm (Lago Agrio Record, Appellate Procedure, cuerpo 119, fojas 11886-11890), 25 July 2011 at 3:10 pm, p. 2 (announcing the upcoming submission of another expert report by Mr Lesnevich). See also Rejoinder, para. 970; **C-2551**, Constitutional Court Case No. 0105-14-EP, 27 June 2018, p. 110 (referring to “the large number of expert reports provided” in the Lago Agrio Litigation).

¹⁰⁵⁴ When listing the “components” and “elements” identified by the Parties pursuant to Procedural Order No. 83, the Claimants simply referred to Appendix 3 to their Memorial in relation to the present component. However, the said Appendix does not expressly refer to the work undertaken by any of these experts and vendors, other than listing certain expert reports submitted by “F. Morales” (presumably referring to Fernando Morales) between 2005 and 2007. See Memorial, Appendix 3, Annex A, pp. 3-6.

¹⁰⁵⁵ See para. 330 above.

timesheets with no, or very limited, descriptions of the work performed, making it difficult to assess whether a connection exists between the underlying costs and the specific measures adopted by Chevron in the Lago Agrio Litigation.¹⁰⁵⁶

671. While the evidence on record suffices for the Tribunal to infer that the services provided by at least some of these experts and vendors formed part of the Claimants' reasonable measures to mitigate the injury flowing from the recognition and enforcement of the Lago Agrio Judgment, the Tribunal has not been presented with sufficient elements to ascertain the reasonableness of the *amounts* spent in the services of these experts and vendors. Moreover, the circumstances described in the preceding paragraph, coupled with the very significant sum claimed by the Claimants for these expert and vendor services (USD 47,115,197.79)¹⁰⁵⁷ when compared to the amount claimed for the services of the Ecuador Legal Team (USD 47,697,340.66)¹⁰⁵⁸ or other law firms (USD 66,712,623.44)¹⁰⁵⁹ in these proceedings, raise significant questions about the reasonableness of the amounts claimed for the experts and vendors.
672. At this juncture, the Tribunal must recall, having consulted the Parties' damages models, that the majority of these expert and vendor costs (over 85%) were incurred prior to the issuance of the Lago Agrio Judgment on 14 February 2011.¹⁰⁶⁰ In other words, the amount of costs incurred by experts and vendors is not that disproportionate when compared to the law firm fees and costs incurred by Chevron in the stage following the issuance of the Lago Agrio Judgment. Be that as it may, the remaining amount of expert and vendor costs (approximately USD 6 million in total) is still quite significant considering the very limited information provided by the Claimants regarding the role played by these experts and vendors.

¹⁰⁵⁶ See for instance **C-3354**, CVX-Track III-20000344 (AMEC Geomatrix); **C-3366**, CVX-Track III-20002154 (Cardno Entrix); **C-3367**, CVX-Track III-20002515 (CH2M Hill); **C-3375**, CVX-Track III-20003957 (Di Paolo Consulting); **C-3387**, CVX-Track III-20005869 (GSI Environmental Inc.); **C-3389**, CVX-Track III-20006044 (Harris Corp Government Communication System); **C-3423**, CVX-Track III-20016194 (RICOH USA Inc/Formerly IKON); **C-3434**, CVX-Track III-20017901 (URS Corporation).

¹⁰⁵⁷ Creative Response Concepts and Benjamin Ortiz Brennan, which have been covered under the previous component, account for USD 676,331.13 of this amount. **RE-51**, Trunko Expert Report, **SM L-3**.

¹⁰⁵⁸ **RE-51**, Trunko Expert Report, **SM L-1**.

¹⁰⁵⁹ **RE-51**, Trunko Expert Report, **SM L-2**.

¹⁰⁶⁰ See also Reply, Updated Appendix 2, pp. 271-320.

673. For the avoidance of doubt, the Tribunal clarifies that this reasoning applies to both the fees and the expenses incurred by the experts and vendors at issue.¹⁰⁶¹ To the extent that the services provided by a given expert or vendor can be reasonably linked with Chevron's mitigation measures in the Lago Agrio Litigation, the Tribunal believes that it was reasonable for those experts or vendors to incur certain expenses (*e.g.*, travel costs or secretarial services). Nonetheless, the Tribunal again has not been presented with sufficient information to determine the purpose (and hence, the reasonableness) of many of these expenses.
674. In view of the uncertainty surrounding the reasonableness of the amounts spent by the Claimants on the services of experts and vendors in the Lago Agrio Litigation as a way of mitigating the injury flowing from the recognition and enforcement of the Lago Agrio Judgment, and having considered the particular circumstances of this case, the Tribunal assesses that 50% of the fees and expenses charged by all relevant experts and vendors after 14 February 2011 (GSI Environmental Inc.; AMEC Geomatrix; CH2M Hill; Cardno Entrix; URS Corporation; Newfields Companies LLC; Ellis GeoSpatial; Exponent, Inc.; Gus R Lesnevich Inc; RICOH USA Inc/Formerly IKON; Autonomy – Introspect; Integrated Science & Technology, Inc.; Harris Corp Government Communication System; Di Paolo Consulting; Fernando Morales; Hargis + Associates, Inc.; Jan Paulsson (billed through Freshfields); Adrian Briggs; Audio Forensic Center; Aninat Schwencke y Cia, Ltda; Pedro J. Alvarez; and Guthrie T. Abbott) should be excluded from compensation.

3. Lago Agrio WestLaw/Lexis charges

675. The Respondent takes issue with the legal research time entries of the U.S. law firms involved in the Lago Agrio Litigation, given that they contain nothing but the name of the database used and sometimes the timekeeper, and thus fail to provide the information required by Chevron's Guidelines.¹⁰⁶²

¹⁰⁶¹ The Respondent also disputes the recoverability of the expenses invoiced by some vendors. *See* Rejoinder, paras. 1146-1148.

¹⁰⁶² Rejoinder, paras. 1096-1098; **C-3233**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00017065—CVX-Track III-00017119), 2010, Section 8.3.

676. These charges, which amount to USD 914,307.67, were incurred between November 2008 and May 2018 by three U.S. law firms: Boies Schiller & Flexner LLP, Gibson, Dunn & Crutcher LLP, and Jones Day.¹⁰⁶³ While the relevant entry descriptions do not contain much detail, the Tribunal infers from the available information that the underlying activities included, at least, research, printing, and payment of fees for the use of the WestLaw and Lexis databases.¹⁰⁶⁴
677. As explained in the context of its analysis at the category level, in order for this component to meet the causation requirement for the compensation of incidental damages under international law, the Tribunal must determine whether these charges were incurred in the preparation of submissions or other work that supported the First Instance Appeal, the Cassation Appeal, or the Constitutional Action.¹⁰⁶⁵
678. The Claimants have not presented sufficient information for the Tribunal to determine the precise content of the work that generated these costs. While the Tribunal understands that databases such as WestLaw and Lexis can be used to access resources on Ecuadorian law (namely, the law applicable to the Lago Agrio Litigation), it is reluctant to infer that this was the primary use of these databases by the U.S. law firms involved in the Lago Agrio Litigation, particularly considering the large team of Ecuadorian lawyers retained by Chevron and the limited background provided by the Claimants regarding these costs.
679. However, and given the nature of these databases, the costs pertaining to this component could also be connected to Chevron's efforts to overturn the Lago Agrio Judgment to the extent that foreign law (and, presumably, U.S. law) was relevant to prepare Chevron's submissions before the Appellate, Cassation and Constitutional Courts. In particular, the Tribunal can highlight at least two instances of the Lago Agrio Litigation (following the

¹⁰⁶³ See generally **RE-51**, Trunko Expert Report, **SM L-5**.

¹⁰⁶⁴ See for instance **RE-51**, Trunko Expert Report, **SM L-5**, pp. 1-2 (containing entries described as "COMPUTER RESEARCH - WESTLAW"), 52 (containing entries described as "LEXIS RESEARCH" or "WESTLAW RESEARCH AND PRINTING CHARGES"), 95 (containing entries described as "WESTLAW SEARCH FEES", "LEXIS SEARCH FEES" or "IMAGING SERVICES - REED ELSEVIER INC . . . MRC STORAGE AND HOSTING"). The Tribunal has also identified a number of entries described as "LEXIS LIBRARY UK", and an additional entry described as "WESTLAW ESPANA". See **RE-51**, Trunko Expert Report, **SM L-5**, pp. 50-56.

¹⁰⁶⁵ See paras. 653-655 above.

issuance of the Lago Agrio Judgment) in which research on U.S. law was in all likelihood required.

680. First, Chevron addressed certain issues related to U.S. law in its request for clarification and expansion of the Lago Agrio Judgment, such as the application of Ecuadorian corporate law to the merger between Chevron and Texaco (which had allegedly taken place pursuant to U.S. law), a possible reference in the Judgment to merger notions under U.S. law, and further application of U.S. case law and legislation by the Lago Agrio Court.¹⁰⁶⁶ Chevron also made discrete references to U.S. case law in its First Instance Appeal.¹⁰⁶⁷
681. Second, a significant part of Chevron's efforts to overturn the Lago Agrio Judgment in Ecuador relied on the submission of evidence of the alleged fraud committed by the LAPs that was obtained through ongoing discovery proceedings in the United States.¹⁰⁶⁸ During the proceedings related to the Cassation Appeal, the LAPs reportedly argued that this evidence should not be admitted, claiming that the underlying discovery proceedings violated their human rights. Chevron later defended the validity of this evidence and the legality of the discovery proceedings, explaining the legal framework of this type of mechanism in the United States.¹⁰⁶⁹
682. To the extent that the WestLaw and Lexis charges at issue were related to the preparation of submissions that addressed issues of non-Ecuadorian law, such as those described above, the Tribunal believes that the costs incurred by the Claimants would also be reasonable. As mentioned earlier, given that the First Instance Appeal, the Cassation Appeal and the Constitutional Action sought directly to leave the Lago Agrio Judgment

¹⁰⁶⁶ **C-970**, Chevron's Motion to clarify and amplify, 17 February 2011 at 8:00 a.m., pp. 3-4, 19-20.

¹⁰⁶⁷ See **C-1178**, Chevron's Appeal of the Lago Agrio Judgment, 9 March 2011 at 4:05 p.m., pp. 21-22. See also **C-2409**, *Maria Aguinda, et al. v. Chevron Corp.*, Constitutional Court, Case No. 0105-14-EP, Chevron's Extraordinary Action for Protection, 23 December 2013, p. 40 (responding to the Cassation Judgment's reference to other foreign jurisdictions where there was precedent for the application of strict liability).

¹⁰⁶⁸ See Seley Witness Statement, para. 63; Mittelstaedt Witness Statement, paras. 54-55, 60.

¹⁰⁶⁹ See **C-2956**, Chevron's Cassation *Alegato*, 30 May 2013 at 1:39 p.m.; **C-2436**, Cassation *Alegato* on fraud, 3 September 2013 at 9:22 a.m., pp. 4-8.

without effect, the Tribunal is prepared to grant a certain level of deference to efforts undertaken by Chevron to maximize the success of these actions.¹⁰⁷⁰

683. That said, non-Ecuadorian law could only be marginally relevant to Chevron’s submissions in the Lago Agrio Litigation. Given the limited information provided by the Claimants regarding the work underlying the WestLaw and Lexis charges, the Tribunal has not been presented with sufficient elements to determine the extent to which all of these costs actually contributed to Chevron’s attempts to reverse the Lago Agrio Judgment. The Tribunal is also sceptical that it was reasonable or efficient to involve three different U.S. law firms in this kind of research activities, given the limited scope of this type of work in the Lago Agrio Litigation, particularly in light of the high sum involved.

684. In sum, while the Tribunal is persuaded that Chevron might have needed, at times, to conduct research regarding U.S. or other foreign law for the preparation of its submissions in the Lago Agrio Litigation (following the issuance of the Lago Agrio Judgment), it has not been presented with sufficient information to establish confidently whether all of the costs pertaining to this component were indeed devoted to any such efforts. In view of this uncertainty, and having considered the particular circumstances of this case, the Tribunal assesses that 60% of the WestLaw and Lexis charges incurred in the Lago Agrio Litigation must be excluded from compensation.

4. (CLA) Lago Agrio fees and costs allegedly relating to administrative and clerical activities / (RES) Lago Agrio fees and costs relating to administrative and clerical activities

685. The Respondent disputes the recoverability of several kinds of overhead expenses incurred by the U.S. law firms involved in the Lago Agrio Litigation, stressing that these expenses are not reimbursable under Chevron’s Guidelines.¹⁰⁷¹ In particular, the Respondent criticizes that the Claimants seek to recover legal fees and expenses for, *inter alia*, “[m]anaging data/files and filing documents”, “[s]etting up/building databases”,

¹⁰⁷⁰ See paras. 341, 647, 649, 651 above.

¹⁰⁷¹ Rejoinder, paras. 1081, 1083; **C-3240**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00017738—CVX-Track III-00017800), 2017, Section 9.1.

“[o]rganizing electronic files”, “[p]roviding technical support” and “[p]rinting”.¹⁰⁷² The Respondent’s expert, Mr Trunko, estimates that the fees and costs relating to these administrative and clerical activities in the Lago Agrio Litigation amount to USD 800,075.34.¹⁰⁷³

686. Given that this issue impacts multiple damages categories, the Tribunal will address the question of whether fees and costs relating to administrative and clerical activities are generally recoverable in this Arbitration as part of its analysis of cross-cutting “elements” in Section VIII.N below.

5. Lago Agrio charges relating to translation

687. The Respondent is also critical of Chevron’s spending in translation services during the Lago Agrio Litigation, observing that Chevron’s U.S. counsel purportedly spent over USD 12,000,000 on external translation services, in addition to having a dedicated translation team for which the Claimants also seek to recover fees.¹⁰⁷⁴ The Respondent submits that the relevant time entries (i) fail to provide sufficient information with regard to the translation work that was performed; (ii) sometimes pertain to matters other than the Lago Agrio Litigation; and (iii) sometimes raise double-billing concerns.¹⁰⁷⁵
688. In addition to the amounts spent on external translation services, Mr Trunko estimates that the additional law firms retained by Chevron (including U.S. firms Boies Schiller & Flexner LLP; Covington & Burling LLP; Gardere Wynne Sewell LLP; Gibson, Dunn & Crutcher LLP; Holland & Knight; Jones Day; Rivero Mestre LLP; Stern Kilcullen & Rufolo LLC; and the Ecuadorian firm Larreategui Meythaler & Zambrano) charged USD 2,549,641.11 in fees for translation-related work in the Lago Agrio Litigation

¹⁰⁷² See Rejoinder, para. 1082; **C-3303.002**, Jones Day (Member) - 2009.xlsx; **C-3303.003**, Jones Day (Member) - 2010.

¹⁰⁷³ See **RE-51**, Trunko Expert Report, **SM L-6**, pp. 4-5, 343-344.

¹⁰⁷⁴ Rejoinder, paras. 1024-1025, Annex A-2.

¹⁰⁷⁵ Rejoinder, paras. 1026-1030; **C-3303.009**, Jones Day (Member) - 2016.xlsx; **C-3303.005**, Jones Day (Member) - 2012.

between April 2008 and August 2018.¹⁰⁷⁶ The Tribunal notes that the vast majority of these fees (USD 2,214,623.25) were charged by Jones Day.¹⁰⁷⁷

689. The Tribunal notes that incurring translation costs is not uncommon in large-scale disputes involving litigation proceedings across multiple jurisdictions. The Tribunal also recognizes the complexity of producing accurate, reliable, and timely translations. The need for precise translations in diverse linguistic contexts is crucial to ensure that submissions and documentary evidence are accurately conveyed in each legal system.
690. In the present case, Chevron initiated the RICO Litigation and the Section 1782 Proceedings in the United States, which were conducted in English. Alongside these proceedings, the LAPs initiated recognition and enforcement actions in Ecuador, Argentina, Canada, and Brazil in three different languages: Spanish, English, and Portuguese. The Gibraltar Proceedings were also conducted in English. Jones Day, acting as “the central hub among all counsel and the in-house team for translations, apostilles, [and] document management” took the lead on maintaining an up-to-date case record and translating documents for use in various jurisdictions.¹⁰⁷⁸ The process involved not only the initial translation by outside vendors but also verification by bilingual attorneys and staff at Jones Day.¹⁰⁷⁹
691. Over the course of the proceedings of the Lago Agrio Litigation following the issuance of the Lago Agrio Judgment, Chevron submitted abundant evidence related to the LAPs’ alleged fraud that was being obtained in parallel discovery proceedings in the United States. According to the Claimants’ witness, Mr Mittelstaedt, Jones Day “took the lead on translating and preparing the supporting evidence” for Chevron’s submissions in furtherance of the First Instance Appeal, and also “managed translating, organizing, and preparing the evidence” (working with Gibson Dunn) for Chevron’s filings in the cassation proceedings.¹⁰⁸⁰ The Tribunal is thus satisfied that Chevron required extensive

¹⁰⁷⁶ See **RE-51**, Trunko Expert Report, **SM L-7**.

¹⁰⁷⁷ See **RE-51**, Trunko Expert Report, **SM L-7**, pp. 1-7.

¹⁰⁷⁸ Mittelstaedt Witness Statement, paras. 31, 86-87, 89-90.

¹⁰⁷⁹ Mittelstaedt Witness Statement, para. 38.

¹⁰⁸⁰ Mittelstaedt Witness Statement, paras. 55, 60. See also Track III Hearing Transcript, Day 3 (22 August 2022), pp. 548-549 (Vega).

translation support in order to furnish its submissions challenging the Lago Agrio Judgment before the Ecuadorian courts.

692. In addition to the preparation of materials to be submitted to the Ecuadorian courts, the Tribunal is satisfied that translation services were also necessary to keep Chevron's management and Chevron's lawyers in the Lago Agrio Litigation, respectively, apprised of the ongoing developments in the Lago Agrio Litigation and in the remaining proceedings in other jurisdictions, with a view to coordinating the company's overall litigation strategy. Consequently, and to the extent that the charges relating to translation contributed to Chevron's attempts to prevent the Lago Agrio Judgment from becoming enforceable or to render it unenforceable, the Tribunal concludes that such costs fulfil the requirement of causation for the compensation of incidental damages.
693. In the Tribunal's view, the translation charges incurred by Chevron were also reasonable. As already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants' decisions as to which specific mitigation measures to undertake in real time, particularly in the context of their attempts to overturn the Lago Agrio Judgment in Ecuador.¹⁰⁸¹ Considering the above, the Tribunal does not seek to second-guess Jones Day's decision to work with its "preferred vendors" for translation work in the Lago Agrio Litigation.¹⁰⁸² While some time entries may lack detail, the Tribunal is sufficiently persuaded that preparing translations to and from English and Spanish was reasonable and necessary for Chevron properly to challenge the Lago Agrio Judgment in Ecuador.
694. In this vein, the Tribunal has taken note that the amount of costs incurred by the U.S. law firms (and mainly by Jones Day) in retaining external translation services over the course of the Lago Agrio Litigation, which according to the Respondent exceeds USD 12,000,000,¹⁰⁸³ is exceptional. The Tribunal has reviewed the list of entries compiled by the Respondent and, while they do not always contain a description of the specific translation work performed, many entries do refer to documents, materials and

¹⁰⁸¹ See paras. 341, 654 above.

¹⁰⁸² Mittelstaedt Witness Statement, para. 38.

¹⁰⁸³ See Rejoinder, para. 1024, Annex A-2.

issues that were likely relevant to the Lago Agrio Litigation.¹⁰⁸⁴ Even if the connection between certain issues reflected in the entries and the Lago Agrio Litigation might be less clear than others, the Tribunal is reluctant to second-guess the relevance of the underlying work, particularly in the context of a high-stakes, multilingual, multijurisdictional legal battle involving dozens of lawyers from various firms and countries, the epicentre of which was, quite precisely, the Lago Agrio Litigation. Although the amounts incurred by Chevron in external translation services were indeed extraordinary, so were the circumstances that the company was facing. For that reason, the Tribunal considers that it was reasonable for Chevron to engage in extensive translation efforts to ensure that all potentially relevant materials were available to the company's lawyers and executives in an appropriate language.

695. The Tribunal otherwise notes that the issues raised by the Respondent with respect to these translation charges (namely, the existence of incomplete time entries, claims pertaining to matters other than the Lago Agrio Litigation and double-billing concerns) have also been identified by the Parties as cross-cutting elements impacting multiple categories, whether as vague billing, nondefense-related activities or double-billing entries.¹⁰⁸⁵ Accordingly, the Tribunal will further address the reasonableness of these amounts in light of those issues together with other elements in Section VIII.N below.
696. The Tribunal further understands that the translations prepared by external vendors would often have to be reviewed by Chevron's lawyers, and that these lawyers themselves might have also been required to prepare certain translations directly. Therefore, and bearing in mind the extraordinary circumstances mentioned earlier, the Tribunal is also persuaded

¹⁰⁸⁴ See for instance Rejoinder, Annex A-2, nos. 307 (referring to "RECURSO DE APELACION"), 312 (referring to "CASES FOR ALEGATO;DEPOSITION EXCERPT"), 324 (referring to "PROTESTA Y REVOCACION"), 348 (referring to "RESPONSE MOTION RE:FRAUD IN JUDGMENT"), 379 (referring to "ECUADOR FACT SHEET;ESCRITO OPOSICION A ESCRITO DE FAJARDO"), 384 (referring to "THIRD INTERIM AWARD"), 390 (referring to "ACCION EXTRADORDINARIA DE PROTECCION"), 415 (referring to "CORONEL DRAFT EXPERT REPORT"), 423 (referring to "CASSATION ALEGATO DOCUMENTS"), 612 (referring to "PRESS RELEASE-CHEVRON SE ESCONDE NUEVAMENTE"), 616 (referring to "STJ PET 9815 LEGAL AID FULL DECISION").

¹⁰⁸⁵ See paras. 570-571 above.

that the fees incurred in translation-related work by the law firms retained by Chevron are reasonable.¹⁰⁸⁶

697. The Tribunal is likewise reluctant to judge the efficiency of the translation work conducted by Chevron’s lawyers with the benefit of hindsight. In any case, the fact that over 95% of the costs of this translation-related work was incurred by one law firm, Jones Day,¹⁰⁸⁷ which was also heavily involved in the Lago Agrio Litigation in other capacities, suggests that this activity was rather centralized, potentially reducing the risk of duplicative work and other inefficiencies.¹⁰⁸⁸

698. Accordingly, the Tribunal rejects the Respondent’s request to exclude from compensation the “Lago Agrio charges relating to translation”.

6. Other issues

699. In this section, the Tribunal will address other issues raised by the Parties in connection with the Lago Agrio Litigation that have not been specifically identified by the Parties as a component. These include (i) the reliability of the “cash calls” provided in support of the claim for the Ecuador Legal Team; (ii) the involvement of eight U.S. law firms for the Claimants’ representation in Ecuador in addition to the Ecuador Legal Team; (iii) the Respondent’s criticism of abusive, excessive and unreasonable litigation practices allegedly adopted by Chevron’s lawyers; (iv) the work of Chevron’s counsel on various matters allegedly unrelated to the Lago Agrio Litigation; (v) the legal fees and expenses incurred for work allegedly related to criminal proceedings unrelated to the Treaty breaches; (vi) the alleged involvement of Chevron’s counsel in the unauthorized practice of law in Ecuador and other activities prohibited by Ecuadorian law; (vii) the U.S. law firms’ alleged lack of compliance with Chevron’s Guidelines; and (viii) the sufficiency

¹⁰⁸⁶ The Tribunal understands that these are the fees amounting to USD 2,549,641.11, as calculated by Mr Trunko. *See* **RE-51**, Trunko Expert Report, **SM L-7**.

¹⁰⁸⁷ In particular, Jones Day’s timekeepers account for over 86% of the translation-related fees incurred by lawyers in the Lago Agrio Litigation. Jones Day was also responsible for retaining the entirety of the external translation services (except for three discrete and rather minor instances). *See generally* **RE-51**, Trunko Expert Report, **SM L-7**, pp. 1-5; Rejoinder, Annex A-2.

¹⁰⁸⁸ *See* Mittelstaedt Witness Statement, paras. 30-31, 38.

of the billing information provided in support of the claim for additional Ecuadorian and foreign firms retained by Chevron.

700. *The reliability of the “cash calls” provided in support of the claim for the Ecuador Legal Team.* The Respondent contends that the “cash calls” submitted by the Claimants in support of their claim for the costs incurred by the Ecuador Legal Team do not provide sufficient information to determine the cause, reasonableness, or necessity of the work performed by these lawyers, such that the Claimants have failed to carry their burden of proof.¹⁰⁸⁹
701. Given that this issue impacts multiple damages categories, the Tribunal will address the question of whether fees and costs claimed on the basis of “cash calls” are generally recoverable in this Arbitration as part of its analysis of cross-cutting “elements” in Section VIII.N below.
702. *The involvement of eight U.S. law firms for the Claimants’ representation in Ecuador in addition to the Ecuador Legal Team.* The Respondent challenges “the dubious necessity of retaining eight U.S. law firms for Claimants’ representation before Ecuadorian courts, in addition to the Ecuador Legal Team that served as counsel of record in the proceeding”.¹⁰⁹⁰ These U.S. law firms include Jones Day, Gibson, Dunn & Crutcher; Rivero Mestre LLP; Gardere Wynne Sewell LLP; Holland & Knight; Boies Schiller & Flexner, Covington & Burling; and Stern Kilcullen & Ruffolo.¹⁰⁹¹
703. In particular, the Respondent challenges the claim of “US\$ 60,563,756.70 in damages for legal fees and expenses” allegedly incurred by these U.S. firms, contending that several of the firms “do not have offices in Ecuador” and that the Claimants have not explained how they “could have performed necessary tasks for a domestic ‘complex environmental matter litigated . . . through every level of the Ecuadorian judicial system’.”¹⁰⁹²

¹⁰⁸⁹ See paras. 598-600 above.

¹⁰⁹⁰ Rejoinder, para. 977; Counter-Memorial, para. 584.

¹⁰⁹¹ See Reply, Updated Appendix 2, p. 145; **RE-51**, Trunko Expert Report, **SM L-1**.

¹⁰⁹² Counter-Memorial, para. 584 (brackets in original); Rejoinder, para. 977.

704. In response, the Claimants’ witness, Mr Veiga, explains that Chevron retained additional counsel as the Lago Agrio Litigation progressed, noting that the company “sometimes retained more than one firm for a particular matter because it needed to ensure fully vetted advice given the range and complexity of the legal issues at play, the incredibly high litigation stakes, and the potentially disruptive outcome”, and that Chevron’s “belief and policy was that well and strategically informed advice resulted from the collaborative efforts of the best lawyers”, such that they “established a culture of collaboration across firms”.¹⁰⁹³
705. As already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants’ decisions as to which specific mitigation measures to undertake in real time.¹⁰⁹⁴ While the Tribunal accepts that the engagement of U.S. law firms for the Lago Agrio Litigation could be regarded as necessary to defend a U.S.-based company in a foreign jurisdiction, it nonetheless has difficulty understanding how the participation of eight U.S. law firms could have reasonably assisted the Claimants in attempting to reverse an Ecuadorian judgment in Ecuador – a quintessential question of Ecuadorian law and procedure that would normally be reserved to, and was indeed primarily handled by, local lawyers (*i.e.*, the Ecuador Legal Team).¹⁰⁹⁵ As explained above, unless the Claimants sought to minimize the possible losses arising directly from the recognition and enforcement of the Lago Agrio Judgment by retaining these U.S. law firms, they cannot claim compensation in these proceedings for the legal fees and expenses charged by those firms.¹⁰⁹⁶
706. In this connection, the Tribunal bears in mind that Chevron’s attempts to overturn the Lago Agrio Judgment in Ecuador relied significantly on extensive efforts to convey to the courts in Ecuador the evidence obtained through discovery proceedings in the United States, and also required addressing discrete issues of U.S. and other foreign law.¹⁰⁹⁷

¹⁰⁹³ Fourth Veiga Witness Statement, paras. 102-115.

¹⁰⁹⁴ See para. 341 above.

¹⁰⁹⁵ See Fourth Veiga Witness Statement, paras. 103-105 (explaining that “Callejas & Asociados was counsel of record to Chevron for the entirety of the Lago Agrio Litigation”).

¹⁰⁹⁶ See paras. 642-643 above.

¹⁰⁹⁷ See paras. 678-681 above.

707. In view of the above, the Tribunal is prepared to grant compensation for the legal fees and expenses charged by Jones Day, which was the first foreign law firm to participate in the Lago Agrio Litigation (since 2008) and “took a lead role in supporting Callejas & Asociados from the United States”, in addition to its responsibility for “the strategic integration of the Lago Agrio Litigation into Chevron’s overall defensive strategy” and its coordination and translation work explained above in the context of the “Lago Agrio charges relating to translation” component.¹⁰⁹⁸ The Tribunal is also prepared to grant compensation for the legal fees and expenses charged by Gibson, Dunn & Crutcher LLP, which became involved in the Lago Agrio Litigation shortly thereafter (in September 2009) to work with Jones Day “on the environmental response”, and also contributed to the review of the Lago Agrio docket and the presentation of evidence obtained in U.S. proceedings.¹⁰⁹⁹ Otherwise, the Tribunal denies compensation under this heading for the legal fees and expenses charged by all other U.S. law firms involved in the Lago Agrio Litigation (Rivero Mestre LLP; Gardere Wynne Sewell LLP; Holland & Knight; Boies Schiller & Flexner; Covington & Burling; and Stern Kilcullen & Rufolo).

708. *The Respondent’s criticism of abusive, excessive and unreasonable litigation practices allegedly adopted by Chevron’s lawyers.* The Respondent submits that it is not required to compensate the Claimants for the costs generated by various “excessive”, “abusive”, and “unreasonable” litigation tactics in which Chevron’s lawyers engaged, presumably “to slow down the proceedings and overburden the Lago Agrio Court”.¹¹⁰⁰ The Claimants deny having engaged in any such tactics, and assert that the Respondent “cherry-picks examples from the Lago Agrio record” and that “Chevron’s attorneys in Ecuador did their best to zealously represent Chevron amidst open hostility against the company”.¹¹⁰¹

709. The Tribunal observes that many of the practices criticised by the Respondent appear to have taken place primarily or entirely prior to the issuance of the Lago Agrio Judgment,

¹⁰⁹⁸ Reply, Updated Appendix 2, p. 150; Fourth Veiga Witness Statement, paras. 105, 108-109, 112; Mittelstaedt Witness Statement, para. 31; para. 690 above.

¹⁰⁹⁹ Reply, Updated Appendix 2, p. 156; Fourth Veiga Witness Statement, para. 111; Mittelstaedt Witness Statement, paras. 50, 60.

¹¹⁰⁰ See generally Rejoinder, para. 955-976, 1037-1052, 1124-1125.

¹¹⁰¹ Reply, paras. 725-738.

including (i) the “[e]xcessive and [d]uplicative [m]otions”;¹¹⁰² (ii) the “requests for extensions”;¹¹⁰³ (iii) the “[m]otions [c]orrecting [c]lerical [m]istakes of [c]ourt [o]rders”;¹¹⁰⁴ (iv) the submission of a “fraudulent military report”;¹¹⁰⁵ (v) the “[f]utile [a]ttempts to [a]nnul [p]roceedings”;¹¹⁰⁶ (vi) the filing of essential error petitions;¹¹⁰⁷ and (vi) the requests for the LAPs’ experts to render “judicial confessions”.¹¹⁰⁸ To the extent that these activities were indeed undertaken before 14 February 2011, the associated costs are not compensable in this Arbitration.¹¹⁰⁹

710. The Respondent has also identified a limited number of these purportedly inappropriate “litigation tactics” as taking place after the issuance of the Lago Agrio Judgment. The Tribunal is not persuaded that any of these “tactics” was manifestly improper or deliberately abusive.¹¹¹⁰ Having reached this conclusion, the Tribunal does not consider it necessary to address this matter any further: as already stated, it is not appropriate for the Tribunal to apply hindsight to the legal strategies employed in the course of the Lago Agrio Litigation.¹¹¹¹

711. Accordingly, the Tribunal declines to exclude from compensation the disputed fees or costs on the basis of the allegedly “excessive”, “abusive” and “unreasonable” litigation

¹¹⁰² See Rejoinder, fns. 1796-1799, 1802.

¹¹⁰³ See Rejoinder, fns. 1807-1809.

¹¹⁰⁴ See Counter-Memorial, fns. 1215-1223, 1249-1258; Rejoinder, fn 1813.

¹¹⁰⁵ See Rejoinder, fns. 1813-1816.

¹¹⁰⁶ See Rejoinder, fns. 1823-1829.

¹¹⁰⁷ See Counter-Memorial, fns. 1163-1164, 1166-1174, 1177; Rejoinder, fns. 1938-1946, 1949.

¹¹⁰⁸ See Counter-Memorial, fn 1177.

¹¹⁰⁹ See paras. 622, 644-645 above.

¹¹¹⁰ One of the very few examples of purportedly abusive litigation practices identified by the Respondent in the period after the issuance of the Judgment concerns two requests for the annulment of the proceedings, submitted before the Appellate Court, in which Chevron argued, *inter alia*, that some of the LAPs’ signatures had been forged. See Rejoinder, fns. 1824, 1948; **R-1736**, Chevron’s motion in the appellate procedure, (Lago Agrio Record, Appellate Procedure, cuerpo 118, fojas 11719-11722), 13 June 2011 at 10:05 a.m.; **R-1738**, Chevron’s motion (Lago Agrio Record, Appellate Procedure, cuerpo 119, fojas 11886-11890), 25 July 2011 at 3:10 .p.m; **C-3303.004**, Jones Day (Member) - 2011. However, the Tribunal is not persuaded that these motions were unreasonable. Even accepting, for the sake of argument, the Respondent’s view that Chevron sought to “to slow down the proceedings”, the Tribunal has difficulty understanding why Chevron would have engaged in dilatory tactics after the issuance of the Lago Agrio Judgment.

¹¹¹¹ See paras. 340, 655 above.

tactics adopted by Chevron’s lawyers in the Lago Agrio Litigation after 14 February 2011.

712. *The work of Chevron’s counsel on various matters allegedly unrelated to the Lago Agrio Litigation.* The Respondent argues that the Claimants’ lawyers undertook work unrelated to the Lago Agrio Litigation that is not compensable. Among other examples, the Respondent refers to work and charges regarding “procedures or concepts foreign to the Ecuadorian legal system”, “a repository used by the U.S. federal courts to locate filings and decisions in U.S. federal court cases”, “[a]dvising a client on Ecuador’s telecom law”, an “Anti-Terrorism Act filing”, “meetings with a Brazilian electric utility company”, “a contentious administrative proceeding”, and “enforcement efforts in countries where enforcements actions were never filed”.¹¹¹² The Respondent also insists that it cannot be made to compensate the Claimants for the legal fees and expenses they incurred in connection with work on “offensive steps” in response to the Lago Agrio Litigation, such as “a potential defamation lawsuit”.¹¹¹³
713. Since the existence of allegedly non-defence related activities has been identified by the Parties as a cross-cutting element impacting multiple categories,¹¹¹⁴ the Tribunal will address it together with other elements in Section VIII.N below.
714. *The legal fees and expenses incurred for work allegedly related to criminal proceedings unrelated to the Treaty breaches.* The Respondent states that the invoices of some of the law firms retained by Chevron in the Lago Agrio Litigation refer to work in relation to the criminal cases against Mr Pérez and Mr Veiga and the “Nuñez tapes” investigations, which, in the Respondent’s view, are not related to any Treaty breaches.¹¹¹⁵ The Respondent contends that Chevron’s U.S. attorneys also incurred fees for time spent searching for potential legal actions against the prosecutor who brought one of these criminal proceedings.¹¹¹⁶

¹¹¹² See generally Rejoinder, paras. 982-989, 1005-1006, 1112-1115, 1120.

¹¹¹³ Rejoinder, paras. 993-998.

¹¹¹⁴ See paras. 570-571 above.

¹¹¹⁵ Rejoinder, paras. 1116-1119.

¹¹¹⁶ Rejoinder, paras. 999-1001.

715. The work related to the Criminal Proceedings against Mr Veiga and Mr Pérez will be addressed by the Tribunal in the context of that damages category in Section VIII.K below.
716. To the extent that the activities questioned by the Respondent concern other criminal proceedings, they will be addressed as part of the analysis regarding non-defence related activities in Section VIII.N below, concerning cross-cutting elements.
717. *The alleged involvement of Chevron’s counsel in the unauthorized practice of law in Ecuador and other activities prohibited by Ecuadorian law.* The Respondent refers to unlawful practices on the part of Chevron’s counsel in the Lago Agrio Litigation. On the one hand, it contends that the U.S. law firms, as well as Chilean law firm Asesorias Bofill Escobar, “were doing work sufficiently central in the Lago Agrio Litigation as to amount to the unauthorized practice of law in a foreign jurisdiction”.¹¹¹⁷ On the other hand, the Respondent asserts that the Claimants’ counsel engaged in activities prohibited by Ecuadorian law, such as having multiple meetings with Ecuadorian judges.¹¹¹⁸
718. The proper question before this Tribunal is whether the Claimants have satisfied their burden under international law, rather than domestic law, to prove their claims for the reimbursement of legal fees and expenses as incidental damages. From this viewpoint, the Tribunal is not tasked with assessing the compliance of Claimants’ counsel’s activities with Ecuadorian law, but must rather assess the sufficiency of the evidence on record, on the basis of its discretion under the UNCITRAL Arbitration Rules, to establish the requirements for the underlying costs to qualify as incidental damages (*i.e.*, causation and reasonableness).
719. Accordingly, the Tribunal rejects the Respondent’s argument that it should deny compensation for the fees corresponding to the activities described in paragraph 717 above for the reason that they were prohibited under Ecuadorian law.

¹¹¹⁷ Rejoinder, paras. 1031-1036, 1128-1129; **RE-58**, Sixth Andrade Expert Report, paras. 13(a), 73-80.

¹¹¹⁸ Rejoinder, paras. 1126-1127.

720. Notwithstanding this conclusion, the Tribunal considers that the nature of those activities is relevant in determining whether they amounted to reasonable mitigation measures under international law.
721. In this respect, the Tribunal observes that preventing the Lago Agrio Judgment from becoming enforceable, or seeking to render it unenforceable, might have required the Claimants to retain additional law firms, including one or two U.S. law firms, to assist their local lawyers in their efforts to overturn the Judgment before the Ecuadorian courts. The Tribunal believes that the decision to retain those additional firms and to involve them substantively in the Lago Agrio Litigation can be considered a reasonable mitigation measure in the specific circumstances of this case¹¹¹⁹ (which, as previously discussed, required conveying evidence obtained in U.S. discovery proceedings to the Ecuadorian courts, while coordinating the company's defence and strategy across various parallel proceedings in other jurisdictions).¹¹²⁰ In any event, the Tribunal notes that "Callejas & Asociados was counsel of record to Chevron for the entirety of the Lago Agrio Litigation", and there is no indication of any malicious or objectionable intent in the involvement of foreign firms in these proceedings.¹¹²¹
722. In contrast, the Tribunal considers that *ex parte* meetings with judges are outside the boundaries of what could be considered a reasonable mitigation measure in the circumstances of this case, regardless of whether they are considered to be legal, illegal or part of regular domestic practice. The Tribunal understands that attaining the reversal of the Lago Agrio Judgment might have required the Claimants as a matter of proper litigation to sway the decision of an Ecuadorian court in their favour. As a general proposition, however, even though *ex parte* contact with a judge may be practised in a local litigation context, the only proper way in which courts should be swayed is through

¹¹¹⁹ At least with respect to Jones Day and Gibson, Dunn & Crutcher LLP, as determined in paragraphs 702-707 above.

¹¹²⁰ See paras. 681, 690-692, 705-707 above.

¹¹²¹ According to Mr Veiga, "[a]s the case progressed, and with Chevron's approval, Dr. Callejas expanded his team to meet the growing needs of the case", and, beginning in 2008, Jones Day "took a lead role in supporting Callejas & Asociados from the United States". Fourth Veiga Witness Statement, paras. 104-105.

written and oral argument, whether on the record or in analogous circumstances in which due process, equality of arms, and other essential procedural guarantees are respected.

723. The Respondent has identified one invoice referring to *ex parte* meetings between the Claimants’ counsel and Ecuadorian judges. It is an invoice covering the services of Dr Santiago Andrade Ubidia, one of Chevron’s local counsel in Ecuador, between July and November 2012.¹¹²² The invoice refers to multiple meetings with judges, which would represent approximately USD 8,697.07 in fees.¹¹²³ For the reasons explained in the preceding paragraph, these fees cannot be compensated as incidental damages under international law. Since the Respondent has not identified any other instances of this kind of practice by Chevron’s counsel, the Tribunal has no basis to infer that any of the Claimants’ lawyers, whose fees are claimed under this damages category, may have engaged in any such practices on a regular basis or otherwise.
724. In sum, the Tribunal assesses that it would be appropriate to exclude from compensation USD 8,697.07 of the fees incurred by Dr Santiago Andrade Ubidia, and declines to apply any further reductions on to the damages claimed under the present heading on the basis of any allegedly unlawful practices in which Chevron’s counsel may have engaged in the Lago Agrio Litigation.
725. *The U.S. law firms’ alleged lack of compliance with Chevron’s Guidelines.* The Respondent avers that the time entries of the U.S. law firms that worked in the Lago Agrio Litigation do not permit a review of the type of work they performed or its relationship with the Lago Agrio Litigation, claiming that these deviations from Chevron’s Guidelines “go to the essence of Chevron’s lack of oversight and the free-wheeling nature of Chevron’s U.S. counsel’s involvement in the Lago Agrio Litigation”.¹¹²⁴ The Respondent provides a number of examples of such “vague time entries”, including with regard to work by temporary employees and travel expenses; and also casts doubts on instances of services performable at a lower level of seniority and billing rate, “excessive amount of

¹¹²² See Rejoinder, para. 1126; C-3245, CVX-Track III-20008956.

¹¹²³ The invoices indicate that the fee amounts are based on a Retainer Agreement concluded in August 2010. As such, the Tribunal has arrived at this figure by weighing the total fees paid in these invoices on the basis of the number of hours devoted to meetings with judges.

¹¹²⁴ See Rejoinder, paras. 1053-1099.

time on certain activities”, “large block entries”, and “fees incurred for the recruitment and training of . . . contract attorneys”.¹¹²⁵

726. Since the issue of vague billing entries has been identified by the Parties as a cross-cutting element impacting multiple categories,¹¹²⁶ the Tribunal will address it together with other elements in Section VIII.N below. To the extent that the practices questioned by the Respondent concern other issues such as non-defence-related activities, alleged blocked billing, fees allegedly related to “Getting Up to Speed and Training”, excessively long billing days and excessive time, or double-billing entries, they will likewise be addressed in Section VIII.N below.

727. *The sufficiency of the billing information provided in support of the claim for the additional Ecuadorian and foreign firms retained by Chevron.* The Respondent is also critical of the billing information provided with regard to the additional Ecuadorian and foreign firms retained by Chevron in the Lago Agrio Litigation. It contends that (i) the Claimants have often not produced proper invoices, but rather documents which do not meet the necessary requirements to establish an expense in Ecuador (such as “*proformas*”); (ii) many invoices are “incomplete” and do not permit a determination on how the charges described are related to the Lago Agrio Litigation; and (iii) many invoices contain “ambiguous descriptions” or lack basic information, showing that Chevron’s Guidelines were not enforced.¹¹²⁷

728. In line with the reasoning set out in paragraphs 718-719 above, the question referred to in item (i) of the previous paragraph, whether the billing records of any of these law firms comply with Ecuadorian law, is *per se* not dispositive of the Claimants’ claim for the reimbursement of the legal fees and expenses charged by these firms. Again, the proper question before this Tribunal is whether the Claimants have satisfied their burden under international law, rather than domestic law, to prove their claims for the reimbursement of legal fees and expenses as incidental damages. From this viewpoint, the Tribunal is not tasked with assessing the compliance of the Ecuadorian firms’ billing records with

¹¹²⁵ See generally Rejoinder, paras. 1068-1080, 1084-1095.

¹¹²⁶ See paras. 570-571 above.

¹¹²⁷ See generally Rejoinder, paras. 1103-1111, 1130-1133.

Ecuadorian law, but must rather assess the sufficiency of the evidence on record to establish the requirements for the underlying charges to qualify as incidental damages under international law (*i.e.*, causation and reasonableness).

729. Accordingly, the Tribunal rejects the Respondent's argument that it should deny compensation for the fees for services rendered by any of the additional Ecuadorian firms involved in the Lago Agrio Litigation (Perez, Bustamante & Ponce; Larreategui Meythaler y Zambrano; Donoso & Donoso Asociados; Ricardo Andrade Vaca & Asociados; and Santiago Andrade Ubidia & Juan Carlos Andrade Dávila) for the reason that some of the invoices produced to support this claim do not suffice as proof of expenditures under Ecuadorian law.
730. As for the Respondent's remaining arguments, referred to in paragraph 727(ii) and (iii) above, since the issue of vague billing entries has been identified by the Parties as a cross-cutting element impacting multiple categories,¹¹²⁸ the Tribunal will address them together with other elements in Section VIII.N below.

7. Implications of the but-for scenario

731. Lastly, the Tribunal turns to the implications of its conclusions on the Respondent's but-for argument, as set out in Section VII.A.5 above, on the assessment of the damages to be awarded under the Lago Agrio Litigation category.
732. The Tribunal has determined that the applicable but-for scenario should take as its point of departure a hypothetical Lago Agrio Judgment that dismisses the diffuse claims and at best ignores the individual claims.¹¹²⁹ This but-for scenario does not necessarily presume no appeal of the hypothetical Lago Agrio Judgment by the LAPs. However, it remains an open question what appellate level would have been reached in the counterfactual and whether any remaining individual claims would have ultimately been adjudicated by the upper courts (even presuming they were not abandoned at the trial court stage). What is clear, however, is that any appellate proceedings would have been much more limited in

¹¹²⁸ See paras. 570-571 above.

¹¹²⁹ See para. 390 above.

terms of scope and stakes than the real-world Lago Agrio Litigation:¹¹³⁰ the Claimants would in all likelihood not have needed to deploy as many resources to oppose the LAPs' appeal of a hypothetical Lago Agrio Judgment finding no liability on Chevron, particularly when compared to the costs they actually incurred to appeal the real-world Lago Agrio Judgment. Among other things, the Tribunal anticipates that the parties' submissions would have involved a comparable level of legal and environmental arguments, but would not have required the discussion of the LAPs' alleged fraud (or at least not to the same degree).

733. As mentioned in paragraph 392 above, it is improbable that the Claimants would have continued to involve several international firms in the Lago Agrio Litigation. Faced with more limited stakes, the legal fees and expenses of any local and international counsel would have likely been only a portion of those that were effectively generated by the actual Ecuadorian team representing the Claimants in the real-world Lago Agrio Litigation.¹¹³¹
734. The Tribunal considers that a single team of local Ecuadorian lawyers would have in all likelihood satisfied Chevron's litigation needs at the appellate stage. Unlike the real-world Ecuador Legal Team, this team would not need to be "able to devote all of its time to Chevron's defenses",¹¹³² meaning that its legal fees and expenses would be comparatively lower. Accordingly, the Tribunal determines that Chevron's local Ecuadorian counsel would in all probability have incurred no more than 60% of the total costs incurred by the real-world Ecuador Legal Team during the period following the issuance of the Lago Agrio Judgment.
735. Further, it is likely that any international law firms would have been involved to a much less significant degree and in all probability in a strict supervisory capacity, or serving as liaison with the Claimants' headquarters in the United States. The Tribunal considers it likely that a single U.S. law firm would have been sufficient to perform this role. Moreover, such firm would in all probability not have been required to undertake a great

¹¹³⁰ See para. 391 above.

¹¹³¹ See para. 393 above.

¹¹³² Fourth Veiga Witness Statement, para. 105.

portion of the tasks that Jones Day – the main international law firm supporting Chevron in the Lago Agrio Litigation – was tasked with in the real world, such as performing “a more active role advising Chevron and coordinating with the Ecuadorian legal team”, working “on the environmental response in the Lago Agrio Litigation”, overseeing the “strategic integration of the Lago Agrio Litigation into Chevron’s overall defensive strategy”, “reviewing [the Ecuadorian] lawyers’ and law firms’ invoices”, extensively reviewing the Lago Agrio Litigation record, coordinating translation issues, “travel[ing] to Ecuador to work in person with the Ecuador Legal Team to finalize the [First Instance Appeal] brief”, working on “an appellate *alegato*, Chevron’s rebuttal to the LAPs’ appellate *alegato* and related motion practice”, “preparing . . . supporting evidence”, “build[ing] a cassation strategy and outlin[ing] the cassation arguments and briefing”, “prepar[ing] five *alegatos* addressing torts, fraud, *res judicata*, due process, and punitive damages”, management of “translating, organizing, and preparing the evidence [of the LAPs’ alleged fraud] for filing in Ecuador” or preparing for the hearings before the Constitutional Court.¹¹³³ Consequently, the Tribunal determines that, for purposes of the services provided by an international law firm in the but-for Lago Agrio Litigation proceedings following the Judgment, the Claimants would in all probability have incurred no more than 15% of the legal fees and expenses charged by Jones Day in the real-world proceedings during the period following the issuance of the Lago Agrio Judgment.

736. Similarly, the lower magnitude and scope of the Lago Agrio Litigation in the but-for world (which, crucially, would have resulted in the absence of parallel enforcement proceedings) would have obviated the need for extensive translation services and for most work regarding non-Ecuadorian law.
737. Lastly, the Tribunal accepts that Chevron might still have had to retain some environmental and technical expertise, as well as litigation support, for purposes of the appellate stage in the but-for world. Such appellate stage, however, would likely have been more straightforward from a technical and logistical point of view than in the real-world litigation, as it would have involved fewer lawyers, less voluminous submissions and no or much more limited efforts to convey any evidence of fraud. Accordingly, the

¹¹³³ Fourth Veiga Witness Statement, paras. 108, 111-112; Mittelstaedt Witness Statement, paras. 31, 35, 37-38, 54-55, 57-62.

Tribunal determines that the costs of these services in the but-for world would in all probability have represented no more than 35% of the amounts claimed for costs of experts and vendors under this category during the period following the issuance of the Lago Agrio Judgment.

738. For these reasons, and having considered the particular circumstances of this case, in order to re-establish the situation which would, in all probability, have existed if the Respondent's Treaty breaches had not been committed, the Tribunal assesses that the global amount of compensation to be awarded to the Claimants for damages arising from the Respondent's Treaty breaches must be reduced by (i) 60% of the total costs incurred by the Ecuador Legal Team in the Lago Agrio Litigation (after 14 February 2011); (ii) 15% of the legal fees and expenses incurred by Jones Day in the Lago Agrio Litigation (after 14 February 2011); and (iii) 35% of the legal fees and expenses charged by all experts and vendors in the Lago Agrio Litigation (after 14 February 2011).

4. Conclusion on Lago Agrio Litigation

739. For the foregoing reasons, the Tribunal:

- (i)* Declines to exclude from compensation the Lago Agrio Litigation category of damages as a whole;
- (ii)* Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Lago Agrio Litigation corresponding to services rendered before 14 February 2011;
- (iii)* Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Lago Agrio Litigation corresponding to services provided by the firm Benjamin Ortiz Brennan, and otherwise defers its determination regarding the compensation of the legal fees and expenses corresponding to the component "PR Firms (Creative Response Concepts; Benjamin Ortiz Brennan)", as well as the legal fees and expenses identified in paragraph 661 above, to its analysis of cross-cutting elements set out in Section VIII.N below;

- (iv)** Excludes from compensation 50% of the fees and expenses charged by all relevant experts and vendors after 14 February 2011 (GSI Environmental Inc.; AMEC Geomatrix; CH2M Hill; Cardno Entrix; URS Corporation; Newfields Companies LLC; Ellis GeoSpatial; Exponent, Inc.; Gus R Lesnevich Inc; RICOH USA Inc/Formerly IKON; Autonomy – Introspect; Integrated Science & Technology, Inc.; Harris Corp Government Communication System; Di Paolo Consulting; Fernando Morales; Hargis + Associates, Inc.; Jan Paulsson (billed through Freshfields); Adrian Briggs; Audio Forensic Center; Aninat Schwencke y Cia, Ltda; Pedro J. Alvarez; and Guthrie T. Abbott);
- (v)** Excludes from compensation 60% of the legal fees and expenses corresponding to the component “Lago Agrio WestLaw/Lexis charges”;
- (vi)** Defers its determination regarding the compensation of the legal fees and expenses corresponding to the component “(CLA) Lago Agrio fees and costs allegedly relating to administrative and clerical activities / (RES) Lago Agrio fees and costs relating to administrative and clerical activities” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (vii)** Defers its determination regarding the compensation of the legal fees and expenses charged by the “Ecuador Legal Team” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (viii)** Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Lago Agrio Litigation corresponding to services provided by the firms Rivero Mestre LLP, Gardere Wynne Sewell LLP, Holland & Knight, Boies Schiller & Flexner, Covington & Burling, and Stern Kilcullen & Rufolo;
- (ix)** Defers its determination regarding the compensation of the legal fees and expenses identified in paragraphs 695, 712, 714, 725, and 727 above (except as provided in paragraphs 715 and 729 above) to its analysis of cross-cutting elements set out in Section VIII.N below;

- (x) Defers its determination regarding the compensation of the legal fees and expenses identified in paragraph 715 above to its analysis of the Criminal Proceedings category of damages in Section VIII.K below;
- (xi) Excludes from compensation USD 8,697.07 of the fees incurred by the Claimants in connection with the Lago Agrio Litigation corresponding to services provided by Dr Santiago Andrade Ubidia;
- (xii) On account of the Tribunal's conclusions regarding the but-for scenario, set out in paragraphs 731-738 above, deducts from the global amount of compensation to be awarded to the Claimants for damages arising from the Respondent's Treaty breaches an amount equal to (1) 60% of the total fees and expenses charged by the "Ecuador Legal Team" after 14 February 2011; (2) 15% of the legal fees and expenses incurred by the Claimants after 14 February 2011 corresponding to services provided by Jones Day; and (3) 35% of the legal fees and expenses charged, after 14 February 2011, by GSI Environmental Inc.; AMEC Geomatrix; CH2M Hill; Cardno Entrix; URS Corporation; Newfields Companies LLC; Ellis GeoSpatial; Exponent, Inc.; Gus R Lesnevich Inc; RICOH USA Inc/Formerly IKON; Autonomy – Introspect; Integrated Science & Technology, Inc.; Harris Corp Government Communication System; Di Paolo Consulting; Fernando Morales; Hargis + Associates, Inc.; Jan Paulsson (billed through Freshfields); Adrian Briggs; Audio Forensic Center; Aninat Schwencke y Cia, Ltda; Pedro J. Alvarez; and Guthrie T. Abbott;
- (xiii) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Lago Agrio Litigation, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below;¹¹³⁴ and
- (xiv) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Lago Agrio Litigation. The Tribunal will

¹¹³⁴ See paras. 569-573 above.

determine the exact amount of compensation corresponding to the Lago Agrio Litigation in Section VIII.O below.

* * *

B. ECUADOR ENFORCEMENT PROCEEDINGS

740. The Claimants seek USD 3,582,889.44 as direct damages for the legal fees and expenses incurred between October 2007 and February 2019 in the Ecuador Enforcement Proceedings as the natural and foreseeable result of the Respondent’s Treaty breaches.¹¹³⁵ In the alternative, the Claimants submit that they are entitled to recover these expenses as incidental damages.¹¹³⁶

741. The Respondent submits that the Claimants’ claims for fees and costs allegedly paid for the Ecuador Enforcement Proceedings should be denied in their entirety, arguing that the Claimants failed to carry their burden of proving that the expenses claimed were caused by the Treaty breaches and were reasonable and necessary.¹¹³⁷

1. The Claimants’ Position

742. According to the Claimants, Chevron began incurring costs to prepare for enforcement proceedings in Ecuador in February 2008 because “the LAPs foreign enforcement efforts were clearly foreseeable in light of their press statements, the strategy outlined in their Invictus Memorandum (the “**Invictus Memorandum**”),¹¹³⁸ and Ecuador’s breach of the Tribunal’s Interim Orders and Awards to facilitate the enforcement of the Judgment.”¹¹³⁹ As a result, the Claimants argue that they were entitled to prepare in advance of the enforcement proceedings before the LAPs filed their action in August 2012 and now are entitled to recover the expenses they incurred in doing so.¹¹⁴⁰

743. As to the Respondent’s complaint about the Claimants engaging foreign attorneys to work on the Ecuadorian enforcement proceedings, the Claimants take the view that the business decisions regarding legal representation should be afforded ample deference and “need

¹¹³⁵ Reply, para. 860, Updated Appendix 2; **C-3462**, Indices of Claimed Invoices by Damage Category (“Ecuador enforcement” tab).

¹¹³⁶ Reply, para. 860.

¹¹³⁷ Counter-Memorial, para. 792; Rejoinder, para. 1501.

¹¹³⁸ **C-903**, “Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated [DONZ00032520-51].

¹¹³⁹ Memorial, paras. 320, 335; Reply, paras. 865, 870.

¹¹⁴⁰ Reply, para. 870.

not be second-guessed.”¹¹⁴¹ As stated by the Claimants’ expert, Mr Joseph Ryan, the Claimants note that Chevron’s decision with respect to hiring law firms was assessed based on the “complexity and timeframe for completion of the legal work” required.¹¹⁴² To the extent the Respondent’s criticism relates to the scope of work performed by foreign attorneys, the Claimants submit that they have provided underlying invoices and time entries and thus presented sufficient evidence and explanation of the work being done.¹¹⁴³

744. Regarding the expenses incurred by the “Ecuador Legal Team” comprised of Ecuadorian lawyers, the Claimants explain that the invoices underlying the claimed fees and costs refer to payments advanced by Chevron for the defence of the Lago Agrio Litigation, which were sent to the attention of three individuals over the course of the dispute: Adolfo Callejas, Rodrigo Pérez Pallares, and Eduardo Borja.¹¹⁴⁴ According to the Claimants, the daily accounting of the times was not necessary or required by Chevron, given that Mr Callejas and several members of his team “had a long, preexisting relationship with the Company going back to the time of the Consortium. This team had the utmost confidence of, and was closely supervised by, Mr Veiga and others on a daily basis.”¹¹⁴⁵
745. The Claimants conclude that – at the very least – they are entitled to recover USD 3,477,000 in direct damages after 1 March 2012 in the Ecuador Enforcement Proceedings.¹¹⁴⁶ In the alternative, the Claimants take the view that they are entitled to recover these legal fees and expenses as incidental damages as a matter of international law.¹¹⁴⁷

2. The Respondent’s Position

746. According to the Respondent, the Claimants are not entitled to recover damages incurred before the Respondent’s breaches became final when the Ecuadorian Constitutional Court

¹¹⁴¹ Reply, para. 872.

¹¹⁴² Reply, para. 872; Ryan Expert Report, paras. 26, 72, 79; Litvack Expert Report, para. 24.

¹¹⁴³ Reply, para. 872.

¹¹⁴⁴ Reply, para. 874.

¹¹⁴⁵ Reply, para. 875; Fourth Veiga Witness Statement, paras. 104-105.

¹¹⁴⁶ Reply, para. 880.

¹¹⁴⁷ Reply, para. 882.

upheld the decisions of the lower courts on 27 June 2018.¹¹⁴⁸ As a result, the Respondent argues that fees incurred before this date are not recoverable and that the maximum fees and costs the Claimants can claim for the Ecuador Enforcement Proceedings is no more than USD 1,722,902.¹¹⁴⁹

747. In particular, the Respondent rejects the Claimants’ assertion that they are entitled to recover fees in the amount of USD 213,910.41 incurred during the four-year period before the Ecuadorian enforcement proceedings commenced in August 2012.¹¹⁵⁰ This is because, in the Respondent’s view, “[l]egal fees cannot be reasonably incurred in ‘defense of’ a legal proceeding that has not yet been initiated.”¹¹⁵¹ The foreseeability of the proceeding, the Respondent adds, does not provide justification for the Claimants to recover fees for work performed during a time when the complaint was not even filed, in particular, when the Claimants have not provided enough information to analyse whether the work was actually performed in connection with the Ecuadorian enforcement proceedings.¹¹⁵²
748. In addition, the Respondent argues there are multiple problems with the Claimants’ evidence pertaining to this category of expenses.¹¹⁵³
749. First, the Respondent takes issue with the Claimants’ engagement of non-Ecuadorian law firms to handle the enforcement proceedings even though they took place in Ecuadorian courts and required knowledge of Ecuadorian law.¹¹⁵⁴ In fact, all of the fees sought before the “Ecuador Legal Team” enters the picture in September 2018, the Respondent asserts, are for work done by non-Ecuadorian law firms even though none of these firms have offices in Ecuador or purport to be licensed to practice in Ecuador.¹¹⁵⁵ According to the Respondent, the Claimants have not established the reasonableness and necessity of

¹¹⁴⁸ Counter-Memorial, para. 793.

¹¹⁴⁹ Counter-Memorial, para. 793.

¹¹⁵⁰ Counter-Memorial, para. 793; Rejoinder, paras. 1502, 1504.

¹¹⁵¹ Rejoinder, para. 1504.

¹¹⁵² Counter-Memorial, para. 795; Rejoinder, paras. 1504-1507.

¹¹⁵³ Rejoinder, para. 1519.

¹¹⁵⁴ Counter-Memorial, para. 797; Rejoinder, para. 1516.

¹¹⁵⁵ Counter-Memorial, para. 798; Rejoinder, para. 1516.

involving these firms, including six large U.S. law firms, before any Ecuadorian lawyers were engaged in September 2018, well into the enforcement action.¹¹⁵⁶

750. Second, while the Claimants have produced six “cash calls” for the “Ecuador Legal Team” from September 2018 to February 2019, the Respondent maintains that the information provided therein is wholly insufficient, as they do not specify the details of the timekeepers and their work nor are accompanied by contemporaneous supporting documentation to conduct an analysis of reasonableness or necessity.¹¹⁵⁷ By way of example, the Respondent notes that many of the items listed relate to overhead expenses and public relations expenses not caused by the Treaty breaches.¹¹⁵⁸ The Respondent further posits that Mr Veiga’s approval of enormous expenditures month after month without requiring individualized entries, in violation of Chevron’s Guidelines, is “a sufficiently egregious lapse in oversight,” for which the Respondent cannot be held responsible.¹¹⁵⁹
751. Lastly, the Respondent contends that the invoices produced by the Claimants for work performed after the initiation of the Ecuador Enforcement Proceedings is not recoverable because many of the invoices lack the detail needed to establish a causal link with the Treaty breaches, as well as the reasonableness and necessity of the fees claimed.¹¹⁶⁰ In this respect, the Respondent points out that the Claimants’ invoices include public relations work, which is not legal by definition.¹¹⁶¹ The fact that Chevron deployed lawyers to perform public relations related activities, the Respondent asserts, “does not transform it into legal and necessary activity.”¹¹⁶²

¹¹⁵⁶ Counter-Memorial, para. 798; Rejoinder, paras. 1518-1519.

¹¹⁵⁷ Rejoinder, paras. 1508-1509, 1512.

¹¹⁵⁸ Rejoinder, para. 1510.

¹¹⁵⁹ Rejoinder, para. 1513.

¹¹⁶⁰ Rejoinder, para. 1514.

¹¹⁶¹ Rejoinder, para. 1515.

¹¹⁶² Rejoinder, para. 1515.

3. The Tribunal's Analysis

(a) Introduction

752. The Claimants' damages claim in Track III includes three different categories concerning separate yet related chains of events taking place in parallel in Ecuador. Under the present heading, the Tribunal will address only the Claimants' claim for reimbursement of the legal fees and expenses disbursed in connection with the Ecuador Enforcement Proceedings. The Claimants' damages claim for the reimbursement of the legal fees and expenses disbursed in connection with the Lago Agrio Litigation is addressed separately in Section VIII.A above, while the Claimants' claim concerning the embargo of Chevron's trademarks in Ecuador will be addressed separately in Section IX.B below.
753. On 3 August 2012, the Lago Agrio Court issued an order of enforcement ordering Chevron to pay the sum of USD 19,041,414,529 per the Lago Agrio Judgment – or to turn over assets of equivalent value free of any encumbrances – within 24 hours.¹¹⁶³ The Lago Agrio Court issued the writ of execution in response to an application by the LAPs to execute on the Claimants' assets.¹¹⁶⁴
754. Shortly after the LAPs' petition, on 15 October 2012, the Lago Agrio Court ordered that the Lago Agrio Judgment's execution "be applicable to the entirety of the assets of [Chevron], until such time as the entire obligation has been satisfied."¹¹⁶⁵ Assets subject to the order included Chevron's intellectual property assets in Ecuador, all of Chevron and its affiliates' bank accounts in Ecuador or transfers through the Ecuadorian banking system, and Chevron's US \$96 million award against Ecuador from the *Chevron v. Ecuador I* arbitration.¹¹⁶⁶ In addition, as already noted, the order named Chevron subsidiaries in other countries, and purported to freeze their assets in those countries.¹¹⁶⁷

¹¹⁶³ See Track II Award, para. 4.467; **C-1404**, Providencia, Provincial Court of Justice of Sucumbíos, 3 August 2012 at 3:00 p.m.

¹¹⁶⁴ **C-1404**, Providencia, Provincial Court of Justice of Sucumbíos, 3 August 2012 at 3:00 p.m.

¹¹⁶⁵ **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012 at 4:54 p.m., p. 2; see Track II Award, paras. 4.469, 7.129.

¹¹⁶⁶ **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012 at 4:54 p.m., pp. 4-5.

¹¹⁶⁷ See paras. 431-432 above.

755. The Lago Agrio Court's order of enforcement and the LAPs' subsequent embargo petition triggered a lengthy proceeding before the Ecuadorian courts. Attachment pursuant to the embargo order was extended to additional Chevron subsidiaries' assets, including additional trademarks and intellectual property in Ecuador.¹¹⁶⁸
756. Notwithstanding the Tribunal's Interim Awards on Interim Measures, the Lago Agrio Court continued to admit the LAPs' motions and denied Chevron's challenges, prompting Chevron to continue to defend against the trademark embargo.¹¹⁶⁹
757. Before beginning its analysis of the Claimants' damages claim in respect of the Ecuador Enforcement Proceedings, the Tribunal recalls the Claimants' position that all of their claimed legal fees and expenses incurred in connection with these proceedings constitute direct damages and are recoverable in the alternative as incidental damages.¹¹⁷⁰ As explained in paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages, *not* as *direct* damages. The costs incurred by the Claimants on account of any other form of harm or geared towards any other goal are *not* compensable in these proceedings.¹¹⁷¹
758. Following the methodology laid out in Section VII.G.5 for the assessment of incidental damages in this case, the Tribunal finds that the Claimants' claim for compensation in respect of the Ecuador Enforcement Proceedings must be granted for the reasons and to the extent set out below.

¹¹⁶⁸ See Section VIII.A above on the Lago Agrio Litigation and Section IX.B below on Intellectual Property Losses in Ecuador.

¹¹⁶⁹ See Section VIII.A above on the Lago Agrio Litigation.

¹¹⁷⁰ Reply, para. 860.

¹¹⁷¹ See para. 317 above.

(b) *First Step: Analysis of Incidental Damages “Category”*

759. As a first step of its analysis, the Tribunal must determine whether the Ecuador Enforcement Proceedings category of damages meets the requirements of causation and reasonableness for the compensation of incidental damages under international law.¹¹⁷²
760. First, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555, the Claimants’ efforts must have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.
761. Second, as noted in paragraph 556 above, incidental damages are subject to an additional requirement of reasonableness: to warrant compensation, legal fees and expenses must have been *reasonably* incurred to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. At this level of analysis, the Tribunal’s determination concerns the reasonableness of the mitigation *measures* undertaken by the Claimants, not of the *amounts* they spent, which will be examined in a subsequent step of the analysis.¹¹⁷³
762. By participating in the Ecuador Enforcement Proceedings, the Claimants sought to resist the execution of the Lago Agrio Judgment against the Claimants’ assets in the territory of Ecuador. As such, the efforts undertaken by the Claimants in connection with the Ecuador Enforcement Proceedings clearly sought to minimize the loss arising directly from the enforcement of the Lago Agrio Judgment as described in item (iii) in paragraph 760 above. These efforts sought to protect Chevron’s property in the very jurisdiction

¹¹⁷² See paras. 553-558 above.

¹¹⁷³ See para. 556 above.

where the Lago Agrio Judgment came into existence and as such were also a direct and reasonable way of mitigating the injury. The requirements of causation and reasonableness are therefore met as regards this category of damages.

(c) Second Step: Analysis of Incidental Damages “Components”

763. As a second step of its analysis, the Tribunal must determine, within the Ecuador Enforcement Proceedings category, whether the Claimants have established the requirement for each individual costs “component” identified by the Parties to qualify as incidental damages. The Tribunal must also examine other issues raised by the Parties in connection with this particular damages category to determine whether any other portion of the legal fees and expenses claimed under the present heading should be excluded from the final amount of compensation.¹¹⁷⁴

764. In view of their importance within the Parties’ pleadings on this category, the Tribunal will address first the broader issues raised by the Respondent affecting this category before turning to the individual component that was identified by the Parties.

1. General issues

765. First, the Tribunal notes that the costs claimed by the Claimants under this category were incurred starting in 2007, *i.e.*, five years before the Ecuador Enforcement Proceedings commenced in August 2012.¹¹⁷⁵ The Respondent considers that the Claimants are not entitled to recover fees and expenses incurred in defence of the Ecuador Enforcement Proceedings before they were initiated.¹¹⁷⁶

766. The Tribunal has already determined that incidental damages are only compensable in principle in this Arbitration if they were incurred starting as of 14 February 2011, the date

¹¹⁷⁴ See paras. 559-565 above.

¹¹⁷⁵ As noted in paragraph 740 above, the Claimants state in their Reply that they “seek US\$ 3,582,889.44 as direct damages for the legal fees and costs incurred between October 2007 and February 2019” in connection with the Ecuador Enforcement Proceedings category of damages (Reply, para. 860) However, the first entry in the Ecuador Enforcement Proceedings category of the Claimants Updated Summary of Chevron’s Fees and Costs Claimed as Damages in Track III is dated December 2008. Reply, Updated Appendix 2, p. 702. The corresponding invoice, dated 28 January 2009, is the oldest in the Claimants’ Index of Claimed Invoices by Damage Category. See C-3462, Indices of Claimed Invoices by Damage Category (“Ecuador enforcement” tab). In view of the Tribunal’s decision to exclude from compensation all legal fees and expenses incurred by the Claimants before 14 February 2011, these discrepancies are ultimately immaterial.

¹¹⁷⁶ See para. 747 above.

of issuance of the Lago Agrio Judgment. This was the date upon which the risks connected to the enforcement of the Judgment became foreseeable and was thus also the date as of which the Claimants' mitigation efforts could be said to respond to the injury arising from the recognition and enforcement of that Judgment – *i.e.*, the injury flowing from the Respondent's internationally wrongful acts. Whatever harm the Claimants may have suffered by undertaking work before 14 February 2011 in preparation for a potential enforcement proceeding in Ecuador was not caused by the Respondent's Treaty breaches and therefore falls outside the scope of the compensable injury in these proceedings.¹¹⁷⁷

767. Accordingly, the Tribunal finds that the Claimants are not entitled to claim compensation for any expenses associated with the advance preparations for the Ecuador Enforcement Proceedings that were done before 14 February 2011. Legal fees and expenses incurred within the context of these proceedings after that date – and, in particular, legal fees and expenses for preparatory work undertaken between 14 February 2011 and the initiation of the Ecuador Enforcement Proceedings in August 2012 – are compensable in principle, subject to the Tribunal's determinations that follow.

768. Second, the Respondent is critical of the Claimants' engagement of several large non-Ecuadorian law firms in these proceedings and notes, in particular, that all fees sought for the work of Ecuadorian lawyers under this category were incurred only as of September 2018, well into the enforcement proceedings.

769. At the outset, the Tribunal observes that while Chevron was effectively represented by Ecuadorian lawyers in the Ecuador Enforcement Proceedings from their initiation in August 2012,¹¹⁷⁸ the Claimants claim no fees under this category for the work of the so-called "Ecuador Legal Team" prior to September 2018.¹¹⁷⁹ In the Tribunal's understanding, the reason for this discrepancy is that the "Ecuador Legal Team" participated both in the Lago Agrio Litigation and the Ecuador Enforcement Proceedings: the team was paid on the basis of a monthly retainer and therefore issued a single billing document for all services performed for Chevron each month in connection with both

¹¹⁷⁷ See paras. 362, 364, 397 above.

¹¹⁷⁸ See generally Memorial, Appendix 8.

¹¹⁷⁹ Reply, Updated Appendix 2, pp. 702-730.

litigations.¹¹⁸⁰ As such, the legal fees and expenses incurred in connection with the Ecuador Enforcement Proceedings before September 2018 appear to be effectively claimed under the Lago Agrio Litigation damages category, while all fees charged by the “Ecuador Legal Team” after the Lago Agrio Litigation ended in mid-2018 are claimed under the present category. Accordingly, the Tribunal’s rulings in this Section should be understood to refer only to legal fees and expenses incurred by the Claimants in connection with the “Ecuador Legal Team” as from September 2018.

770. As to the fees incurred by the “Ecuador Legal Team” starting in September 2018, which are properly claimed under the present heading, the Tribunal recalls that the Respondent objects to the reimbursement of the “cash calls” prepared by this team in lieu of formal invoices on several grounds, including the lack of supporting narratives and detail and the presence of expenses related to public relations work. Given that these are issues that impact multiple damage categories, the Tribunal will address these as cross-cutting “elements” in Section VIII.N below.¹¹⁸¹

771. Aside from the “Ecuador Legal Team”, all remaining legal fees claimed under this category correspond to services rendered by non-Ecuadorian law firms (Jones Day; Holland & Knight; Gardere Wynne Sewell LLP; Gibson, Dunn & Crutcher LLP; Boies Schiller & Flexner LLP; Mateha Associates Corp.; Stern Kilcullen & Ruffolo LLC; Asesorias Bofill Escobar).¹¹⁸²

772. As already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants’ decisions as to which specific mitigation measures to undertake in real time.¹¹⁸³ While the Tribunal accepts that the engagement of foreign law firms for local enforcement proceedings may be useful for the conduct of those proceedings, it nonetheless has difficulty understanding how the participation of 8 non-Ecuadorian law firms could have reasonably assisted the Claimants in resisting the enforcement of an Ecuadorian judgment in Ecuador over assets located in that same jurisdiction – a

¹¹⁸⁰ See Reply, paras. 874-875; Fourth Veiga Witness Statement, paras. 112, 125.

¹¹⁸¹ See paras. 570-572 above.

¹¹⁸² Reply, Updated Appendix 2, p. 702.

¹¹⁸³ See para. 341 above.

quintessential question of Ecuadorian law and procedure that would normally be reserved to local lawyers.

773. As explained above, unless the Claimants sought to minimize the loss arising directly from the enforcement of the Lago Agrio Judgment by retaining these foreign law firms, they cannot claim compensation in these proceedings for the legal fees and expenses charged by those firms.¹¹⁸⁴ To the extent that the goal of resisting enforcement in Ecuador might have required *one* foreign law firm to act as a liaison between the Claimants' headquarters in the United States and the "Ecuador Legal Team" acting before the Ecuadorian courts, or in a coordinating capacity with teams operating in other jurisdictions (including before this Tribunal), the Tribunal is prepared to grant compensation for the legal fees and expenses charged by the first foreign firm to participate in the Ecuador Enforcement Proceedings (Jones Day).¹¹⁸⁵ Otherwise, the Tribunal denies compensation under this heading for the legal fees and expenses charged by all other foreign law firms involved in these proceedings (Holland & Knight; Gardere Wynne Sewell LLP; Gibson, Dunn & Crutcher LLP; Boies Schiller & Flexner LLP; Mateha Associates Corp.; Stern Kilcullen & Rufolo LLC; Asesorias Bofill Escobar).

774. Having addressed all overarching issues raised by the Parties in connection with this category of damages, the Tribunal will now assess the "components" identified by the Parties under this heading.

2. Component: (CLA) Expenses alleged to be for temporary employees / (RES) Temporary employee expenses¹¹⁸⁶

775. The Parties have only identified one component within the Ecuador Enforcement Proceedings Category: "(CLA) Expenses alleged to be for temporary employees / (RES) Temporary employee expenses".¹¹⁸⁷ This component concerns USD 135,588.38 claimed

¹¹⁸⁴ See para. 555 above.

¹¹⁸⁵ Reply, Updated Appendix 2, p. 702. The Tribunal notes that Jones Day was also the non-Ecuadorian firm with the highest billing in connection with this damages category (USD 898,759) and thus, presumably, had a more prominent role than other firms retained by the Claimants. See Letter from the Claimants to the Tribunal dated 2 November 2022, Claimants' Damages Model, Vendor Switches, cell F176.

¹¹⁸⁶ For an explanation of the names assigned to components see para. 568 above.

¹¹⁸⁷ See para. 568 above.

through 61 invoices as “Temporary Employee Expenses” paid by Jones Day.¹¹⁸⁸ Specifically, the Respondent argues that these invoices, which lack sufficient detail, do not on their own prove the necessity of employing temporary employees on top of the multitude of law firms Chevron had already retained for the proceedings.¹¹⁸⁹

776. As pointed out by the Respondent, many of the invoice entries for the work engaged by the temporary employees include “enforcement document collection.”¹¹⁹⁰ In this respect, Mr Mittelstaedt’s witness statement provides further guidance as to what these tasks might have entailed. According to Mr Mittelstaedt, “[t]o ensure that the document was efficient, Jones Day worked seamlessly with teams of lower cost contract attorneys at multiple locations to ensure that Chevron document production needs were met.”¹¹⁹¹ The Jones Day team, Mr Mittelstaedt continues, “provided cost efficient support to keep the record current as the litigation progressed, carry out targeted searches, and assist with record citations when [they] were preparing filings, among other things.”¹¹⁹² As a result, Jones Day “often fielded multiple requests each day, from various law firms and case teams, supplying them with essential information and documents needed to support Chevron’s claims or defenses in the RICO case, 1782 proceedings, recognition and enforcement proceedings, the Gibraltar proceedings, and this arbitration before the Tribunal.”¹¹⁹³

777. In light of the above, the Tribunal can reasonably infer that the work of Jones Day’s temporary employees played a role in the coordination strategy among multiple global firms aimed at supporting Chevron’s defence in the Ecuador Enforcement Proceedings, as described above.¹¹⁹⁴ Accordingly, the Tribunal rejects the Respondent’s request to exclude from compensation the expenses of Jones Day’s temporary employees claimed under this damages category.

¹¹⁸⁸ Rejoinder, para. 1514.

¹¹⁸⁹ Rejoinder, para. 1514.

¹¹⁹⁰ Rejoinder, Annex E-2.

¹¹⁹¹ Mittelstaedt Witness Statement, para. 38.

¹¹⁹² Mittelstaedt Witness Statement, para. 38.

¹¹⁹³ Mittelstaedt Witness Statement, para. 111.

¹¹⁹⁴ See para. 773 above.

4. Conclusion on Ecuador Enforcement Proceedings

778. For the foregoing reasons, the Tribunal:

- (i)** Declines to exclude from compensation the Ecuador Enforcement Proceedings category of damages as a whole;
- (ii)** Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Ecuador Enforcement Proceedings corresponding to services rendered before 14 February 2011;
- (iii)** Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Ecuador Enforcement Proceedings corresponding to services provided by the firms Holland & Knight, Gardere Wynne Sewell LLP, Gibson, Dunn & Crutcher LLP, Boies Schiller & Flexner LLP, Mateha Associates Corp., Stern Kilcullen & Rufolo LLC and Asesorias Bofill Escobar;
- (iv)** Defers its determination regarding the compensation of the legal fees and expenses charged by the “Ecuador Legal Team” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (v)** Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Ecuador Enforcement Proceedings, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below;¹¹⁹⁵ and
- (vi)** Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Ecuador Enforcement Proceedings. The Tribunal will determine the exact amount of compensation corresponding to the Ecuador Enforcement Proceedings in Section VIII.O below.

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¹¹⁹⁵ See paras. 569-573 above.

C. ARGENTINA ENFORCEMENT PROCEEDINGS

779. The Claimants seek USD 25,695,438.12 as direct damages for the legal fees and expenses incurred between October 2007 and December 2018 in the Argentina Enforcement Proceedings.¹¹⁹⁶ In the alternative, the Claimants submit that they are entitled to recover these expenses as incidental damages.¹¹⁹⁷

780. The Respondent submits that the Claimants' claims for legal fees and expenses allegedly paid for the Argentina Enforcement Proceedings should be denied in its entirety, arguing that the Claimants failed to carry their burden of proving that the expenses claimed were caused by the Treaty breaches and were reasonable and necessary.¹¹⁹⁸

1. The Claimants' Position

781. According to the Claimants, the damages sought under this category consist mainly of legal fees and expenses incurred in two proceedings over a period of six and a half years: (i) the LAPs' attempt to enforce an Ecuadorian embargo order targeting the assets of Chevron's subsidiaries in Argentina (the "**Argentina Embargo Proceedings**"); and (ii) a parallel recognition (*exequatur*) proceeding seeking to enforce the Lago Agrio Judgment (the "**Argentina Recognition Proceedings**").¹¹⁹⁹

782. In response to the Respondent's argument that the Claimants are not entitled to recover any expenses incurred before the LAPs actually filed their enforcement action in November 2012, the Claimants posit that they had a sound basis to advance preparatory work in light of the public statements made by President Correa, as well as by LAPs' attorneys, as early as 2007, about their intent to enforce the Lago Agrio Judgment and seize Chevron's assets in jurisdictions worldwide.¹²⁰⁰ As Latin American jurisdictions were "high-risk jurisdictions for potential enforcement actions by the Lago Agrio

¹¹⁹⁶ Reply, paras. 884, 1212, Appendix 2; **C-3462**, Index of Claimed Invoices by Damages Category, "Argentina Enforcement" tab.

¹¹⁹⁷ Reply, para. 884.

¹¹⁹⁸ Counter-Memorial, para. 805; Rejoinder, para. 1367.

¹¹⁹⁹ Memorial, paras. 339-354.

¹²⁰⁰ Memorial, para. 356; Reply, paras. 887-889.

Plaintiffs,” the Claimants take the view that their early preparations in Argentina thus constituted a “proportional response” to a foreseeable substantial threat.¹²⁰¹

783. In the Claimants’ view, the Respondent should be estopped or precluded from advancing the argument that Chevron may not recover losses incurred by its subsidiaries, given that “it conflicts with its own judiciary’s conduct”, which expressly ordered the seizure of Chevron’s subsidiaries’ assets in Argentina.¹²⁰² Allowing the Respondent to invoke the corporate separateness that its own judiciary ignored for the purposes of avoiding the payment of damages sustained as a result of its own breach of international law, the Claimants assert, would violate the international law principle of good faith that does not allow a party to “blow hot and cold”, as well as the separate principle barring a party from benefiting from its own wrongful conduct.¹²⁰³
784. Pointing out that the LAPs did not have any assets in Argentina to satisfy any adverse costs award, the Claimants reject the Respondent’s argument that the Claimants could have recovered their fees and costs that were actually incurred in the Argentina Enforcement Proceedings under Argentine law.¹²⁰⁴
785. In view of the above, the Claimants submit that that – at the very least – they are entitled to recover USD 25,462,000 in direct damages after 1 March 2012 in the Argentina Enforcement Proceedings.¹²⁰⁵
786. In the alternative, the Claimants take the view that they are entitled to recover these legal fees and expenses as incidental damages because they were reasonable.¹²⁰⁶ In this respect, the Claimants clarify that Chevron consulted – but did not retain – 16 law firms on various matters, given the stakes and complexity of the litigation in Argentina, and that most of the legal expenses incurred in Argentina were in fact charged by Argentine

¹²⁰¹ Reply, para. 889.

¹²⁰² Reply, para. 891.

¹²⁰³ Reply, para. 892.

¹²⁰⁴ Reply, paras. 893-895.

¹²⁰⁵ Reply, para. 896.

¹²⁰⁶ Reply, para. 897.

lawyers.¹²⁰⁷ The Claimants add that consulting multiple law firms was required to coordinate the advocacy in Argentina with multiple parallel actions in several other jurisdictions.¹²⁰⁸

787. Lastly, the Claimants contest the Respondent’s assertion that the filings in the Argentina Recognition Proceedings were excessive, unreasonable, and unnecessary.¹²⁰⁹ For the Claimants, “Chevron’s strategy of presenting all legitimate arguments in an effort to protect its assets and business was normative in litigation and reasonable in all respects.”¹²¹⁰

2. The Respondent’s Position

788. Similar to its argument advanced in the context of the Ecuador Enforcement Proceedings, the Respondent maintains that the Claimants are not entitled to recover legal fees and expenses incurred in connection with the Argentina Enforcement Proceedings before the Treaty breaches became final on 27 June 2018.¹²¹¹ Consequently, the Respondent asserts that the Claimants could at most claim USD 634,908 in legal fees and expenses under this category.¹²¹²

789. Even if the Claimants could claim expenses incurred before 27 June 2018, the Respondent takes issue with the expenses allegedly incurred between June 2008 and November 2012, before the LAPs filed their first action in Argentina.¹²¹³ For the Respondent, detailed preparation from more than four years before the initiation of the proceedings “was simply not necessary”, considering that (i) no level of preparatory work could have prevented the Argentine court from attaching Chevron’s subsidiaries’ assets *ex parte*; and (ii) the grounds on which Chevron’s subsidiaries succeeded in lifting the embargo order (*i.e.*, the fact that they were distinct legal entities from Chevron and were not defendants

¹²⁰⁷ Reply, paras. 898-899.

¹²⁰⁸ Reply, para. 899.

¹²⁰⁹ Reply, para. 900.

¹²¹⁰ Reply, paras. 901-903.

¹²¹¹ Counter-Memorial, para. 806.

¹²¹² Counter-Memorial, para. 807; **RE-35**, First Leigh Expert Report, para. 125.

¹²¹³ Counter-Memorial, para. 808.

in the Lago Agrio Litigation) were straightforward and thus did not “require to prepare a mountain of materials over many months”.¹²¹⁴

790. Additionally, the Respondent argues that the Claimants may not recover losses incurred by third parties, even if they are wholly-owned subsidiaries.¹²¹⁵ Rejecting the Claimants’ assertion that it is precluded from advancing its argument about Chevron’s subsidiaries, the Respondent points out that the Claimants “succeeded in vindicating their corporate separateness in vacating the attachment” in the Argentina Embargo Proceedings.¹²¹⁶ Moreover, in the absence of proof regarding who paid the claimed invoices for the Argentina Enforcement Proceedings, the Respondent contends that the Claimants have failed to prove that they suffered a potentially compensable loss.¹²¹⁷

791. Even if the Claimants had shown that they actually paid for the legal fees and expenses incurred in the Argentina Enforcement Proceedings, the Respondent maintains that the Claimants have failed to demonstrate that the services supposedly rendered by certain Argentine lawyers, namely, by Mr León Carlos Arslanian of Arslanian & Asociados and Mr Emilio Jorge Cardenas, were actually rendered, let alone reasonable, necessary, or as a result of any Treaty breach.¹²¹⁸ In this respect, the Respondent explains that the fees are documented exclusively through proforma invoices, cover letters or lists of time entries, instead of formal invoices (*facturas*) issued by either Arslanian & Asociados or Mr Cardenas in accordance with Argentine law.¹²¹⁹ Relying on Argentine law, which governs the provision of legal services in Argentina, the Respondent therefore is of the view that there is no basis for the Tribunal to conclude that the services were, in fact, rendered.¹²²⁰

792. Aside from USD [REDACTED] in fees for services not substantiated by a *factura*, the Respondent contends that the Claimants have failed to prove that any of the USD [REDACTED]

¹²¹⁴ Rejoinder, para. 1379.

¹²¹⁵ Counter-Memorial, paras. 809-811; Rejoinder, para. 1370.

¹²¹⁶ Rejoinder, para. 1371.

¹²¹⁷ Counter-Memorial, para. 812; Rejoinder, para. 1369.

¹²¹⁸ Counter-Memorial, para. 817; Rejoinder, para. 1371.

¹²¹⁹ Rejoinder, para. 1372.

¹²²⁰ Rejoinder, para. 1372.

██████ in fees allegedly charged by Arslanian & Asociados between January 2013 and October 2018 were related to the Treaty breaches.¹²²¹ Pointing out that the flat rate arrangement with Arslanian & Asociados violated Chevron’s Guidelines, the Respondent further questions the “astronomical fees” charged by Arslanian & Asociados accompanied by “paper-thin description” which, according to the Respondent, “far exceed what is normal and reasonable in the Argentine legal market”.¹²²²

793. As to the legal expenses charged by non-Argentine lawyers, the Respondent submits that the Claimants have not proved the reasons for retaining such lawyers, who normally charge at hourly rates much higher than Argentine counsel, nor explained their actual work, and the reasonableness thereof.¹²²³ In this respect, the Respondent further notes that the Claimants have failed to provide justification as to why resorting to 16 domestic and international law firms throughout the proceedings was reasonable and necessary.¹²²⁴
794. In fact, the Respondent argues that Chevron’s subsidiaries consistently submitted excessive, unreasonable, and unnecessary filings and made frivolous motions to recuse judges and to oppose the LAPs’ requests to proceed *in forma pauperis* by using, *inter alia*, high-priced U.S. lawyers, even when doing so would provide no benefit to their legal defence.¹²²⁵ According to the Respondent, the invoice data also reveals that all firms engaged in activities that went beyond defending Chevron in the Argentina Enforcement Proceedings, including unrelated work on public and governmental relations, research on Argentine bankruptcy and environmental law, as well as activities that are prohibited under Argentine law, which would not be compensable under both Argentine and international law.¹²²⁶
795. Lastly, the Respondent argues that the Claimants could have mitigated damages by requesting the Argentine courts in the Argentina Enforcement Proceedings to reimburse

¹²²¹ Counter-Memorial, para. 819; Rejoinder, para. 1373.

¹²²² Rejoinder, paras. 1373-1375; **RE-55**, Second García Pullés Expert Report, para. 11.

¹²²³ Counter-Memorial, para. 818.

¹²²⁴ Counter-Memorial, paras. 818, 820; Rejoinder, para. 1385.

¹²²⁵ Counter-Memorial, paras. 821-826; Rejoinder, paras. 1381-1392.

¹²²⁶ Rejoinder, paras. 1393-1396.

the same expenses that the Claimants are requesting before this Tribunal.¹²²⁷ As such, the Respondent submits that the Claimants are precluded from claiming these fees in this Arbitration when their lawyers have failed to do so through the proper Argentine legal channels.¹²²⁸

3. The Tribunal's Analysis

(a) Introduction

796. On 5 November 2012, the LAPs initiated the Argentina Enforcement Proceedings. First, the LAPs commenced an embargo proceeding, seeking to attach the assets of Chevron's Argentine and Danish subsidiaries Chevron Argentina S.R.L. ("**Chevron Argentina**"), Ingeniero Roberto Priú S.R.L., CDC ApS, and CDHC ApS, pursuant to the 15 October 2012 Order of the Lago Agrio Court.¹²²⁹
797. Less than 24 hours after the request was made, on 6 November 2012, the LAPs were initially successful in obtaining an *ex parte* order attaching the assets of Chevron's Argentine and Danish subsidiaries (the "**Argentina Embargo Order**").¹²³⁰ After eight months, on 4 June 2013, following the rejection of a motion for reconsideration and an appeal, Chevron's subsidiaries ultimately succeeded in obtaining a judgment from the Argentine Supreme Court, which vacated the judgment of the lower appellate court ordering the enforcement of the 15 October 2012 Order of the Lago Agrio Court against the assets of Chevron's subsidiaries.¹²³¹ Subsequently, on 28 June 2013 the Argentine courts lifted the embargo, releasing the funds that had been seized.¹²³²
798. In parallel to the Argentina Embargo Proceedings, on 21 November 2012, the LAPs initiated a formal *exequatur* proceeding to recognize the Lago Agrio Judgment in Argentina against Chevron.¹²³³ This recognition action was accompanied by interlocutory

¹²²⁷ Counter-Memorial, paras. 813-815; **RE-38**, First García Pullés Expert Report, pp. 10-11, 19-20, 23.

¹²²⁸ Counter-Memorial, para. 816.

¹²²⁹ **C-2656**, *Ex Parte* Motion before Argentina's National Civil Trial Courts, 5 November 2012.

¹²³⁰ **C-2349**, Order issued by the National Civil Trial Court No. 61 of Argentina in Aguinda Salazar Maria vs. Chevron Corporation on Preventive Measures, 6 November 2012.

¹²³¹ **C-1877**, Supreme Court Order listing Argentine Embargo, 4 June 2013.

¹²³² **C-2665**, Court Order, 28 June 2013.

¹²³³ **C-2666**, LAPs' Complaint, 21 November 2012.

appeals, motions to recuse judges, and the *in forma pauperis* proceedings, wherein Chevron objected to the LAPs' request to litigate *in forma pauperis*.¹²³⁴ The Argentine courts ultimately dismissed the *exequatur* action on 31 October 2017 (a decision that was later confirmed by the Court of Appeals on 3 July 2018 and by the Supreme Court on 30 July 2020) and concluded that they had no jurisdiction over Chevron because it had no assets or presence in Argentina.¹²³⁵

799. The Claimants submit that they must receive compensation from the Respondent for all of the legal fees and expenses incurred between October 2007 and December 2018 in the Argentina Enforcement Proceedings caused by the Respondent's Treaty breaches. The Respondent disagrees, arguing that the Claimants have failed to meet their burden to prove that the claimed expenses were caused by the Respondent's breaches, let alone that they are entitled to recover losses incurred by their subsidiaries.
800. Before beginning its analysis of the Claimants' damages claim in respect of the Argentina Enforcement Proceedings, the Tribunal recalls the Claimants' position that all of their claimed legal fees and expenses incurred in connection with these proceedings constitute direct damages and are recoverable in the alternative as incidental damages.¹²³⁶ As explained in paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages. The expenses incurred by the Claimants on account of any other form of harm or geared towards any other goal are *not* compensable in these proceedings.¹²³⁷
801. Following the methodology laid out in Section VII.G.5 for the assessment of incidental damages in this case, the Tribunal finds that the Claimants' claim for compensation in

¹²³⁴ Memorial, Appendix 4, pp. 4-13. *See also* C-2667, Chevron's Motion, 27 February 2014; C-2676, Chevron's Motion, 6 March 2014; C-2701, Court Order, 24 May 2016.

¹²³⁵ C-2718, Court Order, 31 October 2017; C-2725, Court Order, 3 July 2018; R-2119, Supreme Court Decision, 30 July 2020.

¹²³⁶ Reply, para. 884.

¹²³⁷ *See* para. 317 above.

respect of the Argentina Enforcement Proceedings must be granted for the reasons and to the extent set out below.

(b) First Step: Analysis of Incidental Damages “Category”

802. As a first step of its analysis, the Tribunal must determine whether the Argentina Enforcement Proceedings category of damages meets the requirements of causation and reasonableness for the compensation of incidental damages under international law.
803. First, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555, the Claimants’ efforts must have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.
804. Second, as noted in paragraph 556 above, incidental damages are subject to an additional requirement of reasonableness: to warrant compensation, legal fees and expenses must have been *reasonably* incurred to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. At this level of analysis, the Tribunal’s determination concerns the reasonableness of the mitigation *measures* undertaken by the Claimants, not of the *amounts* they spent, which will be examined in a subsequent step of the analysis.¹²³⁸
805. The Argentina Enforcement Proceedings comprised two parallel yet distinct proceedings, each requiring a differentiated analysis for present purposes: the Argentina Embargo Proceedings and the Argentina Recognition Proceedings.

¹²³⁸ See para. 556 above.

806. First, the embargo action filed by the LAPs on 5 November 2012 led to the attachment of Argentine assets owned by two of Chevron's Argentinean subsidiaries (Chevron Argentina and Ingeniero Roberto Priú S.R.L.) and two of Chevron's Danish subsidiaries (CDC ApS, and CDHC ApS). The Tribunal recalls that while Chevron was the named defendant in the LAPs motion for an embargo,¹²³⁹ it was Chevron's Danish and Argentine subsidiaries who appeared in the embargo proceedings in their capacity as the owners of the embargoed property.¹²⁴⁰
807. The immediate question before the Tribunal is whether Chevron should receive compensation for the efforts displayed by its subsidiaries (not Chevron) in the Argentina Embargo Proceedings. The Tribunal has already answered this question in the affirmative by ruling in paragraph 438 above that Chevron may in its own right claim compensation in this Arbitration for the injuries caused by the recognition and enforcement of the Lago Agrio Judgment to the assets of its subsidiaries listed in the 15 October 2012 Order of the Lago Agrio Court. As regards Argentina, the Lago Agrio Court order required expressly the seizure of Argentine assets belonging to Chevron's Argentinean and Danish subsidiaries.¹²⁴¹
808. Accordingly, by resisting and eventually overturning the Argentina Embargo Order, Chevron's Argentine and Danish subsidiaries clearly sought to minimize the loss arising directly from the enforcement of the Lago Agrio Judgment – as described in item (iii) in paragraph 642 above – against assets that were specifically identified in the 15 October 2012 Order of the Lago Agrio Court. Because those efforts were a direct and reasonable way of mitigating the injury flowing from the Respondent's Treaty breaches, the requirements of causality and reasonableness are met as regards the Argentina Embargo Proceedings.
809. Second, Chevron was the named defendant in the Argentina Recognition Proceedings and intervened in those proceedings in such capacity.¹²⁴² By challenging the motion for

¹²³⁹ **C-2656**, *Ex Parte* Motion before Argentina's National Civil Trial Courts, 5 November 2012, p. 1.

¹²⁴⁰ **C-1584**, Chevron Argentina, Request for Lifting of Preventative Measures, (Revocatoria Final), 9 November 2012; **C-2658**, Chevron's Motion, 14 November 2012.

¹²⁴¹ See paras. 431-432 above.

¹²⁴² **C-2666**, LAP's Complaint, 21 November 2012, p. 1; **C-2667**, Chevron's Motion, 27 February 2014.

recognition, Chevron displayed direct efforts to prevent the Lago Agrio Judgment from becoming enforceable in Argentina as described in item (i) in paragraph 642 above. Chevron's efforts also sought to minimize the loss arising directly from the enforcement of the Judgment as described in item (iii) of the same paragraph: the LAPs' motion for recognition noted expressly that "Defendant owns property in Argentina, and has even declared before the regulatory authorities of its country, the United States of America, that it owns 100% of Chevron Argentina S.R.L.", thus signalling Chevron's local subsidiary as the ultimate target of the recognition action.¹²⁴³

810. As such, Chevron's efforts sought ultimately to protect the assets of one of its Argentine subsidiaries listed in the 15 October 2012 Order of the Lago Agrio Court¹²⁴⁴ and were thus a direct and reasonable way of mitigating the injury flowing from the recognition and enforcement of the Lago Agrio Judgment. The requirements of causation and reasonableness are therefore also met as regards the Argentina Recognition Proceedings.
811. For these reasons, the Tribunal finds that the requirements of causation and reasonableness are met as regards the Argentina Enforcement Proceedings category of damages – and, specifically, as regards the two distinct proceedings falling under this category.
812. In reaching this conclusion, the Tribunal remains mindful that Chevron made two substantial filings in the Argentina Recognition Proceedings together with its primary opposition to the LAPs' motion for recognition: an opposition to the LAPs' request to litigate *in forma pauperis*¹²⁴⁵ and a motion to recuse the sitting judge (Judge Elcuj).¹²⁴⁶ Chevron's subsidiaries also sought to recuse one of the sitting judges in the appellate court (Judge Castro) later in the Recognition Proceedings.¹²⁴⁷ While these motions, along with several other motions filed by Chevron in the course of the Argentina Enforcement Proceedings, might not have had the direct and immediate objective of mitigating the

¹²⁴³ C-2666, LAP's Complaint, 21 November 2012, p. 2.

¹²⁴⁴ See para. 431 above.

¹²⁴⁵ C-2668, Chevron's Motion, 27 February 2014.

¹²⁴⁶ C-2669, Chevron's Motion, 27 February 2014.

¹²⁴⁷ C-2679, Chevron's Motion, 11 May 2015.

injury arising from the recognition and enforcement of the Lago Agrio Judgment, they are ancillary in nature to Chevron's primary opposition to the LAPs' embargo and recognition motions. Accordingly, these supplemental motions do not affect the Tribunal's conclusion that the participation of Chevron and its subsidiaries in the Argentina Enforcement Proceedings, when considered as a whole, was a reasonable means of mitigating the injury arising from the recognition and enforcement of the Lago Agrio Judgment. The Tribunal will address below Chevron's pursuit of these supplemental motions as part of its analysis of the components of the present category of damages.

(c) Second Step: Analysis of Incidental Damages "Components"

813. As a second step of its analysis, the Tribunal must determine, within the Argentina Enforcement Proceedings category, whether the Claimants have established the requirement for each individual costs "component" identified by the Parties to qualify as incidental damages. The Tribunal must also examine other issues raised by the Parties in connection with this particular damages category to determine whether any other portion of the legal fees and expenses claimed under the present heading should be excluded from the final amount of compensation.¹²⁴⁸
814. The Parties have identified eight components involving the legal fees and expenses incurred by the Claimants and their subsidiaries in Argentina, which are addressed *seriatim* below. Other issues raised by the Parties in connection with this damages category but not expressly identified by them as a component are addressed immediately thereafter.
1. (CLA) Fees and costs before the LAPs' enforcement strategy became known to Claimants / (RES) Fees and costs before the Invictus Memorandum became known to Chevron (January 2011)¹²⁴⁹
815. The Parties disagree on whether the Claimants may recover the costs associated with their early preparation works advanced in Argentina from June 2008 until the Invictus Memorandum became known to the Claimants in January 2011. To justify their

¹²⁴⁸ See paras. 559-565 above.

¹²⁴⁹ For an explanation of the names assigned to components *see* para. 568 above.

compensation claim, the Claimants argue that the LAPs' strategy to enforce the Lago Agrio Judgment outside of Ecuador was already publicly known as early as 2007 and that Latin American jurisdictions were in this respect "high-risk jurisdictions".¹²⁵⁰ The Respondent maintains that the Claimants are not entitled to recover damages incurred before 27 June 2018.

816. The Tribunal has already determined that incidental damages are only compensable in principle in this Arbitration if they were incurred starting as of 14 February 2011, the date of issuance of the Lago Agrio Judgment. This was the date upon which the risks connected to the enforcement of the Judgment became foreseeable and was thus also the date as of which the Claimants' mitigation efforts could be said to respond to the injury arising from the recognition and enforcement of that Judgment – *i.e.*, the injury flowing from the Respondent's internationally wrongful acts. Whatever harm the Claimants may have suffered by undertaking work before 14 February 2011 in preparation for a potential enforcement proceeding in Argentina was not caused by the Respondent's Treaty breaches and therefore falls outside the scope of the compensable injury in these proceedings.¹²⁵¹

817. Accordingly, the Tribunal finds that the Claimants are not entitled to claim compensation for any legal fees and expenses incurred before the Invictus Memorandum became known to them in January 2011 and before the issuance of the Lago Agrio Judgment on 14 February 2011.

2. Fees and costs incurred before November 5, 2012, the date the Argentine proceedings were filed

818. The Parties also disagree on whether the Claimants are entitled to compensation for fees incurred before the commencement of the Argentina Enforcement Proceedings on 5 November 2012. This necessarily encompasses the fees and costs associated with the Claimants' early preparation works in Argentina starting from June 2008 until the Invictus Memorandum became known to the Claimants in January 2011, as addressed in the previous section.

¹²⁵⁰ Reply, para. 889.

¹²⁵¹ See paras. 362, 371, 397 above.

819. For the reasons stated in paragraph 816 above, the Tribunal finds that the Claimants are not entitled to claim compensation for any expenses associated with the advance preparations for the Argentina Enforcement Proceedings that were done before 14 February 2011. Legal fees and expenses corresponding to services provided from that date onwards are compensable in principle, subject to the Tribunal's determinations that follow.

3. Fees for services rendered by Arslanian and Asociados and Emilio Jorge Cardenas not accompanied by *facturas*

820. Relying on the report of its expert, Mr García Pullés, the Respondent argues that, under Argentine law, the informal billing documents submitted by the Argentine law firm Arslanian & Asociados and Mr Emilio Jorge Cardenas – also an Argentine lawyer – do not qualify as adequate documentary proof for the legal services they rendered unless they are accompanied, or later substantiated, by formal invoices (*facturas*).¹²⁵²

821. In the Tribunal's view, the question whether the billing records of Arslanian & Asociados and Mr Cardenas complies with Argentine law is *per se* not dispositive of the Claimants' claim for the reimbursement of the legal fees and expenses charged by these lawyers. The proper question before this Tribunal is whether the Claimants have satisfied their burden under international law, rather than domestic law, to prove their claims for the reimbursement of legal fees and expenses as incidental damages. From this viewpoint, the Tribunal is not tasked with assessing the compliance of Arslanian & Asociados and Mr Cardenas' billing records with Argentine law, but must rather assess the sufficiency of the evidence on record to establish the requirements for this component to qualify as incidental damages (*i.e.*, causation and reasonableness). As noted in paragraph 546 above, the Tribunal enjoys ample discretion under Article 25(6) of the UNCITRAL Arbitration Rules as regards the assessment of evidence.

822. Accordingly, the Tribunal rejects the Respondent's argument that it should deny compensation for the fees for services rendered by Arslanian & Asociados and

¹²⁵² Rejoinder, para. 1372.

Mr Cardenas identified in paragraph 1372 of the Rejoinder for the reason that they were not accompanied by *facturas*.

823. This conclusion, however, is not dispositive of the Respondent's separate but related argument that the Claimants have failed to demonstrate that the overall services provided by Arslanian & Asociados, totalling USD [REDACTED] in fees, were a reasonable and necessary measure. While not expressly falling under this particular component, the Tribunal will also address this argument under the present heading as it affects all of Arslanian & Asociados's fees, not just those billed through proforma invoices not accompanied by a *factura*.
824. In essence, the Respondent requests that the Tribunal deny compensation for the fees charged by Arslanian & Asociados on three different bases: (i) they include "paper-thin descriptions" of the services that he allegedly provided; (ii) they were incurred under a flat-fee arrangement in violation of Chevron's Guidelines; and (iii) they "far exceed what is normal and reasonable in the Argentine legal market".¹²⁵³ The Tribunal notes that these arguments by the Respondent are specific to Arslanian & Asociados's invoices and are not made extensive to Mr Cardenas' billing documentation.
825. The Tribunal has ascertained that Mr Arslanian (of Arslanian & Asociados) was involved in both the Argentina Embargo¹²⁵⁴ and Recognition Proceedings¹²⁵⁵ as part of the legal teams defending Chevron and its subsidiaries – albeit not as first counsel of record. The exact scope of Arslanian & Asociados's engagement is otherwise unclear to the Tribunal. In examining their billing documentation during the relevant time period (from January 2013 onwards)¹²⁵⁶ the Tribunal has noted that it generally lacks detailed written accounts or itemization of the activities carried out specifically in relation to the Argentina Enforcement Proceedings. The only description contained in most of these documents is "Legal Services Provided". Arslanian & Asociados also billed USD [REDACTED] for "Lump

¹²⁵³ Rejoinder, paras. 1373-1375.

¹²⁵⁴ **C-2668**, Chevron's Motion, 27 February 2014, p. 1.

¹²⁵⁵ **C-2660**, Court Order, 27 February 2013, p. 5.

¹²⁵⁶ See generally **C-3356**, Arslanian & Asociados.

sum fee civil litigation up to the present” and USD [REDACTED] for a “sign-one [sic] fee for undertaking civil litigation split part I”.¹²⁵⁷

826. While the evidence on record suffices for the Tribunal to establish that the services provided by Arslanian & Asociados formed part of the Claimants’ reasonable *measures*, as well as those of its subsidiaries, to mitigate the injury flowing from the recognition and enforcement of the Lago Agrio Judgment in Argentina, the Tribunal lacks the elements to ascertain the reasonableness of the elevated *amounts* spent in Arslanian & Asociados’s services. Indeed, the circumstances described in the preceding paragraph, coupled with the very significant sum claimed by the Claimants for Arslanian & Asociados’s services (USD [REDACTED]) when compared to the total amount claimed for this damages category (approximately USD 25 million)¹²⁵⁸ or the amount claimed for the services of other local counsel in these proceedings raise significant questions about the reasonableness of the amounts billed by Arslanian & Asociados.
827. For context, the Tribunal observes that the total fees claimed by the Claimants in respect of other local counsel acting in the Argentina Enforcement Proceedings as gleaned from the Parties’ Damages Models are USD [REDACTED] (Emilio Jorge Cardenas) USD [REDACTED] (Estudio Alegria Buey Fernandez Fissore) USD [REDACTED] (Estudio Nissen y Asociados) USD [REDACTED] (Julio Cesar Rivera Abogados Srl) and USD [REDACTED] (Perez Alati Grondona Benites Arntsen).¹²⁵⁹ The fees claimed in respect of Arslanian & Asociados’s services are higher than those of all other local Argentinean counsel combined. There is no basis to infer that Arslanian & Asociados was tasked with a commensurate amount of the efforts undertaken by local counsel in the Argentina Enforcement Proceedings: as already noted, Arslanian & Asociados did not act as first counsel of record in either the Argentina Embargo or Recognition Proceedings.¹²⁶⁰

¹²⁵⁷ C-3356, CVX-Track III-20000768, Arslanian & Asociados.

¹²⁵⁸ Reply, para. 884.

¹²⁵⁹ Letter from the Claimants to the Tribunal dated 2 November 2022, Claimants’ Damages Model, Vendor Switches; Letter from the Respondent to the Tribunal dated 2 November 2022, Respondent’s Damages Model, Vendor Reductions.

¹²⁶⁰ See C-2660, Court Order, 27 February 2013, p. 5; C-2668, Chevron’s Motion, 27 February 2014.

828. In view of the uncertainty surrounding the reasonableness of the amounts spent by the Claimants and their subsidiaries on Arslanian & Asociados's services as a way of mitigating the injury flowing from the recognition and enforcement of the Lago Agrio Judgment, and having considered the particular circumstances of this case, the Tribunal assesses that 95% of the fees charged by Arslanian & Asociados must be excluded from compensation.

4. (CLA) Fees solely related to media and public relations / (RES) Fees for media and public relations

829. The Respondent takes issue with the non-legal work performed by the Claimants' lawyers, in particular media and public relations work, and argues that any fees arising from such activities should not be recoverable. According to the Respondent and its experts, these activities include *inter alia* "revision of news on the case", "meet with media and PR with K. Robertson and Argentinean counsel", "review and analyze key Spanish language media for July 20", "address press conference to be held in Argentina", "R&E team e-mails on press conferences in media reports in Argentina regarding enforcement by the LAPS", and "Memo on the Implementation of Human Rights Policies".¹²⁶¹

830. Given that this issue impacts multiple damages categories, the Tribunal will address the question whether fees related to media and public relations are generally recoverable in this Arbitration as part of its analysis of cross-cutting "elements" in Section VIII.N below.

5. (CLA) Fees incurred solely for monitoring service, dockets, and service refusal activities / (RES) Fees for monitoring service, dockets, and service refusal activities

831. The Respondent opposes the Claimants' attempt to recover fees of "task[ing] associates at PAGBAM [*i.e.*, the Argentine firm Perez Alati Grondona Benites Arntsen] in May 2013 with four six-and-a-half hour shifts – amounting to 26 hours per day – directed to

¹²⁶¹ Rejoinder, para. 1395; **RE-51**, Trunko Expert Report, SM O-4. *See also* **RE-55**, Second García Pullés Expert Report, Appendix GP-5.

‘monitoring service refusal at Chevron Argentina’s offices,’” which “generated more than US\$600,000 in fees”.¹²⁶²

832. In the Tribunal’s view, the monitoring activities falling under the present heading likely sought to provide an early warning to the Claimants and their subsidiaries about the filing of actions by the LAPs against them. They may have also served, in particular, to ensure the effective service of a recognition (*exequatur*) motion on Chevron – a company with its principal place of business in the United States of America – by preventing service from being performed incorrectly at Chevron Argentina’s offices. Critically, these monitoring activities took place on a regular basis between February and December 2013, that is, starting several months after the LAPs filed their recognition (*exequatur*) motion in Argentina in November 2012 and ending the same month the action was served with Chevron.¹²⁶³
833. Ultimately, however, it is unnecessary for the Tribunal to ascertain the exact purpose or the actual effectiveness of these measures: as already noted, it is not appropriate for the Tribunal to apply hindsight to the legal strategies employed in the course of the Argentina Enforcement Proceedings.¹²⁶⁴ As a whole, the Tribunal is persuaded that these monitoring activities contributed to the Claimants’ attempts to resist the recognition and enforcement of the Lago Agrio Judgment in Argentina.
834. The Tribunal nonetheless lacks the elements to confirm the *reasonableness* of the high sum charged for these services, which total more than USD 600,000 in fees.¹²⁶⁵ The Tribunal has confirmed that there are multiple instances of four timekeepers billing 6,5 hours in a single day for performing these services.¹²⁶⁶ This is strongly indicative of excessive billing. In the Tribunal’s view, whatever the precise nature of these services was, they would have in all likelihood been performed effectively by one timekeeper operating during regular business hours.

¹²⁶² Rejoinder, para. 1394; **RE-51**, Trunko Expert Report, SM O-2.

¹²⁶³ Memorial, Appendix 4, p. 4.

¹²⁶⁴ See para. 340 above.

¹²⁶⁵ **RE-51**, Trunko Expert Report, SM O-2.

¹²⁶⁶ See, e.g., **RE-51**, Trunko Expert Report, SM O-2, pp. 24-32.

835. In view of the uncertainty surrounding the reasonableness of the amounts spent by the Claimants and their subsidiaries on these monitoring service, dockets, and service refusal activities, and having considered the particular circumstances of this case, the Tribunal assesses that 66% of the fees incurred for monitoring service, dockets, and service refusal activities in the Argentina Enforcement Proceedings must be excluded from compensation.

6. (CLA) Fees incurred solely in connection with the challenge to the LAPs' *in forma pauperis status* / (RES) Fees incurred in connection with the challenge to the LAPs' *in forma pauperis status*

836. The Claimants challenged the LAPs' request for *in forma pauperis* status in Argentina Recognition Proceedings, under which the LAPs would not have been required to pay court fees.¹²⁶⁷ In addition to Argentine and Chilean lawyers, the Claimants' U.S. lawyers were significantly involved in proceedings relating to the *in forma pauperis* request.¹²⁶⁸ The Respondent emphasizes that it "has identified more than 250 time entries from U.S. law firms for tasks such as reviewing memoranda on the subject and commenting on and editing the various motions".¹²⁶⁹ The Respondent also highlights that the Claimants have failed to explain the "unnecessary, excessive use of high-priced U.S. lawyers".¹²⁷⁰

837. At the outset, the Tribunal recalls that Chevron's opposition to the LAPs' request to litigate *in forma pauperis* was a supplemental motion vis-à-vis its primary opposition to the LAPs' request for recognition.¹²⁷¹ While, as already addressed, Chevron's opposition to the *exequatur* of the Lago Agrio Judgment was a direct and reasonable way of mitigating the injury arising from the recognition and enforcement of the Lago Agrio Judgment, the same conclusion does not extend necessarily to Chevron's challenge to the LAPs' *in forma pauperis* status simply for being an ancillary motion within the larger recognition proceedings. Chevron filed numerous briefs regarding this matter and was even granted a request for the court to open a parallel proceeding to address the LAPs'

¹²⁶⁷ Memorial, Appendix 4, p. 4.

¹²⁶⁸ Rejoinder, para. 1392.

¹²⁶⁹ Rejoinder, para. 1392; **RE-55**, Second García Pullés Expert Report, Appendix GP-2. *See also* Rejoinder, Annex F-3, entries, 1, 8-14, 22-23, 31.

¹²⁷⁰ Rejoinder, para. 1392.

¹²⁷¹ Memorial, Appendix 4, p. 4.

request for *in forma pauperis* status.¹²⁷² In view of this circumstance, the Tribunal believes a separate analysis of the Claimants' actions in connection with the challenge to the LAPs' *in forma pauperis* status is warranted.

838. In this regard, the Tribunal observes that the Claimants have not addressed distinctly how challenging the LAPs' *in forma pauperis* status before the Argentine courts could have substantially furthered any of the mitigation goals warranting compensation identified in paragraph 642 above, namely: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment.
839. Indeed, the ultimate goal of Chevron's pursuit of this challenge is unclear to the Tribunal. According to the Respondent's Argentine law expert, the revocation of the LAPs' *in forma pauperis* status would have only obligated the LAPs to pay a relatively minor amount of court fees in the context of the overall litigation, no higher than USD 1,000.¹²⁷³ The Tribunal considers that this unsupported figure contradicts the factual record and thus declines to draw any inferences from it: it is highly questionable that both sides in the Argentina Recognition Proceedings – not just Chevron – would have gone to such great lengths to defend and oppose respectively the LAPs' *in forma pauperis* status if USD 1,000 in court fees was all that was at stake. In any event, however, the Claimants have not convincingly explained how exactly opposing the LAPs' *in forma pauperis* request served to mitigate the injury flowing from the Respondent's Treaty breaches.
840. For these reasons, the Tribunal finds that the Claimants have failed to establish that the legal fees and expenses they incurred in connection with their challenge of the LAPs' *in forma pauperis* status were reasonably incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. Accordingly, the Claimants are not entitled to claim compensation for those fees.

¹²⁷² C-2701, Court Order, 24 May 2016.

¹²⁷³ According to the Respondent's expert, Mr García Pullés, the court fees at the time ranged from USD 14.74 to USD 972. RE-55, Second García Pullés Expert Report, para. 34.

7. (CLA) Fees incurred solely in connection with unsuccessful challenges of judges / (RES) Fees incurred in connection with unsuccessful challenges of judges

841. The Respondent is critical of Chevron and its subsidiaries' unsuccessful motions to recuse Judges Adrian Elcuj and Patricia Castro in the Argentina Recognition Proceedings. In the Respondent's view, the motions were "frivolous, unreasonable, and unnecessary".¹²⁷⁴
842. The Tribunal recognizes that the filing of motions to recuse judges is an integral part of legal strategy, often employed to ensure impartiality and fairness in the judicial process. The success or failure of a procedural motion in court is subject to various factors and judicial discretions, and does not automatically reflect on the reasonableness or legitimacy of the motion itself.
843. Therefore, the Tribunal considers that the mere fact that the Claimants' recusal motions were unsuccessful does not inherently imply that they amounted to unreasonable mitigation measures. Furthermore, it is inappropriate for the Tribunal to apply hindsight to the legal strategies employed in the course of the Argentina Enforcement Proceedings.¹²⁷⁵ The question the Tribunal must address is whether in pursuing their challenges to Judges Elcuj and Castro the Claimants sought reasonably to (i) prevent the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seek to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment.¹²⁷⁶ To the extent that ensuring the impartiality and fairness of the Argentina Recognition Proceedings was a necessary condition for Chevron to aspire to achieve any of the aforementioned mitigation goals in those proceedings, the Tribunal considers that the challenges to Judges Elcuj and Castro, even if they were ultimately unsuccessful, amount to reasonable mitigation measures in this case.

¹²⁷⁴ Rejoinder, paras. 1387-1390.

¹²⁷⁵ See para. 340 above.

¹²⁷⁶ See para. 642 above.

844. Accordingly, the Tribunal declines to exclude from compensation the fees incurred in connection with unsuccessful challenges of judges in the Argentina Recognition Proceedings.

8. Fees incurred in carrying out activities alleged to be prohibited under Argentine law

845. The Respondent argues that fees associated with improper activities carried out by the Claimants in violation of Argentine law should be rejected from the Claimants' claims for compensation. These activities include Chevron's attorneys holding *ex parte* meetings with Argentine judges and prosecutors on at least ten occasions and obtaining legal advice on Argentine law from a Chilean lawyer who is not qualified to practice in Argentina.¹²⁷⁷

846. The proper question before this Tribunal is whether the Claimants have satisfied their burden under international law, rather than domestic law, to prove their claims for the reimbursement of legal fees and expenses as incidental damages. From this viewpoint, the Tribunal is not tasked with assessing the compliance of Claimants' counsel's activities with Argentine law, but must rather assess the sufficiency of the evidence on record to establish the requirements for this component to qualify as incidental damages (*i.e.*, causation and reasonableness). As noted in paragraph 546 above, the Tribunal enjoys ample discretion under Article 25(6) of the UNCITRAL Arbitration Rules as regards the assessment of evidence.

847. Accordingly, the Tribunal rejects the Respondent's argument that it should deny compensation for the fees corresponding to this component for the reason that they were allegedly prohibited under Argentine law.

848. Notwithstanding this conclusion, the Tribunal considers that the nature of the activities falling under this component is relevant in determining whether they amounted to reasonable mitigation measures under international law.

849. In this respect, the Tribunal observes that preventing the recognition and enforcement of the Lago Agrio Judgment in Argentina, whether by overturning the embargo over the assets of Chevron's Argentine and Danish subsidiaries or opposing the LAPs' recognition

¹²⁷⁷ Rejoinder, para. 1396.

motion, might have required the Claimants as a matter of proper litigation to sway the decision of an Argentine court in their favour. As a general proposition, however, even though *ex parte* contact with a judge may be practised in a local litigation context, the only proper way in which courts should be swayed is through written and oral argument, whether on the record or in analogous circumstances in which due process, equality of arms, and other essential procedural guarantees are respected. Whether legal or illegal, part of regular domestic practice or not, *ex parte* communications with judges or their staff are outside the boundaries of what could be considered a reasonable mitigation measure in the circumstances of this case.

850. Similarly, having determined that all of the mitigation goals warranting compensation identified in paragraph 642 above required the Claimants to convince the Argentine courts to rule in their favour, the Tribunal has difficulty understanding how the *ex parte* meetings between Chevron's local counsel and employees of the Prosecutor's Office could have reasonably assisted the Claimants in swaying the decision of a court of law. The link between these meetings and the goal of mitigating the injury arising from the recognition and enforcement of the Lago Agrio Judgment is tenuous at best. Accordingly, the Tribunal excludes these fees from the final amount of compensation.
851. Lastly, regardless of any existing similarities between the Argentine and Chilean legal systems, the Tribunal considers that the Claimants' spending funds on a Chilean lawyer ([REDACTED]) to provide advice on Argentine law within the Argentina Enforcement Proceedings cannot amount, by definition, to a reasonable mitigation measure. In this particular context, reasonableness required the Claimants to retain only Argentine lawyers to provide advice on Argentine law. The fees charged by this Chilean attorney for providing advice on Argentine law must therefore be excluded as well from the final amount of compensation.
852. For these reasons, the Tribunal finds that the Claimants are not entitled to claim compensation for fees incurred by the Claimants in connection with activities falling under this component.

9. Other issues

853. In this section, the Tribunal will address other issues raised by the Parties in connection with the Argentina Enforcement Proceedings that have not been specifically identified by the Parties as a component. These include (i) the participation of 16 law firms in the Argentina Enforcement Proceedings, including ten non-Argentine and six Argentine law firms; (ii) the Claimants' failure to pursue the collection of legal costs before domestic courts; (iii) the Respondent's criticism of the Claimants' purported "excessive, unreasonable and unnecessary filings to litigate the merits of the LAPs' recognition claim"; (iv) the Respondent's argument that the Claimants have failed to demonstrate that they should be awarded fees and expenses for other activities of counsel; and (v) the Respondent's argument that the Claimants have not proved that they incurred or paid the legal fees and expenses they claim in connection with the Argentina Enforcement Proceedings.
854. *The participation of 16 law firms in the Argentina Enforcement Proceedings.* The Respondent is critical of the Claimants' engagement of 16 law firms in connection with the Argentina Enforcement Proceedings.¹²⁷⁸ The Claimants assert that "Chevron did not have 16 law firms retained to act as counsel of record, but it did consult 16 law firms, to a greater or lesser extent, on different matters, which was entirely justified given the stakes and complexity of the litigation in Argentina, as well as the need to coordinate the advocacy in Argentina with multiple parallel actions in several other jurisdictions".¹²⁷⁹
855. The Tribunal will address separately the use by the Claimants and their subsidiaries of non-Argentine and Argentine law firms.
856. The Tribunal recalls in the first place that the Claimants and their subsidiaries made use of ten non-Argentine law firms in connection with the Argentina Enforcement Proceedings (Gibson, Dunn & Crutcher LLP, Jones Day, King & Spalding, Boies Schiller & Flexner LLP, Asesorias Bofill Escobar, Stern Kilcullen & Rufolo LLC, Gardere

¹²⁷⁸ Counter-Memorial, para. 820.

¹²⁷⁹ Reply, para. 889.

Wynne Sewell LLP, Rivero Mestre LLP, Holland & Knight, and Covington & Burling LLP).¹²⁸⁰

857. As already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants' decisions as to which specific mitigation measures to undertake in real time.¹²⁸¹ While the Tribunal accepts that the engagement of foreign law firms for local enforcement proceedings may be useful for the conduct of those proceedings, it nonetheless has difficulty understanding how the participation of ten non-Argentine law firms could have reasonably assisted the Claimants in overturning the embargo of assets located in Argentina or opposing the LAPs' recognition motion.
858. In this regard, the Tribunal has taken note that the LAPs' embargo and recognition motions were premised in part on international conventions – respectively, the Inter-American Convention on the Enforcement of Preventive Measures¹²⁸² and the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.¹²⁸³ Receiving advice from foreign international law firms may have thus contributed to the Claimants' efforts in resisting the embargo and recognition motions to a certain extent. However, the participation of non-Argentine firms was by no means necessary for the Claimants and their subsidiaries to prepare their defence before Argentine Courts: the task of assisting local courts in the application of these international conventions would normally be reserved to local lawyers qualified to appear before Argentine courts and opine on the interplay between these conventions and the Argentine legal order. Other ancillary motions filed by the Claimants in the Argentina Enforcement Proceedings, such as the motions to recuse sitting judges, raise quintessential questions of Argentine law and procedure that would also be addressed in normal circumstances by Argentine lawyers alone, including in particular those already regularly retained by Chevron in respect of its Argentine subsidiaries and operations.

¹²⁸⁰ Counter-Memorial, paras. 818, 820, fn 228; Rejoinder, para. 1385.

¹²⁸¹ See para. 341 above.

¹²⁸² **C-2656**, *Ex Parte* Motion before Argentina's National Civil Trial Courts, 5 November 2012, p. 2.

¹²⁸³ **C-2666**, LAPs' Complaint, 21 November 2012, p. 3.

859. As explained above, unless the Claimants sought to minimize the loss arising directly from the recognition and enforcement of the Lago Agrio Judgment by retaining these foreign law firms, they cannot claim compensation in these proceedings for the legal fees and expenses charged by those firms.¹²⁸⁴ To the extent that the goal of resisting the recognition and enforcement of the Lago Agrio Judgment in Argentina might have required *one* foreign law firm to act as a liaison between the Claimants' headquarters in the United States and the firms acting before the Argentine courts, or in a coordinating capacity with teams operating in other jurisdictions (including before this Tribunal), the Tribunal is prepared to grant compensation for the legal fees and expenses charged by the first foreign firm to participate in the Argentina Enforcement Proceedings (Jones Day).¹²⁸⁵ The Tribunal is also prepared to grant compensation for the legal fees and expenses charged by the second foreign law firm to participate in these proceedings (Gibson & Dunn)¹²⁸⁶ on account of the need for Chevron and its subsidiaries (i) to receive advice on the international elements of the Argentine embargo and recognition motions, as explained in the preceding paragraph; and (ii) to coordinate the actions of a larger number of actors – Chevron, its Argentine and Danish subsidiaries and their respective teams of lawyers – in two parallel proceedings, *i.e.*, the Argentina Embargo and Recognition Proceedings. Otherwise, the Tribunal denies compensation under this heading for the legal fees and expenses charged by all other foreign law firms involved in these proceedings (King & Spalding, Boies Schiller & Flexner LLP, Asesorias Bofill Escobar, Stern Kilcullen & Rufolo LLC, Gardere Wynne Sewell LLP, Rivero Mestre LLP, Holland & Knight, and Covington & Burling LLP).

860. The Respondent also considers “unnecessary and excessive” the number of Argentine law firms that were hired by the Claimants and their subsidiaries to advise them in the Argentina Enforcement Proceedings (Emilio Jorge Cardenas, Arslanian & Asociados,

¹²⁸⁴ See paras. 642-643 above.

¹²⁸⁵ Reply, Updated Appendix 2, p. 537.

¹²⁸⁶ Reply, Updated Appendix 2, p. 538. The Tribunal notes that Gibson Dunn and Jones Day were also the two non-Argentine firms with the highest billing in connection with this damages category (USD 2,871,102 and USD 4,445,504, respectively) and thus, presumably, had a more prominent role than other firms retained by the Claimants. See Letter from the Claimants to the Tribunal dated 2 November 2022, Claimants' Damages Model, Vendor Switches, cells F106 and F172.

Estudio Alegria Buey Fernandez Fissore, Estudio Nissen y Asociados, Julio Cesar Rivera Abogados Srl and Perez Alati Grondona Benites Arntsen).¹²⁸⁷

861. The Tribunal recalls that it has already ascertained that the requirements of causation and reasonableness for the reimbursement of incidental damages are met generally as regards the Argentina Enforcement Proceedings category of damages.¹²⁸⁸ The Tribunal has also addressed the arguments raised by the Respondent specifically in connection with the billing documents of Mr Cardenas and Arslanian & Asociados¹²⁸⁹ and also in connection with several activities carried out by these firms, which were analysed as components earlier in this section.
862. Having already addressed these matters, the Tribunal considers unnecessary to analyse further the reasonableness of the Claimants' decision to retain or consult six Argentine law firms in connection with the Argentina Enforcement Proceedings. The number of local law firms used by the Claimants and their subsidiaries *per se* is not indicative of unreasonableness, particularly when compared with the risks attached to the recognition and enforcement of the multi-billion Lago Agrio Judgment in Argentina.
863. *The Claimants' failure to pursue the collection of legal costs before domestic courts.* The Respondent argues that the Claimants are precluded from recovering any legal fees and expenses claimed in connection with the Argentina Enforcement Proceedings because they failed to pursue the collection of legal costs before domestic courts. In the absence of a judicial assessment of the attorneys' fees, the Respondent maintains that it is not possible for the Claimants to show that the expenses they claim as damages in this Arbitration were reasonable and necessary.¹²⁹⁰
864. In Section VII.E.3 above, the Tribunal has already addressed the issue of the recoverability of legal fees and expenses in this Arbitration in circumstances where the Claimants were awarded costs in domestic proceedings but failed to seek the collection of those costs before domestic courts. As noted in paragraph 505(ii) above, the Claimants

¹²⁸⁷ Counter-Memorial, para. 820, fn 228.

¹²⁸⁸ See para. 811 above.

¹²⁸⁹ See paras. 820-828 above.

¹²⁹⁰ Counter-Memorial, para. 816.

are precluded from recovering as damages any legal costs awarded, but not collected, in domestic proceedings only to the extent that the Claimants unreasonably failed to pursue the collection of those costs in breach of their duty to mitigate under international law. The burden of proof regarding the Claimants' failure to mitigate lies with the Respondent. To the extent the Tribunal allows the recovery of such costs in this Award, any amounts collected by the Claimants after the issuance of this Award in local proceedings must be excluded from the final amount of compensation.

865. Against this backdrop, the Tribunal has taken note of the Claimants' explanation that while they were awarded costs in both the Argentina Embargo and Recognition Proceedings¹²⁹¹ they decided not to seek to collect costs because the LAPs had no assets in Argentina, as also evidenced by the LAPs' request to proceed *in forma pauperis* in the Argentina Recognition Proceedings.¹²⁹² The Respondent retorts that "Chevron opposed those *in forma pauperis* motions, and Claimants argue in their Reply and in supporting witness statements and expert reports that the LAPs had significant litigation resources. Claimants cannot have it both ways. If Chevron rejected the LAPs' representations of poverty with respect to requirements to pay filing fees, then it makes no sense for Chevron to defer to those same representations in deciding not to pursue fees and costs from the LAPs".¹²⁹³
866. The dispositive question under the rationale set out in paragraph 864 above is whether the Respondent has established that the LAPs had enough funds located in Argentina to satisfy a hypothetical award on costs. Since the Respondent has failed to make this showing, this question must be answered in the negative. In this respect, while Chevron's opposition to the LAPs' motion to proceed *in forma pauperis* in the Argentina Recognition Proceedings describes the "substantial availability of funds for use by the LAPs" by means of "multiple funding agreements with different sources",¹²⁹⁴ there is no

¹²⁹¹ **C-1877**, Supreme Court Order listing Argentine Embargo, 4 June 2013, p. 11 ("Therefore, considering the opinion of the Attorney General of Argentina, the extraordinary appeal is dismissed, with costs. . ."); **C-2725**, Court Order, 3 July 2018, p. 10 ("Costs are imposed on the losing party"); **R-2119**, Supreme Court Decision, 30 July 2020 ("Therefore, the extraordinary appeal is dismissed. With costs").

¹²⁹² Reply, paras. 893-895.

¹²⁹³ Rejoinder, para. 532.

¹²⁹⁴ **C-2668**, Chevron's Motion, 27 February 2014, paras. 43-73.

indication that any those funds were deposited in Argentina. In the Tribunal's view, it would be unreasonable to require the Claimants to pursue an award on costs against the LAPs in Argentina and then, at much expense and difficulty, attempt to collect those costs overseas against the LAPs or their third-party funders, particularly when the Tribunal has not been informed of the existence of an international legal instrument that could serve as a basis for an action of this sort.

867. *The Respondent's criticism of the Claimants' purported "excessive, unreasonable and unnecessary filings to litigate the merits of the LAPs' recognition claim".* The Respondent is critical of the Claimants' purported "excessive, unreasonable and unnecessary filings to litigate the merits of the LAPs' recognition claim"¹²⁹⁵. In the Respondent's submission, "Chevron's attorneys unnecessarily prepared detailed briefs and voluminous evidence—one primary brief and nine supplemental briefs—to litigate the merits of the LAPs' recognition request, despite the fact that every Argentine court that considered such a request easily rejected it because there was no jurisdiction over Chevron".¹²⁹⁶
868. Having already ascertained that the requirements of causation and reasonableness for the reimbursement of incidental damages are met as regards the Argentina Enforcement Proceedings category of damages (and also as regards the Argentina Recognition Proceedings alone),¹²⁹⁷ the Tribunal declines to opine on the substance or magnitude of the Claimants' submissions in those proceedings. As already noted, it is not appropriate for the Tribunal to apply hindsight to the legal strategies employed in the course of the Argentina Enforcement Proceedings.¹²⁹⁸
869. *The Respondent's argument that Claimants have failed to demonstrate that they should be awarded fees and expenses for other activities of counsel.* The Respondent argues that the Claimants have failed to demonstrate that they should be awarded fees and expenses for other activities of counsel. Some of these activities have already been addressed by

¹²⁹⁵ Rejoinder, para. 1381-1386.

¹²⁹⁶ Rejoinder, para. 1381.

¹²⁹⁷ See paras. 810-811 above.

¹²⁹⁸ See para. 340 above.

the Tribunal as components, such as those related to media and public relations, monitoring service, dockets, and service refusal activities or alleged to be prohibited under Argentine law.¹²⁹⁹

870. In addition to these, the Respondent also refers to other activities that “were not reasonably calculated to advance Chevron’s defense”, such as the preparation of an action for a declaratory judgment or a criminal complaint that were never filed.¹³⁰⁰ Since the existence of allegedly non-defence related activities has been identified by the Parties as a cross-cutting element impacting multiple categories,¹³⁰¹ the Tribunal will address it together with other elements in Section VIII.N below.

871. *The Respondent’s argument that the Claimants have not proved that they incurred or paid the legal fees and expenses they claim in connection with the Argentina Enforcement Proceedings.* The Respondent submits that the Claimants have not proved that they – as opposed to a third party such as their subsidiaries – incurred or paid the legal fees and expenses they claim in connection with the Argentina Enforcement Proceedings. Given that this issue also impacts multiple damages categories, the Tribunal will address this question as part of its analysis of cross-cutting “elements” in Section VIII.N below.¹³⁰²

4. Conclusion on Argentina Enforcement Proceedings

872. For the foregoing reasons, the Tribunal:

- (i) Declines to exclude from compensation the Argentina Enforcement Proceedings category of damages as a whole;
- (ii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Argentina Enforcement Proceedings corresponding to services rendered before 14 February 2011;
- (iii) Excludes from compensation 95% of the fees charged by Arslanian & Asociados;

¹²⁹⁹ See paras. 829-830, 831-835, 845-852 above.

¹³⁰⁰ Rejoinder, para. 1394.

¹³⁰¹ See para. 571 above.

¹³⁰² See para. 571 above.

- (iv) Defers its determination regarding the compensation of the legal fees and expenses corresponding to the component “(CLA) Fees solely related to media and public relations / (RES) Fees for media and public relations” to its analysis of cross-cutting elements set out in Section VIII.N below; and
- (v) Excludes from compensation 66% of the legal fees and expenses corresponding to the component “(CLA) Fees incurred solely for monitoring service, dockets, and service refusal activities / (RES) Fees for monitoring service, dockets, and service refusal activities”;
- (vi) Excludes from compensation 100% of the legal fees and expenses corresponding to the component “(CLA) Fees incurred solely in connection with the challenge to the LAPs’ *in forma pauperis* status / (RES) Fees incurred in connection with the challenge to the LAPs’ *in forma pauperis* status”;
- (vii) Excludes from compensation 100% of the legal fees and expenses corresponding to the component “Fees incurred in carrying out activities alleged to be prohibited under Argentine law”;
- (viii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Argentina Enforcement Proceedings corresponding to services provided by the firms King & Spalding, Boies Schiller & Flexner LLP, Asesorias Bofill Escobar, Stern Kilcullen & Rufolo LLC, Gardere Wynne Sewell LLP, Rivero Mestre LLP, Holland & Knight, and Covington & Burling LLP;
- (ix) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Argentina Enforcement Proceedings, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below;¹³⁰³ and
- (x) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Argentina Enforcement Proceedings. The

¹³⁰³ See paras. 569-573 above.

Tribunal will determine the exact amount of compensation corresponding to the Argentina Enforcement Proceedings in Section VIII.O below.

* * *

D. BRAZIL RECOGNITION PROCEEDINGS

873. The Claimants seek USD 20,668,398.44 as direct damages for the legal costs and expenses incurred between January 2008 and December 2018 in the Brazil Recognition Proceedings as the natural and foreseeable result of the Respondent’s Denial of Justice, Umbrella Clause and Interim Awards Breaches.¹³⁰⁴ In the alternative, the Claimants submit that they are entitled to recover these expenses as incidental damages.¹³⁰⁵

874. The Respondent submits that the Claimants are not entitled to the amount they seek for the Brazil Recognition Proceedings on the grounds that they have failed to meet their burden of proving that the expenses they allegedly incurred in those proceedings were reasonable and necessary.¹³⁰⁶

1. The Claimants’ Position

875. According to the Claimants, Chevron began incurring costs in connection with the Brazil Recognition Proceedings as early as January 2008 because, as already stated, they were aware since 2007 that the LAPs would likely target Chevron’s assets in foreign jurisdictions, including Brazil.¹³⁰⁷ In the Claimants’ view, the Respondent’s specific efforts to support the enforcement of the Lago Agrio Judgment in Brazil, including reaching out to Brazilian government officials relating to this matter, “only heightened the foreseeability” that Chevron would incur costs in resisting the enforcement of the Judgment in that jurisdiction.¹³⁰⁸

876. While the Claimants reject the Respondent’s temporal “date of breach” argument¹³⁰⁹ on the basis that “any global corporation would and should prepare a legal strategy well in

¹³⁰⁴ Reply, para. 919, Updated Appendix 2, pp. 626-700; C-3462, Indices of Claimed Invoices by Damage Category (“Brazil Enforcement” tab).

¹³⁰⁵ Reply, para. 931.

¹³⁰⁶ Counter-Memorial, para. 852; Rejoinder, para. 1404.

¹³⁰⁷ Reply, paras. 925-926.

¹³⁰⁸ Memorial, para. 387.

¹³⁰⁹ Reply, para. 924.

advance when facing a multi-billion-dollar threat”, they note that the pre-litigation fees they incurred before June 2012 only represent 5% of the total fees they claim.¹³¹⁰

877. According to the Claimants, retaining non-Brazilian law firms for the Brazil Recognition Proceedings was necessary both to coordinate their legal representation in these domestic proceedings with actions in numerous other jurisdictions, as well as to provide “significant legal value to critical strategic decision making.”¹³¹¹ As to retaining Mattos Engelberg Advogados, which the Claimants explain is one of the most well-regarded law firms in Brazil, the Claimants take the view that their fees were “more than reasonable” and “proportional” given the stakes involved.¹³¹²
878. The Claimants posit that they consistently took steps to end the Brazil Recognition Proceedings as quickly and efficiently as possible.¹³¹³ Such work included filing supplemental petitions to provide new evidence relating, *inter alia*, to the RICO Litigation and settlement agreements with co-conspirators.¹³¹⁴ Even during the allegedly “dormant” phases of the proceedings, the Claimants posit that substantial preparatory work went into ongoing work streams for upcoming filings, as well as coordination with ongoing actions in other jurisdictions.¹³¹⁵
879. Rejecting the Respondent’s contention that Chevron advanced several legal arguments that were not reasonable or necessary – including, in particular, a fraud defence – because it prevailed on jurisdictional grounds, the Claimants underscore that under Brazilian civil procedure it was necessary for Chevron to present all of its defences, including evidence on fraud, at once.¹³¹⁶ In this respect, the Claimants note that “the fraud defense was a powerful tool that Chevron used to put the recognition action in proper context”, which

¹³¹⁰ Reply, para. 925.

¹³¹¹ Reply, para. 932.

¹³¹² Reply, para. 933.

¹³¹³ Memorial, para. 389.

¹³¹⁴ Memorial, para. 389.

¹³¹⁵ Reply, para. 934.

¹³¹⁶ Reply, para. 935; **RE-37**, First Godoy Expert Report, **LUC-3**, Brazilian Code of Civil Procedure, Arts. 336, 341.

ultimately led to the Brazilian Superior Court of Justice (*Superior Tribunal de Justiça*) (the “STJ”) unanimous decision to dismiss the LAPs’ recognition action.¹³¹⁷

880. As to the Respondent’s contention that Chevron should have recovered legal fees in ancillary proceedings, the Claimants consider this argument to evidence “a real disconnect”: the LAPs sought to litigate in Brazil in *forma pauperis* to allow them to litigate without paying court costs on the grounds that they lacked sufficient funds to prosecute their case.¹³¹⁸
881. The Claimants further clarify that the *sucumbência* fee awarded by the Brazilian courts under Brazilian law is not intended to compensate a party for its paid legal fees; rather, it is designed as a disincentive to frivolous litigation.¹³¹⁹ On this point, the Claimants observe that even the Respondent’s expert on Brazilian law recognizes that this court-fixed system is not meant to be a reimbursement of the fees actually expended by the litigant and its attorneys.¹³²⁰ Therefore, contrary to what the Respondent asserts, the Claimants take the view that the BRL 100,000 (approximately USD 30,000) awarded to Chevron’s Brazilian counsel of record, not to Chevron itself or its local subsidiary, should not be deemed as full compensation.¹³²¹ According to the Claimants, such position is also consistent with Article 22 of Brazil’s Advocacy Statute, which contemplates *sucumbência* as just one component of the total fees that can be paid to attorneys for rendering professional services.¹³²²
882. Even after the STJ issued its ruling declining to recognize the Lago Agrio Judgment in Brazil, the Claimants posit that fees were incurred because there was a small amount of legal work to prepare for additional steps that the LAPs could take in Brazil.¹³²³

¹³¹⁷ Reply, paras. 936-937; **C-2817**, Third Brazil Docket Sheet (referencing Filing of Petition Opinion by the MPF No. 184009/2015 (85), 11 May 2015 (added to the record on 14 May 2015)); Appendix 5 to the Memorial, paras. 20-22.

¹³¹⁸ Memorial, para. 378; Reply, para. 928; **C-2815**, Second Brazil Docket Sheet (citing Order by the Presiding Justice Granting the Claim of Legal Aid and Determining Summons Waiting for Publication, 3 July 2012).

¹³¹⁹ Reply, para. 929.

¹³²⁰ Reply, para. 929; **RE-37**, First Godoy Expert Report, paras. 52-55.

¹³²¹ Reply, para. 929.

¹³²² Reply, para. 929; **C-3200**, Brazil’s Advocacy Statute, Art. 22.

¹³²³ Reply, para. 927.

883. The Claimants submit that, at the very least, they are entitled to recover USD 20,047,000 in direct damages incurred after 1 March 2012 in connection with the Brazil Recognition Proceedings.¹³²⁴

884. In the alternative, the Claimants argue that they are entitled to recover the legal fees and expenses incurred in the Brazil Recognition Proceedings as incidental damages because their expenses were reasonable and served to mitigate the Claimants' damages substantially.¹³²⁵

2. The Respondent's Position

885. The Respondent maintains that the Claimants are not entitled to recover legal fees and expenses incurred in connection with the Brazil Recognition Proceedings before the Treaty breaches became final on 27 June 2018.¹³²⁶ In particular, the Respondent criticizes the Claimants' attempt to recover the expenses incurred in preparing for a potential recognition action "prior to the case being filed, and even before the Lago Agrio Judgment was rendered",¹³²⁷ as well as after 15 June 2018, when the STJ certified that its decision denying recognition of the Lago Agrio Judgment was final and binding.¹³²⁸

886. Relying on Mr Godoy's expert opinion that the attorneys' bills claimed by the Claimants for the Brazil Recognition Proceedings are "surreal" and "surprisingly high", the Respondent challenges the Claimants' submission that the activities for which the fees were incurred were reasonable and necessary to defend Chevron in those proceedings.¹³²⁹ In this respect, the Respondent notes that a recognition proceeding in Brazil generally "is much simpler and faster than almost any other proceeding", normally lasting no more than 18 months.¹³³⁰

¹³²⁴ Reply, para. 930.

¹³²⁵ Reply, para. 931.

¹³²⁶ Counter-Memorial, para. 864.

¹³²⁷ Rejoinder, paras. 1404-1408.

¹³²⁸ Counter-Memorial, para. 871.

¹³²⁹ Counter-Memorial, paras. 852, 855, 867-868; Rejoinder, paras. 1405-1406; **RE-37**, First Godoy Expert Report, paras. 74, 114.

¹³³⁰ Counter-Memorial, para. 856; **RE-37**, First Godoy Expert Report, paras. 39, 44.

887. Furthermore, the Respondent stresses that the amount of *sucumbência* that the STJ actually ordered the LAPs to pay to Chevron’s attorneys at the conclusion of the proceedings (*i.e.*, BRL 100,000) illustrates the extreme unreasonableness of the fees the Claimants seek as damages.¹³³¹ Since Chevron’s Brazilian attorneys have already been awarded fair compensation for the services they rendered to achieve an outcome in the Claimants’ favour, the Respondent argues that the Claimants are precluded from recovering any of the fees they expended in connection with the Brazil Recognition Proceedings.¹³³²
888. Even if the Tribunal were inclined to award the Claimants an amount beyond BRL 100,000, the Respondent submits that the legal fees and expenses claimed by the Claimants are a result of excessive, unreasonable, and unnecessary legal work.¹³³³
889. First, of the USD 20,688,398.44 that the Claimants seek to recover under this heading, the Respondent points out that at least USD 1,153,219.32 of their claimed legal fees and expenses were incurred before the LAPs’ recognition action was filed on 1 June 2012.¹³³⁴ In the Respondent’s view, these pre-litigation fees were *per se* not “incurred in” the Brazil Recognition Proceedings, nor were they “charged to Chevron from the inception” of the proceedings.¹³³⁵ Yet, as the Claimants inaccurately described a significant portion of the fees as those “incurred” in the Brazil Recognition Proceedings, the Respondent, with reference to *PSEG Global Inc. v. Turkey*, argues that the Tribunal should exclude this portion of the fees claim altogether.¹³³⁶
890. Moreover, the Respondent rejects the Claimants’ assertion that there was a sound basis to conduct early preparatory work, arguing that the Claimants have failed to justify how the pre-June 2012 drafting and related activities indeed enabled them to draft the actual submission more efficiently than they would have otherwise been able to, especially when

¹³³¹ Counter-Memorial, para. 869.

¹³³² Counter-Memorial, paras. 853, 869.

¹³³³ Counter-Memorial, para. 854.

¹³³⁴ Counter-Memorial, para. 871; Rejoinder, para. 1401.

¹³³⁵ Counter-Memorial, para. 866.

¹³³⁶ Rejoinder, paras. 1401-1403; **CLA-226**, *PSEG Global Inc. v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award, 19 January 2007, para. 328.

the Claimants had over eight months to prepare their defence after the recognition action was filed.¹³³⁷

891. Second, the Respondent argues that Chevron’s litigation strategy in the Brazil Recognition Proceedings featured inadmissible and unsuccessful arguments: in its view, it should not be required to bear the costs incurred for crafting those arguments.¹³³⁸ In particular, the Respondent asserts that the Claimants’ unsuccessful fraud defence demonstrates that it was not reasonable for Chevron’s attorneys to devote extraordinary efforts to prepare and advance this argument.¹³³⁹ For the Respondent, whether the fraud defence was persuasive or influential on the STJ is irrelevant as the STJ ultimately did not accept the argument in reaching its decision.¹³⁴⁰

892. The Respondent further criticizes the Claimants’ “pointless” efforts in objecting – successfully – to the LAPs’ *in forma pauperis* status, with the involvement of U.S. firms who charged higher rates than their Brazilian colleagues, noting that “the revocation of the LAPs’ *in forma pauperis* status had no apparent effect on the LAPs’ dogged prosecution of the case or its outcome.”¹³⁴¹

893. Third, the Respondent posits that the Claimants have failed to demonstrate that they should be awarded fees for services rendered by Brazilian law firms other than Pinheiro Neto. In particular, regarding the fees for services rendered by Advogacia Velloso, the Respondent asserts that the invoices submitted by the Claimants (i) do not sufficiently identify the nature of work carried out in support of Chevron’s defence, making it impossible to ascertain whether the work this firm performed could not have been carried out by Pinheiro Neto (Chevron’s first counsel of record); and (ii) do not contain detailed time entries in accordance with Chevron’s Guidelines.¹³⁴²

¹³³⁷ Rejoinder, paras. 1405-1408.

¹³³⁸ Counter-Memorial, paras. 857-862, 879-881; Rejoinder, paras. 1409, 1413-1417.

¹³³⁹ Counter-Memorial, para. 882; Rejoinder, para. 1419.

¹³⁴⁰ Rejoinder, para. 1419.

¹³⁴¹ Counter-Memorial, para. 883; Rejoinder, paras. 1410-1411; **RE-37**, Godoy Expert Report, paras. 136-145; **RE-51**, Trunko Expert Report, **SM N-3**.

¹³⁴² Rejoinder, paras. 1420-1421.

894. In regard to services rendered by Mattos Engelberg Advogados, which did not serve as counsel of record for Chevron in the Brazil Recognition Proceedings, the Respondent relies on Mr Godoy’s conclusion that his review of the litigation record did not reveal any “evidence that Mattos Muriel Kestener Advogados [and its successor Mattos Engelberg Advogados] . . . produced any work in connection with the [Brazil Recognition Proceedings]” and that “it is not possible to identify how [the] Mattos [firms] provided independent value to the legal work that was already being done by Pinheiro Neto.”¹³⁴³
895. For the Respondent, even if Mattos Engelberg Advogados represented Chevron Brasil Petróleo Ltda (“**Chevron Brazil**”) as Mr Veiga asserts, the Claimants cannot seek to recover the firm’s fees because Chevron Brazil never intervened in the Brazil Recognition Proceedings and is not itself a party to this Arbitration.¹³⁴⁴
896. Fourth, the Respondent maintains that the fees incurred by non-Brazilian counsel in connection with apprising Brazilian counsel of developments in this Arbitration are excessive and unreasonable.¹³⁴⁵ According to the Respondent, the Claimants have not provided any evidence to suggest that the purported coordination work performed by non-Brazilian attorneys cost even a significant portion of the over USD 7.2 million in fees they allegedly incurred.¹³⁴⁶ Furthermore, out of the many U.S. law firms retained by Chevron, none were counsel of record and only Gibson, Dunn & Crutcher LLP and Jones Day have offices in Brazil.¹³⁴⁷
897. To the extent that foreign law firms did coordinate Chevron’s defence in the Brazil Recognition Proceedings with Chevron’s global strategy and made some contribution to strategic decision-making, the Respondent points out that these non-Brazilian attorneys engaged in activities beyond their self-defined roles, including *inter alia* researching Brazilian court precedent, analysing Brazilian law expert opinions, and assisting with

¹³⁴³ Counter-Memorial, para. 875; Rejoinder, paras. 1422-1423, 1425 (brackets in original); **RE-37**, First Godoy Expert Report, paras. 89(ii), 90(ii); **RE-54**, Second Godoy Expert Report, para. 35.

¹³⁴⁴ Rejoinder, para. 1424.

¹³⁴⁵ Counter-Memorial, para. 874.

¹³⁴⁶ Rejoinder, para. 1452.

¹³⁴⁷ Counter-Memorial, para. 873.

preparing counter-rebuttals.¹³⁴⁸ Therefore, the Respondent considers that it should not be responsible for paying fees generated by U.S. lawyers to engage in tasks that exceed the scope of what the Claimants say they did.¹³⁴⁹

898. Fifth, the Respondent argues that Chevron’s attorneys frequently billed excessive amounts of time and fees for “very simple and straight-forward” tasks and even when “nothing was happening in the Brazilian proceedings.”¹³⁵⁰

899. Lastly, the Respondent denies that the Claimants are entitled to fees related to activities that were not directed to the preparation to Chevron’s defence in the Brazil Recognition Proceedings.¹³⁵¹ These include:

- (i) At least USD 1,350,468.38 for public relations and at least USD 215,935.85 for governmental affairs which, according to the Respondent, are by definition not fees “incurred in” the Brazil Recognition Proceedings;¹³⁵²
- (ii) Fees associated with the work performed by Chevron’s lawyers in deciding whether to bring civil and/or criminal actions in Brazil against the LAPs, their funders, and their Brazilian counsel;¹³⁵³
- (iii) Fees associated with research assignments on topics that had little, if anything, to do with Chevron’s defence in the Brazil Recognition Proceedings;¹³⁵⁴ and
- (iv) Fees spent on administrative and clerical tasks by Chevron’s counsel, as well as translations as a result of Chevron’s choice to engage U.S. attorneys who did not read Portuguese.¹³⁵⁵

¹³⁴⁸ Rejoinder, para. 1447.

¹³⁴⁹ Rejoinder, para. 1448,

¹³⁵⁰ Counter-Memorial, paras. 876-877; **RE-37**, First Godoy Expert Report, paras. 119, 122.

¹³⁵¹ Rejoinder, para. 1428.

¹³⁵² Rejoinder, paras. 1429-14; **RE-51**, Trunko Expert Report, **SM N-4, N-5**.

¹³⁵³ Rejoinder, para. 1435.

¹³⁵⁴ Rejoinder, paras. 1436-1441.

¹³⁵⁵ Rejoinder, para. 1449-1451.

3. The Tribunal's Analysis

(a) Introduction

900. On 27 June 2012, the LAPs filed a recognition action against Chevron before the STJ seeking the recognition of the Lago Agrio Judgment in Brazil.¹³⁵⁶ They also requested *in forma pauperis* status,¹³⁵⁷ which the Claimants describe as a “‘legal aid benefit’ to allow them to litigate without paying court costs . . . on the grounds that they lacked sufficient funds to prosecute their case.”¹³⁵⁸
901. While the LAPs’ recognition motion mentioned Chevron as the sole defendant, service was attempted unsuccessfully at the offices of Chevron Brazil and later at the personal residence of Chevron Brazil’s then-president.¹³⁵⁹ Following an order from the STJ that Chevron be served via Letters Rogatory at its headquarters in California, U.S., service was accomplished on 24 January 2013.¹³⁶⁰
902. Subsequent to two motions filed by Chevron in March 2013 opposing both the recognition and the LAPs’ request to proceed *in forma pauperis*,¹³⁶¹ the STJ bifurcated the proceedings to hear the two issues separately.¹³⁶²
903. The Brazil Recognition Proceedings continued for several years.¹³⁶³ On 19 September 2017, the day before a judgment session,¹³⁶⁴ the LAPs filed a *denúncia* on their recognition action, requesting that the STJ allow them to dismiss the action without

¹³⁵⁶ C-2347, Filing in the Superior Court of Justice of Brazil, 27 June 2012.

¹³⁵⁷ C-2815, Supreme Court of Justice of Brazil Second Docket Sheet, 27 June 2012, p. 10 (“Lawsuit remitted to the Presidency with claim of legal aid”, 28 June 2012).

¹³⁵⁸ Memorial, Appendix 5, para. 1.

¹³⁵⁹ Memorial, Appendix 5, paras. 2-3.

¹³⁶⁰ Memorial, Appendix 5, para. 4.

¹³⁶¹ Memorial, Appendix 5, paras. 5-6; C-2815, Supreme Court of Justice of Brazil Second Docket Sheet, 27 June 2012, pp. 5-6.

¹³⁶² Memorial, Appendix 5, para. 7; C-2815, Supreme Court of Justice of Brazil Second Docket Sheet, 27 June 2012; C-2814, Superior Court of Justice of Brazil First Docket Sheet, 15 March 2013.

¹³⁶³ Memorial, Appendix 5, paras. 8-15.

¹³⁶⁴ The Claimants clarify that a judgment session is a public hearing of the court in which the justices discuss cases and present their votes. Memorial, Appendix 5, paras. 8-16.

prejudice.¹³⁶⁵ Following Chevron’s opposition to the *denúncia*, a majority of the Justices voted to reject the *denúncia* during a judgment session on 4 October 2017; however, consideration of the judgement was again postponed.¹³⁶⁶ Two months thereafter, on 29 November 2017, the STJ unanimously denied the recognition of the Lago Agrio Judgment on jurisdictional grounds as well as the LAPs’ request to proceed *in forma pauperis*.¹³⁶⁷

904. The LAPs subsequently filed a motion requesting that the STJ clarify that it had dismissed the recognition action without considering the merits of the case (the implication being, according to the Claimants, that the decision was without prejudice).¹³⁶⁸ The STJ rejected the LAPs’ request, ruling that “the merit[s] of the action [were] analyzed.”¹³⁶⁹ On 15 June 2018, the STJ certified that the decision denying recognition of the Lago Agrio Judgment in Brazil was final and binding between the Parties.¹³⁷⁰
905. Before beginning its analysis of the Claimants’ damages claim in respect of the Brazil Recognition Proceedings, the Tribunal recalls the Claimants’ position that all of their claimed legal fees and expenses incurred in connection with these proceedings constitute direct damages and are recoverable in the alternative as incidental damages.¹³⁷¹ As explained in paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages. The expenses incurred by the Claimants on

¹³⁶⁵ Memorial, Appendix 5, para. 17; **C-2817**, Superior Court of Justice, Third Brazil Docket Sheet, 22 March 2013, p. 12.

¹³⁶⁶ Memorial, Appendix 5, paras. 18-19; **C-2817**, Superior Court of Justice, Third Brazil Docket Sheet, 22 March 2013, pp. 9-11.

¹³⁶⁷ **C-2546**, STJ SEC 8542, Decision, 15 March 2018; **C-2814**, Superior Court of Justice of Brazil First Docket Sheet, 15 March 2013, p. 2; **C-2817**, Superior Court of Justice, Third Brazil Docket Sheet, 22 March 2013, p. 7. See Memorial, Appendix 5, pp. 7-8.

¹³⁶⁸ Memorial, Appendix 5, para. 24; **Exhibit C-2817**, Superior Court of Justice, Third Brazil Docket Sheet, 22 March 2013, p. 7.

¹³⁶⁹ **C-2817**, Superior Court of Justice, Third Brazil Docket Sheet, 22 March 2013, p. 6.

¹³⁷⁰ **C-2817**, Superior Court of Justice, Third Brazil Docket Sheet, 22 March 2013, p. 4.

¹³⁷¹ Reply, para. 860.

account of any other form of harm or geared towards any other goal are *not* compensable in these proceedings.¹³⁷²

906. Following the methodology laid out in Section VII.G.5 for the assessment of incidental damages in this case, the Tribunal finds that the Claimants' claim for compensation in respect of the Brazil Recognition Proceedings must be granted for the reasons and to the extent set out below.

(b) First Step: Analysis of Incidental Damages "Category"

907. As a first step of its analysis, the Tribunal must determine whether the Brazil Recognition Proceedings category of damages meets the requirements of causation and reasonableness for the compensation of incidental damages under international law.

908. First, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555, the Claimants' efforts must have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.

909. Second, as noted in paragraph 556 above, incidental damages are subject to an additional requirement of reasonableness: to warrant compensation, legal fees and expenses must have been *reasonably* incurred to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. At this level of analysis, the Tribunal's determination concerns the reasonableness of the mitigation *measures*

¹³⁷² See para. 317 above.

undertaken by the Claimants, not of the *amounts* they spent, which will be examined in a subsequent step of the analysis.¹³⁷³

910. As already explained, the LAPs’ motion for recognition of the Lago Agrio Judgment in Brazil was not directed specifically against any of Chevron’s Brazilian subsidiaries: Chevron was the only named defendant.¹³⁷⁴ However, in its 11 March 2013 opposition to the LAPs’ motion for recognition, after noting that it had no assets in Brazil¹³⁷⁵ Chevron argued that the “action for ratification filed should also be terminated with no resolution of the merits” because “any intention by the [LAPs] to appropriate the assets of other companies of the Chevron Group in Brazil to satisfy an improbable enforcement of the Ecuadorian judgment is unacceptable”, as the LAPs’ motion did not comply with the requirements for piercing the corporate veil under Brazilian law.¹³⁷⁶ The Tribunal understands that Chevron’s statements alluded specifically to Chevron Brazil, upon whom the LAPs first attempted to serve the motion for recognition¹³⁷⁷ and which was also identified in the 15 October 2012 Order of the Lago Agrio Court as an “asset[] owned by Chevron Corporation” against which the Lago Agrio Judgment was to be executed.¹³⁷⁸ These circumstances point clearly to Chevron Brazil’s assets being the ultimate target of the LAPs’ efforts to obtain recognition of the Lago Agrio Judgment in Brazil.¹³⁷⁹
911. As such, by challenging the LAPs’ motion for recognition, Chevron displayed direct efforts to prevent the Lago Agrio Judgment from becoming enforceable in Brazil as described in item (i) in paragraph 642 above. Chevron’s efforts also sought to minimize the loss arising directly from the enforcement of the Judgment as described in item (iii) of the same paragraph by seeking to protect the ultimate target of the motion for

¹³⁷³ See para. 556 above.

¹³⁷⁴ See para. 901 above.

¹³⁷⁵ **RE-37**, First Godoy Expert Report, **LUC-18**, Chevron’s defense in the Domestication Proceeding, 11 March 2013, para. 1.

¹³⁷⁶ **RE-37**, First Godoy Expert Report, **LUC-18**, Chevron’s defense in the Domestication Proceeding, 11 March 2013, paras. 70-71.

¹³⁷⁷ **RE-37**, First Godoy Expert Report, **LUC-18**, Chevron’s defense in the Domestication Proceeding, 11 March 2013, para. 57.

¹³⁷⁸ See para. 431 above.

¹³⁷⁹ See also para. 441 above.

recognition – Chevron Brazil – in the event that the Lago Agrio Judgment was eventually recognized and the LAPs sought its enforcement in Brazil.

912. Accordingly, because all of the efforts described in the preceding paragraphs were a direct and reasonable way of mitigating the injury flowing from the Respondent’s Treaty breaches, the requirements of causality and reasonableness are met as regards the Brazil Recognition Proceedings.
913. In reaching this conclusion, the Tribunal remains mindful that Chevron made substantial filings to challenge the LAPs’ request for *in forma pauperis* status in the Brazil Recognition Proceedings together with its primary opposition to the LAPs’ motion for recognition.¹³⁸⁰ While these filings might not have had the direct and immediate objective of mitigating the injury arising from the recognition and enforcement of the Lago Agrio Judgment, they are ancillary in nature to Chevron’s primary opposition to the LAPs’ recognition motion. Accordingly, these supplemental submissions do not affect the Tribunal’s conclusion that the participation of Chevron in the Brazil Recognition Proceedings, when considered as a whole, was a reasonable means of mitigating the injury arising from the recognition and enforcement of the Lago Agrio Judgment. The Tribunal will address below Chevron’s pursuit of these supplemental filings as part of its analysis of the components of the present category of damages.

(c) Second Step: Analysis of Incidental Damages “Components”

914. As a second step of its analysis, the Tribunal must determine, within the Brazil Recognition Proceedings category, whether the Claimants have established the requirement for each individual costs “component” identified by the Parties to qualify as incidental damages. The Tribunal must also examine other issues raised by the Parties in connection with this particular damages category to determine whether any other portion of the legal fees and expenses claimed under the present heading should be excluded from the final amount of compensation.¹³⁸¹

¹³⁸⁰ C-2815, Supreme Court of Justice of Brazil Second Docket Sheet, 27 June 2012, p. 4 (referencing “Petition No. 65262/2013 (PETITION) filed as PET 9815 (2013/0072640-8)”, 15 March 2013).

¹³⁸¹ See paras. 559-565 above.

915. The Parties have identified nine components involving the legal fees and expenses incurred by the Claimants in Brazil, which are addressed *seriatim* below. Other issues raised by the Parties in connection with this damages category but not expressly identified by them as a component are addressed immediately thereafter.

1. (CLA) Fees and costs before the LAPs' enforcement strategy became known to Claimants / (RES) Fees and costs before the Invictus Memorandum became known to Chevron (January 2011)¹³⁸²

916. The Parties disagree on whether the Claimants may recover the costs associated with their early preparation works advanced in Brazil from January 2008 until the Invictus Memorandum became known to the Claimants in January 2011. To justify their compensation claim, the Claimants argue that the LAPs' strategy to enforce the Lago Agrio Judgment outside of Ecuador was already publicly known as early as 2007 and that Latin American jurisdictions were in this respect "high-risk jurisdictions".¹³⁸³ The Respondent maintains that the Claimants are not entitled to recover damages incurred before 27 June 2018.¹³⁸⁴

917. The Tribunal has already determined that incidental damages are only compensable in principle in this Arbitration if they were incurred starting as of 14 February 2011, the date of issuance of the Lago Agrio Judgment. This was the date upon which the risks connected to the enforcement of the Judgment became foreseeable and was thus also the date as of which the Claimants' mitigation efforts could be said to respond to the injury arising from the recognition and enforcement of that Judgment – *i.e.*, the injury flowing from the Respondent's internationally wrongful acts. Whatever harm the Claimants may have suffered by undertaking work before 14 February 2011 in preparation for a potential enforcement proceeding in Brazil was not caused by the Respondent's Treaty breaches and therefore falls outside the scope of the compensable injury in these proceedings.¹³⁸⁵

918. Accordingly, the Tribunal finds that the Claimants are not entitled to claim compensation for legal fees and expenses incurred before the Invictus Memorandum became known to

¹³⁸² For an explanation of the names assigned to components *see* para. 568 above.

¹³⁸³ Reply, para. 889.

¹³⁸⁴ Counter-Memorial, para. 864.

¹³⁸⁵ *See* paras. 362, 371, 397 above.

them in January 2011 and before the issuance of the Lago Agrio Judgment on 14 February 2011.

2. (CLA) Fees incurred solely in connection with the challenge to the LAPs' *in forma pauperis* status / (RES) Fees incurred in connection with the challenge to the LAPs' *in forma pauperis* status

919. The Claimants challenged the LAPs' request for *in forma pauperis* status in the Brazil Recognition Proceedings, under which the LAPs would not have been required to pay court fees.¹³⁸⁶ According to the Respondent, in addition to Brazilian lawyers, the Claimants' U.S. lawyers were significantly involved in proceedings relating to the *in forma pauperis* request.¹³⁸⁷ The Respondent highlights that "it has only been able to identify seven time entries of Brazilian attorneys clearly related to the *in forma pauperis* proceeding, but it has identified at least 71 time entries by attorneys from American firms."¹³⁸⁸ The Respondent also emphasizes that the Claimants have failed to "justify having lawyers from American firms – who charged higher rates than their Brazilian colleagues – do the legwork to prepare, finalize, and file Chevron's objection to the LAPs' *in forma pauperis* status."¹³⁸⁹
920. As already noted, the STJ bifurcated the Brazil Recognition Proceedings to address the LAPs' recognition action and the LAPs' request to proceed *in forma pauperis* separately.¹³⁹⁰ While, as already addressed, Chevron's opposition to the recognition of the Lago Agrio Judgment was a direct and reasonable way of mitigating the injury arising from the recognition and enforcement of the Lago Agrio Judgment, the same conclusion does not necessarily extend to Chevron's challenge to the LAPs' *in forma pauperis* status in the ancillary action within the larger recognition proceedings.¹³⁹¹ Chevron filed numerous supplemental submissions relating to the revocation of the LAPs' *in forma pauperis* status with the support from multiple counsel teams from Brazil and the United

¹³⁸⁶ Memorial, Appendix 5, para. 1.

¹³⁸⁷ Rejoinder, paras. 1411-1412.

¹³⁸⁸ Rejoinder, para. 1412.

¹³⁸⁹ Rejoinder, para. 1412.

¹³⁹⁰ See para 902 above.

¹³⁹¹ See para. 913 above.

States.¹³⁹² In view of this circumstance, the Tribunal believes a separate analysis of the Claimants' actions in connection with the challenge to the LAPs' *in forma pauperis* status is warranted.

921. In this regard, the Tribunal observes that the Claimants have not addressed distinctly how challenging the LAPs' *in forma pauperis* status before the STJ could have substantially furthered any of the mitigation goals warranting compensation identified in paragraph 642 above, namely: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment.¹³⁹³
922. Indeed, it is unclear to the Tribunal what the ultimate goal of Chevron's pursuit of this challenge was. According to the Respondent's Brazilian law expert, Mr Godoy, "[u]nder normal circumstances, the defendant has an interest to oppose the granting of gratuity to claimant; it is a strategy to apply pressure on claimant with the risk of being forced to pay court fees that can be significant when the claim's value is also significant, and Court-Mandated Fees as well."¹³⁹⁴ He also explains, however, that this was not the case of the Brazil Recognition Proceedings, as the "court fee for a domestication [*i.e.*, recognition] proceeding is fixed", meaning that the revocation of the LAPs' *in forma pauperis* status would have only required the LAPs to pay a *de minimis* amount of BRL 124.59 in the context of the overall litigation.¹³⁹⁵
923. The Claimants have thus not convincingly explained how opposing the LAPs' *in forma pauperis* request affected Chevron's chance of success in the Brazil Recognition

¹³⁹² Rejoinder, Annex H-9, entries 1-6, 12-21, 25-92.

¹³⁹³ See Reply, paras. 516, 895, 928.

¹³⁹⁴ **RE-37**, First Godoy Expert Report, para. 140.

¹³⁹⁵ **RE-37**, First Godoy Expert Report, paras. 141-142: "According to regulation n° 2/2017, established by the Brazilian Superior Court of Justice, (LUC 28), the court fee for a domestication proceeding in Brazil is fixed, and presently costs [BRL] 194,12 (one hundred, ninety-four Brazilian reais and twelve cents). In 2012, the costs were even lower: [BRL] 124,59 (one hundred, twenty-four Brazilian reais and fifty-nine cents). The claim's value here is irrelevant." See also **RE-37**, First Godoy Expert Report, **LUC-28**, Brazilian Superior Court of Justice's rules on court fees, Table A, XXIII – Ratification of Foreign Decision.

Proceedings, nor how it served to mitigate the injury resulting from the Respondent's Treaty breaches.

924. For these reasons, the Tribunal finds that the Claimants have failed to establish that the legal fees and expenses they incurred in connection with their challenge of the LAPs' *in forma pauperis* status were reasonably incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. Accordingly, the Claimants are not entitled to claim compensation for those fees.

3. Media and public relations

925. The Respondent takes issue with alleged non-legal work performed by the Claimants' lawyers, in particular media and public relations work, and argues that any fees arising from such activities should not be recoverable. The Respondent has identified these activities to include, *inter alia*, providing "analysis of the media coverage of the visit of Pope Francis to countries in the Amazon region,"¹³⁹⁶ analysing "Twitter strategies" or reviewing tweets,¹³⁹⁷ conducting "[o]utreach research re: key opportunities to advance anti-corruption, human rights, and rule of law message globally",¹³⁹⁸ and strategizing the Claimants' publicity campaign in preparing "High Impact videos" and publishing them on YouTube.¹³⁹⁹
926. Given that this issue impacts multiple damages categories, the question of whether fees related to media and public relations are generally recoverable in this Arbitration will be addressed as part of the Tribunal's analysis of cross-cutting "elements" in Section VIII.N below.

4. Government relations

927. Turning to government relations work, the Respondent likewise emphasizes the Claimants' failure to demonstrate how this work conducted by the Claimants' lawyers

¹³⁹⁶ Rejoinder, para. 1431; **C-3405**, CVX-Track III-20011124, p. 2.

¹³⁹⁷ Rejoinder, para. 1431; Annex H-22, entries 3-5.

¹³⁹⁸ Rejoinder, para. 1431; Annex H-24, row 33.

¹³⁹⁹ Rejoinder, para. 1433.

was reasonable or necessary in connection with Chevron’s defence in the Brazil Recognition Proceedings. According to the Respondent, the activities falling under this component include monitoring activity in the Brazilian legislature for evidence of whether a legislative development might “have an impact on [Chevron’s] interest” or present “risks to [the] client”,¹⁴⁰⁰ preparing a memorandum about the political context in Brazil “that may affect the LA case”,¹⁴⁰¹ and participating in a hearing regarding the “Brazilian Public Program for Control of Oil Polluting Incidents on National Waters”.¹⁴⁰²

928. Given that this issue impacts multiple damages categories, the Tribunal will address the question of whether fees related to government relations are generally recoverable in this Arbitration as part of its analysis of cross-cutting “elements” in Section VIII.N below.

5. Amounts billed by the Mattos Firms under the matters “Ecuador Decision-PGPA [Policy, Government, and Public Affairs]” and “Relações Governamentais [Governmental Relations]”

929. The Respondent requests that the Tribunal deny compensation for the legal fees and expenses corresponding to 47 invoices rendered by Mattos Muriel Kestener between August 2012 and April 2016 under the matter “Ecuador Decision-PGPA [Policy, Government, and Public Affairs],” and seven invoices rendered by Mattos Engelberg Advogados between May 2016 and January 2017 under the matter “Relações Governamentais [Governmental Relations],” for which the Claimants seek USD 234,331.96.¹⁴⁰³

930. The Tribunal declines to exclude from compensation the legal fees and expenses charged by the Mattos firms as a whole, for the reasons set out in Section VIII.D.3(c)9 below. To the extent this specific component relates to activities involving government relations, the Tribunal will address the question of whether fees billed under such activities are recoverable in this Arbitration as part of its analysis of cross-cutting “elements” in Section VIII.N below.

¹⁴⁰⁰ Rejoinder, para. 1434 (brackets in original); Annex H-3, entries 1, 2, 28.

¹⁴⁰¹ Rejoinder, para. 1434; Annex H-3, entries 109-111.

¹⁴⁰² Rejoinder, para 1439; Annex H-24, row 28.

¹⁴⁰³ Rejoinder, para. 1430; **RE-51**, Trunko Expert Report, **SM-N-2**.

6. Fees and costs incurred before the date the Brazilian proceeding was filed

931. The Parties disagree on whether the Claimants are entitled to compensation for fees incurred before the commencement of the Brazil Recognition Proceedings on 27 June 2012. This necessarily encompasses the fees and costs associated with the Claimants' early preparation works in Brazil as early as January 2008 until the *Invictus* Memorandum became known to the Claimants in January 2011, as addressed in Section VIII.D.3(c)1 above.

932. For the reasons stated in paragraph 917 above, the Tribunal finds that the Claimants are not entitled to claim compensation for any expenses associated with the advance preparations for the Brazil Recognition Proceedings that were done before 14 February 2011. Legal fees and expenses corresponding to services provided from that date onwards are compensable in principle, subject to the Tribunal's determinations in this Section.

7. Costs of Portuguese/English translations between May 2013 and July 2015

933. The Respondent takes issue with the amount of time spent by U.S. lawyers to engage in translation-related activities and the expenses they incurred in hiring outside vendors to prepare English into Portuguese translations (approaching USD 900,000) between May 2013 and July 2015.¹⁴⁰⁴

934. The Tribunal notes that incurring translation costs is not uncommon in cases where the enforcement of a judgment is pursued across multiple jurisdictions. The Tribunal also recognizes the complexity of producing accurate and reliable translations. The need for precise translations in diverse linguistic contexts is crucial to ensure that submissions and documentary evidence are accurately conveyed in each legal system.

935. In the present case, the LAPs initiated recognition and enforcement actions in Ecuador, Argentina, Canada, and Brazil in three different languages: Spanish, English, and Portuguese. Alongside these enforcement proceedings, the RICO Litigation, Section 1782 Proceedings and Gibraltar Proceedings were conducted in English. Jones Day, acting as "the central hub among all counsel and the in-house team for translations, apostilles, [and] document management" took the lead on maintaining an up-to-date case record and

¹⁴⁰⁴ Rejoinder, para. 1444; Annex H-24, entries 21-27, 29-32, 34-39, 44, 47-64, 66, 68.

translating documents for use in various jurisdictions.¹⁴⁰⁵ The process involved not only the initial translation by outside vendors but also verification by bilingual attorneys and staff at Jones Day.¹⁴⁰⁶

936. From May 2013, the Claimants filed supplemental submissions in the course of the Brazil Recognition Proceedings, providing new evidence to the STJ as evidence became available in other proceedings, including in the RICO Litigation. All submissions were required to include legalized copies and formal translations under Brazilian law.¹⁴⁰⁷ In this respect, it is worth mentioning that the STJ in its judgment of 29 November 2017 makes reference to a decision issued in the RICO Litigation stating that the Lago Agrio Judgment “was obtained through corrupt means”.¹⁴⁰⁸ According to the Claimants, the opinion issued by the Brazilian Federal Prosecutor’s Office on 11 May 2015 (though non-binding) also relied on the court’s decision in the RICO Litigation in reaching its conclusion on the unenforceability of the Lago Agrio Judgment, implying that the submissions of the Claimants regarding the RICO Litigation were indeed considered.¹⁴⁰⁹
937. As already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants’ decisions as to which specific mitigation measures to undertake in real time.¹⁴¹⁰ Considering the above, the Tribunal does not seek to second-guess Jones Day’s decision to work with its “preferred vendors” for translation work in the Brazil Recognition Proceedings.¹⁴¹¹ The Tribunal is sufficiently persuaded that preparing translations from English into Portuguese was reasonable and necessary for Chevron to resist the recognition of the Lago Agrio Judgment in Brazil.

¹⁴⁰⁵ Mittelstaedt Witness Statement, paras. 31, 86-87.

¹⁴⁰⁶ Mittelstaedt Witness Statement, para. 38.

¹⁴⁰⁷ Memorial, Appendix 5, para. 14.

¹⁴⁰⁸ **C-2546**, STJ SEC 8542, Decision, 29 November 2017, p. 28.

¹⁴⁰⁹ Memorial, Appendix 5, para. 11; **C-2817**, Superior Court of Justice, Third Brazil Docket Sheet, 22 March 2013) (referencing Filing of Petition of Petition Opinion by the MPF No. 184009/2015(85), 11 May 2015 (added to the record on 14 May 2015)); *see also* **C-3062**, *Opinion Of Brazilian Assistant Attorney General On Chevron Worries Assembly*, Press Release, 2 June 2015.

¹⁴¹⁰ *See* para. 341 above.

¹⁴¹¹ Mittelstaedt Witness Statement, para. 38.

938. Accordingly, the Tribunal rejects the Respondent’s request to exclude the costs of Portuguese/English translations in the Brazilian Enforcement Proceedings from being compensated as incidental damages.

8. Costs of English/Spanish translations

939. The Respondent also considers “inexplicable”, and thereby challenges, the Claimants’ attempt to recover the costs of English into Spanish and Spanish into English translations incurred in the Brazil Recognition Proceedings, which, according to the Respondent, amounts to over USD 500,000.¹⁴¹²

940. The Tribunal reiterates that preparing translations in a scenario involving multiple jurisdictions (Argentina, Brazil, Canada, Ecuador, Gibraltar, U.S.), with different working languages (Spanish, English, Portuguese) is inherently complex. By way of example, documents produced in the Lago Agrio Litigation might be translated from Spanish into English for the U.S. lawyers actively participating in coordinating the overall defence strategy – as well as Chevron’s management and in-house counsel in the United States – and then from English into Portuguese for implementing that strategy in the submissions in Brazil. Translating some documents back into Spanish might also become necessary for coherence when liaising with teams in Spanish-speaking jurisdictions or for direct comparison with documents produced in the Lago Agrio Litigation. Given the international nature of the case, the Tribunal infers that there were strategic reasons for maintaining coherence across multiple jurisdictions and ensuring that all international legal teams have access to documents in a comprehensible language.

941. As with the costs of Portuguese/English translations, the Tribunal is prepared to grant a certain level of deference to the Claimants’ decisions as to which specific mitigation measures to undertake in real time.¹⁴¹³ The Tribunal can reasonably infer that the preparation of English/Spanish translations played a role in the coordination strategy among multiple global firms aimed at supporting Chevron’s defence in the Brazil Recognition Proceedings.

¹⁴¹² Rejoinder, para. 1444; Annex H-24, entries 9– 12, 14, 17– 20, 65, 67, 69–73.

¹⁴¹³ See para. 341 above.

942. Accordingly, the Tribunal rejects the Respondent's request to exclude from compensation the costs of English/Spanish translations in the Brazil Recognition Proceedings.

9. (CLA) Law firms that represented Chevron's Brazilian subsidiary (Mattos Engelberg Advogados; Mattos Muriel Kestener Advogados) / (RES) Law firms that purportedly represented Chevron's Brazilian subsidiary (Mattos Engelberg Advogados; Mattos Muriel Kestener Advogados)

943. The Respondent maintains that the Claimants cannot recover USD 2,892,703.61 in fees for services rendered by Mattos Muriel Kestener Advogados and its successor, Mattos Engelberg Advogados, which, according to the testimony of Mr Veiga, represented Chevron Brazil – not Chevron Corporation – in connection with the Brazil Recognition Proceedings.¹⁴¹⁴ In this connection, the Respondent stresses that (i) Chevron Brazil was not a defendant in the Brazil Recognition Proceedings, meaning it had no need to defend itself; (ii) Chevron Brazil is not a claimant in this Arbitration and as such any fees incurred in its defence would be unrecoverable; (iii) the fees charged by the Mattos firms include non-legal services related to public relations and governmental affairs; and (iv) to the extent their fees refer to legal services, they were duplicative of the work of Chevron's Brazilian counsel of record, Pinheiro Neto.¹⁴¹⁵

944. The Tribunal accepts as plausible Mr Veiga's testimony that the Mattos firms represented Chevron Brazil, as opposed to Chevron.¹⁴¹⁶ The ensuing question for the Tribunal is whether Chevron should receive compensation for the efforts displayed by one of its subsidiaries (not Chevron) in connection with the Brazil Recognition Proceedings. The Tribunal has already answered this question in the affirmative by ruling in paragraph 438 above that Chevron may in its own right claim compensation in this Arbitration for the injuries caused by the recognition and enforcement of the Lago Agrio Judgment to the assets of its subsidiaries listed in the 15 October 2012 Order of the Lago Agrio Court. As regards Brazil, the Lago Agrio Court order expressly provided for the execution of the

¹⁴¹⁴ Rejoinder, para. 1424; Fourth Veiga Witness Statement, para. 124.

¹⁴¹⁵ Rejoinder, paras. 1422-1425.

¹⁴¹⁶ Fourth Veiga Witness Statement, para. 124.

Lago Agrio Judgment against Chevron Brazil, which was deemed to be “assets owned by Chevron Corporation.”¹⁴¹⁷

945. In the Tribunal’s view, the preceding determination is not affected by the fact that Chevron Brazil, unlike Chevron, was not a named defendant in the Brazil Recognition Proceedings. In paragraph 910 above, the Tribunal has determined that Chevron Brazil’s assets were the ultimate target of the LAPs’ efforts to obtain recognition of the Lago Agrio Judgment in Brazil. Whether a named defendant in the recognition action in Brazil or not, it was reasonable for Chevron Brazil to retain its own counsel to prepare for a potential intervention as a defendant in the recognition proceedings, the potential future enforcement of the Lago Agrio Judgment, and to coordinate its strategy with its parent company and named defendant in the Brazil Recognition Proceedings. The invoices of the Mattos firms, including those to which the Respondent objects, correspond broadly with these activities and, in the Tribunal’s assessment, are not indicative of duplicative efforts as between the Brazilian firms that were engaged by Chevron and Chevron Brazil.¹⁴¹⁸

946. For these reasons, the Tribunal declines to exclude from compensation the legal fees and expenses corresponding to services rendered by Mattos Muriel Kestener Advogados and its successor, Mattos Engelberg Advogados, subject to the below.

947. The Tribunal has also taken note of the Respondent’s argument that many of the activities performed by the Mattos firms concerned public relations and governmental affairs. As already noted above in paragraph 930 above, all of these questions will be addressed by the Tribunal as part of its analysis of cross-cutting “elements” in Section VIII.N below.

10. Other issues

948. In this section, the Tribunal will address other issues raised by the Parties in connection with the Brazil Recognition Proceedings that have not been specifically identified by the Parties as a component. These include (i) the Respondent’s argument that the Claimants should not be awarded fees for services rendered after 15 June 2018; (ii) the participation

¹⁴¹⁷ See para. 431 above.

¹⁴¹⁸ Rejoinder, Annexes H-12, H-13. See also **C-3405**.

of the Brazilian law firm Advocacia Velloso as second counsel of record for Chevron, as well as 8 non-Brazilian law firms; (iii) the Respondent's criticism of the Claimants' litigation strategy featuring "inadmissible and unsuccessful arguments"; (iv) the Respondent's argument that the fees incurred by the Claimants' attorneys during the "dormant" phases of the proceedings and for "simple tasks" were "excessive"; (v) the *sucumbência* fee awarded by the STJ to Chevron's attorneys; and (vi) the fees incurred in connection with the "offensive actions" planned against the LAPs, their funders, and their Brazilian counsel.

949. *The Respondent's argument that the Claimants should not be awarded fees for services rendered after 15 June 2018.* The Respondent argues that the Claimants have not "articulated any rationale" for claiming at least USD 33,900.63 in fees for services rendered after 15 June 2018, when the STJ certified that its decision denying recognition of the Lago Agrio Judgment was final and binding.¹⁴¹⁹ According to the Claimants, these fees correspond to a "small amount of legal work to prepare for additional steps that the LAPs might have taken in Brazil" which, in their submission, would not have been necessary "if Ecuador had complied with the Tribunal's Interim Orders and Awards."¹⁴²⁰
950. The Tribunal observes that the invoices filed by the Claimants corresponding to services performed between July and December 2018 include activities such as "Review of documents and the results of the researches on possible new filings by the LAPs. Email to the client in that regard. (.8) [R&E: Brazil];"¹⁴²¹ or "Provide update on Brazil recognition action for status report. (.1) [R&E: Brazil]; Further review of analysis of Constitutional Court decision (Ecuador) regarding potential re-file in Brazil. (.8) [R&E: Brazil]".¹⁴²² As gleaned from these narratives, the Claimants undertook efforts after June 2018 to prepare for a potential re-filing of a recognition action in Brazil. Since the Lago Agrio Judgment had not been rendered unenforceable in Ecuador by then¹⁴²³ – and, to the Tribunal's knowledge, remains enforceable to this day – the Tribunal considers that the

¹⁴¹⁹ Counter-Memorial, para. 871.

¹⁴²⁰ Reply, para. 927.

¹⁴²¹ **C-3332.011**, Pinheiro Neto Advogados (Member) – 2018.xlsx, Invoice Number 000530295, row 9.

¹⁴²² **C-3287.010**, Gibson, Dunn & Crutcher LLP (Member) – 2018.xlsx, Invoice Number 2018080303, row 10.

¹⁴²³ See Track II Award, para. 9.15.

Claimants’ decision to perform a limited assessment of a potential re-filing of a recognition action in Brazil amounted to a reasonable mitigation measure in the circumstances.

951. *The participation of the Brazilian law firm Advocacia Velloso as second counsel of record for Chevron, as well as 8 non-Brazilian law firms.* The Respondent is critical of the Claimants’ engagement of “a hodgepodge of foreign law firms” from the United States and Chile in connection with the Brazil Recognition Proceedings.¹⁴²⁴ These include seven U.S. law firms (Gibson, Dunn & Crutcher LLP; Boies Schiller & Flexner LLP; Jones Day; Holland & Knight; King & Spalding; Stern Kilcullen & Ruffolo LLC; and Covington & Burling LLP) and a Chilean law firm (Asesorias Bofill Escobar).¹⁴²⁵ In particular, the Respondent challenges “over US\$ 7.2 million in fees” billed by these firms despite “[t]heir geographic focus and areas of specialization [] so far removed from the question of recognition of an Ecuadorian judgment in Brazil” that concern only issues of Brazilian law.¹⁴²⁶ In response, the Claimants assert that “[t]hese law firms were involved both to coordinate the legal representation in Brazil with the actions in numerous other jurisdictions and because they provided significant legal value to critical strategic decision making”.¹⁴²⁷

952. As already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants’ decisions as to which specific mitigation measures to undertake in real time.¹⁴²⁸ While the Tribunal accepts that the engagement of foreign law firms for local recognition proceedings may be useful for the conduct of those proceedings, it nonetheless has difficulty understanding how the participation of 8 non-Brazilian law firms could have reasonably assisted the Claimants in resisting the recognition of an Ecuadorian judgment in Brazil – a quintessential question of Brazilian law and procedure

¹⁴²⁴ Counter-Memorial, para. 872.

¹⁴²⁵ Counter-Memorial, paras. 872-873.

¹⁴²⁶ Counter-Memorial, paras. 872-874; Rejoinder, para. 1445.

¹⁴²⁷ Reply, para. 932.

¹⁴²⁸ See para. 341 above.

that would normally be reserved to local lawyers, including in particular those already regularly retained by Chevron in respect of its Brazilian operations and subsidiary.

953. As explained above, unless the Claimants sought to minimize the loss arising directly from the recognition and enforcement of the Lago Agrio Judgment by retaining these foreign law firms, they cannot claim compensation in these proceedings for the legal fees and expenses charged by those firms.¹⁴²⁹ To the extent that the goal of resisting recognition in Brazil might have required one foreign law firm to act as a liaison between the Claimants' headquarters in the United States and the law firms representing the Claimants before the Brazilian courts – as well as their local subsidiary – or in a coordinating capacity with teams operating in other jurisdictions, the Tribunal is prepared to grant compensation for the legal fees and expenses charged by the first foreign firm to participate in the Brazil Recognition Proceedings (Gibson, Dunn & Crutcher LLP).¹⁴³⁰ The Tribunal is also prepared to grant compensation for the fees and charged by Jones Day on account of its coordination and translation work explained above in the context of the “Costs of Portuguese/English translations between May 2013 and July 2015” component.¹⁴³¹ Otherwise, the Tribunal denies compensation under this heading for the legal fees and expenses charged by all other foreign law firms involved in these proceedings (Boies Schiller & Flexner LLP; King & Spalding; Asesorias Bofill Escobar; Holland & Knight; Stern Kilcullen & Rufolo LLC; and Covington & Burling LLP).

954. Turning to the Brazilian firms retained by Chevron, the Respondent challenges the fees incurred by Advocacia Velloso, the second Brazilian law firm that served as Chevron's counsel of record in the Brazil Recognition Proceedings in addition to Pinheiro Neto. In essence, the Respondent requests that the Tribunal deny compensation for the fees charged by Advocacia Velloso on the grounds that the invoices from this firm, which

¹⁴²⁹ See para. 642 above.

¹⁴³⁰ Reply, Updated Appendix 2, p. 631.

¹⁴³¹ See paras 933-938 above. The Tribunal notes that Gibson Dunn and Jones Day were also the two non-Brazilian firms with the highest billing in connection with this damages category (USD 6,943,231 and USD 2,279,900, respectively) and thus, presumably, had a more prominent role than other firms retained by the Claimants. See Letter from the Claimants to the Tribunal dated 2 November 2022, Claimants' Damages Model, Vendor Switches, cells F107 and F173.

provide for a flat-fee arrangement, “lack detailed time entries in violation of Chevron’s Guidelines”.¹⁴³²

955. The Tribunal observes that Advocacia Velloso “work[ed] under a fixed fee arrangement based on milestones” in the litigation referenced “Maria Aguinda Salazar et al. x Chevron Corporation” before the STJ.¹⁴³³ These milestones include “Signing of the Engagement Letter”, “Filing of CVXs’ Response to the Exequatur on 03.11.2013”¹⁴³⁴ and “oral argument before the Superior Court of Justice”.¹⁴³⁵ A flat-fee arrangement, with payments made based on specific milestones reached in the proceeding, is not uncommon in legal practice. Under this arrangement, invoices may not detail the specific nature of the work performed at each stage, but could instead reflect the agreed-upon milestone payments, streamlining the billing process and focusing on the overall progress of the case rather than itemizing individual tasks.
956. Additionally, the billing records of the Claimants’ other lawyers provide further context regarding the nature of the work carried out by Advocacia Velloso. By way of example, Pinheiro Neto Advogados analysed “comments on the draft submissions prepared by Mr. Carlos Velloso”; Mattos Muriel Kestener Advogados reviewed “analysis of Velloso’s comments on the draft memo about the arguments that plaintiffs may raise to pierce the corporate veil”; and Gibson, Dunn & Crutcher LLP followed up with “Pinheiro Neto and Velloso firms regarding expert issues.” and discussed with “Advocacia Velloso teams to strategize regarding new filing from the LAPs”, among others.¹⁴³⁶ The Respondent precisely acknowledges that “Advocacia Velloso lawyers frequently commented on drafts in progress and provided information about developments at the STJ”.¹⁴³⁷ Accordingly, the Tribunal considers that the evidence on the record sufficiently establishes that Advocacia Velloso undertook activities as counsel of record in the Brazil

¹⁴³² Rejoinder, para. 1420, *referring to* **C-3353**, CVX-Track III-20000128; CVX-Track III-200000129; CVX-Track III-20000134.

¹⁴³³ **C-3353**, CVX-Track III-20000134.

¹⁴³⁴ **C-3353**, CVX-Track III-200000129.

¹⁴³⁵ **C-3353**, CVX-Track III-200000134.

¹⁴³⁶ Rejoinder, Annex H-10, entries 10, 19, 214, 220.

¹⁴³⁷ Rejoinder, para. 1421.

Recognition Proceedings to mitigate the injury resulting from the recognition and enforcement of the Lago Agrio Judgment in Brazil.

957. Having reached this conclusion, the Tribunal believes it is unnecessary to analyse further the reasonableness of the Claimants’ decision to retain more than one Brazilian law firm in connection with the Brazil Recognition Proceedings. The number of local law firms used by the Claimants *per se* is not indicative of unreasonableness, particularly when compared with the risks attached to the recognition and enforcement of the multi-billion Lago Agrio Judgment in Brazil. As such, the Tribunal declines to exclude from compensation the legal fees and expenses corresponding to services rendered by Advocacia Velloso.
958. *The Respondent’s criticism of the Claimants’ litigation strategy featuring “inadmissible and unsuccessful arguments”.* The Respondent takes issue with the legal fees and expenses incurred in developing and advancing “inadmissible and unsuccessful” arguments.¹⁴³⁸ These include five of the grounds invoked by Chevron to defend against recognition of the Lago Agrio Judgment,¹⁴³⁹ which accounted for “20% of the entire primary defensive pleading”,¹⁴⁴⁰ as well as the argument, on which the STJ did not rely, that the Lago Agrio Judgment was procured by fraud.¹⁴⁴¹ For the Respondent, the Claimants are not entitled to recover costs which they “overspent on an argument that did not prevail”.¹⁴⁴²

¹⁴³⁸ Counter-Memorial, para. 879.

¹⁴³⁹ According to the Respondent: “Mr. Godoy explains five of the grounds invoked by Chevron in its defense—that the judgment conflicted with Brazilian public policy on the grounds that (i) it was a product of political persecution, (ii) it violated the principle of *res judicata*, (iii) it violated the principles of reasonableness and proportionality, (iv) it was an *extra petita* judgment, and (v) it violated the principle of equity by not also holding Chevron’s alleged joint tortfeasors liable—were “not admissible according to Brazilian law, given that they were intended to ultimately discuss the merits of the Lago Agrio Judgment.” Counter-Memorial, para. 880; **RE-37**, First Godoy Expert Report, paras. 145-151 (referencing **LUC-18**, Chevron’s defense in the Domestication Proceeding, 11 March 2013).

¹⁴⁴⁰ Counter-Memorial, para. 991; **RE-37**, First Godoy Expert Report, para. 156.

¹⁴⁴¹ Counter-Memorial, para. 882; **RE-37**, First Godoy Expert Report, paras 102, 152; **C-2546**, STJ SEC 8542, Decision, 15 March 2018. The Respondent also argues that Claimants’ unsuccessful challenge to the LAPs’ *in forma pauperis* status was excessive and was thus unreasonable. Counter-Memorial, para. 883. The fees incurred in connection with the challenge to the LAPs’ *in forma pauperis* status was identified as a “component” and thus has been addressed by the Tribunal in paras. 919-924 above.

¹⁴⁴² Rejoinder, para. 1418.

959. Having already ascertained that the requirements of causation and reasonableness for the reimbursement of incidental damages are met as regards the Brazil Recognition Proceedings category of damages,¹⁴⁴³ the Tribunal does not need to opine on the substance or magnitude of the Claimants' submissions in those proceedings. As already noted, it is not appropriate for the Tribunal to apply hindsight to the legal strategies employed in the course of the Brazil Recognition Proceedings.¹⁴⁴⁴ In any event, the Tribunal observes that the success or failure of any legal defences is subject to various factors, including judicial discretion, and does not inherently reflect on the reasonableness or legitimacy of the defences themselves. Therefore, the mere fact that these defences did not succeed does not automatically render them unreasonable or unjustifiable.
960. *The Respondent's argument that the fees incurred by the Claimants' attorneys during the "dormant" phases of the proceedings and for "simple tasks" were "excessive".* The Respondent criticizes the Claimants' attempt to recover fees incurred by their lawyers "when nothing was happening in the Brazilian proceedings" between July 2013 and February 2014.¹⁴⁴⁵ It is also critical of the fees generated by the Claimants' attorneys conducting "research assignments on topics that had little, if anything, to do with the defense of the Brazil recognition proceedings",¹⁴⁴⁶ such as the oil spill in the Frade Field for which Chevron settled claims brought by the Brazilian government, the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, and unrelated proceedings in Brazil similar to the Brazil Recognition Proceedings "insofar as the respondents in both proceedings resisted recognition on the basis of Brazilian public policy".¹⁴⁴⁷ The Respondent also criticizes the Claimants' attorneys for "spen[ding] a significant amount of time checking court records in Brazil."¹⁴⁴⁸

¹⁴⁴³ See para. 912 above.

¹⁴⁴⁴ See para. 340 above.

¹⁴⁴⁵ Counter-Memorial, para. 877.

¹⁴⁴⁶ Rejoinder, para. 1436.

¹⁴⁴⁷ Rejoinder, paras. 1437-1441.

¹⁴⁴⁸ Rejoinder, para. 1443.

961. The Tribunal reiterates that it is not appropriate for it to apply hindsight to the legal strategies employed in the course of the Brazil Recognition Proceedings.¹⁴⁴⁹ Thus, it will not second-guess the precise impact that the activities described in the preceding paragraph had on the Claimants’ strategy in the Brazil Recognition Proceedings or their coordination efforts with lawyers operating in other jurisdictions. The Tribunal also recalls that a significant portion of the legal fees and expenses charged in connection with these activities has been excluded from compensation as a result of the Tribunal’s decision to deny compensation for the fees charged by several non-Brazilian law firms.¹⁴⁵⁰ Having examined the remaining invoices underlying the activities described in the preceding paragraph, the Tribunal has been persuaded sufficiently that such activities formed part of the Claimants’ reasonable efforts to resist the recognition of the Lago Agrio Judgment in Brazil and, on that basis, declines to exclude from compensation the legal fees and expenses incurred in connection with them.
962. *The sucumbência fee awarded by the STJ to Chevron’s attorneys.* The Respondent maintains that “Chevron’s Brazilian attorneys have already been awarded [BRL] 100,000 (approximately US\$ 30,000) by the STJ” as a *sucumbência*.¹⁴⁵¹ According to the Respondent, this fee “represents what the court that heard the case determined was fair compensation for the services rendered and the Tribunal may not second-guess the determination of the court before which the proceeding unfolded, located where the services were rendered, as to what is and what is not reasonable for the prevailing party or its attorneys to recover.”¹⁴⁵²
963. Similarly, the Respondent states that the “Claimants cannot recover fees that could have been recovered in an ancillary proceeding”.¹⁴⁵³ In the Respondent’s view, “[i]t is irrelevant that the award was made to Chevron’s attorneys, and not Chevron, because

¹⁴⁴⁹ See para. 340 above.

¹⁴⁵⁰ See para. 705 above.

¹⁴⁵¹ Counter-Memorial, para. 853. See **C-2546**, STJ SEC 8542, Decision, 15 March 2018, p. 29.

¹⁴⁵² Counter-Memorial, para. 853.

¹⁴⁵³ Counter-Memorial, para. 853.

Chevron’s arrangement with its attorneys must have accounted for the possibility of the fee award”.¹⁴⁵⁴

964. At the outset, the Tribunal observes that the *sucumbência* fee in Brazil can be distinguished from cost awards in other jurisdictions because it is paid directly to the prevailing party’s lawyers, rather than to the prevailing party itself.¹⁴⁵⁵ According to the Respondent’s Brazilian law expert, Mr Godoy, the fee awarded to Chevron’s lawyers “represents what the Brazilian Superior Court considered fair for Chevron’s attorneys to receive as compensation for the services provided, given Chevron’s attorneys actual work in the [Brazil Recognition] Proceeding”.¹⁴⁵⁶ The Claimants dispute this characterization of the *sucumbência* fee: they assert that it is “a rule of civil procedure designed to disincentivize frivolous litigation . . . not intended to compensate a party for legal fees that they pay their counsel, and . . . does not account for contracted fees and is not meant to be a reimbursement of the fees actually expended by the litigant and its attorneys”.¹⁴⁵⁷
965. The Tribunal considers that the precise nature of a *sucumbência* fee under Brazilian law is immaterial for the Tribunal’s damages assessment under the Treaty and international law. As already explained in paragraph 482 above, the Tribunal is generally not bound by cost determinations made by local courts in domestic proceedings, as these determinations pertain to a different subject matter. It has also been explained in paragraph 483 above that, even when domestic cost-shifting standards incorporate an assessment of reasonableness, the determinations made by local courts in application of those standards will be of limited relevance for the Tribunal’s present analysis, which will examine the question applying the prescribed standard under international law, *i.e.*, not the reasonableness of the legal fees and expenses according to the approaches applied by courts in individual local proceedings, but whether the legal fees and expenses incurred by the Claimants in the various legal proceedings served reasonably to mitigate the injury flowing from the Respondent’s Treaty breaches. In other words, these assessments are

¹⁴⁵⁴ Counter-Memorial, fn 1705.

¹⁴⁵⁵ RE-37, First Godoy Expert Report, para. 52.

¹⁴⁵⁶ RE-37, First Godoy Expert Report, para. 55.

¹⁴⁵⁷ Reply, para. 929 (emphasis removed).

distinct, and fixating on any overlap in these evaluations is more likely to be misleading than helpful.

966. Furthermore, as explained in paragraph 496 above, under the standard of full reparation, if the Claimants incurred what the Tribunal considers to have been established as a matter of international law to be reasonable legal costs in domestic proceedings, in excess of the costs that they were awarded or were able to collect through the domestic court procedures, they are entitled to the resulting shortfall in this Arbitration to the extent required to make them whole for the Respondent's international wrongs. Full reparation requires in this context only that the Tribunal exclude from its award on incidental damages any amounts *collected* by the Claimants in local proceedings so as to avoid any double recovery.
967. Thus, the question the Tribunal must address as regards the *sucumbência* fee is whether the Claimants (not their attorneys) effectively collected this fee in the Brazil Recognition Proceedings.
968. In their Reply, the Claimants imply that neither Chevron nor their local counsel *collected* the *sucumbência* fee for the Brazil Recognition Proceedings: "The fee is owed to counsel of record (i.e., the Brazilian law firms representing Chevron in Brazil), not to Chevron itself or its local subsidiaries. This fee is not intended to compensate a party for legal fees that they pay their counsel, *and even if paid, that fee* (in any amount) *would not have been paid to Chevron* nor would it have reduced the damages it incurred in successfully resisting recognition and enforcement in Brazil."¹⁴⁵⁸
969. In the Tribunal's view, it is immaterial whether Chevron or their local counsel collected the *sucumbência* fee for the Brazil Recognition Proceedings. The Tribunal accepts that even if paid, that fee would not have been paid to Chevron, but to its attorneys. In this connection, the Respondent raises the possibility of Chevron making arrangements with its attorneys to offset any such *sucumbência* fee from the amount it agreed to pay for the legal services.¹⁴⁵⁹ However, the Respondent's own Brazilian law expert, Mr Godoy, notes

¹⁴⁵⁸ Reply, para. 929 (emphasis by the Tribunal).

¹⁴⁵⁹ Counter-Memorial, fn 1705.

that Brazilian lawyers are normally entitled to receive a *sucumbência* fee *in addition to the fees* agreed upon with their client,¹⁴⁶⁰ meaning that such fees are not normally offset from the amount clients agree to pay their lawyers.

970. For these reasons, the Tribunal declines to make any adjustments to the compensation amount owed to the Claimants in connection with the Brazil Recognition Proceedings on account of the award of a *sucumbência* fee in those proceedings.

971. *The fees incurred in connection with the “offensive actions” planned against the LAPs, their funders, and their Brazilian counsel.* The Respondent is critical of the fees incurred by “Chevron’s army of lawyers spend[ing] time researching discussing, and considering whether to bring civil and/or criminal actions in Brazil against the LAPs, their funders, and their Brazilian counsel”.¹⁴⁶¹

972. The Tribunal has carefully reviewed the time entries identified by the Respondent in connection with such activities.¹⁴⁶² As evinced from those entries, Chevron’s counsel explored the possibility of bringing civil and criminal actions against the LAPs, their funders, and their Brazilian counsel at multiple stages of the Brazil Recognition Proceedings (particularly after the issuance of the RICO Judgment)¹⁴⁶³ and for multiple

¹⁴⁶⁰ **RE-37**, First Godoy Expert Report, para. 53: “The Court-Mandated Fees are not a reimbursement of Contract Fees. On the contrary, the attorney is entitled to receive the Contract Fees arranged by private agreement with his own client, and, *in addition to that*, the Court-Mandated Fee established by the court, if his client wins the case.” (emphasis by the Tribunal). *See also* **C-3200**, Brazil’s Advocacy Statute, Art. 22 “The act of rendering professional services ensures to those registered with the Brazilian Bar Association (OAB) the right to receive agreed-upon fees, fees fixed by the court, and loss-of-suit fees.”

¹⁴⁶¹ Rejoinder, para. 1435.

¹⁴⁶² Rejoinder, Annex H-1.

¹⁴⁶³ Rejoinder, Annex H-1, Entries 40 (“Follow-up on use of RICO ruling in Brazil”), 53 (“Follow-up on issues related to filing RICO Supplemental with the Brazil team”), 69 (“Review and analyze memorandum from Team Brazil and related communications from Civil Law Team regarding use of RICO decision in Brazil”), 70 (“Review Brazil memorandum on use of RICO judgment”) and 75 (“INTERNAL DISCUSSION WITH MM REGARDING NEXT STEPS OF THE CASE AND DRAFT OF LETTER TO BE SENT TO MR. BERMUDEZ PUTTING HIM ON NOTICE OF THE RICO DECISION”). For an explanation on the RICO Judgment *see* paras. 1256-1258 below.

reasons, including the potential existence of “fraud”¹⁴⁶⁴ and misrepresentations by the LAPs’ counsel about legal aid.¹⁴⁶⁵

973. While the Tribunal only has partial insight into the nature of these activities, it is sufficiently persuaded that the possible existence of fraud or misrepresentations warranted an inquiry into whether civil or criminal liability arose on the part of the LAPs, their funders and their counsel, particularly to the extent that the alleged “fraud” referred to the circumstances surrounding the ‘ghostwriting’ of the Lago Agrio Judgment and any actions undertaken in furtherance of its corrupt objectives. The Tribunal is further convinced that, if such liability had been established, it would have conferred upon Chevron a discernible advantage in the Brazil Recognition Proceedings. Even if no civil or criminal proceedings were ultimately brought, the Tribunal considers, on balance, that the activities falling under the present heading formed part of the Claimants’ reasonable efforts to resist the recognition of the Lago Agrio Judgment in Brazil and, on that basis, declines to exclude from compensation the legal fees and expenses incurred in connection with them.

4. Conclusion on Brazil Recognition Proceedings

974. For the foregoing reasons, the Tribunal:

- (i)* Declines to exclude from compensation the Brazil Recognition Proceedings category of damages as a whole;
- (ii)* Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Brazil Recognition Proceedings corresponding to services rendered before 14 February 2011;

¹⁴⁶⁴ Rejoinder, Annex H-1, Entries 16 (“Follow-up on crime-fraud pleadings”) and 41 (“review fraud presentation”).

¹⁴⁶⁵ Rejoinder, Annex H-1, Entry 78 (“EXCHANGE OF MESSAGES WITH FFP AND NAP ABOUT STJ PRECEDENT ON LACK OF CRIMINAL IMPLICATIONS IN A MISREPRESENTATION ABOUT LEGAL AID”).

- (iii) Defers its determination regarding the compensation of the legal fees and expenses corresponding to the component “Media and public relations” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (iv) Defers its determination regarding the compensation of the legal fees and expenses corresponding to the component “Government relations” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (v) Defers its determination regarding the compensation of the legal fees and expenses corresponding to the component “Amounts billed by the Mattos Firms under the matters ‘Ecuador Decision-PGPA [Policy, Government, and Public Affairs]’ and ‘Relações Governamentais [Governmental Relations]’” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (vi) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Brazil Recognition Proceedings corresponding to services provided by the firms Boies Schiller & Flexner LLP; King & Spalding; Asesorias Bofill Escobar; Holland & Knight; Stern Kilcullen & Rufolo LLC; and Covington & Burling LLP;
- (vii) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Brazil Recognition Proceedings, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below;¹⁴⁶⁶ and
- (viii) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Brazil Recognition Proceedings. The Tribunal will determine the exact amount of compensation corresponding to the Brazil Recognition Proceedings in Section VIII.O below.

* * *

¹⁴⁶⁶ See paras. 569-573 above.

E. CANADA ENFORCEMENT PROCEEDINGS

975. The Claimants seek USD 39,798,158.90 as direct damages for the legal fees and expenses incurred between November 2009 and February 2019 in the Canada Enforcement Proceedings as the natural and foreseeable result of the Denial of Justice, Umbrella Clause and Interim Awards Breaches.¹⁴⁶⁷ In the alternative, the Claimants submit that they are entitled to recover these expenses as incidental damages.¹⁴⁶⁸

976. The Respondent submits that the Claimants failed to prove that they are entitled to the legal fees and expenses arising from the Canada Enforcement Proceedings, arguing that the claimed fees are excessive, duplicative, and encompass non-legal work that was neither reasonable nor necessary for the Claimants' defence.¹⁴⁶⁹

1. The Claimants' Position

977. The Claimants submit that Chevron's outside counsel began preparing for the defence in the Canada Enforcement Proceedings in November 2009 because, by then, it was clear from the LAPs' public proclamations that they planned to enforce the Lago Agrio Judgment worldwide.¹⁴⁷⁰ Consequently, in the Claimants' view, Chevron was justified in conducting preparatory work before the LAPs filed their enforcement action in Canada on 30 May 2012 in order to prevent or mitigate the foreseeable harm.¹⁴⁷¹

978. The Claimants reject the Respondent's argument that their claim for legal fees and expenses in the Canada Enforcement Proceedings is already *res judicata* because the Canadian courts have already assessed and awarded legal fees that were reasonably incurred by Chevron and its Canadian subsidiaries in the Canada Enforcement Proceedings.¹⁴⁷² This is because, as observed in *Helnan v. Egypt*, "there is no effect of *res judicata* from the decision of a municipal court so far as an international jurisdiction

¹⁴⁶⁷ Reply, para. 906; Updated Appendix 2; **C-3462**, Index of Claimed Invoices by Damage Category ("Canada Enforcement" tab).

¹⁴⁶⁸ Reply, para. 906.

¹⁴⁶⁹ Counter-Memorial, para. 828; Rejoinder, para. 1450.

¹⁴⁷⁰ Memorial, para. 375; Reply, paras. 909-910.

¹⁴⁷¹ Reply, paras. 909-910.

¹⁴⁷² Reply, paras. 911-912.

is concerned.”¹⁴⁷³ Even assuming *arguendo* that the decisions of the Canadian courts and this Tribunal concern the same legal order, the Claimants contend that the doctrine of *res judicata* would still not apply because the Respondent was not a party in the Canada Enforcement Proceedings.¹⁴⁷⁴

979. The Claimants submit that, at the very least, they are entitled to recover USD 39,525,000 as direct damages, corresponding to the expenses incurred in the Canada Enforcement Proceedings after 1 March 2012.¹⁴⁷⁵

980. In the alternative, the Claimants contend that they are entitled to recover these expenses as incidental damages because they were reasonable.¹⁴⁷⁶ In this respect, the Claimants reiterate that both the text of the Treaty and investment jurisprudence support the conclusion that the legal fees and expenses incurred by Chevron’s subsidiaries (*i.e.*, Chevron Canada Limited (“**Chevron Canada**”) and Chevron Canada Finance Limited (“**Chevron Finance**”)) are properly claimable as damages to Chevron.¹⁴⁷⁷ Moreover, the Claimants note that the reasonableness of Chevron’s expenses relating to the Canada Enforcement Proceedings is further corroborated by expert evidence, as well as “by the fact that Chevron had no guarantee that it would ever recover its legal expenses.”¹⁴⁷⁸

2. The Respondent’s Position

981. The Respondent reiterates that the Claimants improperly claim fees for services rendered prior to the Respondent’s Treaty breaches, as well as fees accrued before the initiation of the Canada Enforcement Proceedings.¹⁴⁷⁹ In the Respondent’s view, the Claimants have no legitimate basis to claim costs arising as early as 2009 in connection with enforcement proceedings that were initiated only on 30 May 2012 and which concerned a judgment

¹⁴⁷³ Reply, para. 912; **CLA-568**, *Helnan International Hotels A/S v. Egypt*, ICSID Case No. 05/19, 3 July 2008, para. 124.

¹⁴⁷⁴ Reply, para. 913.

¹⁴⁷⁵ Reply, para. 915.

¹⁴⁷⁶ Reply, para. 916.

¹⁴⁷⁷ Memorial, paras. 202-208, 359; Reply, para. 916.

¹⁴⁷⁸ Reply, para. 916.

¹⁴⁷⁹ Counter-Memorial, paras. 829, 831.

that was not issued until 14 February 2011.¹⁴⁸⁰ As such, the Respondent argues that the Claimants are not entitled to recover at least those USD 662,272.51 in fees alone spent preparing for an action that did not yet exist, nor their costs for this period.¹⁴⁸¹

982. The Respondent further takes issue with the Claimants’ lack of explanation for the alleged fees incurred by two U.S. law firms for Canada-related activities between November 2009 and July 2011, by which time their Canada-based attorneys started to incur fees.¹⁴⁸²

983. Even if the Claimants were entitled to recover fees prior to the date of the Treaty breach, the Respondent argues that the Claimants have failed to justify that their claimed legal fees and expenses were reasonable or necessary.¹⁴⁸³ In this respect, the Respondent notes that the Canadian courts, which were most familiar with the efforts required for the proceedings, already considered and awarded Chevron “fair and reasonable” costs incurred for the major stages of the litigation in the amount of CAD 375,000 based on the Claimants’ detailed cost applications in accordance with Ontario law.¹⁴⁸⁴ Yet, the Respondent emphasizes that the “Claimants now demand over 140 times this amount . . . for the same Canadian Enforcement Proceedings.”¹⁴⁸⁵

984. The Respondent contends that, as observed by Professor Knutsen, the Claimants’ claim for the legal fees allegedly incurred in the Canada Enforcement Proceedings in this Arbitration “bears no relationship” to Chevron’s own submission, as well as the Canadian courts’ determination, of their “fair and reasonable” costs:¹⁴⁸⁶

- (i) While Chevron was awarded costs for major stages of the proceedings relating to its motion for summary judgement (and corresponding appeal) and its defence of the motion to amend the claim, the Claimants in this Arbitration seek costs incurred

¹⁴⁸⁰ Counter-Memorial, para. 832.

¹⁴⁸¹ Rejoinder, para. 1451.

¹⁴⁸² Counter-Memorial, para. 833.

¹⁴⁸³ Counter-Memorial, para. 834.

¹⁴⁸⁴ Counter-Memorial, paras. 835-836, 843-846; Rejoinder, paras. 1454-1469.

¹⁴⁸⁵ Rejoinder, para. 1454.

¹⁴⁸⁶ Counter-Memorial, para. 850; Rejoinder, para. 1470; **RE-39**, First Knutsen Expert Report, p. 22; **RE-57**, Second Knutsen Expert Report, pp. 17-18;.

for all stages of the litigation, including those stages in which Chevron was unsuccessful and those for which the LAPs were awarded costs;¹⁴⁸⁷

- (ii) The Claimants’ request for legal fees in this Arbitration falls “far short” of an “acceptable summary of legal costs under Ontario law as it lacks ‘the most basic directional information to assess reasonableness’”;¹⁴⁸⁸
- (iii) The Claimants’ claim in this Arbitration for the legal fees allegedly incurred in the Canada Enforcement Proceedings includes new figures with respect to hours billed, including by attorneys who were not counsel of record and whose fees were not previously sought;¹⁴⁸⁹
- (iv) In their costs submission to the Canadian courts, the Claimants excluded entirely work done by U.S.-based law firms and did not seek fees of all its Canadian counsel;¹⁴⁹⁰ and
- (v) For the same activities related to the motion to stay and the summary judgment motion, the Claimants now seek an award that is over nine times the amount Chevron represented to the Canadian courts as their actual and reasonable costs.¹⁴⁹¹

985. According to the Respondent, the Claimants’ request in this Arbitration is also inconsistent with their submissions to other courts, including its representations regarding the Canada Enforcement Proceedings to the U.S. District Court for the Southern District of New York in the RICO Litigation.¹⁴⁹²

¹⁴⁸⁷ Rejoinder, paras. 1464-1468.

¹⁴⁸⁸ Counter-Memorial, paras. 837-841; **RE-39**, First Knutsen Expert Report, p. 30.

¹⁴⁸⁹ Rejoinder, para. 1470; Reply, Updated Appendix 2, pp. 329-337; **R-2081**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Superior Court of Justice, Ontario Case No. CV-12-980800CL, Cost Submissions of Chevron Corporation, 17 May 2013; **RE-57**, Second Knutsen Expert Report, p. 16.

¹⁴⁹⁰ Rejoinder, paras. 1471, 1476.

¹⁴⁹¹ Rejoinder, paras. 1472-1475; **R-2081**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Superior Court of Justice, Ontario Case No. CV-12-980800CL, Cost Submissions of Chevron Corporation, 17 May 2013; **RE-51**, Trunko Expert Report, **SM M-4**, **SM M-5**; **RE-57**, Second Knutsen Expert Report, pp. 10, 12, 15-16.

¹⁴⁹² Rejoinder, paras. 1477-1479.

986. In addition to the discrepancy between the Claimants’ demand in this Arbitration and prior Canadian determinations, the Respondent contends that the invoices underlying the legal fees claimed in this category are grossly excessive.¹⁴⁹³ Examples of excessive litigation identified by the Respondent include “a disproportionate preoccupation with the LAPs’ counsel and litigation funding”;¹⁴⁹⁴ Chevron’s fixation on public relations;¹⁴⁹⁵ overstaffing resulting in duplication; inefficiency and excessive billing;¹⁴⁹⁶ and overrepresentation at hearings.¹⁴⁹⁷ The Respondent adds that many categories of expenses sought by the Claimants were wholly unrelated to the Canada Enforcement Proceedings.¹⁴⁹⁸

987. The Respondent concludes that the Claimants were fully heard on the matter of costs in the Canada Enforcement Proceedings by the Canadian courts, which determined the reasonableness of the fees incurred in those proceedings.¹⁴⁹⁹ Therefore, in the Respondent’s view, the Claimants are estopped from claiming these legal fees in this Arbitration; in its view, granting the Claimants the opportunity to re-litigate these claims would be contrary to the principle of *res judicata*.¹⁵⁰⁰

3. The Tribunal’s Analysis

(a) Introduction

988. On 30 May 2012, the LAPs initiated proceedings before the Superior Court of Justice in Ontario seeking the recognition and enforcement of the Lago Agrio Judgment in Canada. This action was commenced against Chevron as well as two of its wholly-owned local subsidiaries, Chevron Canada and Chevron Finance.¹⁵⁰¹ After the exchange of initial

¹⁴⁹³ Counter-Memorial, para. 849; Rejoinder, para. 1481.

¹⁴⁹⁴ Rejoinder, paras. 1481, 1483.

¹⁴⁹⁵ Rejoinder, para. 1482.

¹⁴⁹⁶ Rejoinder, paras. 1485-1491, 1493.

¹⁴⁹⁷ Rejoinder, paras. 1494, 1496.

¹⁴⁹⁸ Rejoinder, para. 1497.

¹⁴⁹⁹ Counter-Memorial, para. 848.

¹⁵⁰⁰ Counter-Memorial, para. 848.

¹⁵⁰¹ **C-1380**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Statement of Claim, Superior Court of Justice, Ontario, Canada, 30 May 2012.

evidentiary affidavits,¹⁵⁰² on 24 August 2012 the LAPs discontinued their action against Chevron Finance, but maintained their action against Chevron and Chevron Canada.¹⁵⁰³

989. The Commercial Court, a specialized subdivision of the Superior Court of Justice, initially stayed the recognition and enforcement action on 1 May 2013 on the grounds that Chevron did not have assets in Canada.¹⁵⁰⁴ On appeal, the Ontario Court of Appeal reversed the first-instance decision of the Commercial Court and ruled that the LAPs could proceed to seek recognition and enforcement of the Lago Agrio Judgment in Ontario.¹⁵⁰⁵ Following an appeal by Chevron and Chevron Canada, on 4 September 2015 the Supreme Court of Canada rendered a judgment dismissing the appeals and holding that the Ontario courts had jurisdiction to hear the LAPs' recognition and enforcement action.¹⁵⁰⁶

990. After the Supreme Court's 2015 judgment, the matter was remanded to the Commercial Court for submissions on the merits of the LAPs' recognition and enforcement claim. Thereafter, on 20 January 2017, the Commercial Court granted a motion for summary judgment finding that Chevron Canada is a separate entity from Chevron, not a party to the Ecuadorian lawsuit, and not a debtor to the Lago Agrio Judgment and, therefore, dismissed the action against Chevron Canada.¹⁵⁰⁷ The Commercial Court also dismissed the LAPs' motion for summary judgment.¹⁵⁰⁸ The judgment of the Commercial Court was upheld on 23 May 2018 by the Ontario Court of Appeal.¹⁵⁰⁹ On 4 April 2019, the

¹⁵⁰² Memorial, para. 365.

¹⁵⁰³ **C-2820**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Court File No. CV-12-9808-00CL, Notice of Discontinuance, 24 August 2012.

¹⁵⁰⁴ **C-2821**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Court File No. CV-12-980800CL, Reasons for Decision, 1 May 2013, paras. 110, 112.

¹⁵⁰⁵ **C-1977**, *Yaiguaje v. Chevron Corporation*, Court of Appeal of Ontario, 17 December 2013.

¹⁵⁰⁶ **C-2524**, *Chevron Corporation v. Yaiguaje*, 2015 SCC 42, Supreme Court of Canada, 4 September 2015.

¹⁵⁰⁷ **C-2833**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Judgment and Order, 20 January 2017.

¹⁵⁰⁸ **C-2833**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Judgment and Order, 20 January 2017.

¹⁵⁰⁹ **C-2856**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Appeal Decision of the Court of Appeal of Ontario (corrected), 23 May 2018.

Supreme Court of Canada rejected the LAPs' application for leave to appeal, bringing an end to the Canada Enforcement Proceedings.¹⁵¹⁰

991. Before beginning its analysis of the Claimants' damages claim in respect of the Canada Enforcement Proceedings, the Tribunal recalls the Claimants' position that all of their claimed legal fees and expenses incurred in connection with these proceedings constitute direct damages and are recoverable in the alternative as incidental damages.¹⁵¹¹ As explained in paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages. The expenses incurred by the Claimants on account of any other form of harm or geared towards any other goal are *not* compensable in these proceedings.¹⁵¹²

992. Following the methodology laid out in Section VII.G.5 for the assessment of incidental damages in this case, the Tribunal finds that the Claimants' claim for compensation in respect of legal fees and expenses incurred in connection with the Canada Enforcement Proceedings shall be granted for the reasons and to the extent set out below.

(b) First Step: Analysis of Incidental Damages "Category"

993. As a first step of its analysis, the Tribunal must determine whether the Canada Enforcement Proceedings category of damages meets the requirements of causation and reasonableness for the compensation of incidental damages under international law.

994. First, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555, the Claimants' efforts must

¹⁵¹⁰ **C-2888**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Decision of the Supreme Court of Canada, 4 April 2019.

¹⁵¹¹ Reply, para. 906.

¹⁵¹² See para. 317 above.

have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.

995. Second, as noted in paragraph 556 above, incidental damages are subject to an additional requirement of reasonableness: to warrant compensation, legal fees and expenses must have been *reasonably* incurred to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. At this level of analysis, the Tribunal's determination concerns the reasonableness of the mitigation *measures* undertaken by the Claimants, not of the *amounts* they spent, which will be examined in a subsequent step of the analysis.¹⁵¹³
996. At the outset, the Tribunal recalls that the named defendants in the LAPs' motion for recognition and enforcement of the Lago Agrio Judgment in Canada were Chevron, Chevron Canada and Chevron Finance.¹⁵¹⁴ The motion refers to the assets of Chevron's subsidiaries as the ultimate targets of the action: "Chevron no longer has assets in Ecuador. In Canada, Chevron has two wholly-owned subsidiaries: Chevron Canada Limited and Chevron Canada Financial Limited . . . The assets of Chevron Canada are significant and are located in many provinces and territories throughout Canada. The assets are beneficially-owned by Chevron and, through it, by the shareholders of Chevron."¹⁵¹⁵
997. After the motion was filed, Chevron, Chevron Canada and Chevron Finance appeared in the recognition proceedings as defendants, where they were represented by different law firms: (i) Chevron was represented by Norton Rose OR LLP and Osler, Hoskin & Harcourt LLP; (ii) Chevron Canada was represented by Goodmans LLP; and (iii) Chevron Canada Finance Limited was represented by Lax O'Sullivan Scott Lisus

¹⁵¹³ See para. 556 above.

¹⁵¹⁴ **C-1380**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Statement of Claim, Superior Court of Justice, Ontario, Canada, 30 May 2012, p. 2.

¹⁵¹⁵ **C-1380**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Statement of Claim, Superior Court of Justice, Ontario, Canada, 30 May 2012, paras. 14-15.

LLP.¹⁵¹⁶ As already noted in paragraph 988 above, on 24 August 2012 the LAPs discontinued their action against Chevron Finance, but maintained their action against Chevron and Chevron Canada.¹⁵¹⁷

998. Against this background, the immediate question before the Tribunal is whether Chevron should receive compensation for the efforts displayed by its subsidiaries (not Chevron) in the Canada Enforcement Proceedings. The Tribunal has already answered this question in the affirmative by ruling in paragraph 438 above that Chevron may in its own right claim compensation in this Arbitration for the injuries caused by the recognition and enforcement of the Lago Agrio Judgment to the assets of its subsidiaries listed in the 15 October 2012 Order of the Lago Agrio Court. As regards Canada, the Lago Agrio Court order expressly provided for the enforcement of the Lago Agrio Judgment against Chevron Canada and Chevron Finance, which were deemed to be “assets owned by Chevron Corporation.”¹⁵¹⁸

999. Accordingly, by challenging the LAPs’ motion for recognition and enforcement of the Lago Agrio Judgment, Chevron, Chevron Canada and Chevron Finance displayed direct efforts to prevent the Lago Agrio Judgment from becoming enforceable in Canada as described in item (i) in paragraph 642 above.

1000. Chevron’s efforts, as well as those of its Canadian subsidiaries, also sought to minimize the loss arising directly from the enforcement of the Judgment as described in item (iii) of paragraph 642. As already explained, the LAPs’ motion for recognition and enforcement expressly identified Chevron’s shares in Chevron Canada and Chevron Canada Finance Limited, as well as the assets of those subsidiaries, as the ultimate targets of the motion.¹⁵¹⁹ As such, the efforts displayed by Chevron, Chevron Canada and Chevron Finance in the Canada Enforcement Proceedings ultimately sought to protect the

¹⁵¹⁶ **C-2820**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Court File No. CV-12-9808-00CL, Notice of Discontinuance, 24 August 2012, pp. 3-4; Fourth Veiga Witness Statement, para. 122.

¹⁵¹⁷ **C-2820**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Court File No. CV-12-9808-00CL, Notice of Discontinuance, 24 August 2012.

¹⁵¹⁸ See para. 431 above.

¹⁵¹⁹ **C-1380**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Statement of Claim, Superior Court of Justice, Ontario, Canada, 30 May 2012, para. 1.

assets of these three companies against the enforcement of the Lago Agrio Judgment in Canada.¹⁵²⁰

1001. Accordingly, because all of the efforts described in the preceding paragraphs were a direct and reasonable way of mitigating the injury flowing from the Respondent's Treaty breaches, the requirements of causation and reasonableness are met as regards the Canada Enforcement Proceedings.

(c) Second Step: Analysis of Incidental Damages "Components"

1002. As a second step of its analysis, the Tribunal must determine, within the Canada Enforcement Proceedings category, whether the Claimants have established the requirements for each individual costs "component" identified by the Parties to qualify as incidental damages. The Tribunal must also examine other issues raised by the Parties in connection with this particular damages category to determine whether any other portion of the legal fees and expenses claimed under the present heading should be excluded from the final amount of compensation.¹⁵²¹

1003. The Parties have identified seven components involving the legal fees and expenses incurred by the Claimants and their local subsidiaries in Canada, which are addressed *seriatim* below. Other issues raised by the Parties in connection with this damages category but not expressly identified by them as a component are addressed immediately thereafter.

1. (CLA) Fees and costs before the LAPs' enforcement strategy became known to Claimants/ (RES) Fees and costs before the Invictus Memorandum became known to Chevron (January 2011)¹⁵²²

1004. The Parties disagree on whether the Claimants may recover the costs associated with their early preparation works advanced in Canada from November 2009 until the Invictus Memorandum became known to the Claimants in January 2011. To justify their compensation claim, the Claimants argue that the LAPs' strategy to enforce the Lago

¹⁵²⁰ **C-1380**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Statement of Claim, Superior Court of Justice, Ontario, Canada, 30 May 2012, para. 1.

¹⁵²¹ See paras. 559-565 above.

¹⁵²² For an explanation of the names assigned to components see para. 568 above.

Agrio Judgment outside of Ecuador was already publicly known by 2009.¹⁵²³ The Respondent maintains that the Claimants are not entitled to recover damages incurred before 27 June 2018.¹⁵²⁴

1005. The Tribunal has already determined that incidental damages are only compensable in principle in this Arbitration if they were incurred starting as of 14 February 2011, the date of issuance of the Lago Agrio Judgment. This was the date upon which the risks connected to the enforcement of the Judgment became foreseeable and was thus also the date as of which the Claimants' mitigation efforts could be said to respond to the injury arising from the recognition and enforcement of that Judgment – *i.e.*, the injury flowing from the Respondent's internationally wrongful acts. Whatever harm the Claimants may have suffered by undertaking work before 14 February 2011 in preparation for a potential enforcement proceeding in Canada was not caused by the Respondent's Treaty breaches and therefore falls outside the scope of the compensable injury in these proceedings.¹⁵²⁵

1006. Accordingly, the Tribunal finds that the Claimants are not entitled to claim compensation for legal fees and expenses incurred before the Invictus Memorandum became known to them in January 2011 and before the issuance of the Lago Agrio Judgment on 14 February 2011.

2. (CLA) Amount awarded by the Canadian courts, allegedly adjusted for full indemnity / (RES) Amount awarded by the Canadian courts, adjusted for full indemnity

1007. According to the Respondent's Ontario law expert, Professor Knutsen, Chevron and Chevron Canada were awarded costs at different stages of the Canada Enforcement Proceedings, totalling CAD 375,000.¹⁵²⁶ In the Respondent's view "[h]aving sought and

¹⁵²³ Reply, para. 909.

¹⁵²⁴ Rejoinder, para. 1450.

¹⁵²⁵ See paras. 362, 371, 397 above.

¹⁵²⁶ **RE-39**, First Knutsen Expert Report, p. 24. See also **C-2834**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Order, 10 February 2017, para. 2; **C-2856**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Decision of the Court of Appeal of Ontario (corrected), 23 May 2018, paras. 89, 91.

received their costs, the Claimants should not be able to seek an award for the same fees from this Tribunal.”¹⁵²⁷

1008. At the outset, the Tribunal observes that while the Claimants do not deny that they were awarded CAD 375,000 in the Canada Enforcement Proceedings, they do not explain whether they actually *collected* those costs or, to the extent that they failed to do so, why they failed to do so.¹⁵²⁸ According to the Claimants, “[a]ny costs that have been collected have been deducted from the amounts claimed in this arbitration; if they have not been collected, no such deduction has been made.”¹⁵²⁹ Yet no such deduction is accounted for in the Memorial, the Reply, the Updated Appendix 2 filed with the Reply,¹⁵³⁰ or the Claimants’ Damages Model.¹⁵³¹

1009. Against this background, on the basis of the record before it, the Tribunal concludes the Claimants either (i) collected the costs they were awarded in the Canada Enforcement Proceedings and failed to deduct them from the amounts claimed in this Arbitration, or (ii) failed to collect those costs for reasons they have not shared with this Tribunal. For the reasons that follow, the Tribunal must deduct CAD 375,000 from the final amount of compensation owed to the Claimants in either of these scenarios.

1010. To the extent the Claimants effectively collected CAD 375,000 in costs in the Canada Enforcement Proceedings, for the reasons stated in Section VII.E.2 and paragraph 505(i) above, the Tribunal must deduct those costs from the final amount of compensation owed to the Claimants.

1011. The same conclusion must be reached to the extent the Claimants failed to collect the costs they were awarded in the Canada Enforcement Proceedings. In Section VII.E.3 above, the Tribunal has addressed the issue of the recoverability of legal fees and expenses in this Arbitration in circumstances where the Claimants were awarded costs in domestic proceedings but failed to seek the collection of those costs before domestic

¹⁵²⁷ Counter-Memorial, para. 342.

¹⁵²⁸ See Reply, paras. 911-914.

¹⁵²⁹ Reply, para. 515.

¹⁵³⁰ Reply, Updated Appendix 2, pp. 324-401.

¹⁵³¹ Letter from the Claimants to the Tribunal, 2 November 2022.

courts. As noted in paragraph 505(ii) above, the Claimants are precluded from recovering as damages any legal costs awarded, but not collected, in domestic proceedings only to the extent that the Claimants unreasonably failed to pursue the collection of those costs in breach of their duty to mitigate under international law. The burden of proof regarding the Claimants' failure to mitigate lies with the Respondent. To the extent the Tribunal allows the recovery of such costs in this Award, any amounts collected by the Claimants after the issuance of this Award in local proceedings must be excluded from the final amount of compensation.

1012. Notwithstanding the general principle that the burden of proof regarding the Claimants' failure to mitigate lies with the Respondent, the Tribunal cannot obviate the fact that the Claimants have failed to explain why they did not collect costs. This precludes even a *prima facie* determination that the Claimants' presumptive decision not to collect costs was reasonable. Accordingly, the Tribunal concludes that the Claimants are precluded from recovering as damages any legal costs awarded, but not collected, in the Canada Enforcement Proceedings.

1013. Lastly, the Tribunal takes note that the Respondent requests the Tribunal to exclude from compensation the costs awarded to the Claimants in the Canada Enforcement Proceedings, adjusted for full indemnity. This is because, according to the Respondent, "Ontario courts' default approach is to award successful litigants' 'reasonable costs' on a partial indemnity scale, which is about 60% of the actual reasonable legal fees, and only after an in-depth examination of the successful litigant's legal fees and costs applying a prescribed set of factors."¹⁵³²

1014. The Tribunal declines to make any such adjustment: as explained in paragraph 481 above, the fact that the Claimants had the ability to recover legal costs in domestic proceedings in no way requires the Tribunal to import domestic cost-shifting standards to rule on the Claimants' damages claims seeking compensation in respect of legal costs. These claims must still be assessed through the lens of the usual standards for damages applicable under

¹⁵³² Counter-Memorial, para. 835.

international law, which do not foresee the indemnity adjustment the Respondent says applies in Canadian proceedings.

1015. For these reasons, the Tribunal excludes from compensation the amount awarded by Canadian courts, excluding any adjustments (*i.e.*, CAD 375,000).¹⁵³³

1016. For the avoidance of doubt, the Tribunal recalls that its determination of the legal fees and expenses the Claimants may recover as incidental damages under international law goes beyond an analysis of the fees they collected or were awarded in other proceedings. As set out in paragraph 496 above, under the standard of full reparation, if the Claimants incurred what the Tribunal considers to have been established as a matter of international law to be reasonable legal costs in domestic proceedings, in excess of the costs that they were awarded or were able to collect through the domestic court procedures, they are entitled to the resulting shortfall in this Arbitration to the extent required to make them whole for the Respondent's international wrongs. Full reparation requires in this context only that the Tribunal exclude from its award on incidental damages any amounts *collected* by the Claimants in local proceedings so as to avoid any double recovery, as set out in the present sub-section.

3. (CLA) Fees Chevron argued were reasonable under domestic rules governing costs applications in the Canadian courts / (RES) Fees Chevron argued were reasonable in Canadian courts

1017. According to the Respondent, "the difference between the claim advanced before the Canadian courts and Claimants' demand to this Tribunal is not attributable to some quirk in the way the Canadian courts applied the 'fair and reasonable' standard."¹⁵³⁴ The Respondent refers to several inconsistencies between the Claimants' costs claim before Canadian courts and their damages claim in this Arbitration:

For example, Chevron submitted a detailed cost application for its work on the motion to stay, representing its own appraisal of the 'significant amount of work required [with] respect to' that motion. In that fee submission, Chevron represented that the actual, reasonable fees for that stage of the litigation were \$683,156.00 CAD . . . Before this Tribunal, however, Claimants' representation of its fair and reasonable costs for the same

¹⁵³³ In Section VIII.O below, fn 3666 the Tribunal addresses the conversion of this amount from CAD to USD.

¹⁵³⁴ Rejoinder, para. 1471.

work is much inflated. Based on the underlying invoices, Claimants appear to request US\$ 4,485,549.24 in fees alone for the same activities.¹⁵³⁵

1018. Taking account of these purported inconsistencies, the Respondent takes the view that the Tribunal should follow the Canadian courts' determination of the "fair and reasonable" fees that the Claimants should recover for their participation in the Canada Enforcement Proceedings and thereby "massively discount Claimants' bloated damages demand."¹⁵³⁶

1019. The Tribunal reiterates, as already explained in paragraph 483 above, that even when domestic cost-shifting standards incorporate an assessment of reasonableness, the determinations made by local courts in application of those standards will be of limited relevance for the Tribunal's present analysis, which will examine the question applying the prescribed standard under international law, *i.e.*, not the reasonableness of the legal fees and expenses according to the approaches applied by courts in individual local proceedings, but whether the legal fees and expenses incurred by the Claimants in the various legal proceedings served reasonably to mitigate the injury flowing from the Respondent's Treaty breaches. In other words, these assessments are distinct, and fixating on any overlap in these evaluations is more likely to be misleading than helpful.

1020. For these reasons, the Tribunal determines that any representations made by Chevron, Chevron Canada or Chevron Finance in the Canada Enforcement Proceedings regarding the reasonableness of the legal fees and expenses they incurred in the context of those proceedings addressed a different subject matter and, therefore, are irrelevant for the Tribunal's present analysis of the damages suffered by the Claimants as a result of the Respondent's Treaty breaches. In the same vein, the Tribunal confirms that none of those representations, and none of the costs decisions made by Canadian courts on the basis of such representations, are capable of giving rise to any form of *res judicata* or estoppel in this Arbitration, particularly in view of the fact that the Respondent was not a party to the Canada Enforcement Proceedings.

1021. Accordingly, the Tribunal rejects the Respondent's argument under the present heading.

¹⁵³⁵ Rejoinder, paras. 1471-1472. *See also* Rejoinder, paras. 1473-1476; **RE-57**, Second Knutsen Expert Report, pp. 5-16.

¹⁵³⁶ Rejoinder, para. 1480.

4. Pre-filing fees

1022. The Parties disagree on whether the Claimants are entitled to compensation for fees incurred before the commencement of the Canada Enforcement Proceedings on 30 May 2012.¹⁵³⁷ This necessarily encompasses the fees and costs associated with the Claimants' early preparation works in Canada starting from November 2009 until the Invictus Memorandum became known to the Claimants in January 2011, as addressed in Section 1 above.

1023. For the reasons stated in paragraph 1005 above, the Tribunal finds that the Claimants are not entitled to claim compensation for any expenses associated with the advance preparation work for the Canada Enforcement Proceedings that was done before 14 February 2011. Legal fees and expenses corresponding to services provided from that date onwards are compensable in principle, subject to the Tribunal's other determinations on this category of damages.

5. Fees and Costs of U.S. Law Firms: Gibson, Dunn & Crutcher LLP; Stern Kilcullen & Rufolo LLC; Jones Day; Boies Schiller & Flexner LLP; Gardere Wynne Sewell; Covington & Burling

1024. The Respondent is critical of the Claimants' engagement of six non-Canadian law firms in connection with the Canada Enforcement Proceedings (Gibson, Dunn & Crutcher LLP; Stern Kilcullen & Rufolo LLC; Jones Day; Boies Schiller & Flexner LLP; Gardere Wynne Sewell LLP; and Covington & Burling LLP).¹⁵³⁸ In particular, the Respondent challenges the extensive fees billed by these U.S. firms, arguing that the attorneys at these firms "would *prima facie* have been of little value in litigating corporate separateness in those proceedings, given that [they] lacked qualifications to practice law in Canada."¹⁵³⁹

1025. As already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants' decisions as to which specific mitigation measures to undertake in real time.¹⁵⁴⁰ While the Tribunal accepts that the engagement of foreign law firms for local

¹⁵³⁷ See para. 994 above.

¹⁵³⁸ See Reply, Updated Appendix 2, p. 324.

¹⁵³⁹ Rejoinder, para. 1485.

¹⁵⁴⁰ See para. 341 above.

enforcement proceedings may be useful for the conduct of those proceedings, the Tribunal has nonetheless difficulty understanding how the participation of six non-Canadian law firms could have reasonably assisted the Claimants in resisting the enforcement of an Ecuadorian judgment in Canada over assets located in that same jurisdiction – a quintessential question of Canadian law and procedure that would normally be reserved to local lawyers, including in particular those already regularly retained by Chevron in respect of its Canadian subsidiaries and operations.

1026. As explained above, unless the Claimants sought to minimize the loss arising directly from the enforcement of the Lago Agrio Judgment by retaining these foreign law firms, they cannot claim compensation in these proceedings for the legal fees and expenses charged by those firms.¹⁵⁴¹ To the extent that the goal of resisting enforcement in Canada might have required *one* foreign law firm to act as a liaison between the Claimants' headquarters in the United States and the law firms representing the Claimants and their local subsidiaries before the Canadian courts, or in a coordinating capacity with teams operating in other jurisdictions (including before this Tribunal), the Tribunal is prepared to grant compensation for the legal fees and expenses charged by the first foreign firm to participate in the Canada Enforcement Proceedings (Gibson, Dunn & Crutcher LLP).¹⁵⁴² Otherwise, the Tribunal denies compensation under this heading for the legal fees and expenses charged by all other foreign law firms involved in these proceedings (Stern Kilcullen & Ruffolo LLC; Jones Day; Boies Schiller & Flexner LLP; Gardere Wynne Sewell LLP; Covington & Burling LLP).

6. Alleged coordination of moots / (RES) Coordination of moots

1027. The Respondent alleges that the Claimants' attorneys spent over USD 1 million to coordinate and attend moot sessions in Houston, Texas and also claim compensation for the fees and airfare it spent to have its Canadian counsel travel to these sessions.¹⁵⁴³

¹⁵⁴¹ See paras. 642-643 above.

¹⁵⁴² Reply, Updated Appendix 2, p. 324. The Tribunal notes that Gibson Dunn was also the non-Canadian firm with the highest billing in connection with this damages category (USD 5,716,409) and thus, presumably, had a more prominent role than other firms retained by the Claimants. See Letter from the Claimants to the Tribunal dated 2 November 2022, Claimants' Damages Model, Vendor Switches, cell F108.

¹⁵⁴³ Rejoinder, para. 1496; **RE-51**, Trunko Expert Report, **SM M-6**.

According to the Respondent, “[s]uch fees would not be compensable in Canada, or the United States for that matter, and should not be compensable here.”¹⁵⁴⁴

1028. The Tribunal considers that preparing for oral argument before a court is an integral part of litigation. Indeed, in numerous instances in this Award, the Tribunal has awarded damages to the Claimants for preparation work undertaken in various domestic proceedings to the extent that such efforts sought reasonably to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment.¹⁵⁴⁵ Because mock oral arguments are one of many tools available to lawyers to prepare for actual oral arguments, the question before the Tribunal is whether, in the circumstances of this case, coordinating moots to prepare for oral argument in the Canada Enforcement Proceedings amounted to a reasonable mitigation measure.

1029. In the Tribunal’s view, mock oral arguments are not a universal practice and go beyond what is normally required to prepare for oral arguments. Moots also entail additional preparation costs, which will often be significant in view of the need to bring together a team of several lawyers, who will need to prepare and later run the mock scenario. As such, expensive, in-depth preparations of this sort are often only justified in particularly sensitive cases or bet-the-company litigations.

1030. Yet this was precisely the case of the Canada Enforcement Proceedings, where the Claimants and their local subsidiaries faced a claim, *inter alia*, for “the Canadian equivalent of USD \$18,256,718,000.00”.¹⁵⁴⁶ Faced with such staggering liability, the Tribunal is unpersuaded that the Claimants were somehow overzealous in conducting moots to prepare for oral argument before the Canadian courts.

1031. Therefore, in view of the risks attached to the recognition and enforcement of the multi-billion Lago Agrio Judgment in Canada, the Tribunal considers that coordinating mock arguments to prepare for oral argument before the Canadian courts hearing the LAPs’

¹⁵⁴⁴ Rejoinder, para. 1496.

¹⁵⁴⁵ See para. 642 above.

¹⁵⁴⁶ **C-1380**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Statement of Claim, Superior Court of Justice, Ontario, Canada, 30 May 2012, para. 1(a).

recognition and enforcement action was a reasonable and proportionate mitigation measure in the circumstances.

1032. Accordingly, the Tribunal rejects the Respondent's request to exclude from compensation the legal fees and expenses claimed by the Claimants in connection with the coordination of moots in the Canada Enforcement Proceedings.

7. (CLA) Law firms that represented Canadian subsidiaries (Goodmans; Lax O'Sullivan) / (RES) Law firms that represented the non-Claimant Canadian subsidiaries (Goodmans; Lax O'Sullivan)

1033. The Respondent seeks to preclude the recovery by Chevron of the losses suffered by its Canadian subsidiaries, including the legal fees and expenses incurred by the law firms representing these subsidiaries in the Canada Enforcement Proceedings. In the Respondent's view, it should not bear responsibility for the Claimants' choice to assume other companies' alleged losses.¹⁵⁴⁷

1034. As already explained in paragraph 998 above, Chevron may in its own right claim compensation in this Arbitration for the injuries to the assets of its subsidiaries listed in the 15 October 2012 Order of the Lago Agrio Court caused by the recognition and enforcement of the Lago Agrio Judgment. As regards Canada, the Lago Agrio Court order expressly required the enforcement of the Lago Agrio Judgment against Chevron Canada and Chevron Finance, which were deemed to be "assets owned by Chevron Corporation."¹⁵⁴⁸ As such, Chevron is entitled to recover the legal fees and expenses incurred by the law firms representing those local subsidiaries in resisting the recognition and enforcement of the unremedied Lago Agrio Judgment in Canada.

1035. For these reasons, the Tribunal rejects the Respondent's request to exclude from compensation the legal fees and expenses incurred by the law firms that represented Chevron Canada and Chevron Canada Finance Limited in the Canada Enforcement Proceedings (Goodmans LLP and Lax O'Sullivan Scott Lisus LLP).

¹⁵⁴⁷ Rejoinder, paras. 508-513.

¹⁵⁴⁸ See para. 431 above.

8. Other issues

1036. In this Section, the Tribunal will address other issues raised by the Parties in connection with the Canada Enforcement Proceedings that have not been specifically identified by the Parties as individual components.

1037. First, the Respondent asserts that the Claimants' claim for damages corresponding to the Canada Enforcement Proceedings is inconsistent with their submissions before other courts.¹⁵⁴⁹ These include (i) the Claimants' alleged representation to this Tribunal that their attorneys' fees and costs for the Canada, Brazil, Argentina and Ecuador Enforcement Proceedings collectively were estimated not to exceed USD 14 million;¹⁵⁵⁰ (ii) Mr Veiga's October 2013 witness statement in the RICO Litigation attesting that "Chevron Corporation has spent no less than USD 1 million defending itself in Canada" as of 2 October 2013;¹⁵⁵¹ Mr Joseph Ryan's expert report in the RICO Litigation opining on the reasonableness of USD 1 million for the Canadian proceedings;¹⁵⁵² and (iii) Mr Daniel Cooperman's expert testimony in the RICO Litigation opining that USD 1,012,864.00 was the reasonable amount for responding to the Canada Enforcement Proceedings.¹⁵⁵³

1038. In the Tribunal's view, none of these alleged representations can affect the determination of the compensation owed to the Claimants as a result of the Respondent's internationally wrongful acts. Apart from being made years before the Canada Enforcement Proceedings concluded, none of these representations addresses the distinct question whether the legal fees and expenses incurred by the Claimants in the Canada Enforcement Proceedings served reasonably to mitigate the injury flowing from the Respondent's Treaty breaches. Similarly to what the Tribunal has found in paragraph 1020 above regarding the Claimants' representations before Canadian courts, the purported representations listed

¹⁵⁴⁹ Counter-Memorial, para. 849; Rejoinder, paras. 1476-1480.

¹⁵⁵⁰ Counter-Memorial, para. 849; Claimants' Show Cause Pleading, 6 May 2013, para. 3.

¹⁵⁵¹ Rejoinder, para. 1477; **R-2092**, *Chevron Corp. v. Steven Donziger*, No. 1:11-cv-00691-LAK-RWL, D.E. 1553-1 Chevron Corporation's Notice of Filing of Witness Statement of Ricardo Reis Veiga (SDNY) 15 October 2013, para. 132.

¹⁵⁵² Rejoinder, para. 1478; **JR-3**, *Chevron Corp. v. Donziger*, No 11-0691 (LAK), Expert Report of Joseph Ryan (SDNY) 1 March 2013, para. 46.

¹⁵⁵³ Rejoinder, para. 1478; **R-2087**, Supplemental Expert Report of Daniel Cooperman, 30 August 2013, paras. 7, 9.

in the preceding paragraph addressed an entirely different subject matter and – with the exception of this Arbitration – were made in proceedings to which the Respondent was not a party. For either of these reasons, the abovementioned representations cannot give rise to any form of *res judicata* or estoppel in these proceedings.

1039. The remaining issues under the present heading include the Respondent’s arguments that the Claimants’ damages claim includes costs (i) unrelated to the Canada Enforcement Proceedings;¹⁵⁵⁴ (ii) related to public and media relations;¹⁵⁵⁵ (iii) “unnecessary” activities, such as “efforts to strike at the LAPs’ counsel and at litigation funders”;¹⁵⁵⁶ and (iv) “excessive” and “duplicative” activities.¹⁵⁵⁷ Since all of these issues have been identified by the Parties as cross-cutting elements impacting multiple categories, the Tribunal will address them together with other elements in Section VIII.N below.¹⁵⁵⁸

4. Conclusion on Canada Enforcement Proceedings

1040. For the foregoing reasons, the Tribunal:

- (i)** Declines to exclude from compensation the Canada Enforcement Proceedings category of damages as a whole;
- (ii)** Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Canada Enforcement Proceedings corresponding to services rendered before 14 February 2011;
- (iii)** Excludes from compensation the amount awarded by Canadian courts, excluding any adjustments (*i.e.*, CAD 375,000);
- (iv)** Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Canada Enforcement Proceedings corresponding to services provided by the firms Stern Kilcullen & Rufo LLC; Jones Day; Boies

¹⁵⁵⁴ Counter-Memorial, para. 850; Rejoinder, para. 1497.

¹⁵⁵⁵ Rejoinder, paras. 1481-1482.

¹⁵⁵⁶ Rejoinder, para. 1483.

¹⁵⁵⁷ Rejoinder, paras. 1484-1497.

¹⁵⁵⁸ See para. 569 above.

Schiller & Flexner LLP; Gardere Wynne Sewell LLP; and Covington & Burling LLP;

- (v) Defers its determination regarding the compensation of the legal fees and expenses identified in paragraph 1039 above to its analysis of cross-cutting elements set out in Section VIII.N below;
- (vi) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Canada Enforcement Proceedings, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below;¹⁵⁵⁹ and
- (vii) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Canada Enforcement Proceedings. The Tribunal will determine the exact amount of compensation corresponding to the Canada Enforcement Proceedings in Section VIII.O below.

* * *

¹⁵⁵⁹ See paras. 569-573 above.

F. COSTS OF PLANNING AGAINST POTENTIAL ENFORCEMENT IN OTHER JURISDICTIONS

1041. The Claimants seek USD 26,166,897.09¹⁵⁶⁰ as direct damages for the legal fees and expenses they allegedly incurred between October 2007 and October 2018 to “prepare and implement [Chevron’s] defensive strategy in anticipation of continuing efforts by the LAPs to enforce the fraudulent Lago Agrio Judgment in multiple jurisdictions around the world”.¹⁵⁶¹ In the alternative, the Claimants submit that they are entitled to the reimbursement of these legal fees and expenses as incidental damages.¹⁵⁶²

1042. The Respondent argues that the Claimants are not entitled to any of the legal fees and expenses they claim under the present heading because, in its view, the Claimants have not shown “how the global risk assessment and planning activities allegedly undertaken in jurisdictions where no recognition and enforcement actions were filed were caused by a Treaty breach or were ‘reasonable and prudent action[s] commensurate to an extraordinary threat’.”¹⁵⁶³

1. The Claimants’ Position

1043. In light of the LAPs’ “public[] boasting” as early as July 2007 that they would attempt to enforce the Lago Agrio Judgment in “whatever country” Chevron has assets, the Claimants submit that it was necessary for Chevron to work with U.S. and foreign counsel to assess the global risks of the potential recognition and enforcement of the Judgment, as well as to develop a strategy to defend Chevron and its affiliates from the LAPs’ anticipated enforcement scheme.¹⁵⁶⁴ In particular, noting the existence of regional treaties facilitating the recognition, enforcement, and attachment of assets, the Claimants assert that in civil law, Latin American jurisdictions, Chevron and its local counsel had to

¹⁵⁶⁰ Reply, para. 939; Updated Appendix 2, pp. 403-532.

¹⁵⁶¹ Memorial, para. 392; Reply, para. 939; Updated Appendix 2, pp. 403, 531; **C-3462**, Indices of Claimed Invoices by Damage Category (“General R&E” tab). *See also* Memorial, para. 396, where the original amount claimed was USD 27,534,505.48.

¹⁵⁶² Reply, para. 939.

¹⁵⁶³ Rejoinder, para. 1337; Reply, para. 349.

¹⁵⁶⁴ Memorial, para. 392; Reply, paras. 941, 948.

prepare in advance to resist any attachment requests that could endanger Chevron's subsidiaries and their assets.¹⁵⁶⁵

1044. In fact, the Claimants posit that the Invictus Memorandum, which outlines the LAPs' enforcement strategy, identifies the specific jurisdictions where Chevron prepared itself for "enforcement battles", including Australia, Colombia, Nigeria, Panama, the Philippines, Singapore, the United States, and Venezuela.¹⁵⁶⁶ In this context, the Claimants highlight that the Invictus Memorandum confirmed what the Claimants already suspected from the LAPs' public statements and activities.¹⁵⁶⁷ On this basis, the Claimants reject the Respondent's attempt to impose an additional temporal limitation to their claim under this heading, *i.e.*, the date on which the Claimants obtained the Invictus Memorandum as the starting date to incur fees and costs associated with this category.¹⁵⁶⁸

1045. Accordingly, the Claimants reject the Respondent's argument that their pre-emptive legal preparations were the result of mere exaggeration or overcautiousness;¹⁵⁶⁹ rather, they stemmed from a factual basis.¹⁵⁷⁰ To the extent that the LAPs' "ambitious" enforcement actions were foreseeable, the Claimants emphasize that Chevron's preparation in other countries was "a reasonable and prudent action commensurate to an extraordinary threat".¹⁵⁷¹

1046. According to the Claimants, the billing records and invoices on which they base their damages claim show that Chevron has spent considerable time, effort, and expense in preparing and implementing its defensive strategy to resist the LAPs' anticipated enforcement efforts in multiple jurisdictions around the world.¹⁵⁷² Therefore, the Claimants deny the existence of a "veil of secrecy" surrounding the Claimants' defence

¹⁵⁶⁵ Reply, para. 941; Fourth Veiga Witness Statement, para. 76; Seley Witness Statement, para. 65.

¹⁵⁶⁶ Memorial, para. 391; Reply, para. 942; **C-903**, "Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement" by Patton Boggs, undated [DONZ00032520-51].

¹⁵⁶⁷ Reply, para. 948.

¹⁵⁶⁸ Reply, para. 948.

¹⁵⁶⁹ Reply, para. 948.

¹⁵⁷⁰ Memorial, para. 394; Reply, para. 944.

¹⁵⁷¹ Reply, para. 949.

¹⁵⁷² Reply, para. 946.

activities.¹⁵⁷³ For the Claimants, the billing records and invoices they provided also show that there is no overlap between this damages category and the General Defence category.¹⁵⁷⁴

1047. In view of the above, the Claimants submit that – at the very least – they are entitled to recover USD 17,540,000 in direct damages incurred after 1 March 2012 in planning and preparing to defend against enforcement actions in other jurisdictions.¹⁵⁷⁵

1048. In the alternative, the Claimants argue that they are entitled to recover the legal fees and expenses under this heading as incidental damages: in their view, these expenses were reasonable.¹⁵⁷⁶

2. The Respondent's Position

1049. For the Respondent, the Claimants voluntarily incurred the costs claimed in this damages category in anticipation of potential enforcement activity by the LAPs, rather than as a reaction to a Treaty violation.¹⁵⁷⁷ Consequently, the Respondent asserts that the Claimants have failed to prove that Chevron would not have undertaken similar preparations in the absence of a Treaty breach, even more so given that Chevron would have faced a serious risk of liability in a Treaty-compliant but-for scenario.¹⁵⁷⁸ In any event, the Respondent argues that any costs Chevron incurred before the date Chevron obtained a copy of the Invictus Memorandum, let alone the date on which the Lago Agrio Judgment was issued or the date of the Constitutional Court Judgment, are not compensable, as they would be either unreasonable, unnecessary, or unrelated to any Treaty breach.¹⁵⁷⁹

1050. Even assuming that the preparatory work in jurisdictions where no recognition or enforcement action was filed was caused by a Treaty breach, the Respondent maintains that the Claimants have failed to show that preparing draft submissions for use in such

¹⁵⁷³ Reply, para. 947.

¹⁵⁷⁴ Reply, para. 947.

¹⁵⁷⁵ Reply, para. 950.

¹⁵⁷⁶ Reply, para. 951.

¹⁵⁷⁷ Counter-Memorial, para. 888; Rejoinder, para. 1337.

¹⁵⁷⁸ Rejoinder, para. 1339.

¹⁵⁷⁹ Counter-Memorial, para. 888.

jurisdictions was reasonable and necessary.¹⁵⁸⁰ In this respect, the Respondent points out that the Claimants have failed to identify any regional treaties in civil law, Latin American jurisdictions concerning the recognition of foreign attachment orders that could have placed Chevron in substantial danger.¹⁵⁸¹

1051. In addition, the Respondent considers that preparing costly draft submissions well ahead of when they might be needed in these jurisdictions was unreasonable and unnecessary because, *inter alia*, (i) Chevron could have sought extensions for deadlines to respond to a recognition action; (ii) in any event, the LAPs would not have been able to prove that there was a risk of immediate or irreparable harm to obtain attachment; and (iii) even if a court in Colombia or the Philippines had attached assets belonging to Chevron or its subsidiaries, that attachment could have been lifted upon the posting of a bond.¹⁵⁸²

1052. Insofar as the legal fees and expenses claimed by the Claimants were allegedly incurred to guard against the risk of attachment of assets in non-civil law, non-Latin American jurisdictions, the Respondent argues that Chevron and its subsidiaries could not have faced a “true” risk of prejudice or being subject to attachment, as it was unlikely that any hypothetical enforcement action filed by the LAPs would have satisfied the substantive and procedural requirements for obtaining attachment in those jurisdictions.¹⁵⁸³

1053. Even if the Claimants’ fears of expedited attachment and recognition had justified preparatory work, the Respondent contends that Chevron’s strategy of drafting stock submissions was highly inefficient, as it required Chevron’s lawyers to “predict the unpredictable”, continuously revise the drafts to account for evolving facts, translate unnecessary materials, and “check court dockets compulsively, sometimes on a daily basis.”¹⁵⁸⁴

1054. The Respondent adds that the invoices and billing records reveal that Chevron’s lawyers engaged in activities unrelated to what the Claimants purport to have done in connection

¹⁵⁸⁰ Rejoinder, para. 1344.

¹⁵⁸¹ Rejoinder, para. 1349.

¹⁵⁸² Rejoinder, paras. 1350-1352.

¹⁵⁸³ Rejoinder, para. 1346.

¹⁵⁸⁴ Rejoinder, paras. 1354-1359.

with the present category.¹⁵⁸⁵ In the Respondent’s view, any fees associated with such activities, including developing offensive strategies against the LAPs, seeking to retaliate against the Respondent, advising Chevron regarding U.S. securities law compliance, and managing their own businesses, are not compensable, given that none of them were caused by a Treaty breach or were related to risk assessment or preparing defences against potential recognition and enforcement actions.¹⁵⁸⁶

3. The Tribunal’s Analysis

(a) Introduction

1055. The USD 26,166,897.09 claimed under this damages category concern the legal fees and expenses allegedly incurred by the Claimants, from October 2007 through October 2018, from 25 law firms and vendors Chevron engaged to defend itself in potential enforcement actions in multiple jurisdictions, including Australia, Colombia, Indonesia, Nigeria, Singapore, the Philippines, Panama, the United States, and Venezuela.¹⁵⁸⁷ While enforcement was ultimately not pursued in these countries, the Claimants argue that these costs were nevertheless reasonably incurred since the LAPs, as early as July 2007, had indicated that they would seek enforcement in “whatever country” Chevron has assets.¹⁵⁸⁸ It was necessary and prudent for Chevron, the Claimants submit, to work with multiple teams of U.S. and local counsel to assess the global risks of potential recognition and enforcement, as well as to develop a strategy to defend Chevron and its affiliates from the LAPs’ anticipated enforcement scheme.¹⁵⁸⁹

1056. The Respondent rejects the existence of a causal link between Chevron’s pre-emptive legal preparations and the Treaty breaches. According to the Respondent, Chevron would have undertaken similar preparations even in the absence of Treaty breaches, given that Chevron faced a serious risk of liability in a Treaty-compliant but-for scenario.¹⁵⁹⁰ In any

¹⁵⁸⁵ Rejoinder, para. 1361.

¹⁵⁸⁶ Rejoinder, paras. 1362-1366.

¹⁵⁸⁷ Reply, para. 939; Updated Appendix 2, pp. 403, 532; **RE-51**, Trunko Expert Report, **SM-J-4**.

¹⁵⁸⁸ Memorial, para. 392; Reply, para. 948; **C-295**, Amazon Watch Press Release, *Chevron Launches “Dirty War” on Ecuador Court*, 4 July 2007.

¹⁵⁸⁹ Memorial, para. 392; Reply, para. 941.

¹⁵⁹⁰ Rejoinder, para. 1342.

event, according to the Respondent, any costs incurred before January 2011 – when Chevron obtained a copy of the Invictus Memorandum and thus became aware of the LAPs’ enforcement strategy – are not compensable.¹⁵⁹¹ Assuming that such risk assessment and preparatory work are compensable, the Respondent submits that the Claimants have failed to prove that it was necessary and reasonable to undertake such measures, and that the activities themselves were reasonable and necessary for Chevron’s defence.¹⁵⁹²

1057. Before beginning its analysis of the Claimants’ damages claim in respect of Costs of Planning Against Potential Enforcement in Other Jurisdictions, the Tribunal recalls the Claimants’ position that all of their claimed legal fees and expenses incurred in connection with these proceedings constitute direct damages and are recoverable in the alternative as incidental damages.¹⁵⁹³ As explained in paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages. The expenses incurred by the Claimants to mitigate any other form of harm or geared towards any other goal are *not* compensable in these proceedings.¹⁵⁹⁴

1058. Following the methodology laid out in Section VII.G.5 for the assessment of incidental damages, the Tribunal finds that the Claimants’ claim for compensation in respect of Costs of Planning Against Potential Enforcement in Other Jurisdictions must be granted for the reasons and to the extent set out below.

(b) First Step: Analysis of Incidental Damages “Category”

1059. As a first step of its analysis, the Tribunal must determine whether this category of damages meets the requirements of causation and reasonableness for the compensation of incidental damages under international law.

¹⁵⁹¹ Counter-Memorial, para. 888.

¹⁵⁹² Rejoinder, para. 1337.

¹⁵⁹³ Reply, para. 860.

¹⁵⁹⁴ See para. 317 above.

1060. First, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555, the Claimants' efforts must have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.

1061. Second, as noted in paragraph 556 above, incidental damages are subject to an additional requirement of reasonableness: to warrant compensation, legal fees and expenses must have been *reasonably* incurred to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. At this level of analysis, the Tribunal's determination concerns the reasonableness of the mitigation *measures* undertaken by the Claimants, not of the *amounts* they spent, which will be examined in a subsequent step of the analysis.¹⁵⁹⁵

1062. At the outset, the Tribunal must recall once again from its findings in its Track II Award that the injury to Chevron through the recognition and enforcement of the unremedied Lago Agrio Judgment was always intended to take place outside of Ecuador, with Chevron's numerous associated companies around the world being the primary target:

(1) *Transnational Enforcement*: Chevron had no significant realisable assets in Ecuador, whether owned directly or indirectly, before and after the "merger" with Texaco in 2001. Before the "merger", Chevron was a stranger to Texaco and TexPet. Texaco and TexPet had left Ecuador by 1992. Neither Texaco nor TexPet left behind any significant realisable assets in Ecuador. Following the "merger", therefore, Chevron's indirect ownership of Texaco and TexPet did not endow Chevron with any significant realisable assets in Ecuador.

Outside Ecuador, however, Chevron, with its large group of associated companies, indirectly owned (and still owns) substantial assets, including ocean-going vessels, bank deposits around the world, and other properties. By their nature, vessels and bank deposits were and remain vulnerable to arrest, attachment or seizure by the Lago Agrio Plaintiffs

¹⁵⁹⁵ See para. 556 above.

upon the Lago Agrio Judgment’s enforcement in multiple jurisdictions, especially *ex parte* without prior notice. Even if Chevron were in a position to discharge promptly such an order freezing a bank deposit or arresting a vessel, the damage to Chevron and its associated companies from such repeated actions could have been very significant (as it may still be).

Hence, as confirmed by the “Invictus Memorandum” (see Part IV above), the Lago Agrio Plaintiffs’ representatives always intended that the Lago Agrio Judgment should be enforced in multiple jurisdictions outside Ecuador, not limited to the USA. This Memorandum listed such other foreign jurisdictions expressly, including the Philippines, Singapore, Australia, Argentina, Brazil, Colombia, Venezuela, Canada, Kuwait, Nigeria, Saudi Arabia, South Africa, South Korea, Belgium, Indonesia, the Netherlands, the United Kingdom, Trinidad and Tobago, New Zealand and Russia. It would be possible to add many more jurisdictions to this list.

The Lago Agrio Litigation was therefore likely to involve, from its outset, numerous national jurisdictions other than Ecuador. This feature makes the present case unusual. Earlier cases on denial of justice have concerned an alleged wrong and an alleged injury taking place within the same State. Here, the injury to Chevron was always intended to take place, at least in part, in one or more foreign jurisdictions elsewhere than Ecuador, whether by the enforcement of the Lago Agrio Judgment or by an enforced “amicable” settlement. Thus, the Lago Agrio Litigation was transnational in the broadest sense, as confirmed by the multiplicity of foreign lawsuits and arbitrations in the USA, Argentina, Brazil, Canada, the Netherlands and elsewhere following the issuance of the Lago Agrio Judgment.¹⁵⁹⁶

1063. The transnational scope of the potential recognition and enforcement of the uncorrected Lago Agrio Judgment required the Claimants to deploy mitigation measures in multiple jurisdictions, for which they now seek compensation in Track III.

1064. Elsewhere in this Award, the Tribunal has partially granted the Claimants’ claims in respect of the legal fees and expenses they incurred in defending against recognition and enforcement actions filed by the LAPs in Argentina,¹⁵⁹⁷ Brazil,¹⁵⁹⁸ Canada,¹⁵⁹⁹ and Ecuador.¹⁶⁰⁰ As there noted by the Tribunal, defending against recognition and enforcement actions in those jurisdictions was a direct and reasonable way of mitigating the injury flowing from the Respondent’s Treaty breaches.¹⁶⁰¹ Similarly, as there also determined, the fact that those recognition and enforcement actions may have affected assets owned by Chevron’s international subsidiaries (as opposed to Chevron) does not

¹⁵⁹⁶ Track II Award, paras. 7.24-7.27.

¹⁵⁹⁷ See Section VIII.C above.

¹⁵⁹⁸ See Section VIII.D above.

¹⁵⁹⁹ See Section VIII.E above.

¹⁶⁰⁰ See Section VIII.B above.

¹⁶⁰¹ See paras. 762 (Ecuador Enforcement Proceedings); 808, 810 (Argentina Enforcement Proceedings); 912 (Brazil Recognition Proceedings); 1001 (Canada Enforcement Proceedings) above.

bar Chevron from seeking compensation for the ensuing damages in Track III: Chevron may in its own right claim compensation in this Arbitration for the injuries caused by the recognition and enforcement of the Lago Agrio Judgment to the assets of its subsidiaries listed in the 15 October 2012 Order of the Lago Agrio Court, by which it ordered the execution of the Lago Agrio Judgment.¹⁶⁰²

1065. The present damages category, comprising Costs of Planning Against Potential Enforcement in Other Jurisdictions, stands apart from the Argentina, Canada, and Ecuador Enforcement Proceedings and the Brazil Recognition Proceedings categories in that it does not concern legal fees and expenses incurred in connection with recognition or enforcement actions that were *actually* filed by the LAPs, but rather to plan for recognition and enforcement actions that were ultimately *never* filed. This raises the question whether such preventative activities, taken by themselves, amount to reasonable mitigation measures in this case.

1066. This question must be answered by reference to the situation prevailing as of the date of issuance of the Lago Agrio Judgment (14 February 2011), which, as already explained, is the date as of which the Claimants' mitigation efforts could be said to respond to the injury arising from the recognition and enforcement of that Judgment – *i.e.*, the injury flowing from the Respondent's internationally wrongful acts – and may thus warrant compensation.¹⁶⁰³ As from that date, the risks attached to the enforcement of the Lago Agrio Judgment were no longer a matter of hypothesis: the findings of liability in the Lago Agrio Judgment made the potential and extent of its enforcement foreseeable beyond any reasonable doubt and made the risks real and immediate. Thus, any efforts the Claimants undertook from that moment onwards to prevent the Lago Agrio Judgment from becoming enforceable in multiple jurisdictions worldwide, including preventative efforts deployed prior to the filing of any enforcement actions, would fulfil the requirement of causation for the compensation of incidental damages under international

¹⁶⁰² See para. 438 above. See also paras 808, 998 above.

¹⁶⁰³ See paras. 362, 373, 397 above.

law as described in item (i) in paragraph 1060 above. This proposition applies with equal force even where no enforcement action was ultimately filed.¹⁶⁰⁴

1067. However, while the Tribunal is prepared to grant a certain level of deference to the Claimants' decisions as to which specific mitigation measures to undertake in real time,¹⁶⁰⁵ not every preventative effort deployed by the Claimants in respect of every jurisdiction where they held assets would qualify for compensation. The notion of reasonableness applied to the assessment of incidental damages required the Claimants to have a particular reason to anticipate that the LAPs would seek the recognition and enforcement of the Lago Agrio Judgment in each specific jurisdiction. Reasonableness also required the Claimants to adjust the scale of any preventative measures they deployed to the level of the risk that the LAPs would actually file a recognition or enforcement action in a given jurisdiction: the higher the risk, the more reasonable it would have been for the Claimants to undertake intensive preparations.

1068. Critically as regards this reasonableness assessment, by 14 February 2011 the Claimants had obtained the "Invictus Memorandum", which, as already explained, sets out (among other things) a legal strategy for seizing Chevron's assets outside Ecuador in multiple jurisdictions, including the arrest of Chevron's vessels.¹⁶⁰⁶

1069. In this connection, the Invictus Memorandum includes a "non-exhaustive list" of "International Forums of Particular Note"¹⁶⁰⁷ where the enforcement of the Lago Agrio Judgment might be attempted for various reasons, including the Philippines, Singapore, Australia, Argentina, Brazil, Colombia, Venezuela, Angola, Canada, Chad, China, Kazakhstan, Kuwait, Nigeria, Saudi Arabia, South Africa, South Korea, Belgium, Indonesia, the Netherlands, New Zealand, Russia, Trinidad and Tobago, and the United

¹⁶⁰⁴ See para. 362 above.

¹⁶⁰⁵ See para. 341 above.

¹⁶⁰⁶ **C-903**, "Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement" by Patton Boggs, undated [DONZ00032520-51]; Fourth Veiga Witness Statement, para. 33: "At this point, there can be no doubt—not that there had ever been any—that the Plaintiffs were planning for aggressive enforcement efforts and that the risk was both real and imminent. Indeed, the Lago Agrio Plaintiffs had already implemented various steps envisioned in the Invictus memorandum by the time we obtained it in January 2011"; Track II Award, para. 4.390.

¹⁶⁰⁷ **C-903**, "Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement" by Patton Boggs, undated [DONZ00032520-51], p. 19.

Kingdom.¹⁶⁰⁸ Of these jurisdictions, Argentina, Brazil, Colombia, and Venezuela were considered to be of note because “all four countries have ratified the *Organization of American States’ Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards*, a fact which should have the effect of significantly streamlining the enforcement process in these nations.”¹⁶⁰⁹

1070. As already noted by the Tribunal, it would be possible to add many more jurisdictions to this list.¹⁶¹⁰ Indeed, the *Invictus* Memorandum also foresaw the targeting of accounts and assets potentially subject to attachment in many jurisdictions beyond those identified as “International Forums of Particular Note” in the preceding paragraph:

Identifying Chevron’s assets worldwide will be a critical step to be taken at the outset of Plaintiffs’ judgment enforcement efforts. As Chevron acknowledges on its website “[w]e conduct business all around the globe.” On the same webpage, Chevron lists 27 sovereign countries in which its “work is more extensive.” In addition to the United States, where it is headquartered in San Ramon, California, these nations with purportedly “extensive operations” include Angola, Argentina, Australia, Azerbaijan, Bangladesh, Belgium, Brazil, Cambodia, Canada, Chad, China, Columbia [*sic*: Colombia], Indonesia, Kazakhstan, Kuwait, the Netherlands, New Zealand, Nigeria, the Philippines, Russia, Saudi Arabia, Singapore, South Africa, South Korea, Thailand, Trinidad and Tobago, the United Kingdom, and Venezuela. Based on Chevron’s own admissions, it is clear that the company conducts business and maintains holdings in many more countries not included in that list. Furthermore, it could be expected that Chevron might strategically choose to withhold from public view information about the location of property that it believes may be at-risk in any judgment enforcement action. Concomitantly, those nations where Chevron maintains the best relations and feels least threatened by judgment enforcement action may have intentionally been counted among its more “extensive” places of operation.¹⁶¹¹

1071. In addition to the jurisdictions that have already been described, the *Invictus* Memorandum refers specifically to the existence of assets owned by Chevron and potentially subject to enforcement in, *inter alia*, Norway, Denmark (including Greenland), Turkey, Vietnam, Cameroon, the Democratic Republic of Congo, Poland, Myanmar, the Republic of the Congo, Ireland, Greece, France (including Martinique),

¹⁶⁰⁸ C-903, “*Invictus*, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated [DONZ00032520-51], pp. 19-20.

¹⁶⁰⁹ C-903, “*Invictus*, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated [DONZ00032520-51], p. 20.

¹⁶¹⁰ Track II Award, para. 7.26.

¹⁶¹¹ C-903, “*Invictus*, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated [DONZ00032520-51], p. 21.

Pakistan, Kenya, Côte d’Ivoire, Georgia, Equatorial Guinea, Qatar, Japan, India, and Mexico.¹⁶¹²

1072. The Invictus Memorandum thus provided critical and reasonably detailed information to the Claimants on the LAPs’ worldwide enforcement strategy. In the Tribunal’s view, reasonableness required the Claimants to take close guidance from the Invictus Memorandum when deciding where and how intensively to prepare for potential enforcement actions. Key factors guiding such assessment include, among others, (i) whether a specific jurisdiction or asset was expressly identified as a potential target in the Memorandum; and (ii) whether Chevron owned assets in a State party to the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, where the LAPs’ counsel expected to be able to “streamline” enforcement.¹⁶¹³

1073. The Invictus Memorandum, however, did not describe the LAPs’ enforcement strategy in a fully exhaustive manner. It would have therefore been reasonable for the Claimants to undertake a limited risk assessment vis-à-vis jurisdictions going beyond the scope of the strategy laid out in the Memorandum and thereafter deploy additional measures in those jurisdictions to the extent such assessment revealed significant risks of enforcement activity.

1074. The Tribunal also recalls that the 15 October 2012 Order of the Lago Agrio Court providing for the execution of the Lago Agrio Judgment identified many of Chevron’s subsidiaries around the world as “assets of Chevron” against whom the Judgment should be executed.¹⁶¹⁴ The order also required that the Judgment be executed against certain assets owned by those subsidiaries that were identified expressly in the order.¹⁶¹⁵ This order, therefore, confirmed the scope of the LAPs’ enforcement plans and should have also provided valuable guidance to Chevron as to where and how intensively to prepare for potential enforcement activity from October 2012 onwards.

¹⁶¹² **C-903**, “Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated [DONZ00032520-51], pp. 21-23.

¹⁶¹³ See para. 1068 above.

¹⁶¹⁴ See para. 431 above.

¹⁶¹⁵ See para. 432 above.

1075. Against this background, the Tribunal shall now address the two specific types of activities identified by the Claimants falling under the present damages category: (i) assessing the global risks of the potential recognition and enforcement of the Lago Agrio Judgment in multiple jurisdictions;¹⁶¹⁶ and (ii) subsequent preparatory work in those jurisdictions where Chevron believed the LAPs were most likely to attempt enforcement.¹⁶¹⁷ Each type of activity requires a differentiated analysis for the present purposes.

1076. First, the Claimants outline global risk assessment, which encompasses activities such as: (i) identifying countries where Chevron and/or its subsidiaries possess assets and operations vulnerable to the LAPs' enforcement scheme; (ii) evaluating the LAPs' public statements for clues as to where they would seek recognition; and (iii) analysing local laws, judiciaries, enforcement procedures, and overall political climates in each jurisdiction.¹⁶¹⁸

1077. Reduced to their essence, the activities described in the preceding paragraph sought to determine whether any risk of enforcement activity existed in each of the multiple jurisdictions and, if so, whether additional preparatory efforts were necessary. As such, to the extent Chevron performed these global risk assessment activities after the critical date of 14 February 2011, the Tribunal is satisfied that they were ultimately geared towards preventing the Lago Agrio Judgment from becoming enforceable as described in item (i) in paragraph 1060 above, thereby fulfilling the requirement of causation for the compensation of incidental damages.

1078. The Tribunal has also concluded that it was reasonable for the Claimants generally to undertake preparatory work in connection with jurisdictions identified in the *Invictus* Memorandum, as well as to perform a limited risk assessment of jurisdictions outside those identified expressly therein.¹⁶¹⁹ In view of Chevron's extensive knowledge of the operations of its own corporate group and its worldwide distribution of assets, the

¹⁶¹⁶ Reply, para. 941.

¹⁶¹⁷ Reply, para. 942.

¹⁶¹⁸ Reply, para. 941.

¹⁶¹⁹ See paras. 1072-1073 above.

Tribunal considers it would be generally inappropriate for it to apply hindsight to the decisions the Claimants took as to the territorial and material scope of these risk assessment activities. Thus, the Tribunal does not dismiss activities such as a global comparative law study on recognition and enforcement in 33 different jurisdictions¹⁶²⁰ as inherently unreasonable – indeed, as gleaned from above, the *Invictus* Memorandum identifies, in a non-exhaustive manner, no less than 50 jurisdictions where enforcement should be considered.¹⁶²¹

1079. Second, the Claimants refer to additional preparation work: “[a]fter the global risk assessment was completed, Chevron began preparing to defend against potential enforcement actions in jurisdictions where it believed the LAPs were most likely to attempt to enforce a judgment, including Australia, Colombia, Nigeria, Panama, the Philippines, Singapore and Venezuela”, as well as Indonesia and the United States.¹⁶²² Mr Robert A. Mittelstaedt, a partner at Jones Day and witness for the Claimants, describes this work as follows:

This work included preparing briefs, affidavits, and other expected elements of an enforcement briefing “package” in a way that they readily could be accommodated to the legal requirements of a wide range of possible jurisdictions yet still present the same key facts and central arguments.

The initial stages of this work focused on legal research and drafting, and marshaling facts regarding the *Lago Agrio* Litigation. Jones Day worked closely with local counsel at Perez Bustamante & Ponce on Ecuador law issues and with local counsel for a short list of the most likely countries for enforcement.

Preparing to oppose anticipated recognition and enforcement efforts in multiple jurisdictions around the globe was necessary and prudent given the potential amount of an adverse judgment, the often short deadlines provided under local law for responding to an exequatur action, and the need to analyze local law, prepare legal arguments, amass supporting evidence, and provide certified translations and other legalized documents in support of the submission. This work could not simply await the filing of an action at some unspecified time in some remote jurisdiction.

Gibson Dunn had developed a core list of documents from the RICO trial and certain 1782s for local counsel in enforcement countries to consider using in their anti-enforcement proceedings. Beyond obtaining certified translations of those documents into several languages, our team worked with Gibson Dunn to obtain certified copies of the English originals whenever possible and have those apostilled by the appropriate authorities. This

¹⁶²⁰ See Rejoinder, para. 1341.

¹⁶²¹ See paras. 1069-1071 above.

¹⁶²² Reply, para. 942; Updated Appendix 2, p. 403. See also Rejoinder, para. 1342.

project was ongoing from late 2011 and well into 2013 and involved multiple trips to at least six Latin American countries.¹⁶²³

1080. As already noted, the Tribunal considers it was reasonable for the Claimants to undertake more intensive preparation work – that is, work going beyond a mere risk assessment – in jurisdictions that were specifically identified in the *Invictus* Memorandum as potential targets for the LAPs’ recognition and enforcement actions.¹⁶²⁴ Such is the case of Australia, Colombia, Indonesia, Nigeria, the Philippines, Singapore, the United States, and Venezuela.¹⁶²⁵

1081. However, the remaining jurisdiction where Chevron undertook additional preparation work – Panama – is not specifically mentioned in the *Invictus* Memorandum. Panama has also not ratified the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards¹⁶²⁶ – which, as already explained, the LAPs’ counsel considered to be “a fact which should have the effect of significantly streamlining the enforcement process” in that jurisdiction.¹⁶²⁷ Furthermore, no Panamanian assets or subsidiaries appear listed in the 15 October 2012 Order of the Lago Agrio Court – by which it ordered the execution of the Lago Agrio Judgment against Chevron’s worldwide assets – or the Court’s subsequent order of 25 October 2012 extending the execution order to additional assets (the “**25 October 2012 Order**”).¹⁶²⁸

1082. Notwithstanding this, the Tribunal notes that the focus of the work of the Panamanian counsel retained by Chevron was “the possible commencement of exequatur proceedings and *arrest proceedings of vessels* by Lago Agrio Plaintiffs against Chevron Corp. and related companies in relation to the enforcement of the Lago Agrio Judgment before Panamanian courts.”¹⁶²⁹ The arrest of vessels, the Tribunal recalls, formed part of the

¹⁶²³ Mittelstaedt Witness Statement, paras. 87-90.

¹⁶²⁴ See para. 1072 above.

¹⁶²⁵ **C-903**, “*Invictus*, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated [DONZ00032520-51], pp. 19-20.

¹⁶²⁶ **RE-54**, Second Godoy Expert Report, **LUC2-7**.

¹⁶²⁷ See para. 1069 above.

¹⁶²⁸ See paras. 431-432 above; **C-1541**, Amplification of Execution Order Issued by the Provincial Court of Sucumbíos, 25 October 2012.

¹⁶²⁹ **C-3373**, De Castro & Robles, p. 1 (emphasis by the Tribunal).

enforcement strategy laid out in the *Invictus* Memorandum.¹⁶³⁰ Outside the Memorandum, the LAPs' counsel also made public their intentions to target Chevron's passing vessels in Panama:

The legal team representing Ecuadorean plaintiffs who won an \$18 billion (11.3 billion pounds) landmark case against oil giant Chevron . . . for polluting the Amazon jungle will target the company's assets in Panama and Venezuela in a bid to collect the award.

Pablo Fajardo, the plaintiffs lead lawyer, told Reuters on Friday that they would first need countries outside Ecuador to recognize the validity of the sentence, and then could try to enforce the ruling there "Chevron has investments in more than 50 countries, but two have caught our eye . . . Panama because oil ships go through the Panama Canal and in Venezuela because they have important assets there," Fajardo said.

When asked if they will try to confiscate Chevron assets in those two countries the lawyer said his team has not yet decided how they will proceed.¹⁶³¹

1083. Flowing from the above, the Tribunal is persuaded that the Claimants had a basis for considering there to be a significant risk of enforcement in Panama in view of the passage of vessels owned by Chevron and its worldwide subsidiaries through the Panama Canal – a central conduit for international maritime trade. In the circumstances, the Tribunal considers it was reasonable for Chevron to undertake additional preparatory work in a jurisdiction where its passing vessels were vulnerable to arrest.

1084. Having reached this conclusion, the Tribunal does not consider it necessary to analyse further whether the Claimants should have also taken into consideration a multiplicity of specifics of local procedural law when deciding where and how intensively to undertake additional preparation work, including (i) the applicable requirements in each of those jurisdictions to obtain attachment, as well as the existing procedural safeguards to protect

¹⁶³⁰ See **C-903**, "Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement" by Patton Boggs, undated [DONZ00032520-51], p. 16: "There may, however, be a potential argument to be made for Rule B attachment with respect to U.S. territories, whereby docked Chevron vessels could be targeted for attachment. At a minimum, this type of aggressive action would lend momentum to the Plaintiffs' enforcement efforts, and would force Chevron to take such efforts seriously"; p. 21: "In addition, Chevron 'downstream' operations—including refining, marketing, and *transportation*—exist in many more foreign states" (emphasis by the Tribunal). See also Track II Award, para. 7.25: "Outside Ecuador, however, Chevron, with its large group of associated companies, indirectly owned (and still owns) substantial assets, including ocean-going vessels, bank deposits around the world, and other properties. By their nature, vessels and bank deposits were and remain vulnerable to arrest, attachment or seizure by the Lago Agrio Plaintiffs upon the Lago Agrio Judgment's enforcement in multiple jurisdictions, especially *ex parte* without prior notice. Even if Chevron were in a position to discharge promptly such an order freezing a bank deposit or arresting a vessel, the damage to Chevron and its associated companies from such repeated actions could have been very significant (as it may still be)."

¹⁶³¹ **C-1117**, Eduardo Garcia, *Ecuador Plaintiffs Eye Chevron Assets in Panama, Venezuela*, Reuters, 2 March 2012.

defendants from the prejudicial effects of asset attachment;¹⁶³² (ii) whether attachment proceedings in each of those jurisdictions are expedited or fast-tracked;¹⁶³³ or (iii) the time available for Chevron to present a response after the filing of a recognition action in each of those jurisdictions.¹⁶³⁴ The Tribunal cannot conduct such an analysis without unduly applying hindsight to the legal strategies deployed by the Claimants to plan for the potential filing of recognition and enforcement actions, which – as explained earlier – is not appropriate, particularly with regard to jurisdictions where the risk of enforcement was significant.¹⁶³⁵

1085. For these reasons, the Tribunal finds that the requirements of causation and reasonableness for the compensation of incidental damages under international law are met as regards the Costs of Planning Against Potential Enforcement category of damages.

1086. In reaching this conclusion, the Tribunal is mindful of the Respondent's argument that this category as a whole is not causally connected to the Respondent's Treaty breaches because a major multinational company like Chevron, embroiled in a significant litigation in Ecuador, where it has no assets, would have undertaken similar risk assessment and preparations against enforcement actions even in a Treaty-compliant but-for scenario.¹⁶³⁶ The Tribunal will address this argument in paragraphs 1103 to 1106 below.

(c) Second Step: Analysis of Incidental Damages "Components"

1087. As a second step of its analysis, the Tribunal must determine, within the Costs of Planning Against Potential Enforcement in Other Jurisdictions category, whether the Claimants have established the requirement for each individual costs "component" identified by the Parties to qualify as incidental damages. The Tribunal must also examine other issues raised by the Parties in connection with this particular damages category to determine

¹⁶³² Rejoinder, para. 1346.

¹⁶³³ Rejoinder, para. 1347.

¹⁶³⁴ Rejoinder, paras. 1350-1352.

¹⁶³⁵ See para. 340 above.

¹⁶³⁶ Rejoinder, para. 1339.

whether any other portion of the legal fees and expenses claimed should be excluded from the final amount of compensation.¹⁶³⁷

1088. The Parties have identified three components involving the Costs of Planning Against Potential Enforcement in Other Jurisdictions category, which are addressed *seriatim* below. Other issues raised by the Parties in connection with this damages category but not expressly identified by them as a component are addressed immediately thereafter.

1. (CLA) Fees and costs before the LAPs' enforcement strategy became known to Claimants / (RES) Fees and costs before the Invictus Memorandum became known to Chevron (January 2011)¹⁶³⁸

1089. The Parties disagree on whether the Claimants may recover the legal fees and expenses Chevron incurred before the LAPs' enforcement strategy became known to them. The Claimants argue that the LAPs' strategy to enforce the Lago Agrio Judgment outside of Ecuador was already publicly known as early as 2007.¹⁶³⁹ Thus, Chevron began preparing its defence against future enforcement proceedings in 2008, on the belief that it would not receive a fair trial in Ecuador and because of the significant risks posed by global enforcement of a multi-billion dollar judgment against Chevron and its subsidiaries.¹⁶⁴⁰ The Respondent, on the other hand, argues that the relevant commencement date should be around January 2011, when Chevron received certain documents in the Donziger 1782, including the Invictus Memorandum detailing the LAPs' enforcement strategy.¹⁶⁴¹

1090. The Tribunal reiterates that incidental damages are only compensable in principle in this Arbitration if they were incurred starting as of 14 February 2011, the date of issuance of the Lago Agrio Judgment. This was the date upon which the risks attached to the enforcement of the Judgment became foreseeable and was thus also the date as of which the Claimants' mitigation efforts could be said to respond to the injury arising from the recognition and enforcement of that Judgment – *i.e.*, the injury flowing from the

¹⁶³⁷ See paras. 559-565 above.

¹⁶³⁸ For an explanation of the names assigned to components *see* para. 568 above.

¹⁶³⁹ Reply, para. 870; **C-295**, Amazon Watch Press Release, *Chevron Launches "Dirty War" on Ecuador Court*, 4 July 2007.

¹⁶⁴⁰ Fourth Veiga Witness Statement, para. 76; Track III Hearing Transcript, Day 3 (22 August 2022), 457-459 (Veiga); Track III Hearing Transcript, Day 4 (23 August 2022), 914-915 (Mittelstaedt).

¹⁶⁴¹ Fourth Veiga Witness Statement, paras. 29-30.

Respondent's internationally wrongful acts. Whatever harm the Claimants may have suffered by undertaking work before 14 February 2011 in preparation for potential enforcement proceedings outside of Argentina, Brazil, Canada, and Ecuador was not caused by the Respondent's Treaty breaches and therefore falls outside the scope of the compensable injury in these proceedings.¹⁶⁴²

1091. Accordingly, the Tribunal finds that the Claimants are not entitled to claim compensation for Costs of Planning Against Potential Enforcement in Other Jurisdictions incurred before 14 February 2011. Legal fees and expenses corresponding to services provided from that date onwards are compensable in principle, subject to the Tribunal's determinations that follow.

2. (CLA) Fees incurred solely for monitoring dockets in jurisdictions where no action was ever filed / (RES) Fees for monitoring dockets in jurisdictions where no action was ever filed

1092. The Respondent opposes the Claimants' attempt to recover fees for monitoring dockets in jurisdictions where no recognition or enforcement action was ever filed. Relying on its extracts of time billings for Australia,¹⁶⁴³ Panama,¹⁶⁴⁴ the Philippines,¹⁶⁴⁵ and Venezuela,¹⁶⁴⁶ the Respondent argues that Chevron's lawyers took an unprincipled approach to monitoring dockets, compulsively checking the same despite the fact that Chevron or its subsidiaries would have to be served with process if they were ever summoned to defend a recognition or enforcement action.¹⁶⁴⁷ As such, recovery should be barred on the ground of unreasonableness, in the Respondent's view.¹⁶⁴⁸ The Claimants, on the other hand, defend the reasonableness of these measures, pointing to the multi-jurisdictional plan for pre-judgment attachment in the *Invictus* Memorandum

¹⁶⁴² See paras. 362, 371, 397 above.

¹⁶⁴³ Rejoinder, Annex I-16.

¹⁶⁴⁴ Rejoinder, Annex I-17.

¹⁶⁴⁵ Rejoinder, Annex I-18.

¹⁶⁴⁶ Rejoinder, Annex I-19.

¹⁶⁴⁷ Rejoinder, para. 1359.

¹⁶⁴⁸ Rejoinder, para. 1360.

and citing *Iran v. United States*,¹⁶⁴⁹ where the Iran-US Claims Tribunal held that “monitoring activities” such as monitoring docket sheets are compensable.¹⁶⁵⁰

1093. In the Tribunal’s view, tasking lawyers to monitor court dockets periodically for filings against Chevron and its subsidiaries served the reasonable objective of (i) ensuring that Chevron was properly apprised of the existence of any enforcement action against it; and (ii) mitigating a possible disruption of business operations caused by an *ex parte* pre-judgment attachment of Chevron’s or its subsidiaries’ assets.¹⁶⁵¹ The Tribunal is cognizant of instances when service of process does not necessarily guarantee adequate notice to a litigant, *e.g.*, in case of substituted, or sometimes even improper, service. As such, it is not uncommon for litigants to monitor court dockets proactively, especially when anticipating an adverse enforcement action.

1094. The Tribunal again notes that Australia, the Philippines, and Venezuela are identified as “International Forums of Particular Note” in the *Invictus* Memorandum, thus reinforcing the conclusion that it was reasonable for Chevron to deploy efforts going beyond a mere risk assessment in these countries at that time – such as monitoring court dockets proactively.¹⁶⁵² A similar conclusion can be reached in respect of Panama, where, for the reasons explained in paragraphs 1081 to 1082 above, there was a significant risk that the LAPs might attempt to arrest Chevron’s vessels.

1095. Accordingly, the Tribunal declines to exclude from compensation the legal fees and expenses incurred by the Claimants for monitoring dockets in jurisdictions where no action was ever filed.

¹⁶⁴⁹ **RLA-722**, *The Islamic Republic of Iran v. The United States of America*, Cases Nos. A15 (IV) and A24-FT, Award No. 590- A15(IV)/A24-FT, 28 December 1998.

¹⁶⁵⁰ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3459 (Silbert).

¹⁶⁵¹ Track II Award, para. 7.25: “Outside Ecuador, however, Chevron, with its large group of associated companies, indirectly owned (and still owns) substantial assets, including ocean-going vessels, bank deposits around the world, and other properties. By their nature, vessels and bank deposits were and remain vulnerable to arrest, attachment or seizure by the Lago Agrio Plaintiffs upon the Lago Agrio Judgment’s enforcement in multiple jurisdictions, especially *ex parte* without prior notice. Even if Chevron were in a position to discharge promptly such an order freezing a bank deposit or arresting a vessel, the damage to Chevron and its associated companies from such repeated actions could have been very significant (as it may still be).”

¹⁶⁵² See paras. 1072, 1080 above.

3. (CLA) Fees incurred solely for drafting pleadings in jurisdictions where no action was ever filed / (RES) Fees for drafting pleadings in jurisdictions where no action was ever filed

1096. The Parties also disagree on whether the Claimants should be allowed to recover fees incurred for drafting pleadings in jurisdictions where no actions were ever filed. The Respondent extracts the time spent developing various pleadings that were never used in Australia,¹⁶⁵³ Colombia,¹⁶⁵⁴ Nigeria,¹⁶⁵⁵ Panama,¹⁶⁵⁶ the Philippines,¹⁶⁵⁷ Singapore,¹⁶⁵⁸ and the United States,¹⁶⁵⁹ and criticizes Chevron’s “expense generating” strategy where its lawyers researched and drafted “stock” submissions that would then be continuously revised and polished to account for evolving facts,¹⁶⁶⁰ even in jurisdictions such as Australia, Nigeria, Singapore, Panama, and the United States, where there were “no realistic chance[s] of pre-judgment attachment of Chevron’s assets”.¹⁶⁶¹

1097. The Claimants, on the other hand, argue that such preparatory work was justified by a substantial risk of pre-judgment attachment and expeditious enforcement in Latin America – owing to regional treaties that facilitate enforcement – and in civil law jurisdictions, where Chevron has shorter periods to respond to a recognition action.¹⁶⁶² The Claimants assert that the reasonableness of such work cannot be judged in hindsight since, at that time, Chevron had no way of knowing which country the LAPs would choose for enforcement. In the Claimants’ view, it is immaterial that no enforcement actions were ultimately filed, as Chevron needed to prepare all the same.¹⁶⁶³ Furthermore, the Claimants state that in a complex, multi-venue litigation, it is not surprising or unusual that actions or motions are voluntarily dismissed or abandoned from time to time on

¹⁶⁵³ Rejoinder, Annex I-3.

¹⁶⁵⁴ Rejoinder, Annex I-4.

¹⁶⁵⁵ Rejoinder, Annex I-5.

¹⁶⁵⁶ Rejoinder, Annex I-6.

¹⁶⁵⁷ Rejoinder, Annex I-7.

¹⁶⁵⁸ Rejoinder, Annex I-8.

¹⁶⁵⁹ Rejoinder, Annex I-9.

¹⁶⁶⁰ Rejoinder, para. 1355; Track III Hearing Transcript, Day 2 (19 August 2022), p. 358 (Renzler).

¹⁶⁶¹ Rejoinder, paras. 1345-1346, 1349; Track III Hearing Transcript, Day 2 (19 August 2022), p. 357 (Renzler).

¹⁶⁶² Reply, para. 941.

¹⁶⁶³ Track III Hearing Transcript, Day 4 (23 August 2022), pp. 914-918 (Mittelstaedt).

account of evolving facts, mootness, declining rates of success, or accomplishment of a litigation objective through other means.¹⁶⁶⁴

1098. The Tribunal notes that, from 2011 to 2018, Chevron incurred over USD 4 million in legal fees and expenses in connection with drafting and revising pleadings and motions anticipating various potential enforcement scenarios. The lion's share of this component comes from drafting activities undertaken by Chevron's U.S. lawyers.¹⁶⁶⁵ As already explained, the Claimants state that their U.S. counsel, Jones Day, took the lead in drafting a set of master pleadings that presented the same key facts and central arguments but could be tailored for use in different jurisdictions.¹⁶⁶⁶ The time extracts provided by the Respondent show that Chevron's counsel in Australia, Nigeria, Panama, the Philippines, and Singapore¹⁶⁶⁷ spent an average of 192 hours in drafting activities over the course of eight years, while Chevron's U.S. counsel spent upwards of 6,680 hours.¹⁶⁶⁸

1099. As already explained in paragraphs 1079 to 1082 above, the Tribunal considers that it was reasonable for the Claimants to undertake more substantive preparatory work – that is, efforts going beyond a mere risk assessment – in certain jurisdictions with a heightened risk of enforcement. These include Australia, Colombia, Indonesia, Nigeria, Panama, the Philippines, Singapore, the United States, and Venezuela. In the Tribunal's view, the anticipatory drafting of responsive pleadings and motions was a generally reasonable response in view of the risk that the LAPs might attempt enforcement in those specific jurisdictions.

1100. Otherwise, it is unnecessary for the Tribunal to second-guess the litigation value of a particular pleading or motion at the time it was drafted. As already explained, it is not appropriate for the Tribunal to apply hindsight to the legal strategies deployed by the

¹⁶⁶⁴ Lea Expert Report, para. 50.

¹⁶⁶⁵ See Rejoinder, Annex I-9.

¹⁶⁶⁶ Track III Hearing Transcript, Day 4 (23 August 2022), pp. 914-915 (Mittelstaedt). See also para. 1079 above.

¹⁶⁶⁷ Colombia is excluded as the drafting activities in Rejoinder, Annex I-4 all took place before 14 February 2011.

¹⁶⁶⁸ See Rejoinder, Annexes I-3 to I-9.

Claimants to plan for the potential filing of recognition and enforcement actions, particularly in jurisdictions where the risk of enforcement attempts was significant.¹⁶⁶⁹

1101. Accordingly, the Tribunal declines to exclude from compensation the legal fees and expenses incurred by the Claimants in connection with drafting pleadings in jurisdictions where no action was ever filed.

4. Other issues

1102. In this Section, the Tribunal will address other issues raised by the Parties in connection with this category that have not been specifically identified by the Parties as a component. These include: (i) the Respondent's argument that the Claimants would have also engaged in preparatory work in a Treaty-compliant *but-for* scenario;¹⁶⁷⁰ (ii) the participation of 25 law firms and vendors in defending Chevron across eight jurisdictions;¹⁶⁷¹ (iii) the Claimants' alleged profligate spending in preparing for a potential recognition action in the United States;¹⁶⁷² (iv) the compensation of fees and costs relating to identifying experts and preparing draft expert reports for hypothetical recognition actions;¹⁶⁷³ (v) the compensation of costs of having documents translated in Colombia for annexing to pleadings;¹⁶⁷⁴ and (vi) the Respondent's argument that the Claimants have failed to demonstrate that they should be awarded fees and expenses for activities unrelated to risk assessment or preparatory work.¹⁶⁷⁵

1103. *The Respondent's argument that the Claimants would have engaged in preparatory work in a Treaty-compliant but-for scenario.* The Respondent submits that the Claimants would have also performed risk assessment activities "in the absence of a Treaty breach, even more so given that Chevron would have faced a serious risk of liability in a Treaty-compliant but-for scenario. The fees allegedly incurred in connection with risk assessment activities are thus simply a result of Chevron being a defendant in the Lago

¹⁶⁶⁹ See paras. 340, 1084 above.

¹⁶⁷⁰ Rejoinder, para. 1339.

¹⁶⁷¹ Rejoinder, para. 1336.

¹⁶⁷² Rejoinder, para. 1356; Rejoinder, Annexes I-10 to I-13.

¹⁶⁷³ Rejoinder, para. 1359; Rejoinder, Annex I-14.

¹⁶⁷⁴ Rejoinder, para. 1359; Rejoinder, Annex I-15.

¹⁶⁷⁵ Rejoinder, paras. 1361-1365.

Agrio Litigation, which was not, on its own, a Treaty breach.”¹⁶⁷⁶ Similarly, the Respondent argues that “just as with the fees Chevron’s counsel generated through risk-assessment activities, the fees they generated through preparatory activities are voluntarily incurred expenses not caused by any Treaty breach.”¹⁶⁷⁷

1104. The Tribunal has already addressed, in paragraphs 378 to 395 above, its consideration of the Parties’ arguments regarding a but-for scenario. As discussed in paragraph 390, the applicable but-for scenario must be premised on a hypothetical Lago Agrio Judgment that dismisses the LAPs’ diffuse claims and at best ignores their individual claims – that is, a Lago Agrio Judgment finding no liability on Chevron.

1105. As also found by the Tribunal, it is unclear whether any remaining individual claims would have ultimately been adjudicated by the upper courts (even presuming they were not abandoned at the trial court stage). What is clear, however, is that any potential enforcement proceedings would have been much more limited in terms of scope and stakes than the real-world Lago Agrio Litigation.¹⁶⁷⁸

1106. Against this background, the Tribunal is unpersuaded that the Claimants, faced with more limited stakes in the but-for world, would in all probability have continued to pursue the same global risk assessment and worldwide pre-emptive preparations they undertook when faced with the real-world Lago Agrio Judgment. Critically, in view of the Tribunal’s finding that a but-for scenario should depart from a trial-phase Lago Agrio Judgment finding no liability on Chevron, it is uncertain whether the Claimants would have conducted *any* further risk assessment or preparatory work whatsoever after the issuance of such judgment on 14 February 2011. As already explained, this date is both the starting date for the assessment of incidental damages in this Arbitration¹⁶⁷⁹ and the departing point of the but-for counterfactual.¹⁶⁸⁰

¹⁶⁷⁶ Rejoinder, para. 1339.

¹⁶⁷⁷ Rejoinder, para. 1342.

¹⁶⁷⁸ See para. 391 above.

¹⁶⁷⁹ See para. 1066 above.

¹⁶⁸⁰ See para. 390 above.

1107. Accordingly, the Tribunal rejects the Respondent's argument that the Claimants would in all probability have engaged in preparatory work in a Treaty-compliant but-for scenario.

1108. *The participation of 25 law firms and vendors in defending Chevron across eight jurisdictions.* The Respondent is critical of the Claimants' engagement of 25 law firms and vendors in connection with this damages category.¹⁶⁸¹

1109. The Tribunal notes that, of these 25 vendors, ten are law firms that appear to have been engaged for work in a particular jurisdiction (King & Wood Mallesons in Australia; Philippi Prietocarrizosa Ferrero DU & Uria SAS and Medellin Martinez & Duran Abogados SAS in Colombia; Lubis Santosa & Maulana in Indonesia; Miannaya Aja Essien & Associates The Principles Law Partnership in Nigeria; Morgan & Morgan Group and De Castro & Robles in Panama; Angara Abello Concepcion Regala & Cruz in the Philippines; Wong Partnership LLP in Singapore; Despacho de Abogados Miembros de Norton Rose Fulbright SC and Macleod Dixon SC in Venezuela);¹⁶⁸² nine are U.S. law firms (Gibson, Dunn & Crutcher LLP; Jones Day; Boies Schiller & Flexner LLP; Gardere Wynne Sewell LLP; Rivero Mestre LLP; King & Spalding; Covington & Burling LLP; Three Crowns LLP; and Holland & Knight);¹⁶⁸³ and another five vendors were engaged as experts (Prof Adrian Briggs KC, Mr Marco Cabra, Lord Lawrence Collins, Mr Cesar Coronel Jones, and Ms Linda Silberman).¹⁶⁸⁴

1110. While, as already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants' decisions as to which specific mitigation measures to undertake in real time,¹⁶⁸⁵ the Tribunal has difficulty understanding how the participation of 25 law firms and vendors could reasonably be supposed to be required to assist the Claimants in preparing for potential recognition and enforcement actions in jurisdictions where no such actions were ultimately filed.

¹⁶⁸¹ Rejoinder, para. 1336.

¹⁶⁸² Rejoinder, Annexes I-3 to I-8, I-16 to I-19; **RE-51**, Trunko Expert Report, **SM J-4**.

¹⁶⁸³ Reply, Updated Appendix 2, pp. 403-504; **RE-51**, Trunko Expert Report, **SM J-4**.

¹⁶⁸⁴ Reply, Updated Appendix 2, pp. 531-532; **RE-51**, Trunko Expert Report, **SM J-4**.

¹⁶⁸⁵ See para. 341 above.

1111. This is particularly true in respect of the United States, where Chevron decided to take affirmative action against potential enforcement attempts by bringing the RICO Litigation, rather than passively wait for an enforcement action to be filed. As more fully explained in Section VIII.G below, by bringing the RICO Litigation Chevron sought to ensure that any enforcement action filed in any U.S. State other than New York would be treated as a compulsory counterclaim of the RICO Litigation and be transferred to the SDNY, thus concentrating all enforcement issues into one specific forum.¹⁶⁸⁶ As such, preparing for potential recognition and enforcement actions in the United States sought principally to mitigate the risk that the strategy underlying the RICO Litigation would not succeed. In view of the heightened risk of enforcement in the United States, where Chevron has its headquarters and numerous assets,¹⁶⁸⁷ the Tribunal does not believe that it was unreasonable for the Claimants to display two parallel mitigation strategies – *i.e.*, the RICO Litigation and preparing for potential enforcement attempts – in that jurisdiction. However, in the circumstances, engaging nine U.S. law firms to perform preventive activities would appear to be excessive. Having regard to these factors, the Tribunal is prepared to grant compensation for the legal fees and expenses charged by the first two U.S. law firms that were engaged to prepare for potential enforcement and recognition actions (Jones Day and Gibson, Dunn & Crutcher LLP).¹⁶⁸⁸ The Tribunal otherwise denies compensation under this heading for the legal fees and expenses charged by all other U.S. law firms engaged by the Claimants (Boies Schiller & Flexner LLP; Gardere Wynne Sewell LLP; Rivero Mestre LLP; King & Spalding; Covington & Burling LLP; Three Crowns LLP; and Holland & Knight).

¹⁶⁸⁶ See paras. 1290-1292 below.

¹⁶⁸⁷ **C-903**, “Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated [DONZ00032520-51], pp. 13-14: “We note that Chevron, by way of public disclosure on its corporate website, has notable attachable assets located in a number of these jurisdictions, including Alabama, California, Southern Louisiana, Mississippi, Nevada, and New Mexico. Dependent upon the peculiarities of the foreign judgment recognition law in these jurisdictions, among other considerations, the aforementioned states may prove to be especially attractive for enforcement. . .”

¹⁶⁸⁸ Reply, Updated Appendix 2, pp. 405, 410. The Tribunal notes that Gibson Dunn and Jones Day were also the two U.S. firms with the highest billing in connection with this damages category (USD 12,853,813 and USD 4,853,223, respectively) and thus, presumably, had a more prominent role than other firms retained by the Claimants. See Letter from the Claimants to the Tribunal dated 2 November 2022, Claimants’ Damages Model, Vendor Switches, cells F109 and F175.

1112. As to the remaining jurisdictions with a heightened risk of enforcement (Australia, Colombia, Indonesia, Nigeria, Panama, the Philippines, Singapore, and Venezuela),¹⁶⁸⁹ to the extent that the goal of preventing the Lago Agrio Judgment from becoming enforceable in those jurisdictions might have required *one* local law firm to undertake such preparatory efforts, or to act in a coordinating capacity with teams operating in other jurisdictions (including before this Tribunal), the Tribunal is prepared to grant compensation for the legal fees and expenses charged by the local firm that billed the most in each of those jurisdictions, which, with one exception, was also the first local firm to be engaged by Chevron: (i) King & Wood Mallesons (Australia);¹⁶⁹⁰ (ii) Philippi Prietocarrizosa Ferrero DU & Uria SAS (Colombia);¹⁶⁹¹ (iii) Lubis Santosa & Maulana (Indonesia);¹⁶⁹² (iv) Miannaya Aja Essien & Associates The Principles Law Partnership (Nigeria);¹⁶⁹³ (v) Morgan & Morgan Group (Panama);¹⁶⁹⁴ (vi) Angara Abello Concepcion Regala & Cruz (the Philippines);¹⁶⁹⁵ (vii) Wong Partnership LLP (Singapore);¹⁶⁹⁶ and (viii) Despacho de Abogados Miembros de Norton Rose Fulbright SC (Venezuela).¹⁶⁹⁷ Otherwise, the Tribunal denies compensation under this heading for the legal fees and expenses charged by all other local firms engaged by Chevron in these jurisdictions (Medellin Martinez & Duran Abogados SAS in Colombia; De Castro & Robles in Panama; and Macleod Dixon SC in Venezuela).

¹⁶⁸⁹ See paras. 1080-1082 above.

¹⁶⁹⁰ Reply, Updated Appendix 2, p. 428.

¹⁶⁹¹ Reply, Updated Appendix 2, p. 413.

¹⁶⁹² Reply, Updated Appendix 2, p. 509.

¹⁶⁹³ Reply, Updated Appendix 2, p. 509.

¹⁶⁹⁴ Reply, Updated Appendix 2, p. 430.

¹⁶⁹⁵ Reply, Updated Appendix 2, p. 431.

¹⁶⁹⁶ Reply, Updated Appendix 2, p. 431.

¹⁶⁹⁷ Reply, Updated Appendix 2, p. 426. The Tribunal notes that Macleod Dixon SC was the first firm that was engaged by the Claimants in Venezuela (*see* Reply, Updated Appendix 2, p. 404). Macleod Dixon SC billed USD 252,887 in connection with this damages category (*see* Letter from the Claimants to the Tribunal dated 2 November 2022, Claimants' Damages Model, Vendor Switches, cell F227). By contrast, Despacho de Abogados Miembros de Norton Rose Fulbright SC – the second firm engaged by the Claimants in Venezuela – billed a total of USD 1,159,629 (*see id.*, cell F84). Based on these figures, the Tribunal infers that this latter law firm had a much more prominent role than Macleod Dixon SC when undertaking general recognition and enforcement work in Venezuela.

1113. The Tribunal’s analysis regarding the engagement of five vendors as experts (Prof Adrian Briggs KC, Mr Marco Cabra, Lord Lawrence Collins, Mr Cesar Coronel Jones, and Ms Linda Silberman)¹⁶⁹⁸ is addressed separately in paragraphs 1117 to 1118 below.

1114. *The Claimants’ alleged profligate spending in preparing for a potential recognition action in the United States.* The Respondent is critical of Chevron’s efforts to prepare for a potential recognition action in the United States. According to the Respondent, the Invictus Memorandum showed that the LAPs did not intend to attempt enforcement in the United States unless and until the Lago Agrio Judgment was enforced elsewhere.¹⁶⁹⁹ As such, the Respondent asserts that it is unreasonable for Chevron to claim USD 18,448,054.37¹⁷⁰⁰ in legal fees incurred by counsel “imagining and preparing for all permutations of a U.S. recognition action”.¹⁷⁰¹

1115. Further, the Respondent notes that Chevron’s lawyers gathered evidence inefficiently despite their familiarity with the case records of the RICO and Lago Agrio Litigations, generating at least USD 230,000 in additional fees solely for reviewing the Lago Agrio case.¹⁷⁰² Additionally, Chevron’s U.S. and Venezuelan counsel dedicated at least 214 hours to monitoring cases that would be inconsequential vis-à-vis a U.S. recognition action, despite the fact that lawyers from Jones Day and Gibson, Dunn & Crutcher – Chevron’s legal team – handled the defendants’ representation in these miscellaneous judgment proceedings.¹⁷⁰³

1116. The Tribunal recalls that it has already excluded from compensation the legal fees and expenses charged by seven U.S. law firms in connection with this damages category.¹⁷⁰⁴ Having reached that conclusion, the Tribunal does not consider it necessary to opine further on the substance or magnitude of the Claimants’ efforts to prepare for a potential

¹⁶⁹⁸ Reply, Updated Appendix 2, pp. 531-532; **RE-51**, Trunko Expert Report, **SM J-4**.

¹⁶⁹⁹ **C-903**, Patton Boggs, “Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement,” undated [DONZ00032520-51], p. 17; Respondent’s Track III Closing Presentation, 7 September 2022, Slide 97.

¹⁷⁰⁰ **RE-51**, Trunko Expert Report, **SM J-4**.

¹⁷⁰¹ Rejoinder, para. 1356.

¹⁷⁰² Rejoinder, para. 1357; Annex I-10.

¹⁷⁰³ Rejoinder, para. 1358; Annexes I-11 to I-13.

¹⁷⁰⁴ See para. 1111 above.

enforcement action. As already noted, it is not appropriate for the Tribunal to apply hindsight to the legal strategies deployed by the Claimants to plan for the potential filing of recognition and enforcement actions, particularly in jurisdictions where the risk of enforcement was significant.¹⁷⁰⁵

1117. *The compensation of fees and costs relating to identifying experts and preparing draft expert reports for hypothetical recognition actions.* The Respondent rejects the Claimants' attempt to obtain reimbursement of legal fees and expenses incurred for time spent identifying experts and preparing draft expert submissions for hypothetical recognition actions.¹⁷⁰⁶

1118. Having already ascertained that the requirements of causation and reasonableness for the compensation of incidental damages are met as regards Costs of Planning Against Potential Enforcement in Other Jurisdictions as a category, the Tribunal does not consider it necessary to opine further on the substance or magnitude of the Claimants' efforts to prepare for a potential enforcement action, including the preparation of expert evidence. As already noted, it is not appropriate for the Tribunal to apply hindsight to the legal strategies deployed by the Claimants to plan for the potential filing of recognition and enforcement actions, particularly in jurisdictions where the risk of enforcement was significant.¹⁷⁰⁷

1119. *The compensation of costs of having documents translated in Colombia for annexing to pleadings.* The Respondent rejects the Claimants' attempt to obtain reimbursement of legal fees and expenses incurred for time spent by Chevron's Colombian lawyers attending to the translation of over 700 documents that were never used.¹⁷⁰⁸

1120. As already noted, Mr Robert A. Mittelstaedt, a partner at Jones Day and witness for the Claimants, explained that preparing to oppose anticipated recognition and enforcement proceedings in multiple jurisdictions around the globe required, among other things, "certified translations and other legalized documents in support of the submission. This

¹⁷⁰⁵ See paras. 340, 1084 above.

¹⁷⁰⁶ Rejoinder, para. 1359; Annex I-14.

¹⁷⁰⁷ See paras. 341, 1084 above.

¹⁷⁰⁸ Rejoinder, para. 1359; Annex I-15.

work could not simply await the filing of an action at some unspecified time in some remote jurisdiction.”¹⁷⁰⁹ Such work concerned, in particular, the following documents:

Gibson Dunn had developed a core list of documents from the RICO trial and certain 1782s for local counsel in enforcement countries to consider using in their anti-enforcement proceedings. Beyond obtaining certified translations of those documents into several languages, our team worked with Gibson Dunn to obtain certified copies of the English originals whenever possible and have those apostilled by the appropriate authorities. This project was ongoing from late 2011 and well into 2013 and involved multiple trips to at least six Latin American countries.¹⁷¹⁰

1121. Against this background, the Tribunal is convinced that preparing certified Spanish translations of certain key documents for use in Colombia was necessary for the Claimants properly to prepare for the potential filing of a recognition and enforcement action in that country. As already explained, it is immaterial whether those translations were ultimately used or not: the relevant inquiry is whether there was a heightened risk of enforcement activity in Colombia that would have justified more intensive preparations for potential enforcement activity. The Tribunal has already concluded that there was,¹⁷¹¹ particularly in view of the fact that Colombia has ratified the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards¹⁷¹² – which, as already explained, the LAPs’ counsel considered to be “a fact which should have the effect of significantly streamlining the enforcement process” in that jurisdiction.¹⁷¹³ Adding to this risk, the 15 October 2012 Order of the Lago Agrio Court provided for the execution of the Lago Agrio Judgment against specific assets owned by one of Chevron’s local subsidiaries, citing to the Inter-American Convention on the Enforcement of Preventive Measures.¹⁷¹⁴

¹⁷⁰⁹ Mittelstaedt Witness Statement, para. 89.

¹⁷¹⁰ Mittelstaedt Witness Statement, para. 90.

¹⁷¹¹ See para. 1080 above.

¹⁷¹² See para. 1069 above; **RE-54**, Second Godoy Expert Report, **LUC2-7**.

¹⁷¹³ See para. 1069 above.

¹⁷¹⁴ **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012, p. 6: “In relation to the assets that the petitioner has identified in the Republic of Colombia, the request is for a ‘seizure order and a prohibition against transfer,’ likewise, over a series of assets that are under the control and total ownership of the debtor under execution in this proceeding, through a series of subsidiaries and a Colombian branch, Chevron Petroleum Company – Colombia Branch. Thus, under the same argument, the claim is granted, and as a result, the court orders ‘the freezing of all credits, present and future, of those that Chevron Corp., through its controlled

1122. *The Respondent's argument that Claimants have failed to demonstrate that they should be awarded fees and expenses for activities unrelated to risk assessment or preparatory work.* The Respondent argues that the Claimants have failed to demonstrate that they should be awarded fees and expenses for activities of counsel unrelated to risk assessment or preparatory work. According to the Respondent, the invoice data shows that Chevron's lawyers routinely billed for activities such as (i) developing offensive strategies against the LAPs; (ii) retaliating against Ecuador; (iii) advising Chevron regarding U.S. securities law compliance; and (iv) administrative work relating to firm management.¹⁷¹⁵

1123. In particular, the Respondent refers to activities of Chevron's attorneys in Colombia, the Philippines, the United States, and Venezuela in researching "offensive strategies", *i.e.*, possible affirmative actions against the LAPs, their attorneys, and their funders.¹⁷¹⁶ The Respondent also points to time entries concerning Chevron's petition to the U.S. Trade Representative to deny Ecuador trade preferences as non-compensable retaliatory activities.¹⁷¹⁷ Further, the Respondent highlights time charges for work relating to U.S. securities law compliance,¹⁷¹⁸ as well as fees charged by Chevron's lawyers for administrative tasks including running internal conflict checks, preparing budgets,¹⁷¹⁹ and handling "billing issues".¹⁷²⁰ According to the Respondent, these fees, amounting to approximately USD 185,519.09 for this component, were neither causally connected to a Treaty breach nor reasonable or necessary in preparing to defend Chevron in potential recognition and enforcement actions, and hence should be excluded from compensation.¹⁷²¹

company, Chevron Petroleum Company Colombian branch, identified with the tax identification number 860.005.223-9 is a creditor, and whose debtor is any of the following companies . . . Likewise, the order is given to 'prohibit the transfer of all the commercial establishments that has registered the Colombian branch of Chevron Petroleum Company,' however, the official letters indicated by the petitioner shall be ordered and processed by the Colombian authority, together with any other requisite that is required for the application of the provisions in the [Inter-American Convention on the Enforcement of Preventive Measures]."

¹⁷¹⁵ Rejoinder, para. 1361.

¹⁷¹⁶ Rejoinder, para. 1362; Annex I-27, entries 23-37.

¹⁷¹⁷ Rejoinder, para. 1363; Annex I-27, entries 1-3.

¹⁷¹⁸ Rejoinder, para. 1364; Annex I-24, row 4.

¹⁷¹⁹ Rejoinder, para. 1365; Annex I-25.

¹⁷²⁰ Rejoinder, para. 1365; Annex I-26.

¹⁷²¹ See Rejoinder, Annex I-24 to I-27, excluding entries prior to 14 February 2011.

1124. Since the Parties have already identified (i) allegedly non-defence related activities, (ii) activities allegedly relating to Government Relations, including USTR, and (iii) alleged administrative and clerical activities as cross-cutting elements impacting multiple categories,¹⁷²² the Tribunal will address these issues together with other elements in Section VIII.N below.

4. Conclusion on Costs of Planning Against Potential Enforcement in Other Jurisdictions

1125. For the foregoing reasons, the Tribunal:

- (i)** Declines to exclude from compensation the Costs of Planning Against Potential Enforcement in Other Jurisdictions category of damages as a whole;
- (ii)** Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants under this category corresponding to services rendered before 14 February 2011;
- (iii)** Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants under this category corresponding to services provided by the firms Boies Schiller & Flexner LLP; Gardere Wynne Sewell LLP; Rivero Mestre LLP; King & Spalding; Covington & Burling LLP; Three Crowns LLP; Holland & Knight; Medellin Martinez & Duran Abogados SAS; De Castro & Robles; and Macleod Dixon SC;
- (iv)** Defers its determination regarding the compensation of the legal fees and expenses identified in paragraphs 1122 to 1124 above to its analysis of cross-cutting elements set out in Section VIII.N below;
- (v)** Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Costs of Planning Against Potential Enforcement in Other Jurisdictions category of damages, to the extent not already addressed in

¹⁷²² See para. 571 above.

this Section, to its analysis of cross-cutting elements set out in Section VIII.N below;¹⁷²³ and

- (vi) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Costs of Planning Against Potential Enforcement in Other Jurisdictions category of damages. The Tribunal will determine the exact amount of compensation corresponding to the Costs of Planning Against Potential Enforcement in Other Jurisdictions category in Section VIII.O below.

* * *

¹⁷²³ See paras. 564-566 above.

G. RICO LITIGATION

1126. The Claimants seek USD 323,180,099.51 as direct damages for the legal fees and expenses they allege to have incurred between January 2009 and December 2018 in the RICO Litigation initiated by Chevron. According to the Claimants, these damages are a “natural and foreseeable result of Ecuador’s breach of the Umbrella Clause, its denial of justice, and its breach of the Tribunal’s Interim Orders and Awards.”¹⁷²⁴ In the alternative, the Claimants submit that they are entitled to recover these expenses as incidental damages.¹⁷²⁵

1127. The Claimants assert that this sum represents “574,335.5 hours expended by ten different law firms, experts, and other vendors over a time period spanning nearly a decade”,¹⁷²⁶ in the litigation commenced by Chevron on 1 February 2011 before the U.S. District Court for the Southern District of New York (defined earlier as the “SDNY”) under, *inter alia*, 18 U.S.C. Section 1962, the Racketeer Influenced and Corrupt Organizations Act (“**RICO**”), leading to the RICO Judgment of 4 March 2014 (the “**RICO Judgment**”),¹⁷²⁷ which was affirmed by the U.S. Court of Appeals for the Second Circuit (the “**Second Circuit**”) in its judgment of 8 August 2016¹⁷²⁸ and by the U.S. Supreme Court’s denial of the appellants’ petition for *certiorari* on 19 June 2017.¹⁷²⁹

1128. The Respondent argues that the Claimants are not entitled to any of the legal fees and expenses they claim for the RICO Litigation, principally on two grounds: (i) a reasonable observer could not have foreseen that Chevron would bring a RICO action; and (ii) the fees and costs incurred by Chevron from the RICO Litigation were patently and objectively unreasonable. Consequently, the Respondent considers that this entire

¹⁷²⁴ Reply, para. 794.

¹⁷²⁵ Reply, para. 794.

¹⁷²⁶ Reply, para. 794.

¹⁷²⁷ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014.

¹⁷²⁸ **C-2865**, *Chevron Corp. v. Donziger*, 833 F.3d 74, 122 (2d Cir. 2016) Case (WL 2019).

¹⁷²⁹ **C-2542**, U.S. Court of Appeals for the Second Circuit, denying the petition for a writ of *certiorari* in *Steven Donziger, et al. v. Chevron Corporation*, Case No. 16-1178, 19 June 2017.

category of damages is non-compensable.¹⁷³⁰ The Respondent also contests the compensability of a number of identified components under this damages category.¹⁷³¹

1. The Claimants' Position

(a) Description of the Proceedings¹⁷³²

1129. The Claimants recall that Chevron initiated the RICO Litigation before the SDNY against Mr Steven Donziger, the Law Offices of Steven R. Donziger, and Donziger & Associates, PLLC (collectively, the “**Donziger Defendants**”); Stratus Consulting and two of its employees, Ms Ann Maest and Mr Douglas Beltman (collectively, the “**Stratus Defendants**”); Messrs Pablo Fajardo and Luis Yanza, the Ecuadorian representatives of the LAPs; and the alleged “front” organizations ADF and Selva Viva (the Donziger Defendants, the Stratus Defendants, Messrs Fajardo and Yanza, and ADF and Selva Viva are collectively referred to as the “**RICO Defendants**”).¹⁷³³ Chevron also impleaded the individual LAPs in relation to other causes of action pursued in the RICO Litigation.¹⁷³⁴ Chevron accused the defendants of engaging in “a wide-ranging scheme to defraud and extort Chevron” by, among others, unlawfully procuring and ghostwriting the Lago Agrio Judgment.¹⁷³⁵ Chevron successfully obtained injunctive relief in the RICO Litigation preventing the Donziger Defendants and the LAPs from taking any steps to recognize and enforce the Lago Agrio Judgment in the United States. As of the date of the Claimants’ Memorial dated 31 May 2019, Chevron remained involved in the RICO Litigation due to

¹⁷³⁰ Rejoinder, para. 1208-1209.

¹⁷³¹ See Letter from the Respondent dated 21 October 2022.

¹⁷³² For a detailed description of the chronology of these proceedings, *see generally* Appendix 9 to the Claimants’ Memorial.

¹⁷³³ The Tribunal notes that Chevron, in its Amended Complaint in the RICO Litigation, used the term “RICO Defendants” to refer to a specific subset of defendants charged under Counts 1 and 2 (for violation of RICO and conspiracy to violate RICO), which include the Donziger Defendants, the Stratus Defendants, Messrs. Fajardo and Yanza, ADF, and Selva Viva. For the avoidance of doubt, the Tribunal adopts the same terminology in this Award and shall accordingly use the term “RICO Defendants” to refer to this particular subset of defendants under Counts 1 and 2 of the RICO Litigation. On the other hand, where the Tribunal uses the non-capitalized term “defendants”, *i.e.*, “RICO defendants”, it does so in reference to all defendants in the RICO Litigation, including those not charged under Counts 1 and 2.

¹⁷³⁴ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, paras. 7-21.

¹⁷³⁵ Memorial, paras. 282-284. Specifically, Chevron alleged violations under the RICO and several common law torts under New York law. *See C-2865*, *Chevron Corp. v. Donziger*, 833 F.3d 74, 122 (2d Cir. 2016) Case (WL 2019).

various outstanding motions regarding, for example, Mr Donziger’s alleged violations of the injunction.¹⁷³⁶

1130. The Claimants argue that the defendants, who were represented by prominent counsel and raised almost USD 30 million to support their activities, pursued “a strategy of obstruction”, including through discovery obstruction, meritless appeals and petitions, and even challenging Judge Lewis A. Kaplan of the SDNY.¹⁷³⁷

1131. The Claimants explain that in March 2011, the SDNY granted Chevron’s request for a global preliminary injunction to prevent any enforcement activity pending resolution of the RICO Litigation. The SDNY subsequently granted the company’s motion to bifurcate its request for a declaratory judgment that the Lago Agrio Judgment was non-recognizable and unenforceable.¹⁷³⁸ However, in September 2011, the Second Circuit reversed the preliminary injunction and dismissed the bifurcated request, following which Chevron pursued numerous motions before the SDNY to mitigate the risk of enforcement activity.¹⁷³⁹ The Claimants also note that Chevron was forced to litigate many complex discovery-related issues, including “frivolous and dilatory” tactics of the defendants that required significant resources to challenge and address.¹⁷⁴⁰

1132. According to the Claimants, following a trial held from 15 October through 26 November 2013, the SDNY issued an opinion on 4 March 2014 finding that some of the defendants had violated the RICO statute and enjoining them from seeking to enforce the Lago Agrio Judgment in the United States.¹⁷⁴¹ The Second Circuit appellate court later rejected the

¹⁷³⁶ Memorial, paras. 285-286.

¹⁷³⁷ Memorial, paras. 288-289.

¹⁷³⁸ The Claimants indicate that work began in January 2009. Memorial, paras. 290-291; **C-972**, *Chevron Corp. v. Donziger et al.*, Case No. 11-cv-00691, United States District Court for the Southern District of New York, Opinion, 7 March 2011; **C-975**, *Chevron Corp. v. Steven Donziger*, No. 11CV691(LAK) SDNY, 15 April 2011 (Scheduling Order to Count Nine).

¹⁷³⁹ Memorial, paras. 292-293; **C-3039**, *Chevron Corp. v. Pablo Fajardo Mendoza.*, Docket for Case No. 11-1150 (2d Cir.), referencing Order, 12 May 2011.

¹⁷⁴⁰ Memorial, para. 294.

¹⁷⁴¹ Memorial, para. 295; **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014; **C-2865**, *Chevron Corp. v. Donziger*, 833 F.3d 74, 122 (2d Cir. 2016) Case (WL 2019).

defendants’ appeal and affirmed the SDNY’s decision, and the U.S. Supreme Court ultimately denied Mr Donziger’s petition for *certiorari* in June 2017.¹⁷⁴²

(b) Costs Incurred

1133. Observing that the RICO statute requires proving that defendants violated multiple federal criminal laws over time and in connection with the operation of an enterprise, the Claimants argue that prosecuting this lawsuit required a substantial amount of attorney time due to the inherent complexity of the action, as well as Mr Donziger’s obstructive efforts.¹⁷⁴³ In particular, the Claimants break down Chevron’s “significant” expenses into seven general sub-categories, which they describe below:

- (i)* preparing and filing the complaint and an amended complaint in 2011, which involved additional expenses in connection with their service to the defendants residing in Ecuador;¹⁷⁴⁴
- (ii)* extensive discovery, investigation, and related activity through which Chevron sought and obtained “devastating” evidence, including documents, testimony and written discovery from the defendants, their former counsel, and various vendors and other related entities, as well as time devoted to responding to the defendants’ discovery requests and overall obstructive behaviour;¹⁷⁴⁵
- (iii)* rebutting the defendants’ assertions that Ecuadorian law applied to various issues in the case, which required retaining Ecuadorian legal experts, analysing Ecuadorian and U.S. sources, and deposing the defendants’ Ecuadorian legal experts;¹⁷⁴⁶

¹⁷⁴² Memorial, para. 296.

¹⁷⁴³ Memorial, para. 297.

¹⁷⁴⁴ Memorial, para. 298.

¹⁷⁴⁵ Memorial, paras. 299-307.

¹⁷⁴⁶ Memorial, para. 308.

- (iv) proving that Mr Donziger had engaged in several RICO-predicate financial crimes, which was central to several aspects of the case and required the services of not only attorneys, but also financial and accounting professionals;¹⁷⁴⁷
- (v) motion practice and hearings, including those related to the bifurcated proceedings, the Second Circuit appeals, and the *certiorari* petition;¹⁷⁴⁸
- (vi) expenses incurred during the seven-week trial on the merits, which involved 31 witnesses testifying in person and 37 depositions offered into evidence, and was also affected by Mr Donziger’s “obstructive conduct” during the pre-trial proceedings and through trial;¹⁷⁴⁹ and
- (vii) post-judgment expenses, including in connection with Mr Donziger and the LAPs’ refusal to pay the fees of the “Special Masters” responsible for supervising the depositions of key witnesses.¹⁷⁵⁰

1134. The Claimants insist that the RICO Litigation was crucial to prove the fraud in the Lago Agrio Litigation and uncover important evidence used in this Arbitration, as well as to prevent the enforcement of the Lago Agrio Judgment.¹⁷⁵¹

1135. The Claimants further assert that there is no risk of double recovery on these fees and expenses, explaining that the SDNY has not yet ruled on Chevron’s 2014 motion for a small portion of its attorney’s fees, except for a judgment related to the Special Masters’ costs, which remains on appeal and “largely unsatisfied”.¹⁷⁵² Even if the SDNY were to award the entirety of the requested fees, the Claimants opine that there is minimal chance of recovering them, and confirm in any event that Chevron will not seek or accept any double recovery of any amounts actually collected.¹⁷⁵³

¹⁷⁴⁷ Memorial, para. 309.

¹⁷⁴⁸ Memorial, para. 310.

¹⁷⁴⁹ Memorial, para. 311.

¹⁷⁵⁰ Memorial, para. 312.

¹⁷⁵¹ Memorial, para. 313.

¹⁷⁵² Memorial, para. 319.

¹⁷⁵³ Memorial, para. 319.

(c) Request for Full Reparation of Direct Damages

1136. The Claimants submit that the Respondent must make full reparation for Chevron's RICO Litigation costs as direct damages, to the extent that they are the natural, foreseeable, and proximate result of Ecuador's Treaty breaches.¹⁷⁵⁴

1137. In the Claimants' view, it is natural and foreseeable that Chevron would take all reasonable steps to (i) bring the fraud to light while resisting enforcement of the Lago Agrio Judgment; and (ii) hold the fraudsters responsible for their wrongful conduct under applicable U.S. laws, including RICO, especially considering that, during the pendency of the RICO Litigation, Ecuador continued to support the LAPs' efforts to enforce the Judgment.¹⁷⁵⁵ The Claimants highlight that Ecuador had repeatedly ignored the mounting evidence of fraud provided by Chevron, while the latter was especially concerned about the risk of a potential enforcement action in the United States, where Chevron has substantial assets.¹⁷⁵⁶

1138. Similarly, the Claimants assert that the Respondent's Treaty breaches proximately caused Chevron's fees and costs in the RICO Litigation, since the cause of the Claimants' harm resulting from the denial of justice was (i) Judge Zambrano's acceptance of a bribe in return for permitting the LAPs' representatives to ghostwrite the judgment; and (ii) that the judgment ghostwriting scheme included the preparation of the fraudulent Cabrera Reports.¹⁷⁵⁷ In the Claimants' view, whether the RICO Litigation involved claims against non-State actors is irrelevant, since, under international law, the Respondent may not invoke concurrent causes, such as the LAPs or their counsel, to allege a break in the causal chain excusing the State's liability for its wrongful acts.¹⁷⁵⁸

1139. According to the Claimants, several factual considerations illustrate how the RICO Litigation "naturally flowed" from Ecuador's breaches and the surrounding circumstances, including that (i) the fraud was beginning to come to light in 2009 and

¹⁷⁵⁴ Memorial, para. 315; Reply, para. 794.

¹⁷⁵⁵ Memorial, para. 316; Reply, paras. 797-798.

¹⁷⁵⁶ Reply, para. 796; Fourth Veiga Witness Statement, paras. 67, 71.

¹⁷⁵⁷ Reply, para. 798; Track II Award, paras. 5.230, 5.247.

¹⁷⁵⁸ Memorial, para. 317.

2010; (ii) Ecuador demonstrated that “it would turn a blind eye” to allegations of fraud and corruption; (iii) U.S. courts were willing to entertain these allegations; (iv) the LAPs planned enforcement actions in the United States; (v) the Lago Agrio Judgment was potentially massive and anticipated in early 2011; and (vi) Ecuador failed to comply with the Tribunal’s Interim Orders and Awards.¹⁷⁵⁹

1140. The Claimants assert that it was foreseeable that Chevron would seek to prevent enforcement of the Lago Agrio Judgment in the United States, its home jurisdiction, and hold those responsible for the fraud “accountable under the law.”¹⁷⁶⁰ It was equally foreseeable, according to the Claimants, that the first jurisdiction of the LAPs’ intended enforcement actions would be the United States, where (i) Chevron is headquartered and incorporated and has assets; (ii) much of the ghostwriting took place; and (iii) courts allow broad discovery and are “respected” in such way that they could give “credibility” to the enforcement initiative or to a declaration of fraud, as the case may be.¹⁷⁶¹

1141. The Claimants further underscore that the RICO Litigation served to resist enforcement of the Lago Agrio Judgment in the United States and generated evidence of the fraud that was “instrumental” in Chevron’s efforts to oppose enforcement actions in other jurisdictions, which treated the RICO Judgment “as persuasive authority.”¹⁷⁶² The Claimants reject the suggestion that Chevron should or could have pursued a common law fraud claim, noting in any event that it is not up to the Respondent to self-servingly dictate, in hindsight, the best legal strategy for Chevron.¹⁷⁶³

1142. Finally, even if the Tribunal were to find that the RICO Litigation was not foreseeable, the Claimants posit that the expenses arising from this litigation would still constitute

¹⁷⁵⁹ Reply, paras. 799, 803; Track II Award, paras. 1.16, 4.199, 4.272-4.275, 4.277, 4.324-4.327, 4.385, 5.235, 7.169, 8.33-8.34, 8.76; Lea Expert Report, para. 63.

¹⁷⁶⁰ Reply, para. 798.

¹⁷⁶¹ Reply, paras. 800-802.

¹⁷⁶² Reply, paras. 804-805; Fourth Veiga Witness Statement, para. 73; Seley Witness Statement, para. 87; Litvack Expert Report, para. 111; Lea Expert Report, para. 67.

¹⁷⁶³ Reply, paras. 806-807. See **C-3198**, *Pasternack v. Lab'y Corp. of Am. Holdings*, 27 N.Y.3d 817, 59 N.E.3d 485 (2016).

proximate or direct damages arising from Ecuador’s Treaty breaches, because both Ecuador and the LAPs intended to inflict this type of harm on Chevron.¹⁷⁶⁴

(d) Request for Full Reparation of Incidental Damages

1143. In the alternative, the Claimants submit that they are entitled to recover the legal fees and expenses incurred in the RICO Litigation as incidental expenses geared towards mitigating the harm arising from the Respondent’s international delicts, as well as providing crucial evidence for this Arbitration.¹⁷⁶⁵

1144. First, the Claimants contend that the RICO Litigation was a reasonable and calculated mitigation measure that prevented the enforceability of the Lago Agrio Judgment in the United States. The RICO Litigation was expected and proved to be successful, and the expense incurred was proportionate to the imminent threat of great harm.¹⁷⁶⁶ Indeed, until the issuance of the Track II Award, the March 2014 RICO judgment and the April 2018 default judgment “provided the principal bulwark protecting Chevron’s assets against attachment or seizure” in the United States. The RICO Judgment thus provided important protection that the Claimants would not have required had the Respondent prevented the Lago Agrio Judgment from becoming enforceable as directed by the Tribunal.¹⁷⁶⁷

1145. According to the Claimants, the filing of the RICO Litigation before the issuance of the Lago Agrio Judgment does not change the analysis because incidental damages can be incurred “pre-emptively” to avert the harm threatened. In fact, filing the RICO Litigation before the SDNY, after some of the evidence was coming to light but before the Lago Agrio Judgment was issued, helped mitigate the harm to the Claimants by effectively concentrating all enforcement issues into one specific forum, thus limiting the LAPs’

¹⁷⁶⁴ Reply, para. 808.

¹⁷⁶⁵ Reply, paras. 794, 809.

¹⁷⁶⁶ Reply, paras. 810-811, 822. The Claimants also suggest comparing these costs with the price and effectiveness of the bond which the Tribunal found the Claimants were not required to pay in the Lago Agrio Litigation. *See id.* at 812.

¹⁷⁶⁷ Reply, para. 813.

options about when and where they could commence their U.S. enforcement campaign.¹⁷⁶⁸

1146. The Claimants further reject the opinion of the Respondent's U.S. law expert, Dr Stacie Strong, that the RICO Litigation was not a necessary or efficient means of preventing enforcement. The Claimants argue that (i) a passive strategy of waiting and resisting enforcement actions "would have been irresponsible" and "devoid of business and legal sense" given the substantial and imminent risk that Chevron faced at the time; (ii) Dr Strong fails to explain how a reasonable claimant stood to gain by adopting an inferior litigation strategy; (iii) Chevron needed to be proactive, since a "sit and wait" approach would have likely led to a disruption of the company's operations if the LAPs had been able to file multiple enforcement actions in various states of the United States; (iv) Dr Strong's analysis of the complexity of the RICO Litigation bolsters Chevron's claim that the legal fees and expenses it paid were reasonable; and (v) pursuing a "more robust" RICO action entailed a higher bar, but provided a means to prosecute this type of criminal enterprise in a civil action, while the evidence gleaned could be valuable for other proceedings.¹⁷⁶⁹

1147. *Second*, the Claimants stress that the RICO Litigation provided valuable evidence that the Tribunal used in finding the Respondent's breaches of international law in the Track II Award. According to the Claimants, many of the witness testimonies and documents proffered in the RICO Litigation had a direct bearing on the questions involved in this Arbitration regarding Ecuador's responsibility for the ghostwriting and extortion scheme surrounding the Lago Agrio Judgment.¹⁷⁷⁰ In particular, the Claimants highlight the following pieces of evidence:

- (i) Judge Zambrano's testimony, which was given "great importance", proved to have "mitigated" the effects of otherwise unavailable evidence and assisted the Tribunal

¹⁷⁶⁸ Reply, paras. 814-815; **RLA-738**, Sergey Ripinsky & Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2008), p. 306; Lea Expert Report, para. 66.

¹⁷⁶⁹ Reply, paras. 816-822; Fourth Veiga Witness Statement, para. 75; Lea Expert Report, paras. 63-64, 66 (emphasis omitted); First Silver Expert Report, paras. 128, 131, 177.

¹⁷⁷⁰ Reply, paras. 823-825; Track II Award, paras. 1.40, 4.25, 4.28.

in determining that the LAPs ghostwrote the Lago Agrio Judgment, even if it rejected the truthfulness of Judge Zambrano's sworn assertions;¹⁷⁷¹

- (ii) Mr Donziger's testimony and personal notebook, which the Tribunal used to support its findings about the LAPs' representatives' "malign conduct towards the Respondent's legal system", the ghostwriting of the Cabrera Report by Stratus Consulting, and the ghostwriting of the Lago Agrio Judgment;¹⁷⁷² and
- (iii) Judge Guerra's testimony and physical evidence (such as his personal computer and bank records) which corroborated the other evidence of ghostwriting and his later testimony at the Track II Hearing.¹⁷⁷³

1148. Third, the Claimants reiterate that it was reasonable and proportionate for Chevron to bring the RICO Litigation in order to prevent the enforcement of a "correctly anticipated" fraudulent, multi-billion dollar judgment. The proceedings in the Lago Agrio Litigation at that time, as well as discovery actions in the United States, provided evidence of the LAPs' fraud that implicated Ecuador as well as their intent to immediately enforce the fraudulent judgment. It would have been "foolish" for Chevron to sit idly by and not mitigate a foreseeable harm.¹⁷⁷⁴

1149. As for the reasonableness of Chevron's expenses, the Claimants assert that this is supported by the fact that Chevron incurred them even without any guarantee of recovery.¹⁷⁷⁵ The Claimants further argue that:

- (i) The fact that the global preliminary injunction ordered by the SDNY in 2011 was subsequently vacated by the Second Circuit does not mean that Chevron's RICO

¹⁷⁷¹ Reply, paras. 826-833; Track II Award, paras. 4.8-4.25; 5.17, 5.135-5.150, 5.17, 5.150, 5.228; Transcript of Procedural Hearing, 20-21 January 2014, Day 2, p. 267.

¹⁷⁷² Reply, paras. 834-839; Track II Award, paras. 4.27-4.29, 4.224-4.225, 4.232, 4.235, 4.237, 4.241, 4.253, 4.259, 4.263, 4.267, 4.270, 4.288, 4.302-4.303, 4.310, 4.318, 4.344-4.345, 4.473, 5.161-5.164, 5.229, 5.231.

¹⁷⁷³ Reply, paras. 840-842; Track II Award, paras. 4.37-4.38, 4.352, 4.356, 4.359, 4.362, 4.364, 4.365, 4.366, 4.371, 4.372, 4.373, 4.375, 4.405, 5.157.

¹⁷⁷⁴ Reply, paras. 843-845.

¹⁷⁷⁵ Reply, paras. 846-848; Lea Expert Report, para. 43; Litvack Expert Report, para. 41; Miller Expert Report, para. 57.

strategy was unsuccessful or otherwise unreasonable, considering that it resulted in a permanent injunction against any enforcement in the United States;¹⁷⁷⁶

- (ii) While Chevron did not prevail on all of its claims, none of those claims were vexatious or patently unmeritorious, and Chevron was “the clear winner in the RICO litigation”, since the critical factor is “the degree of success obtained”;¹⁷⁷⁷
- (iii) Chevron’s basis for claiming costs incurred in the RICO Litigation is not U.S. federal law but international law, to the extent that Ecuador’s breaches were the natural and foreseeable cause of the RICO Litigation and the Claimants’ damages in this category;¹⁷⁷⁸
- (iv) It is irrelevant if certain law firms did not formally appear in the RICO Litigation, since Ecuador’s breach of its international law obligations entitles Chevron to full reparation including all of the fees it incurred in connection with the RICO Litigation;¹⁷⁷⁹
- (v) Chevron undertakes in good faith not to seek or accept double recovery of any amounts actually collected in other proceedings;¹⁷⁸⁰
- (vi) Ecuador’s concerns about double-billing have been addressed by Chevron’s production of the underlying invoices supporting the claimed fees and costs;¹⁷⁸¹ and
- (vii) Seeking to hold Mr Donziger and others accountable for fraud and corruption and to prevent them from continuing to enforce a fraudulent judgment “is hardly a vendetta”, while the post-judgment filings identified by the Respondent are lawful and legitimate remedies available to Chevron.¹⁷⁸²

¹⁷⁷⁶ Reply, paras. 849-852.

¹⁷⁷⁷ Reply, para. 853.

¹⁷⁷⁸ Reply, para. 854.

¹⁷⁷⁹ Reply, para. 855.

¹⁷⁸⁰ Reply, para. 856.

¹⁷⁸¹ Reply, para. 857.

¹⁷⁸² Reply, para. 858.

2. The Respondent's Position

1150. The Respondent rejects the Claimants' submission that they are entitled to the legal fees and expenses from the RICO Litigation on two grounds: (i) a reasonable observer could not have foreseen that the Claimants would bring a RICO action; and (ii) the fees and costs incurred by Chevron from the RICO Litigation were unreasonable.¹⁷⁸³

(a) Unforeseeable and Unintended Consequences

1151. The Respondent argues that a reasonable observer could not have foreseen that the Claimants would bring a RICO action – designed to combat organized crime groups, with its attendant complicated, onerous burdens of proof – to forestall the enforcement of the Lago Agrio Judgment before it was even entered or became enforceable.¹⁷⁸⁴ Consequently, the Respondent submits that the alleged fees and expenses from the RICO Litigation are not compensable as direct damages.¹⁷⁸⁵

1152. In particular, the Respondent maintains that the RICO Litigation was not a predictable response to the Treaty breaches in the context where Texaco assured the SDNY that it would contest an Ecuadorian judgment “only in the limited circumstances permitted by New York’s Recognition of Foreign Country Money Judgment Act.”¹⁷⁸⁶ As such, it was not foreseeable that Chevron would deviate from its predecessor’s explicit commitment and instead launch a novel offensive under the complex federal RICO statute.¹⁷⁸⁷

1153. In support of its contention, the Respondent refers both to the Second Circuit and the opinion of the Claimants’ experts, all of which agree with the Respondent that the Claimants’ resort to a RICO action was “unorthodox”, “innovative,” and a “masterstroke”.¹⁷⁸⁸

¹⁷⁸³ Rejoinder, para. 1208.

¹⁷⁸⁴ Rejoinder, paras. 1211-1213.

¹⁷⁸⁵ Rejoinder, para. 1211.

¹⁷⁸⁶ Rejoinder, para. 1214; **R-4**, Texaco Inc.’s Reply Memorandum of Law in Support of Its Renewed Motions to Dismiss Based on Forum Non Conveniens and International Comity, *Aguinda v. Texaco, Inc.*, Case No. 93-Civ-7527 (SDNY), 25 January 1999, p. 21.

¹⁷⁸⁷ Rejoinder, para. 1214.

¹⁷⁸⁸ Rejoinder, paras. 1215-1216; **R-1563**, *Chevron Corp. v. Donziger*, 533 F.3d 74 (2d Cir. 2016), 8 August 2016, p. 137; Silver Expert Report, para. 177; Lea Expert Report, para. 63.

1154. For the Respondent, it was also not foreseeable that the Claimants would try to use a single expensive action in the United States to prevent pre-emptively the global enforcement of the Lago Agrio Judgment.¹⁷⁸⁹ In this respect, the Respondent emphasizes that the preliminary injunction entered by the SDNY was vacated by the Second Circuit on the grounds that such a global injunction against the enforcement of a foreign judgment was “radical” and would cause “grave[]” comity concerns.¹⁷⁹⁰

1155. Furthermore, the Respondent rejects the Claimants’ contention that the Respondent intended to inflict harm on the Claimants or that it intended the Claimants to pursue the RICO Litigation.¹⁷⁹¹ Nor did the Respondent intend for the Claimants to bring a complicated and expensive pre-emptive lawsuit in the United States in response to the Treaty breaches.¹⁷⁹² The Respondent criticizes the Claimants’ reliance on the Invictus Memorandum to argue otherwise, asserting that Ecuador “had absolutely nothing to do with the Invictus Memo.”¹⁷⁹³ The Respondent underscores that, as found by the Tribunal, Ecuador is separate and apart from Mr Donziger and the LAPs and that the conduct of the LAPs and their representatives is “not attributable to the Respondent under international law.”¹⁷⁹⁴

(b) Unreasonableness of the Fees

1156. Second, the Respondent submits that the Claimants are not entitled to recover fees and expenses from the RICO Litigation – regardless of whether they are characterized as direct or indirect damages – because the Claimants’ expenditures were simply unreasonable.¹⁷⁹⁵ Specifically, the Respondent avers that it has no duty to finance “a bloated action”, which was “neither necessary nor the most economical or efficient means

¹⁷⁸⁹ Rejoinder, para. 1217.

¹⁷⁹⁰ Rejoinder, para. 1218; **R-1558**, *Chevron Corp. v. Camacho Naranjo*, 667 F.3d 232 (2d Cir. 2012), 26 January 2012, p. 244.

¹⁷⁹¹ Rejoinder, paras. 1220, 1223.

¹⁷⁹² Rejoinder, para. 1221.

¹⁷⁹³ Rejoinder, para. 1222.

¹⁷⁹⁴ Rejoinder, para. 1222; Track II Award, para. 5.229.

¹⁷⁹⁵ Rejoinder, para. 1225.

of preventing the enforcement of the Lago Agrio Judgment” in the United States or elsewhere in the world.¹⁷⁹⁶

1157. Considering that only one out of the nine separate claims in the RICO Litigation – Count 3, for common law fraud – provided the basis for preventing the LAPs from enforcing the Lago Agrio Judgment in the United States, the Respondent argues that the Claimants could have pursued other less expensive means to achieve the same result.¹⁷⁹⁷ The Respondent further highlights that Chevron asserted only the common law fraud claim against all of the RICO Defendants, whereas it asserted the RICO counts against a subset that did not even include the LAPs.¹⁷⁹⁸ Even Chevron, according to the Respondent, conceded that its RICO claim was superfluous and immaterial and that, as opined by Prof Silver, the complexity of the RICO claim is what drove Chevron’s legal fees and expenses.¹⁷⁹⁹

1158. Accordingly, it is the Respondent’s submission that a “cheaper” fraud claim could have prevented enforcement of the Lago Agrio Judgment in the United States, in particular, when bringing a RICO claim to prevent enforcement of a foreign judgment was unprecedented, uncertain, and risky.¹⁸⁰⁰

1159. Furthermore, to the extent that the Claimants argue that the RICO Litigation was reasonable because it facilitated the Claimants’ goal to preclude enforcement of the Judgment on a global scale, the Respondent points out that the Second Circuit vacated the preliminary injunction and dismissed Count 9, holding that neither the New York Recognition Act nor the Declaratory Judgment Act could be used “to declare the [enforceability of a foreign judgment before the putative judgment-creditor could seek”

¹⁷⁹⁶ Counter-Memorial, para. 741; Rejoinder, para. 1227; **RE-44**, First Strong Report, para. 7.

¹⁷⁹⁷ Counter-Memorial, para. 756; Rejoinder, para. 1228; **R-1563**, *Chevron Corp. v. Donziger*, 533 F.3d 74 (2d Cir. 2016), 8 August 2016, p. 140.

¹⁷⁹⁸ Counter-Memorial, para. 757; Rejoinder, paras. 1229-1230; **R-1819**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, paras. 388-395.

¹⁷⁹⁹ Rejoinder, paras. 1229, 1231; Silver Expert Report, para. 177; **R-2106**, *Steven Donziger et al v. Chevron Corporation*, 137 S. Ct. 2268, No. 16-1178, Brief in Opposition in Petition for a Writ of Certiorari, 5 May 2017, pp. 3, 26; Memorial, Appendix 9, para. 8.

¹⁸⁰⁰ Counter-Memorial, para. 752; Rejoinder, para. 1233.

enforcement.¹⁸⁰¹ Thus, the Respondent emphasizes that the Claimants did not get the global injunction that they insist justifies their expenditures.¹⁸⁰²

1160. Similarly, as opined by Dr Strong, the Respondent posits that the constructive trust that the SDNY ultimately ordered in the RICO Litigation is unlikely to be enforceable outside the United States because it is a uniquely American doctrine that has no civil law counterpart.¹⁸⁰³

1161. Contrary to what the Claimants suggest, the Respondent contends that there was no urgency in defending against the Lago Agrio Judgment such that it was necessary for Chevron to incur the costs of the RICO Litigation.¹⁸⁰⁴ Further, there was no basis to believe that the LAPs would have tried to enforce in multiple U.S. jurisdictions simultaneously.¹⁸⁰⁵ Rather, the Invictus Memorandum, the Respondent notes, advised the LAPs not to seek enforcement in the United States without first obtaining favourable rulings in other jurisdictions.¹⁸⁰⁶ As demonstrated in their media statements, it was likewise “clear” to the Claimants’ attorneys at the time that they did not anticipate the LAPs bringing an enforcement action in the United States.¹⁸⁰⁷

1162. In fact, the Respondent submits that a reasonable litigant would have waited for the LAPs to attempt to enforce the Lago Agrio Judgment because it would have been far more economical, and more effective, for Chevron to defend against a U.S. recognition action.¹⁸⁰⁸ This is because, as explained by Professor Strong, recognition actions are

¹⁸⁰¹ Counter-Memorial, para.742; Rejoinder, para. 1241; **R-1558**, *Chevron Corp. v. Camacho Naranjo*, 667 F.3d 232 (2d Cir. 2012), 26 January 2012, pp. 245-246.

¹⁸⁰² Rejoinder, para. 1234.

¹⁸⁰³ Counter-Memorial, para. 743; Rejoinder, para. 1235; **RE-44**, First Strong Report, para. 88.

¹⁸⁰⁴ Rejoinder, para. 1238.

¹⁸⁰⁵ Counter-Memorial, para. 753.

¹⁸⁰⁶ Rejoinder, para. 1238; **C-903**, “Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated [DONZ00032520-51], p. 17.

¹⁸⁰⁷ Rejoinder, para. 1239; **R-2071**, Randy Mastro on The \$8 Billion Lawyer Joke, *Wall St. J. Opinion Journal*, available at <https://www.wsj.com/video/opinion-the-8-billion-lawyer-joke/43F54BBB-9A9C-48F8-A1A1-C6E214FD08B2.html>, 7 February 2012.

¹⁸⁰⁸ Counter-Memorial, para. 749.

relatively straightforward and faster than a RICO action.¹⁸⁰⁹ Dr Strong adds that if Chevron defeats a U.S. enforcement action, that defeat would have precluded subsequent enforcement actions in other U.S. courts pursuant to the U.S. Constitution’s Full Faith and Credit Clause and the doctrine of collateral estoppel.¹⁸¹⁰

1163. In the Respondent’s view, the Claimants’ rush to New York to pursue the RICO Litigation may have been counter-productive, considering that New York is widely considered an enforcement-friendly jurisdiction and that the court could have found the RICO Litigation to be an improper anticipatory suit, which, in turn, would not have precluded the LAPs from bringing an enforcement action in the United States.¹⁸¹¹

1164. While the Respondent believes it is “improper” to bring a proceeding in the United States for the purpose of obtaining discovery for use in another proceeding, it also avers that the Claimants have, in any event, failed to identify evidence gathered solely from the RICO Litigation that was integral to this Arbitration or to any enforcement proceedings.¹⁸¹²

1165. According to the Respondent, the Claimants have conceded in their earlier filings that they obtained much of the evidence presented in the RICO Litigation elsewhere and made “extensive use” of its Section 1782 evidence in the RICO Litigation.¹⁸¹³ The Respondent further points out that the majority of the evidence on which the Tribunal allegedly relied is trial testimony, not the product of discovery.¹⁸¹⁴ Even assuming that crucial evidence was obtained in the RICO Litigation, the Respondent maintains that the cost-benefit analysis does not justify spending a purported USD 330 million in the RICO Litigation when lower-cost proceedings could have yielded the same evidence.¹⁸¹⁵ In this respect, the Respondent, relying on Dr Strong’s opinion, argues that Chevron would have been

¹⁸⁰⁹ Counter-Memorial, paras. 750-751; Rejoinder, para. 1240; **RE-44**, First Strong Report, paras. 50-56; **RE-62**, Second Strong Expert Report, paras. 63-72.

¹⁸¹⁰ Counter-Memorial, para. 749; **RE-44**, First Strong Report, paras. 39, 45.

¹⁸¹¹ Rejoinder, paras. 1242, 1245; **RE-62**, Second Strong Expert Report, paras. 59-60.

¹⁸¹² Counter-Memorial, para. 740; Rejoinder, para. 1253; **RE-62**, Second Strong Expert Report, para. 75.

¹⁸¹³ Counter-Memorial, para. 732; Rejoinder, para. 1256; Memorial, para. 250; Fourth Veiga Witness Statement, para. 114.

¹⁸¹⁴ Rejoinder, para. 1255.

¹⁸¹⁵ Rejoinder, paras. 1257, 1271.

permitted to conduct discovery in a U.S. enforcement proceeding had the LAPs brought one.¹⁸¹⁶

1166. Contrary to the Claimants' contentions, the Respondent clarifies that the Tribunal explicitly disclaimed any "rel[iance] upon the judgments of the New York Courts in the RICO Litigation."¹⁸¹⁷ According to the Respondent, the Tribunal made limited use of the evidence that the Claimants obtained through the RICO Litigation.¹⁸¹⁸

- (i) *Judge Zambrano's testimony*: The Tribunal rejected Judge Zambrano's testimony in full and thus did not rely on the testimony in any respect. Therefore, in the Respondent's view, the only value that Judge Zambrano's testimony could have had was that it was unreliable.¹⁸¹⁹
- (ii) *Mr Donziger's testimony*: The Tribunal referred to Mr Donziger's both oral and written testimony just four times. By contrast, the Tribunal cited Mr Donziger's deposition testimony in Section 1782 Proceedings at least 17 times. Accordingly, the Tribunal's "extensive use" of Mr Donziger's testimony in issuing Track II Award was primarily referring to Donziger's testimony from his deposition in Chevron's Section 1782 action.¹⁸²⁰
- (iii) *Mr Donziger's diary entries*: The diary entries are not an evidentiary product of the RICO Litigation because, as repeatedly asserted by the Claimants, the diary entries are proof of the success of the Section 1782 Proceedings.¹⁸²¹
- (iv) *Judge Guerra's testimony*: Judge Guerra's testimony in the RICO Litigation was not the source of any unique evidence because the Tribunal received his testimony at the Track II hearing.¹⁸²² According to the Respondent, the Claimants omit to mention the Tribunal's concerns about corroborating his testimony because

¹⁸¹⁶ Rejoinder, paras. 1271-1273; **RE-44**, First Strong Report, para. 68.

¹⁸¹⁷ Counter-Memorial, para. 738; Rejoinder, para. 1258; Track II Award, para. 4.6.

¹⁸¹⁸ Counter-Memorial, paras. 734-735; Rejoinder, para. 1268; Track II Award, para. 5.150.

¹⁸¹⁹ Rejoinder, para. 1270.

¹⁸²⁰ Counter-Memorial, para. 737; Rejoinder, paras. 1260-1261; Track II Award, para. 4.28.

¹⁸²¹ Rejoinder, paras. 1263-1264.

¹⁸²² Rejoinder, para. 1266.

“Dr Guerra could colour his testimony to favour the Claimants as his benefactors during his exile from Ecuador.”¹⁸²³

1167. The Respondent further contests the Claimants’ argument that the RICO Litigation and the evidence obtained therein were used as persuasive authority in foreign enforcement proceedings.¹⁸²⁴ According to the Respondent, Chevron and its subsidiaries prevailed in the enforcement proceedings in Canada, Argentina, and Brazil on the basis that the subsidiaries had distinct legal personalities from Chevron and/or that the court lacked jurisdiction over Chevron.¹⁸²⁵ In fact, the Canadian appellate court explicitly disclaimed any reliance on the RICO Litigation by stating that the “court is not purporting to adopt the findings of the United States courts.”¹⁸²⁶

1168. In addition, the Respondent submits that the amount the Claimants allegedly spent on the RICO Litigation was patently unreasonable.¹⁸²⁷

1169. The Respondent criticizes the Claimants’ ends-justify-the-means approach to determine the reasonableness of the RICO Litigation fees, arguing that the proper test should instead be to consider whether the RICO Litigation offered the most favourable success-to-cost ratio when compared to other feasible alternatives.¹⁸²⁸ Simply put, the Respondent asserts that a reasonableness inquiry should focus on whether the Claimants could have achieved the same outcome at a fraction of the cost they claim to have incurred.¹⁸²⁹ In this respect, the Respondent stresses the need to take account of the intermediate decisions the Claimants made between initiating and concluding the RICO Litigation that had a huge impact on the reasonableness of a fee expenditure, including their decision to incur fees

¹⁸²³ Rejoinder, para. 1277; Track II Award, paras. 4.37.

¹⁸²⁴ Counter-Memorial, para. 739; Rejoinder, para. 1274.

¹⁸²⁵ Counter-Memorial, para. 739; Rejoinder, paras. 1275, 1277, 1279; **RE-38**, First García Pullés Expert Report, pp. 51-52; **C-2546**, STJ SEC 8542 Decision, 15 March 2018, p. 10.

¹⁸²⁶ Rejoinder, para. 1278; **C-2856**, *Yaiguaje et al. v. Chevron Corp., Chevron Canada Ltd., and Chevron Canada Finance Ltd.*, Decision of the Court of Appeal of Ontario (corrected), 23 May 2018, p. 36, fn 5.

¹⁸²⁷ Rejoinder, para. 1280.

¹⁸²⁸ Rejoinder, paras. 1282-1283.

¹⁸²⁹ Rejoinder, para. 1283.

of USD 731,205.09 to pursue a valueless unjust enrichment claim in the amount of USD 358.92.¹⁸³⁰

1170. According to the Respondent, the business judgment rule that shields certain corporate decisions from review is inapplicable in this context because “litigation strategy is not a business judgment”.¹⁸³¹

1171. Turning to the legal fees and expenses allegedly incurred in the RICO Litigation, the Respondent faults the Claimants for the “little scrutiny” applied to the alleged invoices to derive a conclusion that the expenditures were reasonable.¹⁸³² In the Respondent’s view, Mr Veiga’s “self-serving” statement that the RICO Litigation was “ultimately successful” is untenable, given that Chevron failed to obtain a global injunction even though the RICO Litigation was purportedly commenced “to preclude enforcement of the fraudulent judgment anywhere in the world as quickly as possible”.¹⁸³³

1172. As regards the Claimants’ experts, the Respondent avers that none of them considered the possibility of any alternatives to Chevron’s chosen course of action that offered cost savings and a higher or comparable chance of success.¹⁸³⁴ Further, the Respondent faults the Claimants’ experts for reviewing only 5% of the invoices and then concluding that only “few” instances of overbilling were found, without mentioning how “few” of these instances were spotted. Claimants’ experts also assumed that “because the ethical rules prohibit overbilling, and because lawyers behave ethically, then the fees must be reasonable.”¹⁸³⁵ In the Respondent’s view, the reliance on such assumption does not constitute a professional analysis because, as opined by Professor Brad Wendel, “compliance with any ethical duty is an issue that must be determined in a dispute, not something that can be taken for granted.”¹⁸³⁶

¹⁸³⁰ Counter-Memorial, paras. 770-771; Rejoinder, paras. 1285-1286.

¹⁸³¹ Rejoinder, para. 1287; **RE-66**, Wendel Expert Report, para. 76.

¹⁸³² Rejoinder, para. 1309.

¹⁸³³ Rejoinder, paras. 1299-1300; Fourth Veiga Witness Statement, para. 130; Silver Expert Report, para. 146.

¹⁸³⁴ Rejoinder, para. 1301.

¹⁸³⁵ Rejoinder, paras. 1303-1305, 1307; Lea Expert Report, paras. 12(l), 47-48; Ryan Expert Report, paras. 83-85, 97; Parsons Miller Expert Report, paras. 21, 33-34.

¹⁸³⁶ Rejoinder, para. 1307; **RE-66**, Wendel Expert Report, para. 38.

1173. Conversely, a careful review of the claimed invoices, the Respondent posits, shows that considerable time and money were spent by Chevron’s attorneys pursuing unnecessary and unreasonable activities, including filing (i) motions and subpoenas that the RICO court considered to be harassing, improper, and unnecessary, including oppositions to *pro hac* vice motions;¹⁸³⁷ and (ii) motions for summary judgments despite the RICO court’s warning that Chevron was likely “wasting [its] time” in so doing.¹⁸³⁸

1174. The Respondent points out that the following fees and expenses sought by the Claimants are unrelated to the claims or defences in the RICO Litigation or are unnecessarily costly:

- (i) legal work that was done prior to bringing the RICO Litigation, in particular, that undertaken on behalf of Chevron employees, Mr Veiga and Dr Pérez, neither of whom are a party to the RICO Litigation or this Arbitration;¹⁸³⁹
- (ii) a “series of false starts,” none of which are attributed to the RICO complaint that Chevron ultimately filed in the SDNY;¹⁸⁴⁰
- (iii) overstaffing of Chevron’s counsel team in hearings as acknowledged by Judge Kaplan, and rental fees of facilities for an unspecified number of attorneys without justification;¹⁸⁴¹
- (iv) work related to Count 9 – through which Chevron sought a pre-emptive declaratory judgment that the Lago Agrio Judgment was unenforceable worldwide – that was dismissed by the Second Circuit on appeal;¹⁸⁴²

¹⁸³⁷ Counter-Memorial, paras. 490, 784-785; **R-1837**, *Chevron Corp v. Maria Salazar and Steven Donziger*, S.D.N.Y. Case 1:11-cv-03718-LAK-JCF, D.E. 360 Memorandum and Order, 20 September 2011, p. 3; **R-1585**, *Chevron Corp. v. Maria Salazar*, D. OR. Case 6:11-mc-07003-TC, D.E. 36 Granting ELAW’s Petition for \$32,945.20 in Fees, 30 November 2011 (Order entered in *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL), p. 6.

¹⁸³⁸ Counter-Memorial, paras. 522-523, 772; **R-1613**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1318 Transcript of Proceedings, 26 July 2013, p. 14.

¹⁸³⁹ Counter-Memorial, para. 764; Rejoinder, para. 1291-1293, 1311.

¹⁸⁴⁰ Rejoinder, paras. 1294-1295.

¹⁸⁴¹ Counter-Memorial, paras. 780-781; **R-1614**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1798 Transcript of Proceedings, 10 December 2013, p. 838.

¹⁸⁴² Counter-Memorial, paras. 766-768; Rejoinder, paras. 1296-1297; **R-1558**, *Chevron Corp. v. Camacho Naranjo*, 667 F.3d 232 (2d Cir. 2012), 26 January 2012, p. 247.

- (v) preparation of unnecessary witnesses who were never called at trial and compilation of unnecessary exhibits;¹⁸⁴³
- (vi) three other counts (Count 4 for tortious interference with contract, Count 5 for trespass to chattels, and Count 6 for unjust enrichment) that were dismissed in their entirety;¹⁸⁴⁴ and
- (vii) work related to Chevron's internal shareholder relations.¹⁸⁴⁵

1175. The Respondent further contends that Chevron accepted invoices from attorneys that provided wholly inadequate descriptions of the work performed, or billed twice for the same work, or referring to activities that were billed by two different attorneys performing precisely the same task on the same day.¹⁸⁴⁶ Equally concerning, the Respondent notes, is the Claimants' approval of invoices that included charges for timekeepers not working and those that did not even include the names of the timekeepers.¹⁸⁴⁷

1176. In view of the above, the Respondent takes the view that the legal fees and expenses incurred by Chevron in connection with the RICO Litigation were not necessary, reasonable, or related to the Treaty violations.¹⁸⁴⁸ The Claimants could have simply waited to defend an enforcement action in the United States if the LAPs ultimately brought such an action.¹⁸⁴⁹ Instead, the RICO Litigation was pursued as part of Chevron's vendetta against Mr Donziger for which Chevron was willing to spend an extraordinary sum.¹⁸⁵⁰ Since Chevron pursued the RICO Litigation as part of its vendetta, the Respondent should not be asked to subsidize Chevron for its crusade to inflict maximum pain on Mr Donziger.¹⁸⁵¹

¹⁸⁴³ Counter-Memorial, para. 782.

¹⁸⁴⁴ Counter-Memorial, para. 769.

¹⁸⁴⁵ Rejoinder, para. 1312.

¹⁸⁴⁶ Counter-Memorial, paras. 774-777; Rejoinder, paras. 1310, 1313-1316.

¹⁸⁴⁷ Rejoinder, paras. 1318-1319.

¹⁸⁴⁸ Counter-Memorial, para. 791.

¹⁸⁴⁹ Counter-Memorial, para. 755; Rejoinder, para. 128.

¹⁸⁵⁰ Counter-Memorial, paras. 787, 791; Rejoinder, para. 1246.

¹⁸⁵¹ Rejoinder, para. 1252.

1177. The Respondent also highlights that Chevron obtained a money judgment from Mr Donziger in the amount of USD 813,602.71 in litigation costs, pursued post-judgment discovery on his wife, and filed motions to hold Mr Donziger in civil contempt of court.¹⁸⁵² In addition, the Respondent points out that certain Chevron attorneys testified against Mr Donziger at the criminal contempt proceedings initiated by the SDNY and facilitated the proceedings to disbar Mr Donziger in New York, the fees of which have been claimed as damages in this Arbitration under the RICO Litigation category.¹⁸⁵³

1178. In the alternative, if the Tribunal determines that the fees for the RICO Litigation are compensable, the Respondent argues that the Claimants should not be permitted to recover more than USD 32 million, the sum they requested before the SDNY for Chevron's fees and costs in the RICO Litigation.¹⁸⁵⁴ This is because, according to the Respondent, the Claimants are seeking to recover fees for precisely the same activities that Chevron sought to recover in the RICO Litigation as "the cost of the suit, including a reasonable attorneys' fee" pursuant to the RICO Act.¹⁸⁵⁵ Furthermore, any compensation awarded by the Tribunal in connection with the RICO Litigation, the Respondent submits, should be offset by any award that the Claimants could recover directly from the RICO Litigation in the SDNY, where the matter of Chevron's USD 32 million fees and costs remains pending.¹⁸⁵⁶

3. The Tribunal's Analysis

(a) Introduction

1179. The Claimants claim by way of direct or, in the alternative, incidental damages the amount of USD 323,180,099.51 for legal fees and expenses incurred between January 2009 and December 2018 in the RICO Litigation initiated by Chevron.¹⁸⁵⁷ The Respondent contests the recoverability of this amount, principally on two grounds: (i) a

¹⁸⁵² Counter-Memorial, para. 789-790; Rejoinder, paras. 1247-1248.

¹⁸⁵³ Rejoinder, paras. 1249-1251.

¹⁸⁵⁴ Rejoinder, paras. 1321-1322.

¹⁸⁵⁵ Rejoinder, paras. 1321, 1323-1324; **R-1603**, *Chevron Corp. v. Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1890 Memorandum of Law ISO Application for Attorneys' Fees, 18 March 2014, p. 2.

¹⁸⁵⁶ Rejoinder, para. 1325.

¹⁸⁵⁷ Reply, para. 794, Updated Appendix 2, pp. 2-143.

reasonable observer could not have foreseen that the Claimants would bring a RICO action; and (ii) the fees and costs incurred by Chevron in connection with the RICO Litigation were unreasonable.

1180. The Tribunal observes that this is the largest category of damages claimed in these proceedings. According to the Claimants, the more than USD 323 million in legal fees and expenses they claim is justified by the sheer complexity of the RICO Litigation, which has a docket sheet that is “almost 500 pages long and lists more than 2,200 separate entries”. The Claimants recount that the parties in the RICO Litigation filed more than 195 separate motions, with the RICO Defendants initiating 11 separate appeals, two petitions for mandamus, approximately 52 motions in the Second Circuit, and a petition for *certiorari* before the U.S. Supreme Court.¹⁸⁵⁸

1181. Due to its complexity and the significant amount of fees and costs claimed under this category, a more detailed account of what transpired in the RICO Litigation is in order.¹⁸⁵⁹ The Tribunal will thus structure its analysis by providing first a concise background of RICO, followed by a summary of the RICO Litigation proceedings, before setting out its analysis of the category as a whole. The category-level analysis will be followed by the Tribunal’s analysis of individual components and other issues identified by the Parties.

(b) Background of RICO

1182. RICO is a U.S. federal statute that provides for enhanced criminal penalties as well as civil remedies against individuals involved in activities conducted as part of a continuing criminal organization. Enacted in 1970 as Title IX of the broader Organized Crime Control Act, and codified at 18 U.S.C. §§ 1961-1968, RICO is intended primarily to combat the corrupt influence of organized crime.¹⁸⁶⁰ It was enacted in response to the growing influence of organized crime syndicates, particularly mafia families, who in the

¹⁸⁵⁸ Memorial, Appendix 9, para. 3.

¹⁸⁵⁹ For a detailed description of the procedural history of these proceedings, *see generally* Memorial, Appendix 9.

¹⁸⁶⁰ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, p. 340 (“RICO was drafted as a weapon to fight against organized crime.”)

1960s and 1970s had become “highly sophisticated, diversified, and widespread”, draining “billions of dollars from America’s economy”.¹⁸⁶¹

1183. In its statement of finding and purpose, the U.S. Congress noted that the purpose of RICO is, among others, “to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.”¹⁸⁶² RICO provides for civil and criminal penalties for persons who engage in a “pattern of racketeering activity”, drawn from a long list of predicate crimes, and who have a specified relationship to an “enterprise”.¹⁸⁶³ An “enterprise”, in turn, includes “any union or group of individuals associated in fact although not a legal entity” “associated together for a common purpose of engaging in a course of conduct”.¹⁸⁶⁴ While originally aimed at organized crime syndicates, RICO applies to “any person” who violates its provisions, and is intended “to be read broadly” in accordance with its “expansive language and overall approach.”¹⁸⁶⁵ Thus, over time, the application of RICO broadened to include cases involving a broad array of perpetrators operating in many different ways.¹⁸⁶⁶

1184. It is common ground between the Parties that pursuing a RICO action is both complex and costly. The Claimants recognize that “litigating a RICO case is an inherently costly endeavor . . . which requires a plaintiff to prove that the defendants violated multiple federal criminal laws over time and in connection with the operation of an enterprise.”¹⁸⁶⁷ Thus, Chevron had to “amass and present an extensive evidentiary record through documents, videos, fact witnesses, and experts”.¹⁸⁶⁸ Chevron retained 36 experts in a

¹⁸⁶¹ **RLA-703**, Organized Crime Control Act of 1970, Pub. L. 91–452, 84 Stat. 922 (1970).

¹⁸⁶² **RLA-703**, Organized Crime Control Act of 1970, Pub. L. 91–452, 84 Stat. 923 (1970).

¹⁸⁶³ *See, generally*, 18 U.S.C. §§ 1963-1964.

¹⁸⁶⁴ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, p. 354.

¹⁸⁶⁵ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, p. 340.

¹⁸⁶⁶ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, p. 340.

¹⁸⁶⁷ Memorial, Appendix 9, para. 8.

¹⁸⁶⁸ Memorial, Appendix 9, para. 8.

range of technical and legal subjects,¹⁸⁶⁹ prepared over 38 fact and expert witnesses for trial, and presented almost 3000 affirmative exhibits.¹⁸⁷⁰ The RICO defendants, on the other hand, introduced about 1,000 exhibits, submitted seven witness statements, and called six witnesses at trial.¹⁸⁷¹ The parties collectively produced more than 875,000 documents following contentious discovery proceedings.¹⁸⁷²

(c) *Summary of the RICO Litigation*

1185. At the outset, the Tribunal clarifies that the summary of the RICO Litigation that follows is primarily drawn from Appendix 9 to the Claimants' Memorial, which is largely uncontested by the Respondent as regards the underlying facts, albeit not as regards its implications for the Tribunal's current analysis. The Tribunal has also consulted extensively the case docket sheet for the RICO Litigation¹⁸⁷³ and numerous documents pertaining to those proceedings that have been filed by the Parties in this Arbitration, which encompass only a portion of a larger RICO Litigation case record.

1186. The Tribunal does not purport for this summary of the RICO Litigation to be exhaustive or to recount those proceedings in every detail. It is only meant to place in context its decisions regarding the compensation of the legal fees and expenses allegedly incurred in connection with those proceedings.

1. The RICO Complaint and Amended Complaint

1187. On 1 February 2011, Chevron filed a Complaint against Steven Donziger and his law office, the Stratus Defendants, Messrs Fajardo and Yanza, the organizations ADF and Selva Viva, as well as the named plaintiffs in the Lago Agrio Litigation (the LAPs).¹⁸⁷⁴ The action was filed before the SDNY and assigned to Judge Lewis A. Kaplan.¹⁸⁷⁵ Chevron pleaded nine (9) different claims for relief, including under 18 U.S.C. § 1962

¹⁸⁶⁹ Memorial, Appendix 9, para. 96.

¹⁸⁷⁰ Memorial, Appendix 9, para. 139.

¹⁸⁷¹ Memorial, Appendix 9, para. 139.

¹⁸⁷² Memorial, Appendix 9, para. 69.

¹⁸⁷³ **C-3037**, RICO Docket.

¹⁸⁷⁴ **R-1811**, *Chevron Corp. v. Donziger et al.*, Case No. 11-cv-00691 (SDNY), Complaint, 1 February 2011, paras. 8-19.

¹⁸⁷⁵ Memorial, Appendix 9, para. 1; **C-3037**, RICO Docket, ECF No. 1 (1 February 2011).

and New York state law,¹⁸⁷⁶ and prayed for, *inter alia*, equitable relief as appropriate, including a temporary restraining order, a preliminary injunction, and a permanent injunction against the enforcement of the Lago Agrio Judgment.¹⁸⁷⁷ Gibson, Dunn & Crutcher LLP represented Chevron as counsel of record in the RICO Litigation.¹⁸⁷⁸

1188. On 20 April 2011, following the issuance of the Lago Agrio Judgment, Chevron amended its Complaint (the “**Amended Complaint**”).¹⁸⁷⁹ The Amended Complaint (i) reiterated the nine claims for relief previously pleaded in Chevron’s original Complaint; (ii) included an additional defendant (Donziger & Associates, PLLC) and alleged additional “non-party co-conspirators”; (iii) clarified Chevron’s claims and the RICO Defendants’ alleged involvement in fraudulent activity; and (iv) specified that Count 9 (requesting declaratory and injunctive relief) was directed to the LAPs and Donziger’s organization (the ADF) only.¹⁸⁸⁰

1189. As pleaded in both the original Complaint and the Amended Complaint, Chevron’s nine claims for relief in the RICO Litigation, and the different subsets of defendants for each claim, are as follows:

- (i) Count 1 (against the RICO Defendants): Violations of the RICO statute, including a pattern of racketeering activity, witness tampering, and money laundering;
- (ii) Count 2 (against the RICO Defendants): Conspiracy to violate RICO;
- (iii) Count 3 (against all defendants): Fraud, including that the defendants “and their agents have knowingly misrepresented, omitted, and/or concealed material facts in their pleadings and representations before U.S. courts and before the Lago Agrio court”;

¹⁸⁷⁶ **R-1811**, *Chevron Corp. v. Donziger et al.*, Case No. 11-cv-00691 (SDNY), Complaint, 1 February 2011, para. 21, p. 11.

¹⁸⁷⁷ **R-1811**, *Chevron Corp. v. Donziger et al.*, Case No. 11-cv-00691 (SDNY), Complaint, 1 February 2011, pp. 146-147.

¹⁸⁷⁸ Memorial, Appendix 9, para. 1.

¹⁸⁷⁹ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011.

¹⁸⁸⁰ Memorial, Appendix 9, para. 12.

- (iv) Count 4 (against all defendants): Tortious interference with contract, namely that “Defendants have intentionally caused and continued to cause the Republic of Ecuador to repeatedly breach the 1995 Settlement Agreement and the 1998 Final Release”;
- (v) Count 5 (against all defendants): Trespass to chattels, or that the defendants “have engaged in a pattern of extortion, collusion, wrongdoing and deceit with an intent to interfere with Chevron’s property”;
- (vi) Count 6 (against all defendants): Unjust enrichment, or that the defendants “seek to obtain billions of dollars from Chevron through a fraudulent judgment . . . Defendants have been and will continue to be unjustly enriched by the benefits obtained due to the judgment itself”;
- (vii) Count 7 (against all defendants): Civil conspiracy, or that the defendants “agreed to participate in a common scheme against Chevron” and “intentionally participated in the furtherance of a plan or purpose to obtain property from Chevron”;
- (viii) Count 8 (against the Donziger Defendants): Violations of New York Judiciary law § 487, which provides that any attorney who “is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party . . . [i]s guilty of a misdemeanor”;
- (ix) Count 9 (against ADF and the LAPs¹⁸⁸¹): Request for declaratory judgment that the Lago Agrio Judgment against Chevron is unenforceable and non-recognizable worldwide. As described in greater detail below, Count 9 (Declaratory Judgment) was bifurcated from the remaining claims and proceeded apace independently of Counts 1-8.¹⁸⁸²

1190. As will be shown in the narration that follows, these claims for relief had different objectives and outcomes, as summarized below:

¹⁸⁸¹ Count 9 was directed against all defendants in the original Complaint, and was later circumscribed to the ADF and the LAPs in the Amended Complaint.

¹⁸⁸² Memorial, Appendix 9, para. 13; **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 136-161.

Claim	Targets	Relief prayed for	Outcome
Count 1 <i>(Violations of the RICO statute)</i>	RICO Defendants	1. General damages, trebled according to 18 U.S.C. § 1964(c); 2. Pre-judgment interest according to statute; 3. Reasonable attorneys' fees and costs according to 18 U.S.C. § 1964(c); 4. Equitable relief, including but not limited to a temporary restraining order, a preliminary injunction and a permanent injunction that bars defendants from any attempt to recognize or enforce the Lago Agrio Judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad.¹⁸⁸³	Survived to trial; equitable relief awarded (constructive trust on property traceable to the Lago Agrio Judgment and permanent injunction against enforcement in the United States) ¹⁸⁸⁴
Count 2 <i>(Conspiracy to violate RICO)</i>	RICO Defendants	1. General damages, trebled according to 18 U.S.C. § 1964(c); 2. Pre-judgment interest according to statute; 3. Reasonable attorneys' fees and costs according to 18 U.S.C. § 1964(c); 4. Equitable relief, including but not limited to a temporary restraining order, a preliminary injunction and a permanent injunction that bars	Survived to trial; equitable relief awarded (constructive trust on property traceable to the Lago

¹⁸⁸³ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 163-165.

¹⁸⁸⁴ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, pp. 299, 475-479.

Claim	Targets	Relief prayed for	Outcome
		defendants from any attempt to recognize or enforce the Lago Agrio Judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad. ¹⁸⁸⁵	Agrio Judgment and permanent injunction against enforcement in the United States) ¹⁸⁸⁶
Count 3 (<i>Fraud</i>)	All defendants	1. General damages according to proof at trial; 2. Equitable relief, including but not limited to a temporary restraining order, a preliminary injunction and a permanent injunction that bars defendants from any attempt to recognize or enforce the Lago Agrio Judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad; 3. Punitive damages in an amount to be proven at trial.¹⁸⁸⁷	Partly dismissed, ¹⁸⁸⁸ partly survived to trial; equitable relief awarded (constructive trust on property traceable to the Lago Agrio Judgment and permanent injunction

¹⁸⁸⁵ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 163-165.

¹⁸⁸⁶ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, pp. 299, 475-479.

¹⁸⁸⁷ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 163-165.

¹⁸⁸⁸ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, p. 53.

Claim	Targets	Relief prayed for	Outcome
			against enforcement in the United States) 1889
Count 4 (<i>Tortious interference with contract</i>)	All defendants	1. General damages according to proof at trial; 2. Equitable relief, including but not limited to a temporary restraining order, a preliminary injunction and a permanent injunction that bars defendants from any attempt to recognize or enforce the Lago Agrio Judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad; 3. Punitive damages in an amount to be proven at trial. ¹⁸⁹⁰	Dismissed before trial for being time-barred ¹⁸⁹¹
Count 5 (<i>Trespass to chattels</i>)	All defendants	1. General damages according to proof at trial; 2. Equitable relief, including but not limited to a temporary restraining order, a preliminary injunction and a permanent injunction that bars	Dismissed before trial for failure to plead a cause of action ¹⁸⁹³

¹⁸⁸⁹ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, pp. 299, 339, 475-479.

¹⁸⁹⁰ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 163-165.

¹⁸⁹¹ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, p. 53.

¹⁸⁹³ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, p. 53.

Claim	Targets	Relief prayed for	Outcome
		defendants from any attempt to recognize or enforce the Lago Agrio Judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad; 3. Punitive damages in an amount to be proven at trial. ¹⁸⁹²	
Count 6 <i>(Unjust enrichment)</i>	All defendants	1. General damages according to proof at trial; 2. Equitable relief, including but not limited to a temporary restraining order, a preliminary injunction and a permanent injunction that bars defendants from any attempt to recognize or enforce the Lago Agrio Judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad. ¹⁸⁹⁴	Thrice dismissed before trial for being premature ¹⁸⁹⁵
Count 7 <i>(Civil conspiracy)</i>	All defendants	1. General damages according to proof at trial; 2. Equitable relief, including but not limited to a temporary restraining order, a preliminary injunction and a permanent injunction that bars	Survived to trial; cause of action recognized but not distinctively

¹⁸⁹² **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 163-165.

¹⁸⁹⁴ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 163-165.

¹⁸⁹⁵ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, p. 53; **R-1593**, Memorandum Endorsement, 12 March 2013, p. 2; **C-3037**, RICO Docket, ECF No. 1662 (1 November 2013).

Claim	Targets	Relief prayed for	Outcome
		defendants from any attempt to recognize or enforce the Lago Agrio Judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad; 3. Punitive damages in an amount to be proven at trial. ¹⁸⁹⁶	addressed in respect of the equitable relief that was ultimately granted ¹⁸⁹⁷
Count 8 (Violations of New York Judiciary Law)	Donziger Defendants	1. General damages trebled according to Judiciary Law § 487; 2. Reasonable attorneys' fees and costs according to Judiciary Law § 487. ¹⁸⁹⁸	Survived to trial; no relief awarded ¹⁸⁹⁹
Count 9 (Declaratory Judgment)	ADF and LAPs	1. Declaration that the Lago Agrio Judgment is non-recognizable and unenforceable; 2. Equitable relief, including but not limited to a temporary restraining order, a preliminary injunction and a permanent injunction that bars the ADF and the LAPs from any attempt to recognize or enforce the	Global preliminary injunction issued; ¹⁹⁰¹ claim bifurcated and later dismissed at

¹⁸⁹⁶ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 163-165.

¹⁸⁹⁷ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, p. 299.

¹⁸⁹⁸ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 163-165.

¹⁸⁹⁹ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, p. 409.

¹⁹⁰¹ **C-972**, *Chevron Corp. v. Donziger et al.*, Case No. 11-cv-00691, United States District Court for the Southern District of New York, Opinion, 7 March 2011, p. 125.

Claim	Targets	Relief prayed for	Outcome
		Lago Agrio Judgement in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad. ¹⁹⁰⁰	discovery stage ¹⁹⁰²

2. Temporary Restraining Order and Preliminary Injunction

1191. Meanwhile, on 3 February 2011, the SDNY issued an Order, on the basis of Chevron’s original Complaint, asking the defendants to show cause why a temporary restraining order and preliminary injunction should not be issued.¹⁹⁰³ On 8 February 2011, Messrs Hugo Gerardo Camacho Naranjo and Mr Javier Piaguaje Payaguaje, two of the LAPs impleaded in the Complaint, filed a memorandum of law in opposition to Chevron’s application for a temporary restraining order.¹⁹⁰⁴ Messrs Camacho and Piaguaje (hereafter the “**LAP Representatives**”) are the only two individual LAPs who appeared and defended the lawsuit.

1192. On 9 February 2011, the SDNY granted the temporary restraining order requested by Chevron, preventing Mr Donziger and the LAPs from “funding, commencing, prosecuting, advancing in any way, or receiving benefit from, directly or indirectly, any action or proceeding for recognition or enforcement of any judgment entered against Chevron” in the then-pending Lago Agrio Litigation.¹⁹⁰⁵ The SDNY scheduled an oral argument on 18 February 2011 for Chevron’s application for a preliminary injunction.¹⁹⁰⁶ The temporary restraining order, originally lasting to noon of 22 February 2011, was subsequently extended until 8 March 2011 “in order to facilitate careful consideration of

¹⁹⁰⁰ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 163-165.

¹⁹⁰² **R-1558**, *Chevron Corp. v. Camacho Naranjo*, 667 F.3d 232 (2d Cir. 2012), 26 January 2012, p. 2.

¹⁹⁰³ **C-3037**, RICO Docket, ECF No. 4 (3 February 2011).

¹⁹⁰⁴ **C-3037**, RICO Docket, ECF No. 61 (8 February 2011).

¹⁹⁰⁵ Memorial, Appendix 9, para. 14; **C-963**, *Chevron Corporation v. Steven Donziger, et al.*, No. 11CV691(LAK), Order on Plaintiff’s Motion for a Temporary Restraining Order, 8 February 2011, p. 2.

¹⁹⁰⁶ **C-3037**, RICO Docket, ECF No. 79 (9 February 2011).

[Chevron’s] motion for preliminary injunction” against the enforcement of the Lago Agrio Judgment.¹⁹⁰⁷

1193. On 7 March 2011, following exchange of briefings and an oral argument on the motion, the SDNY issued a 131-page Order granting in part and denying in part Chevron’s request for a preliminary injunction. All the defendants, save for the Stratus Defendants, were:

enjoined and restrained, pending the final determination of this action, 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 in *Maria Aguinda y Otros v. Chevron Corporation*, No. 002-2003, in the Provincial Court of Justice of Sucumbios, Ecuador (hereinafter the “*Lago Agrio Case*”), 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* (collectively, a “Judgment”), or for prejudgment seizure or attachment of assets, outside the Republic of Ecuador, based upon a Judgment.¹⁹⁰⁸

1194. In the same Order, the SDNY noted the “parties’ interest in having the enforceability and recognizability of the [Lago Agrio Judgment] outside of Ecuador determined without unnecessary delay” and thus advised that “[t]he parties therefore may move promptly to sever Count 9 of the complaint, the declaratory judgment claim, and to establish and appropriate schedule for its prompt resolution.”¹⁹⁰⁹

1195. The parties, as directed by the SDNY, met-and-conferred on several occasions to seek an agreement on the scope of the preliminary injunction. These meetings proved unsuccessful, and on 13 April 2011, Chevron filed a supplemental statement reporting that the parties, despite their efforts, were unable to reach an agreement regarding the form of the preliminary injunction.¹⁹¹⁰

¹⁹⁰⁷ **C-964**, *Chevron Corporation v. Steven Donziger, et al.*, No. 11CV691(LAK), Order extending Chevron’s temporary restraining order, 14 February 2011.

¹⁹⁰⁸ **C-972**, *Chevron Corp. v. Donziger et al.*, Case No. 11-cv-00691, United States District Court for the Southern District of New York, Opinion, 7 March 2011, p. 125.

¹⁹⁰⁹ **C-972**, *Chevron Corp. v. Donziger et al.*, Case No. 11-cv-00691, United States District Court for the Southern District of New York, Opinion, 7 March 2011, pp. 125-126.

¹⁹¹⁰ Memorial, Appendix 9, para. 18.

3. Second Circuit Proceedings

1196. In the interim, on 24 March 2011, the LAP Representatives noticed an appeal to the Second Circuit, challenging the 7 March 2011 preliminary injunction.¹⁹¹¹ The LAP Representatives also moved to stay the proceedings before the SDNY while their Second Circuit appeal was pending.¹⁹¹² Relatedly, on 1 April 2011, the Donziger Defendants appealed the same Order to the Second Circuit, which was later consolidated with the LAP Representatives' appeal.¹⁹¹³

1197. On 12 May 2011, the Second Circuit denied the LAP Representatives' request for a stay of proceedings pending appeal of the preliminary injunction, but granted partial stay "insofar as the preliminary injunction restrains activities other than commencing, prosecuting, or receiving benefit from recognition, enforcement, or prejudgment seizure or attachment proceedings".¹⁹¹⁴

1198. On 2 June 2011, the LAP Representatives and the Donziger Defendants filed their merits briefs on the pending appeal before the Second Circuit.¹⁹¹⁵ Oral argument was scheduled and held on 16 September 2011.¹⁹¹⁶

1199. Relatedly, on 2 June 2011, the LAP Representatives also filed a petition for mandamus requesting the Second Circuit to order Judge Kaplan to recuse himself from the case.¹⁹¹⁷ This mandamus petition was later consolidated with the LAP Representatives' and the Donziger Defendants' pending appeal.¹⁹¹⁸

¹⁹¹¹ **C-3037**, RICO Docket, ECF No. 233 (24 March 2011).

¹⁹¹² **C-3037**, RICO Docket, ECF No. 237 (29 March 2011).

¹⁹¹³ Memorial, Appendix 9, para. 41.

¹⁹¹⁴ ; Memorial, Appendix 9, para. 20; **C-3039**, *Chevron Corp. v. Pablo Fajardo Mendoza*., Docket for Case No. 11-1150 (2d Cir.), referencing Order, 12 May 2011, ECF No. 135.

¹⁹¹⁵ **C-3039**, *Chevron Corp. v. Pablo Fajardo Mendoza*., Docket for Case No. 11-1150 (2d Cir.), referencing Order, 12 May 2011, ECF Nos. 159, 163.

¹⁹¹⁶ Memorial, Appendix 9, paras. 17, 41.

¹⁹¹⁷ **C-3038**, *In re: Hugo Gerardo Camacho*, No. 11-2259 (2d Cir.), Docket, Writ of Mandamus, 6 June 2011, ECF No. 1.

¹⁹¹⁸ **C-3038**, *In re: Hugo Gerardo Camacho*, No. 11-2259 (2d Cir.), Docket, Writ of Mandamus, 6 June 2011, ECF No. 31.

4. Bifurcation of Count 9 and Dismissal by Second Circuit

1200. Meanwhile, on 11 March 2011, Chevron – following the SDNY’s 7 March 2011 Order – asked the SDNY to hold a bench trial and “bifurcate the Ninth Claim for Relief – the request for a declaratory judgment that the Lago Agrio judgment against Chevron is non-recognizable and enforceable – in whole or in part, from the other claims for relief,” to expedite decision on this claim for relief,¹⁹¹⁹ citing necessity on account of the Invictus Memorandum enforcement strategy.¹⁹²⁰ The Donziger Defendants, the Stratus Defendants, and the LAP Representatives opposed Chevron’s motion to bifurcate and requested an oral argument on the issue of bifurcation.¹⁹²¹

1201. On 16 March 2011, the Donziger Defendants filed a demand for trial by jury.¹⁹²² This was followed by similar demands from the Stratus Defendants¹⁹²³ and the LAP Representatives.¹⁹²⁴

1202. On 15 April 2011, the SDNY issued an order granting Chevron’s motion to bifurcate Count 9 and set an expedited schedule to ensure that Count 9 would proceed apace.¹⁹²⁵ Noting the defendants’ objections regarding a right to trial by jury, the SDNY ruled:

The interests of justice, convenience, the avoidance of prejudice, and the desirability of an expedited resolution of Count 9 all support conducting a separate trial on that claim. Chevron’s motion to bifurcate Count 9 therefore is granted. The Court, however, retains complete flexibility to ensure that the matter is handled appropriately and that any Seventh Amendment [trial by jury] rights are preserved. It therefore will stand ready to consider changes to this order, should circumstances warrant, as the matter proceeds.¹⁹²⁶

1203. On 26 April 2011, the LAP Representatives challenged Judge Kaplan’s impartiality and filed an order to show cause why Judge Kaplan should not be recused, arguing that “the Court bifurcated Chevron’s ninth claim of relief, maximizing the risk that the Ecuadorian

¹⁹¹⁹ Memorial, Appendix 9, paras. 21-22 **C-3037**, RICO Docket, ECF No. 199 (11 March 2011).

¹⁹²⁰ **C-903**, “Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated [DONZ00032520-51].

¹⁹²¹ Memorial, Appendix 9, para. 21; **C-3037**, RICO Docket, ECF Nos. 220, 223, 224 (21 March 2011).

¹⁹²² **C-3037**, RICO Docket, ECF No. 212 (16 March 2011).

¹⁹²³ **C-3037**, RICO Docket, ECF No. 218 (20 March 2011).

¹⁹²⁴ **C-3037**, RICO Docket, ECF No. 226 (21 March 2011).

¹⁹²⁵ Memorial, Appendix 9, para. 23; **C-3037**, RICO Docket, ECF Nos. 278, 279 (15 April 2011).

¹⁹²⁶ **C-3037**, RICO Docket, ECF No. 278 (15 April 2011).

Plaintiffs and Defendant Donziger will be deprived of their Seventh Amendment [*i.e.*, trial by jury] rights, all the while taking steps to insulate its decision from meaningful appellate review.”¹⁹²⁷

1204. On 9 May 2011, following exchange of submissions, Judge Kaplan issued an order denying the RICO Defendants’ motion for his recusal.¹⁹²⁸

1205. Subsequently, Mr Donziger sought to intervene as a defendant in the Count 9 proceedings. Following an exchange of submissions, on 31 May 2011, the SDNY partially granted Mr Donziger’s request and allowed for limited intervention due to the possibility of factual overlap.¹⁹²⁹

1206. On 31 May 2011, the SDNY also issued an Order severing Count 9 from the Amended Complaint and allowing it to proceed as its own action¹⁹³⁰ with Chevron as the plaintiff, the 47 individual LAPs and ADF as the defendants, and the Donziger Defendants as intervenors.¹⁹³¹ The SDNY generated a new docket pertaining only to Count 9.

1207. Following the severance of Count 9, on 2 June 2011, the LAP Representatives sought a stay of discovery in the Count 9 action pending their Second Circuit appeal regarding the 7 March 2011 preliminary injunction, including a temporary stay pending the court’s decision on the stay.¹⁹³² They advanced two main arguments: (i) Count 9 would require a lesser discovery burden, and (ii) they required all of their resources to be focused on the expedited Second Circuit appeal.¹⁹³³

1208. After briefing, on 14 June 2011 the SDNY denied the request for stay of the Count 9 proceedings.¹⁹³⁴ Discovery on the Count 9 proceedings continued. Chevron continued to

¹⁹²⁷ Memorial, Appendix 9, para. 24.

¹⁹²⁸ **C-3037**, RICO Docket, ECF No. 310 (9 May 2011).

¹⁹²⁹ Memorial, Appendix 9, para. 26; **C-3037**, RICO Docket, ECF No. 327 (31 May 2011).

¹⁹³⁰ **C-3037**, RICO Docket, ECF No. 328 (31 May 2011).

¹⁹³¹ **C-3037**, RICO Docket, ECF No. 328 (31 May 2011).

¹⁹³² Memorial, Appendix 9, para. 28; **C-3041**, RICO Count 9 Docket, ECF No. 4 (2 June 2011).

¹⁹³³ Memorial, Appendix 9, para. 28.

¹⁹³⁴ Memorial, Appendix 9, para. 31; **C-3041**, RICO Count 9 Docket, ECF No. 33 (14 June 2011).

seek the assistance of the court to compel discovery and depositions from the defendants.¹⁹³⁵

1209. On 19 September 2011, in the midst of discovery proceedings for Count 9, the Second Circuit – acting on the earlier appeal and mandamus petition of the LAP Representatives – issued an Order which (i) denied the mandamus petition to compel Judge Kaplan to recuse himself, (ii) vacated the preliminary injunction issued by the SDNY on 7 March 2011, and (iii) stayed the proceedings on Count 9.¹⁹³⁶ The operative part of the 19 September 2011 Order reads:

Upon due consideration, it is hereby ORDERED that the mandamus petition, docketed under 11-2259-op is DENIED. IT IS FURTHER ORDERED that in the appeal [from] the issuance of a preliminary injunction issued in *Chevron Corp v. Donziger*, 768 F. Supp. 2d 58a, 660 (S.D.N.Y. 2011), docketed in this Court under 11-1150-cv, the preliminary injunction issued by the District Court on Marc[h] 7, 2011 is VACATED in its entirety upon entry of this Order. IT IS FURTHER ORDERED that the motion for a stay of the District Court's proceedings on Count 9 of the Compliant, renewed by counsel at oral argument before this Court on Sep. 16, 2011 is GRANTED.¹⁹³⁷

1210. With proceedings in Count 9 stayed, proceedings before the Second Circuit continued. On 26 January 2012, the Second Circuit issued an Opinion deciding the appeal, the dispositive portion of which read:

Accordingly, for the foregoing reasons and consistent with our September 19, 2011 order, the judgment of the district court is REVERSED and the preliminary injunction VACATED. We REMAND to the district court with the instruction to DISMISS Chevron's claim for injunctive and declaratory relief under the Recognition Act in its entirety.¹⁹³⁸

1211. In dismissing Count 9 in its entirety, the Second Circuit explained that New York law does not grant a putative judgment-debtor a cause of action to challenge a foreign judgment before enforcement of such judgment is sought, and judgment-debtors can only challenge a foreign judgment's validity defensively in response to an attempted

¹⁹³⁵ Memorial, Appendix 9, paras. 32-40.

¹⁹³⁶ **C-3041**, RICO Count 9 Docket, ECF No. 361 (19 September 2011). *See also*, **C-3039**, *Chevron Corp. v. Pablo Fajardo Mendoza*, Docket for Case No. 11-1150 (2d Cir.), referencing Order, 12 May 2011, ECF No. 597; **C-3038**, *In re: Hugo Gerardo Camacho*, No. 11-2259 (2d Cir.), Docket, Writ of Mandamus, 6 June 2011, ECF No. 75.

¹⁹³⁷ **C-3041**, RICO Count 9 Docket, ECF No. 361 (19 September 2011).

¹⁹³⁸ **R-1558**, *Chevron Corp. v. Camacho Naranjo*, 667 F.3d 232 (2d Cir. 2012), 26 January 2012, p. 2.

enforcement.¹⁹³⁹ Following the Second Circuit Opinion, the case was remanded to the SDNY and Count 9 was accordingly dismissed.¹⁹⁴⁰

1212. On 25 May 2012, Chevron filed with the U.S. Supreme Court a petition for *certiorari* seeking review of the Second Circuit’s 26 January 2012 Opinion vacating the preliminary injunction and dismissing Count 9. Chevron’s petition was denied by the U.S. Supreme Court with finality on 9 October 2012.¹⁹⁴¹

5. Defendants’ Motions to Dismiss

1213. Reverting to Chevron’s original Complaint of 1 February 2011, on 30 March 2011, the Donziger Defendants filed a motion to dismiss that Complaint, primarily on the grounds that (i) RICO lacked extraterritorial effect; (ii) Chevron allegedly failed to articulate sufficient “predicate” acts that would fall under the scope of RICO, and (iii) Chevron’s claims for relief “fail to state a claim upon which [a] Court can grant relief.”¹⁹⁴²

1214. On 4 May 2011, the Donziger Defendants renewed their motion to dismiss in light of Chevron’s Amended Complaint of 20 April 2011.¹⁹⁴³ The Stratus Defendants similarly filed a motion to dismiss the Amended Complaint on 17 May 2011.¹⁹⁴⁴ Chevron opposed both the Donziger Defendants’ and Stratus Defendants’ motions to dismiss.¹⁹⁴⁵

1215. On 14 May 2012, following further briefings, the SDNY issued an Opinion partially granting and partially denying the Donziger Defendants’ motion to dismiss. The SDNY disagreed with Mr Donziger regarding the RICO claims, finding that the Amended Complaint “adequately [] alleged at least one predicate act of extortion” and that the

¹⁹³⁹ **R-1558**, *Chevron Corp. v. Camacho Naranjo*, 667 F.3d 232 (2d Cir. 2012), 26 January 2012, p. 2.

¹⁹⁴⁰ **C-3037**, RICO Docket, ECF No. 390 (16 February 2012).

¹⁹⁴¹ Memorial, Appendix 9, para. 44; **C-3042**, *Chevron Corp. v. Naranjo*, Petition Denied, U.S. Supreme Court Dkt. No. 11-1428, 25 May 2012.

¹⁹⁴² Memorial, Appendix 9, paras. 49-51.

¹⁹⁴³ **C-3037**, RICO Docket, ECF No. 302 (4 May 2011). *See* para. 1188 above.

¹⁹⁴⁴ **C-3037**, RICO Docket, ECF No. 320 (17 May 2011).

¹⁹⁴⁵ **C-3037**, RICO Docket, ECF No. 324 (18 May 2011), ECF No. 333 (3 June 2011).

asserted RICO claims were not essentially extraterritorial in focus.¹⁹⁴⁶ However, the SDNY found that:

- (i) The tortious interference claim (Count 4) was time-barred;
- (ii) The Amended Complaint failed to adequately plead a trespass to chattels claim (Count 5) under New York law; and
- (iii) The unjust enrichment claim (Count 6) was premature, thus dismissing these counts in their entirety, without prejudice to the claim for damages under Count 6.¹⁹⁴⁷
- (iv) The SDNY also granted dismissal to the extent that so much of Count 3 was premised on detrimental reliance.¹⁹⁴⁸

1216. On 24 May 2012, the SDNY issued an Opinion regarding the Stratus Defendants' motion to dismiss, largely identical to its Opinion dated 14 May 2012.¹⁹⁴⁹

1217. On 12 February 2013, Chevron moved for reconsideration of the SDNY's 14 May 2012 Opinion, requesting the reinstatement of its claim under Count 6 for unjust enrichment.¹⁹⁵⁰ Following exchange of briefings, Chevron's motion was denied by the SDNY on 12 March 2013.¹⁹⁵¹ Chevron made a second attempt to reinstate its Count 6 claim,¹⁹⁵² which the LAP Representatives opposed.¹⁹⁵³ The SDNY summarily denied Chevron's second attempt through an Order dated 1 November 2013.¹⁹⁵⁴

¹⁹⁴⁶ Memorial, Appendix 9, para. 52.

¹⁹⁴⁷ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, pp. 43-49, 53; Memorial, Appendix 9, para. 52.

¹⁹⁴⁸ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, p. 53.

¹⁹⁴⁹ Memorial, Appendix 9, para. 53.

¹⁹⁵⁰ **C-3037**, RICO Docket, ECF Nos. 782-785 (12 February 2013).

¹⁹⁵¹ **C-3037**, RICO Docket, ECF No. 889 (12 March 2013).

¹⁹⁵² **C-3037**, RICO Docket, ECF Nos. 1470-1473 (30 September 2013).

¹⁹⁵³ **C-3037**, RICO Docket, ECF No. 1511 (8 October 2013).

¹⁹⁵⁴ **C-3037**, RICO Docket, ECF No. 1662 (1 November 2013).

1218. Chevron's motions to reinstate Count 6 having been unsuccessful, Chevron's claims for tortious interference (Count 4), trespass to chattels (Count 5) and unjust enrichment (Count 6) were ultimately dismissed.¹⁹⁵⁵

6. Donziger and Stratus Counterclaims

1219. Meanwhile, on 7 May 2011, Mr Donziger filed his amended answer prior to the bifurcation of Count 9. With leave of court, on 28 November 2012, Mr Donziger filed another amended answer asserting counterclaims against Chevron, in particular claims of fraud and duress.

1220. On 24 December 2012, Chevron filed a motion to dismiss Mr Donziger's counterclaims. After briefing, the SDNY ultimately granted Chevron's motion, dismissing the Donziger Defendants' counter-claims on 29 July 2013.¹⁹⁵⁶

1221. In the interim, the Stratus Defendants filed their answer to the Amended Complaint on 6 June 2012. After briefing, and with leave of court, on 1 December 2013, the Stratus Defendants filed an amended answer with a counterclaim of defamation against Chevron.¹⁹⁵⁷

7. Stratus Settlement

1222. Subsequently, Chevron and the Stratus Defendants, including Mr Douglas Beltman and Ms Ann Maest, entered into an agreement settling the claims against the Stratus Defendants in the RICO Litigation. Thus, on 22 March 2013, Chevron and the Stratus Defendants filed a Joint Motion seeking, among others, an order dismissing Chevron's claims against the Stratus Defendants.¹⁹⁵⁸

1223. Thereafter, the non-settling defendants (the Donziger Defendants and the LAP Representatives) moved to compel the production of the declarations of Mr Beltman and

¹⁹⁵⁵ Memorial, Appendix 9, paras. 54-55.

¹⁹⁵⁶ Memorial, Appendix 9, paras. 46, 48; **C-3037**, RICO Docket, ECF No. 1321 (29 July 2013).

¹⁹⁵⁷ Memorial, Appendix 9, para. 47.

¹⁹⁵⁸ Memorial, Appendix 9, para. 56.

Ms Maest resulting from the settlement. This motion was ultimately denied by the SDNY on 18 March 2013.¹⁹⁵⁹

1224. On 8 April 2013, the SDNY granted Chevron's and the Stratus Defendants' joint motion for, among others, voluntary dismissal and dismissed Chevron's action against the Stratus Defendants and the latter's related counterclaims with prejudice, without award of costs or attorneys' fees.¹⁹⁶⁰ On 11 April 2013, the Stratus Defendants and Chevron obtained a voluntary dismissal order which satisfied the conditions precedent to the settlement agreement between them and rendered that agreement binding.¹⁹⁶¹

8. Chevron's First Motion for Partial Summary Judgment

1225. On 1 March 2012, Chevron filed a motion for summary judgment on the RICO defendants' affirmative defences of *res judicata* and collateral estoppel, arguing that these defences should already be decided for lack of a genuine issue as to any material fact.¹⁹⁶² On 31 July 2012, after briefing, the SDNY partially granted Chevron's motion, dismissing the Donziger Defendants' and the LAP Representatives' affirmative defences of *res judicata* but reserving their defences regarding the recognizability and enforceability of the Lago Agrio Judgment.¹⁹⁶³

9. Discovery Issues

1226. The RICO Litigation was characterized by long, contentious, and voluminous discovery process, involving several incidents as well as the exchange of hundreds of thousands of documents well until 2013. According to Chevron, it had to "utilize many attorney resources and expend significant amounts of time and money on discovery-related tasks, such as reviewing hundreds of thousands of pages of evidence produced by the [RICO defendants], taking and defending depositions, reviewing, (where appropriate) logging

¹⁹⁵⁹ Memorial, Appendix 9, paras. 57-58.

¹⁹⁶⁰ Memorial, Appendix 9, para. 59; **C-3037**, RICO Docket, ECF No. 988 (8 April 2013).

¹⁹⁶¹ Memorial, Appendix 9, para. 58; **C-3037**, RICO Docket, ECF No. 1002 (11 April 2013).

¹⁹⁶² Memorial, Appendix 9, para. 60; **C-3037**, RICO Docket, ECF No. 396 (1 March 2012).

¹⁹⁶³ Memorial, Appendix 9, para. 61; **C-3037**, RICO Docket, ECF No. 550 (31 July 2012).

communications involving Chevron and its agents, and otherwise overcoming the [d]efendants' repeated attempts to obstruct Chevron's discovery efforts."¹⁹⁶⁴

1227. In addition to voluminous written discovery requests from both parties requiring several motions to compel, Chevron also propounded dozens of interrogatories to the defendants, as well as hundreds of requests for admission.¹⁹⁶⁵ Ultimately, the RICO Defendants produced more than 500,000 documents to Chevron.¹⁹⁶⁶ For their part, the defendants issued voluminous discovery requests to Chevron, and Chevron ultimately produced more than 375,000 documents to the RICO defendants in response to these requests, in addition to privilege logs.¹⁹⁶⁷

1228. Apart from discovery issues involving the parties, there were also significant issues involving third-party discovery.¹⁹⁶⁸ These include subpoena requests and motions to compel non-parties Messrs Joseph Kohn, Andrew Woods, and Ms Laura Garr in the Count 9 action,¹⁹⁶⁹ Mr Aaron Marr Page,¹⁹⁷⁰ and Patton Boggs LLP, which provided legal advice and services to the LAPs since early 2010.¹⁹⁷¹

1229. From June 2012 to March 2013, Chevron engaged in discovery disputes with Patton Boggs, with back-and-forth briefings on the propriety and scope of subpoena as well as assertions of privilege. Patton Boggs ultimately produced the documents, but only after multiple meet-and-confer calls to discuss the search terms for their document collection.¹⁹⁷²

1230. On 5 April 2013, the SDNY also ordered that non-party Mr David Russell, an environmental engineer hired by Mr Donziger for the Lago Agrio Litigation, and non-

¹⁹⁶⁴ Memorial, Appendix 9, para. 62.

¹⁹⁶⁵ Memorial, Appendix 9, paras. 65-73.

¹⁹⁶⁶ Memorial, Appendix 9, para. 63.

¹⁹⁶⁷ Memorial, Appendix 9, para. 69.

¹⁹⁶⁸ Memorial, Appendix 9, para. 74.

¹⁹⁶⁹ Memorial, Appendix 9, paras. 75-76.

¹⁹⁷⁰ Memorial, Appendix 9, para. 77.

¹⁹⁷¹ Memorial, Appendix 9, para. 78.

¹⁹⁷² Memorial, Appendix 9, paras. 78-88.

party Mr Orin Kramer, comply with Chevron's *subpoena duces tecum*.¹⁹⁷³ Chevron also sought to compel production of documents from H5, a litigation support firm that assisted Mr Donziger and the LAPs.¹⁹⁷⁴

1231. For its part, the RICO defendants sought discovery from 26 non-parties for the production of documents and other materials. Twenty of these non-parties were persons or entities who served as expert witnesses or consultants to Chevron in connection with the Lago Agrio Litigation. Following the issuance of these subpoenas, Chevron moved the court to enter a protective order striking or compelling the withdrawal of the subpoenas addressed to 20 Chevron environmental contractors, consultants, or experts, and the 23 subpoenas directed to non-parties, including 20 environmental witnesses.¹⁹⁷⁵ On 12 December 2012, the SDNY issued an order forbidding the LAP Representatives from enforcing the subpoenas listed in Chevron's motion, ruling that environmental issues are irrelevant in the RICO Litigation where "the central issue . . . is whether the LAPs procured [the Lago Agrio Judgment] by fraud or other misconduct in furtherance of the overall extortion scheme".¹⁹⁷⁶

1232. On 18 January 2013, the LAP Representatives filed a Notice of Appeal challenging the SDNY's issuance of the protective order. On 1 May 2013, the Second Circuit granted Chevron's Motion to Dismiss for lack of appellate jurisdiction.¹⁹⁷⁷

1233. On 13 February 2013, Chevron moved the SDNY to appoint a Special Master to oversee the numerous party and party-related depositions in the case.¹⁹⁷⁸ On 1 March 2013, the SDNY appointed Messrs Max Gitter and Theodore H. Katz as Special Masters for the purposes of assisting with discovery in the action.¹⁹⁷⁹ The Special Masters issued twenty

¹⁹⁷³ Memorial, Appendix 9, para. 89.

¹⁹⁷⁴ Memorial, Appendix 9, para. 90.

¹⁹⁷⁵ Memorial, Appendix 9, para. 91.

¹⁹⁷⁶ Memorial, Appendix 9, para. 92.

¹⁹⁷⁷ Memorial, Appendix 9, para. 94.

¹⁹⁷⁸ Memorial, Appendix 9, para. 99.

¹⁹⁷⁹ Memorial, Appendix 9, para. 100.

orders throughout the case analysing and deciding questions of relevance and privilege over contentious depositions.¹⁹⁸⁰

1234. On 5 March 2013, Judge Kaplan held a pre-trial status conference, where he issued his “Rule 16 Order” directing the parties “to confer and to report by [12 March 2013] any agreement of all parties as to the number of depositions for each side”.¹⁹⁸¹ As the parties disagreed on the location of depositions, Judge Kaplan also instructed the parties to confer and seek an agreement on a deposition protocol by 12 March 2013.¹⁹⁸²

1235. On 15 March 2013, the SDNY issued an order limiting the number of fact witness depositions to 21 witnesses per side. On 26 March 2013, the SDNY allowed the deposition of certain Ecuadorian witnesses in Lima, Peru, in light of security risks in Ecuador raised by Chevron.¹⁹⁸³ Further, the SDNY also granted in part and denied in part Chevron’s motion for discovery, ruling that, because the RICO defendants were present or represented at the Section 1782 depositions, those depositions could be used “to the same extent as if taken in [this] action.”¹⁹⁸⁴

1236. Following further incidents relating to the depositions, such as changes to Chevron’s deponent list, proposed modifications to the deposition schedule, and requests to depose Chevron’s senior executives, as well as requests for protective orders from both parties,¹⁹⁸⁵ the remaining depositions were held pursuant to the schedule in Special Masters Orders Nos. 12, 13, and 14.¹⁹⁸⁶ Pursuant to Special Masters Order No. 18, Mr Donziger’s deposition was also taken and completed on 28 June 2013.¹⁹⁸⁷

1237. In the interim, on 12 March 2013 Chevron filed a motion for sanctions seeking to hold the Donziger Defendants and the LAP Representatives in contempt of court for refusing

¹⁹⁸⁰ Memorial, Appendix 9, para. 102.

¹⁹⁸¹ **C-3037**, RICO Docket, ECF No. 882 (7 March 2013).

¹⁹⁸² Memorial, Appendix 9, paras. 105-106.

¹⁹⁸³ **C-3037**, RICO Docket, ECF No. 941 (26 March 2013); Memorial, Appendix 9, paras. 107-108.

¹⁹⁸⁴ **C-3037**, RICO Docket, ECF No. 939 (26 March 2013); Memorial, Appendix 9, para. 113.

¹⁹⁸⁵ Memorial, Appendix 9, paras. 114-116.

¹⁹⁸⁶ Memorial, Appendix 9, paras. 110-111.

¹⁹⁸⁷ Memorial, Appendix 9, para. 112.

to produce documents from their Ecuadorian agents and lawyers. Following an exchange of briefings, on 10 April 2013 the SDNY directed a full evidentiary hearing on certain issues pertinent to the motion.¹⁹⁸⁸

1238. Contempt hearings were held from 16 to 18 April 2013.¹⁹⁸⁹ On 10 October 2013, the SDNY issued an Opinion granting in part and denying in part Chevron's sanctions motion against the Donziger Defendants and the LAP Representatives.¹⁹⁹⁰

10. LAP Representatives' Motion to Dismiss and Motion for Judgment on the Pleadings

1239. On 18 July 2012, the LAP Representatives filed a motion to dismiss for lack of jurisdiction. Following opposition from Chevron and a reply from the LAP Representatives, the SDNY, on 24 August 2012, denied the motion stating it would defer the question of personal jurisdiction to trial, "because discovery is just beginning in this action, and the factual issues pertinent to this motion are intertwined with the merits."¹⁹⁹¹

1240. On 23 October 2012, the LAP Representatives moved for judgment on the pleadings, which was opposed by Chevron on 12 November 2012.¹⁹⁹²

1241. On 27 November 2012, the SDNY issued an Order granting in part and denying in part the LAP Representatives' motion for judgment on the pleadings. The SDNY granted the motion "to the extent that so much of the third claim for relief as is premised on detrimental reliance by Chevron and the fourth through the sixth claims for relief all are dismissed, provided, however, that the dismissal of the claim for damages asserted in the sixth claim is dismissed only as premature."¹⁹⁹³

¹⁹⁸⁸ C-3037, RICO Docket, ECF No. 997 (10 April 2013).

¹⁹⁸⁹ Memorial, Appendix 9, para. 127; C-3037, RICO Docket, ECF No. 997 (10 April 2013).

¹⁹⁹⁰ Memorial, Appendix 9, paras. 107-108; C-3037, RICO Docket, ECF No. 1529 (10 October 2013).

¹⁹⁹¹ Memorial, Appendix 9, paras. 117-118.

¹⁹⁹² Memorial, Appendix 9, para. 120.

¹⁹⁹³ Memorial, Appendix 9, para. 121; C-3037, RICO Docket, ECF No. 634 (27 November 2012).

1242. On 4 December 2012, the LAP Representatives sought leave to appeal on two points, which the SDNY denied on 7 January 2013.¹⁹⁹⁴

11. Huaorani People's Motion to Intervene

1243. Meanwhile, on 30 November 2012 members of the Huaorani people in Ecuador sought leave to intervene in the RICO Litigation on the ground that it was necessary to defend the validity of the Lago Agrio Judgment. The Huaorani people challenged Mr Donziger and ADF's purported representation of them in the Lago Agrio Litigation and asserted cross claims against Mr Donziger and ADF.¹⁹⁹⁵

1244. On 14 January 2013, the SDNY issued an Order denying the Huaorani people's motion on the grounds of untimeliness and lack of interest, as the Huaorani people's "objective [with regard to the defending the validity of the Lago Agrio Judgment] are entirely aligned with those of the existing [RICO Defendants]".¹⁹⁹⁶

12. LAPs' Mandamus Petition

1245. Meanwhile, on 5 March 2013, the LAPs – represented by attorneys at Patton Boggs – filed a mandamus petition before the Second Circuit seeking an order directing the SDNY to "refrain, *in any context*, from considering whether the [Lago Agrio Judgment] is entitled to recognition, unless Petitioners affirmatively seek relief under the Recognition Act" in addition to other relief, including removing Judge Kaplan from the RICO Litigation.¹⁹⁹⁷ Chevron filed its response to the mandamus petition on 15 July 2013.

1246. Following oral argument on 26 September 2013, the Second Circuit denied the mandamus petition.¹⁹⁹⁸

¹⁹⁹⁴ Memorial, Appendix 9, paras. 122-123; **C-3037**, RICO Docket, ECF No. 707 (7 January 2013).

¹⁹⁹⁵ Memorial, Appendix 9, para. 124.

¹⁹⁹⁶ Memorial, Appendix 9, para. 125.

¹⁹⁹⁷ Memorial, Appendix 9, para. 131 (emphasis in the original).

¹⁹⁹⁸ Memorial, Appendix 9, para. 134; **C-3044**, *In re Hugo Gerardo Camacho Naranjo and Javier Piaguaje Payaguaje*, Docket for Case No. 13-772 (2d Cir.), 5 March 2013, ECF No. 182 (26 September 2013).

13. RICO Trial Phase

1247. On 25 October 2012, the SDNY issued a Trial Order, noting that it expected the RICO Litigation to be called for trial a year later, on 15 October 2013.¹⁹⁹⁹ Apart from the incidents narrated above, there were several motions filed by both parties in the lead-up to the RICO trial.²⁰⁰⁰

1248. Chevron filed several motions *in limine* to exclude allegedly irrelevant and prejudicial statements, as well as to preclude or allow admission of certain evidence or arguments.²⁰⁰¹

1249. On 8 September 2013, Chevron filed a notice that it was waiving any right to collect money damages against the LAP Representatives.²⁰⁰² Following this, on 7 October 2013 the SDNY held that there is no right to trial by jury and declined to order a jury trial in this case.²⁰⁰³

1250. Meanwhile, Chevron again attempted to reinstate its claim for unjust enrichment (Count 6).²⁰⁰⁴ On the other hand, the remaining RICO defendants (at this stage, the Donziger Defendants and the LAP Representatives) sought an order to dismiss Counts 1 and 2 of the RICO Litigation in light of Chevron's waiver to claim any money damages.²⁰⁰⁵ The SDNY denied this motion, declining to address the issue on an expedited basis in the absence of a complete factual record that may inform his ultimate disposition.²⁰⁰⁶

1251. The Claimants allege that, by the time the trial began, Chevron had taken and defended over 50 depositions as well as identified, prepared, and introduced almost 3,000 affirmative exhibits. Chevron also prepared over 38 fact and expert witnesses for trial, including preparing statements for each witness and preparing them for their appearance

¹⁹⁹⁹ Memorial, Appendix 9, para. 135; **C-3037**, RICO Docket, ECF No. 606 (25 October 2012).

²⁰⁰⁰ *See generally* Memorial, Appendix 9, paras. 135-139.

²⁰⁰¹ **C-3037**, RICO Docket, ECF No. 1388 *ff* (8 September 2013).

²⁰⁰² **C-3037**, RICO Docket, ECF No. 1404 (8 September 2013).

²⁰⁰³ **C-3037**, RICO Docket, ECF No. 1500 (7 October 2013).

²⁰⁰⁴ **C-3037**, RICO Docket, ECF No. 1470 (30 September 2013).

²⁰⁰⁵ **C-3037**, RICO Docket, ECF No. 1521 (10 October 2013).

²⁰⁰⁶ **C-3037**, RICO Docket, ECF No. 1533 (10 October 2013).

in court. Chevron ultimately called 25 witnesses at trial. Further, the Claimants assert that Chevron prepared over 150 demonstratives for use during trial. The remaining RICO defendants, in turn, introduced about 1,000 exhibits, submitted seven witness statements, and called six witnesses at trial.

1252. Trial took place before Judge Kaplan from 15 October through 26 November 2013. The Court heard Chevron's RICO, fraud, and other claims against the Donziger Defendants and the LAP Representatives. In all, the SDNY heard 31 witnesses in person and considered the sworn/stipulated testimony of an additional 37 witnesses.²⁰⁰⁷ Among the factual witnesses examined orally were Dr Zambrano, Mr Donziger, and Dr Guerra.²⁰⁰⁸

1253. According to the Claimants, given the "enormity and complexity" of the RICO trial, Chevron incurred significant expenses in terms of: (i) trial logistics; (ii) preparing over 23 trial briefs; (iii) preparing Chevron's witnesses and witness statements; (iv) preparing for cross-examination and other responses to defence witnesses; and (v) other trial costs excluding attorney time.²⁰⁰⁹ Other trial costs include Chevron's expenses relating to: (i) space rentals and related costs; (ii) transcripts; (iii) courier services/delivery; (iv) travel/lodging of its counsel, paralegals, vendors, witnesses and experts; (v) catered meals; (vi) printing and photocopying costs; and (vii) interpreter fees.²⁰¹⁰

1254. After the conclusion of the RICO trial, the parties had one month to prepare post-trial briefs, which the parties filed on 23 December 2013. Reply briefs were filed on 21 January 2014.²⁰¹¹

1255. The trial did not conclude the incidents before the SDNY. On 22 January 2014, the Donziger Defendants filed a second motion to dismiss for lack of jurisdiction,²⁰¹² which

²⁰⁰⁷ Memorial, Appendix 9, para. 140.

²⁰⁰⁸ Track II Award, para. 4.479.

²⁰⁰⁹ *See generally* Memorial, Appendix 9, paras. 141-151.

²⁰¹⁰ *See generally* Memorial, Appendix 9, paras. 152-158.

²⁰¹¹ Memorial, Appendix 9, para. 160.

²⁰¹² **C-3037**, RICO Docket, ECF No. 1860 (22 January 2014).

the LAP Representatives later joined.²⁰¹³ Following another round of briefings, the SDNY denied the defendants' motion together with his decision on the Amended Complaint.²⁰¹⁴

14. SDNY Decision

1256. On 4 March 2014, the SDNY issued its Opinion and related Orders in the RICO Litigation (previously defined as the “**RICO Judgment**”),²⁰¹⁵ finding that the “[Lago Agrio Judgment] was procured by fraud and that [the Donziger Defendants] conducted and conspired to conduct the affairs of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. §§ 1962(c) and 1962(d).”²⁰¹⁶ The RICO Judgment was entered (i) imposing a constructive trust for the benefit of Chevron on the assets of the Donziger Defendants and LAP Representatives that are traceable to the Lago Agrio Judgment; and (ii) enjoining said defendants from seeking to enforce the Lago Agrio Judgment in the United States or from undertaking any acts to monetize or profit from the Lago Agrio Judgment.²⁰¹⁷ Chevron was also allowed to recover the costs of the action against the defendants, jointly and severally.²⁰¹⁸

1257. The Order appended to the RICO Judgment reads, in relevant part, as follows:

1. The Court hereby imposes a constructive trust for the benefit of Chevron on all property, whether personal or real, tangible or intangible, vested or contingent, that Donziger has received, or hereafter may receive, directly or indirectly, or to which Donziger now has, or hereafter obtains, any right, title or interest, directly or indirectly, that is traceable to the Judgment or the enforcement of the Judgment anywhere in the world including, without limitation, all rights to any contingent fee under the Retainer Agreement and all stock in Amazonia. Donziger shall transfer and forthwith assign to Chevron all such property that he now has or hereafter may obtain.
2. The Court hereby imposes a constructive trust for the benefit of Chevron on all property, whether personal or real, tangible or intangible, vested or contingent, that the LAP Representatives, and each of them, has received, or hereafter may receive, directly or indirectly, or to which the LAP Representatives, and each of them, now has, or hereafter obtains, any right, title or interest, directly or indirectly, that is

²⁰¹³ **C-3037**, RICO Docket, ECF No. 1862 (28 January 2014).

²⁰¹⁴ Memorial, Appendix 9, para. 161.

²⁰¹⁵ Track II Award, para. 4.481.

²⁰¹⁶ **C-3037**, RICO Docket, ECF No. 1874 (4 March 2014).

²⁰¹⁷ **C-3037**, RICO Docket, ECF No. 1875 (4 March 2014).

²⁰¹⁸ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, para. 9.

traceable to the Judgment or the enforcement of the Judgment anywhere in the world. The LAP Representatives, and each of them, shall transfer and forthwith assign to Chevron all such property that he now has or hereafter may obtain.

3. Donziger shall execute in favor of Chevron a stock power transferring to Chevron all of his right, title and interest in his shares of Amazonia, and Donziger and the LAP Representatives, and each of them, shall execute such other and further documents as Chevron reasonably may request or as the Court hereafter may order to effectuate the foregoing provisions of this Judgment.
4. Donziger and the LAP Representatives, and each of them, is hereby enjoined and restrained from:
 - 4.1 Filing or prosecuting any action for recognition or enforcement of the Judgment or any New Judgment or seeking the seizure or attachment of assets based on the Judgment or any New Judgment, in each case in any court in the United States.
 - 4.2. Seeking prejudgment seizure or attachment of assets based upon the Judgment or any New Judgment, in each case in any court in the United States.²⁰¹⁹
5. Donziger and the LAP Representatives, and each of them, is hereby further enjoined and restrained from undertaking any acts to monetize or profit from the Judgment, as modified or amended, or any New Judgment, including without limitation by selling, assigning, pledging, transferring or encumbering any interest therein.
6. Notwithstanding anything to the contrary in this Judgment, nothing herein enjoins, restrains or otherwise prohibits Donziger, the LAP Representatives, or any of them, from (a) filing or prosecuting any action for recognition or enforcement of the Judgment or any New Judgment, or any for prejudgment seizure or attachment of assets based in courts outside the United States; or (b) litigating this action or any appeal of any order or judgment issued in this action.

[. . .]
8. In accordance with Federal Rule of Civil Procedure 65(d)(2), this Judgment is binding upon the parties; their officers, agents, servants, employees, and attorneys; and other persons who are in active concert and participation with any of the foregoing.

[. . .]
9. Chevron shall recover of Donziger and the LAP Representatives, and each of them, jointly and severally, the costs of this action pursuant to Fed. R. Civ. P. 54(d)(1) and 28 U.S.C. § 1920 [. . .].²⁰²⁰

²⁰¹⁹ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014.

²⁰²⁰ Track II Award, para. 4.481; **C-2134**, Judgment as to Donziger Defendants and Defendants Camacho and Piguafe, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014.

1258. As summarized by the Claimants, the SDNY’s Opinion contained several key holdings, namely: (i) the Lago Agrio Judgment was procured by fraud, and is thus unenforceable in the United States; (ii) the application of RICO was not impermissibly extraterritorial; (iii) the RICO Defendants constituted an “enterprise” under the RICO statute; (iv) the Ecuadorian litigation team violated the Hobbs Act (*i.e.*, 18 U.S.C. § 1951, interference with commerce by robbery or extortion); (v) Mr Donziger violated the Foreign Corrupt Practices Act and the Travel Act; (vi) Chevron sufficiently showed its injuries satisfied RICO’s direct causation mandate; (vii) none of the related Ecuadorian decisions – including the final Lago Agrio Judgment – were entitled to recognition in the United States; (viii) Chevron was not judicially estopped from challenging the validity of the Lago Agrio Judgment; (ix) the circumstances required the imposition of a constructive trust in Chevron’s favour in case any proceeds from the fraudulent Judgment were ever obtained; and that (x) it was proper to issue a permanent injunction barring enforcement of the judgment anywhere in the United States.²⁰²¹

15. Appeal before the Second Circuit

1259. On 18 March 2014, the Donziger Defendants and the LAP Representatives each noticed their respective appeals with the Second Circuit, challenging the SDNY’s RICO Judgment.²⁰²²

1260. With leave of court, all the parties filed briefs. The LAP Representatives and Mr Donziger their respective merits brief on 1 July and 2 July 2014.²⁰²³

1261. On 1 October 2014, Chevron filed a response brief. This was followed by a corrected response brief on 8 October 2014.²⁰²⁴

1262. On 3 November 2014, the LAP Representatives filed their reply brief. On 25 November 2014, Mr Donziger filed a brief, followed by a corrected reply brief on 6 January 2015.²⁰²⁵

²⁰²¹ Memorial, Appendix 9, para. 162.

²⁰²² **C-3037**, RICO Docket, ECF Nos. 1886, 1887 (18 March 2014).

²⁰²³ Memorial, Appendix 9, para. 168.

²⁰²⁴ Memorial, Appendix 9, para. 169.

²⁰²⁵ Memorial, Appendix 9, para. 170.

1263. An oral argument was held on 20 April 2015. After argument, the parties filed supplemental briefing relating to the implications of this Arbitration, as the issue had been raised during the oral argument.²⁰²⁶

1264. Ecuador also moved to file an *amicus curiae* brief before the Second Circuit and also filed a motion for judicial notice.²⁰²⁷ On 15 March 2015, Mr Donziger filed with the court a motion for judicial notice asking the court to take notice of eight documents filed in this Arbitration.

1265. On 8 August 2016, the Second Circuit affirmed the SDNY's decision.²⁰²⁸

a. *Certiorari* before the Supreme Court

1266. On 27 March 2017, Mr Donziger and one of the LAP Representatives, Mr Camacho Naranjo, filed a petition for *certiorari* before the U.S. Supreme Court, seeking review of the Second Circuit's decision affirming the SDNY's RICO Judgment.²⁰²⁹

1267. Following the submission of briefs, including an *amicus brief* filed by Ecuador in support of the petition for *certiorari*, the U.S. Supreme Court denied the petition on 19 June 2017, thus affirming with finality the Second Circuit's Decision and the SDNY's RICO Judgment.²⁰³⁰

b. Post-judgment Proceedings

1268. The RICO Judgment did not bring an end to the RICO Litigation. Chevron continued pursuing certain motions and incidents that are relevant in the determination of the damages claimed under this category, including (i) Chevron's application for attorneys' fees and costs, and (ii) post-judgment contempt proceedings against Mr Donziger.

²⁰²⁶ Memorial, Appendix 9, para. 171.

²⁰²⁷ Memorial, Appendix 9, para. 173.

²⁰²⁸ Track II Award, para. 4.486.

²⁰²⁹ Memorial, Appendix 9, para. 180.

²⁰³⁰ Memorial, Appendix 9, paras. 181-182; **C-2542**, U.S. Court of Appeals for the Second Circuit, denying the petition for a writ of certiorari in *Steven Donziger, et al. v. Chevron Corporation*, Case No. 16-1178, 19 June 2017.

1269. On 18 March 2014, shortly after the issuance of the RICO Judgment, Chevron filed its motion for attorneys' fees for the amount of USD 32,334,584.²⁰³¹ The SDNY deferred the determination of the motion "pending the outcome of Donziger's appeal" before the Second Circuit.²⁰³² Accordingly, on 8 November 2016 after the conclusion of the Second Circuit Appeal, Chevron filed a notice reactivating its motion for attorneys' fees.²⁰³³ However, the SDNY still declined to reactivate the motion at that time, stating that Chevron could seek to renew its application on or after 26 January 2017 or, if Mr Donziger had by then filed a petition for certiorari before the Supreme Court, Chevron could reapply to reactivate the motion after the Supreme Court proceedings.²⁰³⁴

1270. On 19 June 2017, following the conclusion of Supreme Court proceedings, Chevron again requested the SDNY to reactivate its motion for attorneys' fees.²⁰³⁵ On 17 July 2017, the SDNY granted Chevron's request and gave Mr Donziger until 7 August 2017 to contest the reasonableness of Chevron's attorneys' fees rates and hours.²⁰³⁶ According to the Claimants, the SDNY has not yet decided whether to award Chevron any attorneys' fees.²⁰³⁷

1271. In the same order, the SDNY also directed the clerk of court to tax costs against Mr Donziger, which included fees associated with the work of the Special Masters who oversaw discovery.²⁰³⁸ Mr Donziger, through several submissions, contested the reasonableness of the Special Masters' costs, which were eventually upheld by the SDNY.²⁰³⁹

²⁰³¹ **C-3037**, RICO Docket, ECF No. 1889 (18 March 2014).

²⁰³² **C-3037**, RICO Docket, ECF No. 1902 (29 April 2014).

²⁰³³ **C-3037**, RICO Docket, ECF No. 1915 (8 November 2016).

²⁰³⁴ **C-3037**, RICO Docket, ECF No. 1916 (9 November 2016).

²⁰³⁵ **C-3037**, RICO Docket, ECF No. 1922 (19 June 2017).

²⁰³⁶ **C-3037**, RICO Docket, ECF No. 1923 (17 July 2017).

²⁰³⁷ Memorial, Appendix 9, para. 184.

²⁰³⁸ **C-3037**, RICO Docket, ECF No. 1923 (17 July 2017).

²⁰³⁹ Memorial, Appendix 9, paras. 185-186.

1272. On 8 August 2017, costs were taxed in favour of Chevron and against the Donziger Defendants in the amount of USD 944,463.85.²⁰⁴⁰ On 28 February 2018, following a motion to review from Mr Donziger concerning the amounts taxed for the Special Masters, the costs award was reduced to USD 813,602.71.²⁰⁴¹
1273. As regards post-judgment discovery and contempt proceedings, on 19 March 2018, Chevron filed a request for discovery and a preservation order as well as an application to have Mr Donziger held in contempt of court for his alleged failure to transfer his shares in Amazonia Recovery Limited (“**Amazonia**”) – a Gibraltar company created by the LAPs’ representatives “for receipt and distribution of any funds in consequence of the Judgment”²⁰⁴² – and his alleged attempts to monetize the Lago Agrio Judgment. After briefing by the parties and a hearing that took place on 8 May 2018, the SDNY reserved its decision on the motion.²⁰⁴³
1274. On 16 May 2018, the SDNY granted Chevron’s motion with respect to discovery and added that the question of whether or not Mr Donziger could be found in contempt would be addressed at a later date. On 28 June 2018, an evidentiary hearing on the monetization contempt claims was held. The SDNY again reserved decision after this evidentiary hearing.²⁰⁴⁴
1275. Chevron subsequently served post-judgment subpoenas under Federal Rule of Civil Procedure 69 (*i.e.*, execution) and New York CPLR 5224 (*i.e.*, enforcement of money judgments) on Mr Donziger and other third parties alleged to be involved with his solicitation of judgment enforcement funds. Following Mr Donziger’s refusal to comply, Chevron moved to compel discovery, which the SDNY granted. Mr Donziger allegedly “produced minimal responses” and was deposed on 15 June 2018, during which examination he again allegedly “refused to fully comply.”²⁰⁴⁵ Chevron also subpoenaed

²⁰⁴⁰ **C-3037**, RICO Docket, ECF Nos. 1928 (8 August 2017).

²⁰⁴¹ **C-3037**, RICO Docket, ECF Nos. 1959 (28 February 2018).

²⁰⁴² **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, fn 1110.

²⁰⁴³ Memorial, Appendix 9, para. 192.

²⁰⁴⁴ Memorial, Appendix 9, para. 193.

²⁰⁴⁵ Memorial, Appendix 9, para. 194.

documents from and deposed numerous third parties, following the SDNY’s confirmation that the subpoenaed third parties were subject to post-judgment discovery.²⁰⁴⁶

1276. Rather than an unqualified transfer of his Amazonia shares to Chevron as previously represented, Mr Donziger later executed an allegedly non-compliant share transfer document with an “Addendum of Understandings” seeking to negate the transfer of shares.²⁰⁴⁷ Thus, on 27 June 2018, Chevron moved to compel Mr Donziger to execute an unqualified transfer of these shares to Chevron, which the SDNY granted.²⁰⁴⁸

1277. According to the Claimants, post-judgment discovery showed that Mr Donziger is in repeated violation of the RICO Judgment, which prohibited him from monetizing or profiting from the Lago Agrio Judgment and which required him to transfer to Chevron all property he obtains that is traceable to the Lago Agrio Judgment. Thus, on 1 October 2018, Chevron filed another contempt motion based on these alleged violations of the RICO Judgment.²⁰⁴⁹

1278. On 5 October 2018, following Chevron’s motion to hold him in contempt, Mr Donziger executed a document for the transfer of his Amazonia shares to Chevron.²⁰⁵⁰ Thus, the SDNY denied Chevron’s 1 October 2018 contempt motion as moot.²⁰⁵¹

1279. On 5 March 2019, the SDNY directed Mr Donziger to comply with a Forensic Inspection Protocol which required him to, *inter alia*, provide a court-appointed neutral forensic expert with a list of his accounts and devices for imaging. Mr Donziger refused to comply. Thus, on 20 March 2019, Chevron filed another motion to hold him in contempt.²⁰⁵²

²⁰⁴⁶ Memorial, Appendix 9, para. 195.

²⁰⁴⁷ Memorial, Appendix 9, para. 200.

²⁰⁴⁸ Memorial, Appendix 9, para. 201.

²⁰⁴⁹ Memorial, Appendix 9, para. 204.

²⁰⁵⁰ Memorial, Appendix 9, para. 202.

²⁰⁵¹ Memorial, Appendix 9, para. 202.

²⁰⁵² Memorial, Appendix 9, para. 203; **C-3037**, RICO Docket, ECF No. 2175 (20 March 2019).

1280. On 20 March 2019, Chevron filed yet another contempt motion based on Mr Donziger allegedly pledging a portion of his interest in the Lago Agrio Judgment to pay for personal consulting services.²⁰⁵³

1281. On 23 May 2019, the SDNY granted the pending contempt motions and found Mr Donziger in contempt of the RICO Judgment and the Forensic Inspection Protocol order. Mr Donziger was ordered to complete an unqualified transfer of his interest under his 2017 retainer agreement with ADF to Chevron and to provide the lists of devices and accounts required by the Forensic Protocol Order, with daily fines if Mr Donziger still fails to comply.²⁰⁵⁴ In the same order, the SDNY found that Mr Donziger profited in the amount of USD 666,476.34 from the sale of his interest in the Lago Agrio Judgment, and that he failed to transfer these proceeds to Chevron. The SDNY accordingly ordered a supplemental judgment in Chevron's favour in the amount of USD 666,476.34.²⁰⁵⁵

1282. According to the Claimants, to date, this ancillary proceeding in the RICO Litigation is still ongoing.²⁰⁵⁶

(d) Analysis

1283. Before beginning its analysis of the Claimants' damages claim in respect of the RICO Litigation, the Tribunal recalls the Claimants' position that all of their claimed legal fees and expenses incurred in connection with this litigation constitute direct damages and are recoverable in the alternative as incidental damages.²⁰⁵⁷ As explained in paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages. The expenses incurred by the Claimants to mitigate any other form of harm or geared towards any other goal are *not* compensable in these proceedings.²⁰⁵⁸

²⁰⁵³ Memorial, Appendix 9, para. 205; C-3037, RICO Docket, ECF No. 2175 (20 March 2019).

²⁰⁵⁴ Memorial, Appendix 9, para. 206.

²⁰⁵⁵ Memorial, Appendix 9, para. 206.

²⁰⁵⁶ Memorial, Appendix 9, para. 207.

²⁰⁵⁷ Reply, para. 794.

²⁰⁵⁸ See para. 317 above.

1284. Following the methodology laid out in Section VII.G.5 for the assessment of incidental damages in this case, a majority of the Tribunal finds that the Claimants' claim for compensation in respect of the RICO Litigation must be granted for the reasons and to the extent set out below. The findings set forth in Section VIII.G.3(d)1 below are subject to a dissent by Arbitrator Dr Horacio A. Grigera Naón.

1. First Step: Analysis of Incidental Damages "Category"

1285. As a first step of its analysis, the Tribunal must determine whether the RICO Litigation category of damages meets the requirements of causation and reasonableness for the compensation of incidental damages under international law.

1286. First, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555, the Claimants' efforts must have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.

1287. Second, as noted in paragraph 556 above, incidental damages are subject to an additional requirement of reasonableness: to warrant compensation, legal fees and expenses must have been *reasonably* incurred to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. At this level of analysis, the Tribunal's determination concerns the reasonableness of the mitigation *measures* undertaken by the Claimants, not of the *amounts* they spent, which will be examined in a subsequent step of the analysis.²⁰⁵⁹

²⁰⁵⁹ See para. 556 above.

1288. The Tribunal is satisfied that, by initiating the RICO Litigation, the Claimants sought to prevent the Lago Agrio Judgment from becoming enforceable, particularly in the United States. Thwarting enforcement in this jurisdiction was critical: aside from hosting Chevron's headquarters and numerous assets, the Invictus Memorandum – which set out a legal strategy for seizing Chevron's assets outside Ecuador in multiple jurisdictions – noted expressly that recognition and enforcement of the Lago Agrio Judgment “in the United States is undoubtedly the most desirable outcome”.²⁰⁶⁰ In clear reaction to that strategy, the request for relief in Chevron's Amended Complaint includes (i) a request for a temporary restraining order, a preliminary injunction, and permanent injunction barring any attempt “to recognize or enforce the Lago Agrio judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad”;²⁰⁶¹ and (ii) a request for a declaratory judgment that the Lago Agrio Judgment is unenforceable and non-recognizable.²⁰⁶² Chevron's efforts were partly successful: the relief ultimately obtained by Chevron by the time the U.S. Supreme Court denied *certiorari* in 2017 included (i) a permanent injunction against the enforcement of the Lago Agrio Judgment in the United States (albeit not abroad); and (ii) a constructive trust for Chevron's benefit on all property that Mr Donziger or the LAPs may obtain that is traceable to the enforcement of the Lago Agrio Judgment.²⁰⁶³

1289. As shown in this analysis, Chevron's pursuit of the RICO Litigation was geared towards the goal of preventing the Lago Agrio Judgment from becoming enforceable (item (i) in paragraph 642 above), thus fulfilling the requirement of causation for the compensation of incidental damages under international law. The same set of circumstances is nonetheless insufficient, on its own, to support the conclusion that the requirement of

²⁰⁶⁰ **C-903**, “Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated [DONZ00032520-51], p. 12. *See also id.*, pp. 13-14: “We note that Chevron, by way of public disclosure on its corporate website, has notable attachable assets located in a number of these jurisdictions, including Alabama, California, Southern Louisiana, Mississippi, Nevada, and New Mexico. Dependent upon the peculiarities of the foreign judgment recognition law in these jurisdictions, among other considerations, the aforementioned states may prove to be especially attractive for enforcement. . .”

²⁰⁶¹ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 136-161.

²⁰⁶² **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 136-161.

²⁰⁶³ **C-2134**, Judgment as to Donziger Defendants and Defendants Camacho and Piguaje, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, pp. 1-3.

reasonableness is also met: the fact that Chevron’s pursuit of the RICO Litigation was one course of action to achieve the goal of preventing enforcement does not necessarily entail that Chevron’s choice of measures was reasonable overall.²⁰⁶⁴

1290. The Tribunal shall now consider other relevant questions raised by the Parties to determine whether the requirement of the reasonableness of incidental damages is met as regards the RICO Litigation, *i.e.*, whether Chevron’s pursuit of the RICO Litigation was a reasonable means of mitigating the injury arising from the recognition and enforcement of the Lago Agrio Judgment. Without prejudice to such analysis, however, the fact that Chevron’s choice of measures to prevent the enforcement of the Lago Agrio Judgment in its home jurisdiction was successful and effective in achieving this wholly legitimate result (save for Count 9 and Chevron’s request for a global injunction) compels the conclusion that the RICO Litigation cannot be entirely excluded from compensation.²⁰⁶⁵ Lending additional support to this conclusion, the RICO Litigation was the source of extensive evidence and discovery ultimately relied upon in other contexts where Chevron was defending itself against the risk of very serious harm created by the fraudulent Lago Agrio Judgment and its recognition and enforcement, including to prove the Claimants’ claims before this Tribunal.²⁰⁶⁶ Accordingly, any potential shortcomings in the reasonableness of the Claimants’ choice of measures should, at most, result in a reduction of compensation for the legal fees and expenses incurred by the Claimants in connection with the RICO Litigation.

1291. The Respondent raises two main arguments touching upon the reasonableness of the Claimants’ decision to pursue the RICO Litigation: (i) a reasonable litigant would have waited for the LAPs to attempt to enforce the Lago Agrio Judgment instead of bringing the RICO Litigation; and (ii) the claims in the RICO Litigation were not related to preventing enforcement; rather, they “sought to inflict maximum pain on Steven

²⁰⁶⁴ See para. 342 above.

²⁰⁶⁵ See para. 553 above.

²⁰⁶⁶ See, *e.g.*, Track II Award, paras. 4.25, 4.28.

Donziger” and “send a message to anyone else who may deign to challenge Chevron in the future”.²⁰⁶⁷ The Tribunal will address each argument in turn.

1292. First, relying on the opinion its expert, Dr Stacie Strong, the Respondent asserts that if Chevron wished simply to prevent the enforcement of the Lago Agrio Judgment in the United States, a reasonable option would have been “to defend against an enforcement action in U.S. courts”, in which case Chevron “would have saved considerable time and money”.²⁰⁶⁸ The Respondent recalls in this respect that the Second Circuit, in dismissing Chevron’s pre-emptive request for a declaratory judgment that the Lago Agrio Judgment is unenforceable, similarly opined that “a far better remedy is available: Chevron can present its defense to the recognition and enforcement of the Ecuadorian judgment in New York if, as and when the LAPs seek to enforce their judgment in New York.”²⁰⁶⁹ In essence, therefore, the Respondent questions the reasonableness of the Claimants’ decision to bring the RICO Litigation in circumstances where there was an alternative course of action which would have “a higher chance of succeeding [and] would be a more efficient as well as a more time- and cost-effective procedure.”²⁰⁷⁰

1293. The Tribunal is not persuaded by this analysis, as it understates the threat faced by the Claimants in the United States and the critical procedural advantages brought about by taking affirmative action against potential enforcement attempts. The Invictus Memorandum laid out an “aggressive approach” for enforcement of the Lago Agrio Judgment in the United States, canvassing multiple jurisdictions where pre-judgment attachment may be attempted.²⁰⁷¹ The Tribunal thus sees merit in the Claimants’ argument that “[r]ather than facing the threat of enforcement actions in unknown U.S.

²⁰⁶⁷ Rejoinder, paras. 1227-1252.

²⁰⁶⁸ **RE-44**, First Strong Report, para. 7.

²⁰⁶⁹ **R-1558**, *Chevron Corp. v. Camacho Naranjo*, 667 F.3d 232 (2d Cir. 2012), 26 January 2012, p. 246.

²⁰⁷⁰ **RE-44**, First Strong Report, para. 90.

²⁰⁷¹ **C-903**, “Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated [DONZ00032520-51], p. 14: “Consistent with their aggressive approach, Plaintiff’s Team will look for ways to proceed against Chevron on a pre-judgment basis, largely as a means of attaining a favorable settlement at an early stage. Various laws and procedures within and outside of the United States may permit the attachment of Chevron’s assets prior to successful recognition of the Ecuadorian judgment. Pre-judgment attachment would undoubtedly compound the pressure already placed on Chevron vis à vis an international enforcement campaign, and force Chevron to focus its resources on the proceedings initiated by the Plaintiffs, rather than its own sideshows. Undoubtedly, the availability of pre-judgment attachment mechanisms will play a critical role in our decision to enforce the judgment in a particular U.S. jurisdiction.”

jurisdictions with a myriad of potentially applicable state laws”, it was reasonable to seek to concentrate all enforcement issues into one specific forum.²⁰⁷² Among other advantages arising from this approach identified by the Claimants’ experts, Mr Sanford Litvack notes, crucially, that “Chevron was able to affirmatively choose the venue and timing of that proceeding, rather than having to react defensively. This control of venue and timing is a key element in any litigation strategy.”²⁰⁷³ The Tribunal agrees with this assessment, particularly in circumstances in which Chevron might have conceivably faced parallel enforcement actions in several U.S. jurisdictions. The RICO Litigation may not have been the most economical and efficient strategy, but that does not necessarily make it an unreasonable strategy.

1294. In this connection, the Tribunal has taken note of Dr Strong’s opinion that Rule 13 of the Federal Rules of Civil Procedure would not have required an enforcement action in another U.S. State to be treated as a compulsory counterclaim of the RICO Litigation and be transferred to the SDNY, as the Claimants assert.²⁰⁷⁴ This opinion, however, is disproven by the RICO Judgment, where the SDNY stated that there was a “substantial” chance that any enforcement action filed elsewhere would be brought before it:

As noted, attempts to enforce the Judgment in the United States always have been part of the plan. Indeed, even when the defendants sought to defeat the preliminary injunction in this case by disclaiming any then present intention to seek enforcement in New York, they conspicuously did not disclaim any such intention elsewhere in the United States.

Moreover, the reasons for their failure to seek enforcement to date in the United States are fairly obvious.

As an initial matter, the defendants’ repeated efforts to have this case assigned to a different judge make clear their preference for almost any other forum. Any attempt, however, to enforce the Judgment in the United States while this action remains pending would carry a substantial risk that the enforcement proceeding would be litigated here for two reasons.

First, as long as this action remains pending, any suit in a federal court by any of the LAPs (other than the two LAP Representatives who defended this case at trial) to enforce the

²⁰⁷² Reply, para. 814. *See also* Silver Expert Report, para. 180.

²⁰⁷³ Litvack Expert Report, para. 94.

²⁰⁷⁴ **RE-62**, Second Strong Expert Report, paras. 35-47. Rule 13(a) of the Federal Rules of Procedure, concerning compulsory counterclaims, reads: “(1) *In General*. A pleading must state as a counterclaim any claim that – at the time of its service – the pleader has against an opposing party if the claim: (A) arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim; and (B) does not require adding another party over whom the court cannot acquire jurisdiction.” **RE-62**, Second Strong Expert Report, **SS-89**, Fed. R. Civ. P. 13(a).

judgment likely would be a compulsory counterclaim in this case, as the defaulting LAPs are defendants here and have not answered the complaint in this case. FED. R. CIV. P. 13(a)(1).

Second, there in any event would be a substantial chance that any enforcement action brought in a federal court other than this one would be transferred to this Court under 28 U.S.C. § 1404(a) or 1407, as occurred with Patton Boggs’ related lawsuit in the District of New Jersey. *Patton Boggs LLP v. Chevron Corp.*, No. 12 Civ. 9176 (LAK), DI 42 (filed Dec. 14, 2012). Moreover, as the LAPs all are aliens, any enforcement action brought in a state court, other than those of the two states of which Chevron is a citizen (California and Delaware), could and quite likely would be removed by Chevron to federal court and then likely transferred to this Court.²⁰⁷⁵

1295. Therefore, in the Tribunal’s view, it was reasonable for Chevron to take affirmative action to prevent the recognition and enforcement of the Lago Agrio Judgment in the United States by initiating the RICO Litigation, rather than passively wait for an enforcement action to be filed and defend against it.

1296. Second, the Respondent asserts that the claims in the RICO Litigation were not related to preventing enforcement; rather, their goal was “to inflict maximum pain on Steven Donziger” and “send a message to anyone else who may deign to challenge Chevron in the future”.²⁰⁷⁶

1297. The Tribunal has already determined that by initiating the RICO Litigation Chevron had the goal of preventing the Lago Agrio Judgment from becoming enforceable in the United States.²⁰⁷⁷ Critically, however, RICO does not address the enforcement of foreign judgments in the United States: it is intended primarily to combat the corrupt influence of organized crime.²⁰⁷⁸ In the Tribunal’s view, this circumstance invites further scrutiny of the reasonableness of Chevron’s choice of mitigation measures. The fact that Chevron elected to pursue claims under RICO – a course of action the Claimants’ own experts characterize as “innovative”²⁰⁷⁹ – begs the question of why it chose to do so, whether by

²⁰⁷⁵ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, fn 1192.

²⁰⁷⁶ Rejoinder, paras. 1227-1252.

²⁰⁷⁷ See para. 1288 above.

²⁰⁷⁸ See para. 1182 above.

²⁰⁷⁹ Lea Expert Report, para. 63.

doing so Chevron pursued other goals beyond preventing enforcement, and, in such case, whether any of those other goals informed Chevron's choice of litigation strategy.

1298. These questions cannot be answered only by reference to Chevron's ultimate success in pursuing the RICO Litigation or the evidence of fraud it gathered while the litigation unfolded: the attainment of a particular outcome does not, in itself, establish that such an outcome was Chevron's primary aim. Whether Chevron pursued other goals beyond preventing enforcement by bringing the RICO Litigation must be answered chiefly by reference to the Claimants' Amended Complaint – which was filed shortly after the issuance of the Lago Agrio Judgment – and, in particular, by reference to the specific relief requested by Chevron in such complaint.

1299. The Tribunal notes that the Amended Complaint encompassed nine different causes of action, directed towards particular subsets of defendants.²⁰⁸⁰ For better reference, Chevron's nine claims for relief in the Amended Complaint, as well as its prayer for relief, are reproduced below:

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violations of RICO, 18 U.S.C. § 1962(c))

(Against All RICO Defendants)

[. . .]

SECOND CLAIM FOR RELIEF

(Conspiracy to Violate RICO, Violation of 18 U.S.C. § 1962(d))

(Against All RICO Defendants)

[. . .]

THIRD CLAIM FOR RELIEF

(Fraud)

(Against All Defendants)

²⁰⁸⁰ See para. 1190 above.

[. . .]

FOURTH CLAIM FOR RELIEF

(Tortious Interference With Contract)

(Against All Defendants)

[. . .]

FIFTH CLAIM FOR RELIEF

(Trespass to Chattels)

(Against All Defendants)

[. . .]

SIXTH CLAIM FOR RELIEF

(Unjust Enrichment)

(Against All Defendants)

[. . .]

SEVENTH CLAIM FOR RELIEF

(Civil Conspiracy)

(Against All Defendants)

[. . .]

EIGHTH CLAIM FOR RELIEF

(Violations of New York Judiciary Law § 487)

(Against Defendants Donziger, the Law Offices of Steven R. Donziger and Donziger & Associates, PLLC)

[. . .]

NINTH CLAIM FOR RELIEF

(Request for Declaratory Judgment That the Judgment by the Lago Agrio Court Against Chevron is Unenforceable and Non-Recognizable)

(Against the [ADF] and the “Lago Agrio Plaintiffs”)

[. . .]

PRAYER FOR RELIEF

On the First and Second Claims for Relief:

1. For general damages according to proof at trial, trebled according to statute, 18 U.S.C. § 1964(c);
2. For pre-judgment interest according to statute; and
3. For Chevron's reasonable attorneys' fees and costs according to statute, 18 U.S.C. § 1964(c).

On the First through Seventh Claims for Relief:

4. For general damages according to proof at trial;
5. For equitable relief as appropriate pursuant to applicable law, including but not limited to issuing a temporary restraining order, a preliminary injunction and a permanent injunction that bars Defendants, their assignees and anyone else acting in concert with them including potentially the law firms of Emery Celli, Motley Rice and Patton Boggs, and H5 and financial backers such as Burford and Russell DeLeon-from commencing, prosecuting, or advancing in any way-directly or indirectly-any attempt to recognize or enforce the Lago Agrio judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad, including any attempt to attach or seize any Chevron or Chevron subsidiary's or co-venturer's assets, whether pre-judgment or otherwise, until this Court determines the merits and enters judgment on Chevron's claims against the Defendants in this action; and
6. Only for the third, fourth, fifth, and seventh claims for relief, punitive damages in an amount to be proven at trial.

On the Eighth Claim for Relief:

7. For general damages according to proof at trial, trebled according to statute, Judiciary Law § 487; and
8. For Chevron's reasonable attorneys' fees and costs according to statute, Judiciary Law § 487.

On the Ninth Claim for Relief:

9. For a declaration that the judgment against Chevron in the Lago Agrio Litigation is non-recognizable and unenforceable for each and everyone of the reasons set forth herein; and
10. For equitable relief as appropriate pursuant to applicable law, including but not limited to issuing a temporary restraining order, a preliminary injunction and a permanent injunction that bars the Front, the Lago Agrio Plaintiffs, their assignees and anyone else acting in concert with them-including the other RICO Defendants, the law firms of Emery Celli, Motley Rice and Patton Boggs, and H5 and financial backers such as Burford and Russell De Leon from commencing, prosecuting, or advancing in any way-directly or indirectly-any attempt to recognize or enforce the Lago Agrio judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad, including any attempt to attach or seize any Chevron or Chevron subsidiary's or co-venturer's assets, whether pre-judgment or otherwise, until this Court determines the merits and enters judgment on Chevron's claims against the Defendants in this action, or until such time as this Court deems appropriate.

As to All Causes of Action:

11. For such other legal and equitable relief as the Court may deem Chevron is entitled to receive.²⁰⁸¹

1300. As gleaned from above, the only claims for relief in the Amended Complaint that are actually based on RICO are the First and Second Claims for Relief (to which the Parties also refer as Counts 1 and 2). In particular, Chevron pleaded violations of RICO (18 U.S.C. § 1962(c)) and conspiracy to violate RICO (18 U.S.C. § 1962(d)) as against a particular subset of the defendants, *i.e.*, the Donziger Defendants, the Stratus Defendants, Messrs Fajardo and Yanza, ADF, and Selva Viva. In Chevron’s submission, this group of defendants “associated together in fact for the common purpose of carrying out an ongoing criminal enterprise”.²⁰⁸²

1301. Aside from the two RICO claims, the remaining claims for relief in the Amended Complaint are either non-statutory claims for equitable relief (*i.e.*, common law claims) or claims based on New York law.²⁰⁸³

- (i) Count 3 (Fraud) is principally based on the premise that the RICO defendants “and their agents have knowingly misrepresented, omitted, and/or concealed material facts in their pleadings and representations before U.S. courts and before the Lago Agrio court, in their communications to federal and state government agencies and officials, and in their communications to Chevron, Chevron’s shareholders, investors, analysts, and the media”. According to Chevron, “[a]s a direct, proximate, and foreseeable result of Defendants’ fraud, Chevron has been harmed, including significant pecuniary, reputational, and other damages. These injuries include significant damage to Chevron’s reputation and goodwill, and the attorneys’ fees and costs to defend itself in objectively baseless, improperly motivated sham litigation in Ecuador and in related litigation in the U.S., including the attorneys’

²⁰⁸¹ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 136-161.

²⁰⁸² **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 342.

²⁰⁸³ Track III Hearing Transcript, Day 1 (18 August 2022), p. 67 (Coriell).

fees and costs associated with exposing the Defendants’ pervasive fraud in the Section 1782 proceedings”.²⁰⁸⁴

- (ii) Count 4 (Tortious Interference with Contract) is founded on the assertion that that “Defendants have intentionally caused and continued to cause the Republic of Ecuador to repeatedly breach the 1995 Settlement Agreement and the 1998 Final Release. Defendants have, through improper influence and the fabricated Cabrera Report, persuaded the Republic of Ecuador to refuse to defend Chevron’s rights and those of its subsidiaries under the contracts, to improperly dictate to the judiciary that Chevron be held liable in the Lago Agrio Litigation, and to bring criminal charges against Chevron’s employees”.²⁰⁸⁵
- (iii) Count 5 (Trespass to Chattels) proceeds on the basis that the same subset of defendants against whom Counts 1 and 2 were brought “have engaged in a pattern of extortion, collusion, wrongdoing, and deceit with an intent to interfere with Chevron’s property, and the Lago Agrio Plaintiffs have benefited and will continue to benefit from the RICO Defendants’ criminal scheme through a fraudulent judgment. Through these actions, and by prosecuting a fraudulent lawsuit, manufacturing false evidence, tampering with testimony, disseminating misleading statements to courts, the public, and U.S. government officials, and otherwise engaging in the pressure campaign described in the foregoing paragraphs of this Amended Complaint, Defendants have intentionally, and without justification or consent, interfered and intermeddled with Chevron’s use and enjoyment of its funds that were intended for Chevron’s business purposes and of its business reputation and goodwill”.²⁰⁸⁶
- (iv) Count 6 (Unjust Enrichment) was argued as follows: “Principles of equity and good conscience mandate that this Court prevent Defendants from reaping a multi-billion

²⁰⁸⁴ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, paras. 388-395.

²⁰⁸⁵ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 398.

²⁰⁸⁶ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 404.

dollar windfall and any benefits arising out of the fraudulent litigation by, among other things, issuing a preliminary and permanent injunction against Defendants that enjoins Defendants, their assignees, and anyone else acting in concert with them”.²⁰⁸⁷

- (v) Count 7 (Civil Conspiracy) departs from the premise that the RICO defendants “have committed torts against Chevron, including acts of racketeering giving rise to violations of RICO, fraud, tortious interference with contract, trespass to chattels, and unjust enrichment”.²⁰⁸⁸ Against this background, Chevron asserted that “Defendants agreed to participate in a common scheme against Chevron. Defendants intentionally participated in the furtherance of a plan or purpose to obtain property from Chevron. In furtherance of this plan or purpose, Defendants committed overt and unlawful acts, including acts of racketeering as alleged herein.”²⁰⁸⁹
- (vi) Count 8 (Violations of New York Judiciary Law § 487) is based on New York Judiciary Law § 487, which, as reproduced in the Amended Complaint, reads in relevant part: “An attorney or counselor who . . . [i]s guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party . . . [i]s guilty of a misdemeanor, and in addition to the punishment prescribed therefore by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.”²⁰⁹⁰ According to Chevron, the Donziger Defendants “engaged in an intentional pattern of collusion, wrongdoing, and deceit with the intent to deceive both Chevron and multiple federal courts, including the

²⁰⁸⁷ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 413.

²⁰⁸⁸ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 415.

²⁰⁸⁹ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 416.

²⁰⁹⁰ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 421.

United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit.”²⁰⁹¹

(vii) Count 9 (Request for Declaratory Judgment That the Judgment by the Lago Agrio Court Against Chevron is Unenforceable and Non-Recognizable) is a prayer for relief pursuant to the Declaratory Judgment Act, 28 USC § 2201(a)²⁰⁹² for a “declaratory judgment that the Lago Agrio judgment is unenforceable and non-recognizable, including but not limited to under the United States Constitution, federal common law, New York common law principles of comity, and/or New York’s Recognition of Foreign Country Money Judgments Act (New York C.P.L.R. 5301, *et seq.*)”.²⁰⁹³

1302. From among Counts 3-9, Count 8 merits a separate analysis. As gleaned from above, all of Counts 3-7 and 9 concern relief seeking to prevent the enforcement of the Lago Agrio Judgment.²⁰⁹⁴ In contrast, Count 8 concerns only a request “for general damages according to proof at trial, trebled according to statute” and “for Chevron’s reasonable attorneys’ fees and costs according to statute” under Judiciary Law § 487.²⁰⁹⁵ This raises questions regarding the extent to which Count 8 fulfils the requirement of causation for the compensation of incidental damages under international law. In view of the limited scope of Count 8, the Tribunal deems it preferable to address it individually in the following section.²⁰⁹⁶ The Tribunal’s further analysis will proceed only in respect of Counts 1-7 and 9.

1303. As mentioned before, from among the nine claims for relief set out in the Amended Complaint, Counts 1 and 2 stand apart for being based on RICO, a statute which is

²⁰⁹¹ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 422.

²⁰⁹² **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 428.

²⁰⁹³ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 430.

²⁰⁹⁴ *See also* para. 1190 above.

²⁰⁹⁵ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 136-161.

²⁰⁹⁶ *See* paras. 1456-1461 below.

intended primarily to combat the corrupt influence of organized crime²⁰⁹⁷ and does not address the enforcement of foreign judgments in the United States. At the same time, the two RICO claims and the remaining claims for relief in the Amended Complaint share the same factual matrix,²⁰⁹⁸ while all counts except for Count 8 concern the same equitable relief seeking to prevent the enforcement of the Lago Agrio Judgment. This raises the question of whether it was necessary²⁰⁹⁹ for Chevron to bring Counts 1 and 2 to prevent the recognition and enforcement of the Lago Agrio Judgment in the United States, instead of bringing an action based only on Counts 3-7 and 9. In the Tribunal's view, Counts 1 and 2, being based on RICO, are clearly separable from all other Counts and must be justified independently.

1304. The Claimants reject the suggestion that Chevron could have brought an action based only on Counts 3-7 and 9 on the basis that a common law claim would not have supported a request for equitable relief, as “there is no cause of action for common law fraud in New York where a plaintiff pleads detrimental reliance by a third party”.²¹⁰⁰ However, the Tribunal does not believe this is germane to the question at hand. The equitable relief ultimately granted to Chevron in the RICO Litigation, which was identified in paragraph 1288 above, was based on liability under RICO and also under “non-statutory grounds” (*i.e.*, common law fraud under Count 3).²¹⁰¹ As rightly noted by the Respondent, the

²⁰⁹⁷ See para. 1182 above.

²⁰⁹⁸ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 23: “This Court has subject matter jurisdiction over Chevron’s claims under 28 U.S.C. §§ 1331 and 1332, and under 18 U.S.C. § 1964(c). Chevron’s first claim for relief arises under 18 U.S.C. § 1961 *et seq.*, as hereinafter more fully appears. There is also complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. *Chevron’s state law claims arise out of the same case or controversy as its federal law claims, as all claims in this action arise out of a common nucleus of operative facts.* Thus, this Court also has supplemental jurisdiction over Chevron’s state law claims under 28 U.S.C. § 1367.” (emphasis by the Tribunal).

²⁰⁹⁹ The Tribunal recalls that necessity is a component of reasonableness in the context of the assessment of incidental damages (*see* para. 336 above).

²¹⁰⁰ Reply, para. 807.

²¹⁰¹ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, pp. 306 (“Chevron’s principal remaining claims seek equitable relief with respect to the Judgment both on non-statutory grounds and under RICO. These two claims are entirely independent of each other although, of course, they rely to a great but not complete extent on the same facts. Chevron asserts in addition certain other claims.”); 318 (“*The Non-Statutory Claims for Equitable Relief With Respect to the Judgment* - Chevron asserts that the Judgment was procured by bribery and coercion of Ecuadorian judges and, even if that were not so, that it nevertheless was procured by fraud in other respects. It nevertheless

Claimants’ contrary proposition is disproven by the Second Circuit’s opinion, which makes clear that the SDNY did, in fact, award equitable relief on principles of common law:

Chevron did not assert RICO claims against the LAPs, and the district court based its grant of equitable relief against the LAP Representatives—for procurement of the Judgment by means of fraud—on principles of common law. The court also based the relief it granted against Donziger on that common-law theory as well as on RICO.²¹⁰²

1305. Chevron also acknowledged as much when opposing a petition for *certiorari* questioning the availability of private injunctive relief in a RICO action:

[Petitioners] fail to mention that the equitable relief ordered by the district court is independently supported under New York common law, and thus the question of RICO’s remedial scope would not meaningfully affect the outcome of this appeal.

[. . .]

[The] district court’s grant of equitable relief is also supported by a second, independent cause of action. As the Second Circuit noted, the district court “based the relief it granted against Donziger” on both the New York “common law theory as well as RICO.” App. 125a. Thus, even if this Court were to grant *certiorari* and reverse the Second Circuit’s holding regarding the availability of equitable relief under RICO, the relief ordered by the district court would remain in place.²¹⁰³

1306. In sum, there was no distinct need for Chevron to bring claims under RICO to prevent the recognition and enforcement of the Lago Agrio Judgment in the United States, as the equitable relief it ultimately obtained could be independently supported in common law. In view of this circumstance, what precise goal did Chevron seek to attain by bringing two RICO claims (*i.e.*, Counts 1 and 2) in the RICO Litigation?

1307. At the heart of this question lies a fact of critical significance: before the RICO Litigation there was no clear precedent supporting the use of RICO to prevent the enforcement of a foreign judgment in the United States, much less to support a worldwide injunction. In

does not seek to set aside the Judgment in the Ecuadorian court – an institution of a sovereign nation – or even to enjoin its enforcement outside the United States. Rather, it seeks equitable relief ‘that will strip Defendants of any profits they are able to procure as a result of their corrupt judgment’ and to enjoin enforcement of the Judgment in the United States.”) 339 (“All of the elements required for equitable relief from the Judgment as against all defendants have been satisfied in this case. . .”).

²¹⁰² **R-1563**, *Chevron Corp. v. Donziger*, 533 F.3d 74 (2d Cir. 2016), 8 August 2016, p. 167.

²¹⁰³ **R-2106**, *Steven Donziger et al v. Chevron Corporation*, 137 S. Ct. 2268, No. 16-1178, Brief in Opposition in Petition for a Writ of Certiorari, 5 May 2017, pp. 3, 25-26.

the words of the Second Circuit, prior to its decision on appeal: “Neither the Supreme Court nor this Court has decided the question of whether RICO authorizes a court to award equitable relief to a private plaintiff.”²¹⁰⁴ The Tribunal thus sees merit in the Respondent’s argument that, at the time it initiated the action, Chevron “could not even be sure that the relief it was seeking through RICO *existed*. It therefore made little sense, objectively, for Chevron to turn to RICO to prevent enforcement, particularly when other means were available and were well within the bounds of existing precedent”.²¹⁰⁵ In other words, there is a disconnect between the filing of Chevron’s two RICO claims and the goal of preventing the enforcement of the Lago Agrio Judgment.

1308. Such disconnect becomes all the more apparent in light of the fact that, by the Claimants’ own admission, “[l]itigating a RICO case is an inherently costly endeavor. RICO is a complex statute which requires a prevailing plaintiff to prove that defendants violated multiple federal criminal laws over time and in connection with the operation of an enterprise.”²¹⁰⁶ In particular, to establish civil liability under RICO, a party must prove several elements, *i.e.*, “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.”²¹⁰⁷ Chevron also needed to prove the commission of predicate acts that took place on two continents, spanning nearly 50 years, and involving more than 50 defendants, including foreign individuals.²¹⁰⁸ As such, to prove its RICO claims, Chevron had to “process, amass[] and present[] a voluminous evidentiary record through documents, videos, fact witnesses, and experts” that “naturally required a substantial amount of attorney time”.²¹⁰⁹ Among other examples, the Claimants note that Chevron incurred “significant expenses” in a complex “follow the money” strategy to develop evidence proving that Mr Donziger had engaged in several RICO-predicate financial crimes, such as money laundering, Travel Act/Foreign Corrupt Practices Act violations, and wire fraud.²¹¹⁰ When compared to other claims raised by Chevron in the Amended

²¹⁰⁴ **R-1563**, *Chevron Corp. v. Donziger*, 533 F.3d 74 (2d Cir. 2016), 8 August 2016, p. 137.

²¹⁰⁵ Rejoinder, para. 1233 (emphasis in the original).

²¹⁰⁶ Memorial, para. 297.

²¹⁰⁷ **RE-44**, First Strong Report, para. 58.

²¹⁰⁸ **RE-44**, First Strong Report, para. 59.

²¹⁰⁹ Memorial, para. 297.

²¹¹⁰ Memorial, para. 309.

Complaint, such as Count 3, the Claimants themselves state that “[p]roving a RICO violation was a higher bar, with more elements to satisfy than a fraud claim”.²¹¹¹

1309. Thus, the complexity of the two RICO claims included in the Amended Complaint was in all likelihood a key driver (if not *the* key driver) of the legal fees and expenses spent by Chevron in the RICO Litigation. While the Claimants have made a detailed case arguing that the legal fees and expenses they incurred in connection with the RICO Litigation were reasonable and proportionate to the multi-billion-dollar liability arising from the Lago Agrio Judgment, they have not convincingly explained why Chevron decided to spend potentially hundreds of millions of dollars in pursuit of two RICO claims²¹¹² under a statute that had never been used before to prevent the enforcement of a foreign judgment when there was no distinct need to do so to achieve that particular goal.

1310. Indeed, the Claimants have not convincingly established that the advantages Chevron claims to have gained as a result of bringing the RICO Litigation could not have been obtained in equal measure without relying on RICO. For instance, as already noted, the Claimants’ expert, Prof Silver, opines that “the lawsuit had the potential to place all possible recognition and enforcement actions within the jurisdiction of a single U.S. federal court empowered to enjoin the LAPs, their attorneys, and other parties from proceeding”²¹¹³. However, the Amended Complaint itself states that the SDNY (a first-instance federal court) could be seized on the sole basis of diversity of citizenship between the Chevron and the RICO defendants, without the need to invoke a federal statute such as RICO.²¹¹⁴ In the same vein, the RICO Judgment noted that there was “a basis of subject

²¹¹¹ Reply, para. 821.

²¹¹² The Tribunal recalls that the Claimants claim approximately USD 323 million under the RICO Litigation category (*see* Reply, para. 1212(2)(c)).

²¹¹³ Silver Expert Report, para. 180.

²¹¹⁴ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 23: “This Court has subject matter jurisdiction over Chevron’s claims under 28 U.S.C. §§ 1331 and 1332, and under 18 U.S.C. § 1964(c). Chevron’s first claim for relief arises under 18 U.S.C. § 1961 *et seq.*, as hereinafter more fully appears. *There is also complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.* Chevron’s state law claims arise out of the same case or controversy as its federal law claims, as all claims in this action arise out of a common nucleus of operative facts. Thus, this Court also has supplemental jurisdiction over Chevron’s state law claims under 28 U.S.C. § 1367.” (emphasis by the Tribunal). *See also* **RE-62**, Second Strong Expert Report, fn 21: “The

matter jurisdiction over [Chevron’s claims based on non-statutory grounds] and other non-federal claims completely independent of the RICO claims, namely 28 U.S.C. § 1332 [*i.e.*, diversity of citizenship].”²¹¹⁵

1311. The Tribunal is also not persuaded that other advantages stemming from the RICO Litigation identified by Prof Silver (enjoining the enforcement of the Lago Agrio Judgment in the United States; obtaining discovery; producing a detailed opinion by a federal court; exposing the defendants to personal civil liability; prompting the litigation funders and Patton Boggs to withdraw; easier access to discovery than when defending a recognition action, obtaining discovery while evidence of the fraud was still available; filing the action before the court where some of the Section 1782 Proceedings were pending; obtaining Judge Zambrano’s testimony; and obtaining relief against the ADF – a creditor of the Lago Agrio Judgment)²¹¹⁶ would not have also applied to an Amended Complaint excluding Counts 1 and 2.

1312. Taking into account all these factors, the Tribunal is not persuaded that the two RICO claims were reasonable steps to take in addition to the other legal steps taken by Chevron (*i.e.*, Counts 3-7 and 9). The Respondent and its expert have suggested other possible rationales for bringing the RICO claims, including “a possible desire on the part of Chevron to distract and/or bankrupt the judgment creditors in order to thwart enforcement efforts; a belief by Chevron that a robust litigation strategy would deter other plaintiffs from undertaking similar actions in the future; and/or a sense of vengeance toward certain individuals, most notably Steven Donziger”.²¹¹⁷ It is unnecessary for the Tribunal to determine whether Chevron pursued these specific goals or any other goal entirely. The Claimants have not discharged the burden incumbent upon them to satisfy the Tribunal that the two RICO claims were reasonable steps to take alongside Claims 3-7 and 9 to mitigate the damage done to them.

concept of diversity jurisdiction allows federal courts to hear disputes between citizens of different U.S. states or different countries, even in situations where those matters would need to be heard in state courts because of their connection to state substantive law.”

²¹¹⁵ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, fn 1228.

²¹¹⁶ Silver Expert Report, paras. 181-191.

²¹¹⁷ **RE-44**, First Strong Report, para. 73.

1313. For the avoidance of doubt, this conclusion does not extend to Chevron's pursuit of Counts 3-7 and 9.²¹¹⁸ As already noted, all of Counts 3-7 and 9 concern relief seeking to prevent the enforcement of the Lago Agrio Judgment.²¹¹⁹ Regardless of whether these claims ultimately provided the basis for preventing the LAPs from enforcing the Lago Agrio Judgment in the United States – that was the case only for Count 3 –²¹²⁰ there is no similar disconnect between Chevron's filing of Counts 3-7 and 9 and the goal of preventing enforcement.²¹²¹ In the circumstances, the Tribunal considers that the Claimants are owed a certain level of deference as to this specific choice of mitigation measures.²¹²² By contrast, there remains substantial uncertainty as to whether Counts 1 and 2 were devised by Chevron as a mitigation measure seeking to address specifically the injury arising from the Respondent's Treaty breaches, as opposed to other sources of concern.

1314. This determination has implications for the fulfilment of the requirement of reasonableness for the compensation of incidental damages under international law. To the extent that the legal fees and expenses spent by Chevron in connection with Counts 1 and 2 were incurred not with the goal of preventing the enforcement of the Lago Agrio Judgment, but primarily with other goals in focus, the requirement of reasonableness is not met, particularly in circumstances in which the legal fees and expenses for which reimbursement is claimed are of an extraordinary magnitude by any account.

1315. Therefore, the Tribunal determines that a significant portion of the legal fees and expenses spent by Chevron in connection with the RICO Litigation were not reasonably incurred to repair damage and otherwise mitigate loss arising from the recognition and enforcement of the Lago Agrio Judgment.

1316. For the reasons stated in paragraph 1290 above, the Tribunal's conclusion in the preceding paragraph should not result in a wholesale exclusion of the RICO Litigation

²¹¹⁸ See para. 1302 above. As discussed, in view of its limited scope, the Tribunal will analyse Count 8 separately in paras. 1456-1461 below.

²¹¹⁹ See para. 1302 above. See also para. 1190 above.

²¹²⁰ See para. 1304 above.

²¹²¹ See paras 1331-1343, 1363-1370, and 1442-1455 below for a more detailed analysis of Counts 3-6 and 9.

²¹²² See para. 341 above.

category of damages from compensation. That said, it remains the case that the onus is on the Claimants to establish the requirement of reasonableness in connection with each mitigation measure for which they request compensation,²¹²³ and they have failed to meet that burden to a significant extent in connection with the RICO Litigation category of damages as a whole. The Claimants have also not provided sufficient elements to the Tribunal to distinguish precisely which portion of the legal fees and expenses incurred by Chevron in connection with the RICO Litigation was meant specifically to prevent the enforcement of the Lago Agrio Judgment, as opposed to pursuing other goals.

1317. Accordingly, the Tribunal assesses that 80% of the total amount of fees and costs claimed under the RICO Litigation category of damages must be excluded from compensation. This figure seeks to reflect the fact that (i) the legal fees and expenses specifically attributable to the two RICO claims represent a portion of the total costs of the RICO Litigation; (ii) while the exact percentage remains uncertain, there are grounds to infer that it is significant; (iii) the burden to establish reasonableness – and thus to remove such uncertainty – falls on the Claimants, and they have failed to meet such burden; and (iv) had the RICO Litigation not been pursued, it is evident that Chevron would have incurred some expenditure in pursuing its legitimate goals by other legal means. For the avoidance of doubt, the Tribunal confirms that this discount is irrespective of the additional exclusion from compensation of legal fees and expenses corresponding to certain circumscribed components of this damages category, as set out in the following sections.

2. Second Step: Analysis of Incidental Damages “Components”

1318. As a second step of its analysis, the Tribunal must determine, within the RICO Litigation category, whether the Claimants have established the requirements for each individual costs “component” identified by the Parties to qualify as incidental damages. The Tribunal must also examine other issues raised by the Parties in connection with this particular category to determine whether any other portion of the legal fees and expenses

²¹²³ See para. 335 above.

claimed under the present heading should be excluded from the final amount of compensation.²¹²⁴

1319. The Parties have identified twenty-three (23) components under the RICO Litigation category, which are addressed *seriatim* below. Other issues raised by the Parties in connection with this damages category but not expressly identified by them as a component are addressed immediately thereafter.

*i. (CLA) Fees Exceeding US\$ 32,334,584 / (RES) Fees Exceeding US\$ 32,334,584 (amount requested in fee application)*²¹²⁵

1320. The Respondent argues that, if the Claimants are at all entitled to damages under this category, they should not exceed USD 32,334,584 – the amount that Chevron publicly sought before the SDNY as reasonable attorneys’ fees for the RICO Litigation.²¹²⁶

1321. According to the Respondent, the SDNY is the proper forum where Chevron may seek to recover the legal fees and expenses it incurred in connection with the RICO Litigation. The Respondent highlights that Chevron asked the SDNY for only USD 32 million as reasonable attorneys’ fees for “a limited set of activities at the core of its [RICO] case.”²¹²⁷ According to the Respondent, by asking for only this amount, Chevron effectively conceded that the myriad other RICO activities for which it claims compensation in this Arbitration were “outside the core of [Chevron’s] case”.²¹²⁸ Based on the premise that the standard for recovery of attorneys’ fees under RICO is “reasonable and necessary”, the Respondent posits that Chevron, in declining to request the vast majority of its fees before the SDNY, effectively acknowledged that no amount it spent going above USD 32 million was reasonable and necessary in pursuing the RICO Litigation.²¹²⁹

1322. The Respondent further rejects the Claimants’ explanation that its decision to seek only 10% of the amount it claims in this Arbitration before the SDNY sought to “streamline”

²¹²⁴ See paras. 559-565 above.

²¹²⁵ For an explanation of the names assigned to components *see* para. 568 above.

²¹²⁶ Counter-Memorial, para. 338; Rejoinder, para. 1210.

²¹²⁷ Counter-Memorial, para. 336-338.

²¹²⁸ Counter-Memorial, paras. 338, 497.

²¹²⁹ Counter-Memorial, paras. 339-340, 458.

the SDNY’s consideration of Chevron’s application.²¹³⁰ According to the Respondent, there is a nearly “one-to one” alignment between the activities for which it claims compensation in this Arbitration and the activities for which Chevron requested fees for in the RICO Litigation, *i.e.*, “[1] preparing its complaint, [2] handling discovery, [3] analyzing matters of Ecuadorian law, [4] analyzing the racketeering enterprise’s complex financial issues, [5] preparing and litigating motions—including participation in court hearings—[6] responding to [the RICO] Defendants’ ill-taken writ petition, and, [7] finally, trial and related court submissions.”²¹³¹ The Respondent states that the ten-fold increase in the Claimants’ fee request in this Arbitration can only be explained by the Claimants “attempting to take advantage” of the confidentiality of these proceedings and the Tribunal’s lesser familiarity with the RICO Litigation in particular and the U.S. trial system in general.²¹³²

1323. In essence, the Claimants respond that the basis on which they rely to claim the costs incurred in connection with the RICO Litigation is not U.S. federal law, but rather international law, under which they are entitled to full reparation for all fees and expenses they incurred as a consequence of the Respondent’s Treaty breaches.²¹³³

1324. At the outset, the Tribunal recalls the principle laid out in paragraph 483 above: even when domestic cost-shifting standards incorporate an assessment of reasonableness, the determinations made by local courts in application of those standards will be of limited relevance for the Tribunal’s present analysis, which will be examined under a distinct standard under international law, *i.e.*, not the reasonableness of the legal fees and expenses in the context of individual local proceedings, but whether the legal fees and expenses incurred by the Claimants in the various legal proceedings served reasonably to mitigate the injury flowing from the Respondent’s Treaty breaches. In other words, these assessments are distinct, and fixating on any overlap in these evaluations is more likely to be misleading than helpful.

²¹³⁰ Rejoinder, para. 1323.

²¹³¹ Rejoinder, para. 1323, **R-1603**, *Chevron Corp. v. Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1890 Memorandum of Law ISO Application for Attorneys’ Fees, 18 March 2014, p. 15.

²¹³² Rejoinder, para. 1324.

²¹³³ Reply, para. 854-855.

1325. For these reasons, the Tribunal determines that any representations made by Chevron in the RICO Litigation regarding the reasonableness of the legal fees and expenses they incurred in the context of those proceedings addressed a different subject matter and, therefore, are irrelevant for the Tribunal's present analysis of the damages suffered by the Claimants as a result of the Respondent's Treaty breaches. In the same vein, the Tribunal confirms that none those representations, and none of the costs decisions made by U.S. courts on the basis of such representations, are capable of giving rise to any form of *res judicata* or estoppel in this Arbitration, particularly in view of the fact that the Respondent was not a party to the RICO Litigation. Accordingly, the Tribunal rejects the Respondent's argument under the present heading.

1326. Notwithstanding this conclusion, the Tribunal also recalls that, as stated in paragraph 488 above, any fees collected by the Claimants or their subsidiaries in local proceedings must be deducted from the final amount of compensation to prevent any double recovery. As regards the RICO Litigation, a distinction must be drawn between attorneys' fees and other costs for which Chevron claimed reimbursement in those proceedings.

1327. First, the Tribunal observes that while Chevron applied for the reimbursement of USD 32,334,584 in attorneys' fees before the SDNY,²¹³⁴ it does not appear from the record that the SDNY ever granted such request²¹³⁵ or that Chevron was able to recover any such amount.²¹³⁶ In its Rejoinder, the Respondent indicated that a decision on this fee petition remains pending.²¹³⁷ It is thus unnecessary to deduct any corresponding amounts from compensation at this stage.

²¹³⁴ See **R-1603**, *Chevron Corp. v. Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1890 Memorandum of Law ISO Application for Attorneys' Fees, 18 March 2014, p. 24.

²¹³⁵ See Memorial, Appendix 9, para. 184, where the Claimants note that, as of May 2019, "Judge Kaplan has not yet decided whether to award Chevron any attorneys' fees" in the RICO Litigation.

²¹³⁶ See **C-3037**, RICO Docket, ECF No. 1902 (29 April 2014), which records an Order of even date terminating Chevron's first motion for attorneys' fees dated 18 March 2014, without prejudice to Chevron requesting that the motion be reactivated after the determination of Mr Donziger's appeal. Chevron did request this reactivation, which was first denied (see **C-3037**, RICO Docket, ECF Nos. 1915 and 1916 (8 November 2016)), and then granted (see **C-3037**, RICO Docket, ECF Nos. 1922 and 1923 (19 June and 17 July 2017)), pursuant to which the SDNY ordered the exchange of submissions with which the parties complied with (see **C-3037**, RICO Docket ECF Nos. 1927, 1934, and 1936 (7 August, 28 August, and 12 September 2017)). It does not appear from the RICO Docket that the application for attorneys' fees was granted.

²¹³⁷ Rejoinder, para. 1325.

1328. Second, the Tribunal notes that while Chevron’s application for attorneys’ fees in the RICO Litigation is yet to be decided, the SDNY did allocate other costs. In an Order entered on 28 February 2018, the SDNY awarded costs in favour of Chevron and against Mr Donziger in the amount of USD 813,602.71 (reduced from an earlier award of USD 944,463.85).²¹³⁸ According to the Claimants, Mr Donziger has refused to satisfy this ruling voluntarily and collection efforts have only resulted in the reimbursement of approximately USD 150,000.²¹³⁹

1329. Thus, the amount of USD 150,000, representing the costs awarded and collected by Chevron in the RICO Litigation, must be deducted from compensation. There is otherwise no evidence that the Claimants unreasonably failed to pursue the collection of the outstanding amount of this costs award in breach of their duty to mitigate under international law.²¹⁴⁰ As such, no further deductions are warranted at this stage.

1330. For these reasons, the Tribunal rejects the Respondent’s argument that any damages award under this category should be limited to USD 32,334,584. However, the amount of USD 150,000, representing costs awarded and collected by Chevron in the RICO Litigation, must be deducted from the final amount of compensation. Lastly, to prevent a double recovery, any further legal fees and expenses the Claimants may collect in the RICO Litigation must also be excluded from the final amount of compensation.

ii. *(CLA) Work relating solely to Count IX (including Preliminary Injunction) / (RES) Work relating to Count IX (including Preliminary Injunction)*²¹⁴¹

1331. As explained above, the early stages of the RICO Litigation focused on (i) Count 9, *i.e.*, Chevron’s request for a declaratory judgment that the Lago Agrio Judgment is non-

²¹³⁸ See, **C-3037**, RICO Docket, ECF Nos. 1928 (8 August 2017), 1959 (28 February 2018). See also Track II Award, para. 4.114; **C-2547**, Michael I. Krauss, “The Ecuador Saga Continues: Steven Donziger now owes Chevron more than \$800,000,” FORBES, 14 March 2018, which quotes an earlier award of USD 944,463.85 (RICO Docket ECF No. 1928). This amount was reduced following a motion to review from Mr Donziger (see RICO Docket ECF No. 1959).

²¹³⁹ Memorial, Appendix 9, para. 188.

²¹⁴⁰ See para. 505(ii) above. In respect of Chevron’s efforts to collect the money judgment against Mr Donziger, see also paras. 1382-1389 below.

²¹⁴¹ The name given to this component is taken from the list of components prepared by the Parties, who labelled Count 9 as “Count IX” using Roman numerals. (See Letter from the Respondent to the Tribunal dated 21 October 2022; Letter from the Claimants to the Tribunal dated 22 October 2022, Attachment A). For the avoidance of

recognizable and unenforceable; and (ii) Chevron’s request for a global injunction against the enforcement of the Lago Agrio Judgment. The SDNY granted Chevron’s request for a global preliminary injunction in part on 7 March 2011 on the basis of Count 9²¹⁴² and severed Count 9 as a whole for separate adjudication on 31 May 2011.²¹⁴³ Thereafter, on 26 January 2012, the Second Circuit vacated the preliminary injunction and ordered the SDNY to dismiss Count 9 in its entirety.²¹⁴⁴

1332. According to the Respondent’s Damages Model, the Claimants claim approximately USD 52.6 million for all legal fees and expenses incurred by Chevron in pursuit of Count 9 between 14 February 2011 and late January 2012, when Count 9 was dismissed.²¹⁴⁵

1333. In the Respondent’s view, pursuing these actions was a significantly costly yet unsuccessful endeavour that was the “overwhelming focus” of the first nine months of the RICO Litigation.²¹⁴⁶ As evidence that all activity relating to the preliminary injunction and to Count 9 was unnecessary, the Respondent points to the Second Circuit’s decision to vacate the preliminary injunction and to order Count 9 to be dismissed entirely.²¹⁴⁷ Citing the opinion of the Second Circuit, the Respondent contends that the Count 9 proceedings, despite costing “a fortune”, “lacked a sound legal basis and ultimately afforded Chevron no relief from the Lago Agrio Judgment.”²¹⁴⁸ Since Chevron did not succeed on the merits of its global injunction theory, the Respondent considers that it should not be made to “foot the bill” for this “ill-advised” novelty.²¹⁴⁹

doubt, the Tribunal confirms that regardless of whether a cause of action is given an Arabic or a Roman numeral in this Award, the RICO Litigation arose from a single set of causes of action, comprising Counts 1 through 9 (or Counts I through IX).

²¹⁴² **C-972**, *Chevron Corp. v. Donziger et al.*, Case No. 11-cv-00691, United States District Court for the Southern District of New York, Opinion, 7 March 2011.

²¹⁴³ **C-3037**, RICO Docket, ECF No. 328 (31 May 2011).

²¹⁴⁴ **R-1558**, *Chevron Corp. v. Camacho Naranjo*, 667 F.3d 232 (2d Cir. 2012), 26 January 2012.

²¹⁴⁵ Letter from the Respondent to the Tribunal dated 2 November 2022.

²¹⁴⁶ Rejoinder, para. 1296. *See also* Counter-Memorial, paras. 487, 517, 766.

²¹⁴⁷ Counter-Memorial, para. 487.

²¹⁴⁸ Rejoinder, paras. 1296-1297.

²¹⁴⁹ Rejoinder, para. 1297.

1334. As explained in paragraph 1289 above, the Claimants have established that Chevron's pursuit of the RICO Litigation sought to prevent the recognition and enforcement of the Lago Agrio Judgment, thus fulfilling the requirement of causation for the compensation of incidental damages under international law. The Tribunal confirms that this finding extends to Chevron's pursuit of Count 9 and a global preliminary injunction against enforcement of the Lago Agrio Judgment.

1335. To recall, Chevron's prayer for relief under Count 9 reads as follows:

On the Ninth Claim for Relief:

9. For a declaration that the judgment against Chevron in the Lago Agrio Litigation is non-recognizable and unenforceable for each and everyone of the reasons set forth herein; and

10. For equitable relief as appropriate pursuant to applicable law, including but not limited to issuing a temporary restraining order, a preliminary injunction and a permanent injunction that bars the Front, the Lago Agrio Plaintiffs, their assignees and anyone else acting in concert with them-including the other RICO Defendants, the law firms of Emery Celli, Motley Rice and Patton Boggs, and H5 and financial backers such as Burford and Russell De Leon from commencing, prosecuting, or advancing in any way-directly or indirectly-any attempt to recognize or enforce the Lago Agrio judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad, including any attempt to attach or seize any Chevron or Chevron subsidiary's or co-venturer's assets, whether pre-judgment or otherwise, until this Court determines the merits and enters judgment on Chevron's claims against the Defendants in this action, or until such time as this Court deems appropriate.

1336. As such, consistent with the Tribunal's finding in paragraph 1289 above, Count 9 was geared towards the compensable objectives of (i) seeking a temporary restraining order, a preliminary injunction, and permanent injunction barring any attempt "to recognize or enforce the Lago Agrio judgment in any court, tribunal, or administrative agency in any jurisdiction, in the United States or abroad";²¹⁵⁰ and (ii) a request for a declaratory judgment that the Lago Agrio Judgment is unenforceable and non-recognizable.²¹⁵¹

1337. A separate analysis of the second requirement for the compensation of incidental damages – reasonableness – vis-à-vis Count 9 is in order. In essence, the Respondent challenges the reasonableness of Chevron's pursuit of Count 9 on the grounds that these

²¹⁵⁰ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 136-161.

²¹⁵¹ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 136-161.

proceedings “lacked a sound legal basis and ultimately afforded Chevron no relief from the Lago Agrio Judgment [] [b]ut they cost Chevron a fortune.”²¹⁵²

1338. As already noted by the Tribunal, reasonableness should be assessed contemporaneously and not with the benefit of hindsight.²¹⁵³ Accordingly, the Tribunal is prepared to grant a certain level of deference to the Claimants’ decisions as to which specific actions to bring as part of the RICO Litigation.²¹⁵⁴ For the same reason, the ultimate success of Count 9 should not be a decisive factor when determining whether it was reasonable for the Claimants to pursue such action; rather, the relevant inquiry is whether Count 9 was a reasonable step towards the goal of removing the risk of enforcement.

1339. In the Tribunal’s view, the reasonableness of Chevron’s choice of mitigation measures is confirmed by the SDNY’s Order of 7 March 2011.²¹⁵⁵ The SDNY there granted a global preliminary injunction against the enforcement of the Lago Agrio Judgment on the basis of Count 9 upon a finding, *inter alia*, that Chevron “is sufficiently likely to prevail on its claim for a declaration that the Ecuadorian judgment is not entitled to recognition or enforcement and that efforts in that direction should be enjoined”.²¹⁵⁶ As a consequence, all the defendants, save for the Stratus Defendants, were:

enjoined and restrained, pending the final determination of this action, 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 in *Maria Aguinda y Otros v. Chevron Corporation*, No. 002-2003, in the Provincial Court of Justice of Sucumbios, Ecuador (hereinafter the “*Lago Agrio Case*”), 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* (collectively, a “Judgment”), or for prejudgment seizure or attachment of assets, outside the Republic of Ecuador, based upon a Judgment.²¹⁵⁷

²¹⁵² Rejoinder, para. 1297.

²¹⁵³ See para. 340 above.

²¹⁵⁴ See para. 341 above.

²¹⁵⁵ See para. 1193 above.

²¹⁵⁶ **C-972**, *Chevron Corp. v. Donziger et al.*, Case No. 11-cv-00691, United States District Court for the Southern District of New York, Opinion, 7 March 2011, p. 87.

²¹⁵⁷ **C-972**, *Chevron Corp. v. Donziger et al.*, Case No. 11-cv-00691, United States District Court for the Southern District of New York, Opinion, 7 March 2011, p. 125.

1340. As such, the SDNY's Order of 7 March 2011 confirms that, at the start of the RICO Litigation, Chevron had a reasonable basis on which to bring Count 9 and put forward a request for a global injunction, preliminary or otherwise. The fact that the Second Circuit later overturned the SDNY's Order does not alter this conclusion: as already explained, it would not be appropriate for the Tribunal to determine with the benefit of hindsight that the defeat of Count 9 implies that Chevron's decision to bring Count 9 was unreasonable.

1341. Lastly, aside from the reasonableness of Chevron's choice of measures, the Respondent questions the reasonableness of the amounts spent by Chevron in connection with Count 9. As already noted, the Claimants claim approximately USD 52.6 million for all legal fees and expenses incurred by Chevron in pursuit of Count 9 between February 2011 and January 2012.²¹⁵⁸ While the Tribunal considers this amount to be extraordinary for an action that lasted a little under a year, its reasonableness must be ascertained in light of the circumstances in which it was spent – the interim period between the issuance of the Lago Agrio Judgment and the date on which the Judgment was rendered enforceable by the Lago Agrio Court (1 March 2012).²¹⁵⁹ In the Tribunal's view, it was reasonable for Chevron to display substantial efforts – and thus incur significant fees and expenses – to obtain some form of relief preventing the enforcement of the Lago Agrio Judgment in the United States before enforcement became possible as a matter of law.

1342. The conclusion that Count 9 is compensable, however, is subject to the Tribunal's analysis of other grounds supporting the Respondent's argument that the amount of the Claimants' spending in connection with the RICO Litigation was unreasonable – concerning, primarily, Chevron's attorneys' billing practices – which are addressed in sub-section 3 below.

1343. For these reasons, the Tribunal declines to exclude from compensation the fees incurred by Chevron for work relating to Count 9.

²¹⁵⁸ Letter from the Respondent to the Tribunal dated 2 November 2022.

²¹⁵⁹ See para. 350 above.

iii. *Work related to bringing a Complaint Against NY State Comptroller DiNapoli*

1344. The Parties disagree on whether Chevron may recover the fees and costs it incurred in filing an ethics complaint against Mr Thomas DiNapoli, then New York State Comptroller and trustee of the New York Common Retirement Fund, which held significant shares of stock in Chevron. According to the Claimants, the ethics complaint stemmed from public statements made by Mr DiNapoli, including an article he wrote in the Huffington Post urging Chevron to settle with the LAPs, allegedly as part of a broader pressure campaign against Chevron.²¹⁶⁰

1345. The Respondent rejects this claim, arguing that it should not be made to bear the costs of Chevron’s “public relations war”. In particular, the Respondent contends that if its own statements did not violate the Treaty, it certainly cannot be held liable for statements made by others, particularly foreign public officials like Mr DiNapoli.²¹⁶¹

1346. In its complaint against Mr DiNapoli, Chevron “urge[d] the New York State Joint Commission on Public Ethics . . . to investigate the apparent misconduct of New York State Comptroller Thomas P. DiNapoli in violation of New York Public Officers Law Section 74 *et seq*”.²¹⁶² Chevron alleged that “[Mr] Donziger and his associates have given [Mr] DiNapoli consideration . . . including large monetary contributions . . . [i]n apparent exchange . . . [for] the unwavering support of [Mr] DiNapoli and his office” in publicly denouncing and attacking Chevron.²¹⁶³ According to Chevron, Mr DiNapoli’s actions “have apparently violated several New York State laws governing the ethics of public

²¹⁶⁰ Memorial, para. 428; **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, pp. 372-374.

²¹⁶¹ Counter-Memorial, para. 935.

²¹⁶² **C-2915**, *In re the Matter of an Investigation into Apparent Misconduct by N.Y. State Comptroller Thomas P. DiNapoli (Chevron Corp. v. DiNapoli)*, N.Y. Joint Commission on Public Ethics, Complaint, 15 November 2012, p. 2.

²¹⁶³ **C-2915**, *In re the Matter of an Investigation into Apparent Misconduct by N.Y. State Comptroller Thomas P. DiNapoli (Chevron Corp. v. DiNapoli)*, N.Y. Joint Commission on Public Ethics, Complaint, 15 November 2012, pp. 2-3.

officials” and the matter “warrants the Commission’s immediate consideration and a thorough investigation.”²¹⁶⁴

1347. Applying the rationale set out in paragraph 1286 above, the Tribunal determines that the legal fees and expenses incurred by Chevron in bringing a complaint against Mr DiNapoli were not incurred to mitigate the injury arising from the recognition and enforcement of the Lago Agrio Judgment. Rather, Chevron’s ethics complaint sought to hold Mr DiNapoli, a public official, accountable under New York state laws for alleged unethical conduct – an objective that bears no relation to preventing the recognition and enforcement of the Lago Agrio Judgment in the United States or elsewhere. While there was nothing seemingly improper in Chevron’s decision to bring an ethics complaint, the Respondent has no obligation to reimburse the associated costs.

1348. Accordingly, the Tribunal excludes from compensation all fees and costs incurred by the Claimants in relation to Chevron’s ethics complaint against New York State Comptroller Mr Thomas DiNapoli.

iv. Work related to opposing John Keker’s pro hac vice application

1349. The Respondent asserts that the fees and costs relating to Chevron’s “needless” opposition to the application of Mr John Keker to appear in the RICO Litigation as *pro hac vice* counsel of Mr Donziger (that is, to appear before New York courts while not being admitted to practice in New York) should be deducted from compensation.²¹⁶⁵ The Respondent also points to Chevron’s decision to submit a written response regarding Mr Keker’s withdrawal from the case despite not opposing it as an example of Chevron’s “needless[] attack” on such routine and typically unopposed motions,²¹⁶⁶ thereby inflating its fees and costs. According to the Respondent, this behaviour is an example of the “unnecessary filings” Chevron made throughout the RICO Litigation.²¹⁶⁷

²¹⁶⁴ **C-2915**, *In re the Matter of an Investigation into Apparent Misconduct by N.Y. State Comptroller Thomas P. DiNapoli (Chevron Corp. v. DiNapoli)*, N.Y. Joint Commission on Public Ethics, Complaint, 15 November 2012, p. 50.

²¹⁶⁵ Counter-Memorial, para. 549.

²¹⁶⁶ Counter-Memorial, para. 549.

²¹⁶⁷ Counter-Memorial, para. 773.

1350. The Tribunal notes that the Claimants have not addressed how opposing Mr Keker's *pro hac vice* application could have furthered the objective of preventing the enforcement of the Lago Agrio Judgment or how such measure fit within Chevron's larger litigation strategy in the RICO Litigation. Indeed, the ultimate goal of Chevron's opposition is unclear to the Tribunal. In opposing the admission *pro hac vice* of Mr Keker, Chevron argued the following:

Plaintiff Chevron Corporation ("Chevron") opposes the motion. It argues that Mr. Keker and his firm (1) violated (a) this Court's order of February 8, 2011, which required the filing on or before February 11, 2011, of all papers in opposition to Chevron's preliminary injunction motion, (b) its verbal direction on February 18, 2011, and (c) the provisions of S.D.N.Y. Civ R. 6.1(b), all by filing on February 25, 2011, a 35 page brief, a declaration, and supporting exhibits in opposition to the motion, (2) filed a frivolous application to transfer the case to the Honorable Jed S. Rakoff, and (3) and made misleading and false assertions in their February 25, 2011 submission.²¹⁶⁸

1351. In turn, in rejecting Chevron's opposition, the SDNY dealt with "the first two points [in the preceding quote] and decline[d] . . . to be embroiled in the third":

1. The February 25 , 2011 filing was made in direct violation of the Court's orders and the local rules. The fact that it was Donziger's only written submission in opposition to the preliminary injunction motion is a product of Donziger's failure to file his opposition within the period prescribed by the Court. The fact that the Keker firm was not retained until after the papers were due did not justify it in ignoring the orders and rules. If it felt that the Court erred in fixing the schedule, its remedy was an appeal from the preliminary injunction, not disobedience.

2. The application to transfer the case to Judge Rakoff, already denied by the Court, was utterly without merit for reasons explained in that ruling.

There is no evidence before the Court on the present motion that shows that Mr. Keker knowingly made false or misleading statements in the February 25, 2011 submission, even assuming *arguendo* that inaccurate or misleading statements were made. If there were inaccuracies, the Court is confident that Mr. Keker will be more careful in the future . It trusts also that he henceforth will conform his actions and those of his firm to the requirements of the rules and the Court. While the Court has ample means of dealing with any future problems, it hopes that there will not be any.

The motion to admit John W. Keker, Esq., *pro hac vice* for purposes of this case [DI 166] is granted.²¹⁶⁹

²¹⁶⁸ **R-1576**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 192 Granted Motion to Admit J. Keker Pro Hac Vice , 9 March 2011.

²¹⁶⁹ **R-1576**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 192 Granted Motion to Admit J. Keker Pro Hac Vice , 9 March 2011.

1352. While the Tribunal understands that Chevron sought to oppose certain actions taken by Mr Keker and his firm in the context of the RICO Litigation, the Tribunal has difficulty understanding how opposing the admission *pro hac vice* of Mr Keker was an appropriate procedural tool to address those particular concerns or, more generally, how such course of action contributed to Chevron's efforts to prevent the recognition and enforcement of the Lago Agrio Judgment.

1353. The Tribunal draws a similar conclusion in respect of Chevron's decision to respond to Mr Keker's motion to withdraw as counsel in May 2013. Chevron stated the following:

Chevron does not object to the Keker and Smyser firms' coordinated requests to withdraw as counsel for their respective clients, defendants Steven Donziger and the LAPs. In a sense, one can hardly blame them for wanting to get out, with mounting evidence that their clients and co-counsel are engaged in an ongoing fraud that their own acts serve to further and with no credible defense that they can offer to controvert that evidence. The Keker and Smyser withdrawals will not leave Defendants without counsel, since Mr. Gomez remains to represent the LAPs, Donziger is himself a lawyer, and Patton Boggs presumably continues its "behind-the-curtain" role. The withdrawal, therefore, should not serve as a pretext to delay these proceedings, or forestall the outcome of the pending sanctions motion. *But while Chevron does not object to counsel's withdrawal, it must respond to the manner in which counsel seek to take their leave, and correct some of the false and disrespectful statements made in their papers that have no place other than to promote their clients' public-relations purposes.*²¹⁷⁰

1354. Thereafter, noting Mr Keker's claim that its attorneys' fees remained unpaid since September 2012, Chevron argued:

In sum, Defendants' counsels' assertion that their clients' failure to pay them is due to Chevron's "litigation strategy" is a smokescreen. Defendants have matched and even exceeded Chevron motion for motion, discovery request for discovery request, and have sought to expand, not limit, the scope of this action. If Defendants, in fact, cannot pay their counsel, it is not because of Chevron's litigation strategy, but because of the facts. It is because the evidence adduced in this proceeding and elsewhere has hampered their efforts to raise capital on the back of their fraudulent judgment. While it is understandable why these counsel would choose to withdraw, they should at least be honest about it. They have no one to blame but themselves for taking on this case, knowing at the time that there was already so much evidence of fraud and wrongdoing that other lawyers felt constrained to withdraw in other proceedings, rather than continue to take positions they no longer

²¹⁷⁰ **R-1896**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1140 Memorandum of Law Response to Motions for Leave to Withdraw as Counsel, 11 May 2013, p. 1 (emphasis by the Tribunal).

believed in good faith they could assert. *So while these counsel should be permitted to withdraw, their attacks on Chevron and this Court are baseless and dishonorable.*²¹⁷¹

1355. It appears from these materials that Chevron commented on Mr Keker's motion to withdraw seeking to manage the public and the SDNY's perception of Chevron's litigation strategy – and, in particular, to make the point that Mr Keker's alleged "attacks on Chevron and [the SDNY] are baseless and dishonorable."²¹⁷² Once again, the Tribunal is unable to identify a connection between such course of action and the goal of mitigating the injury arising from the recognition and enforcement of the Lago Agrio Judgment.

1356. In sum, absent an explanation from the Claimants of the rationale of such a measure – let alone the need for it – the Tribunal determines that the Claimants have failed to establish that the legal fees and expenses incurred by Chevron in opposing Mr Keker's *pro hac vice* application were incurred to mitigate the injury arising from the recognition and enforcement of the Lago Agrio Judgment.

1357. Accordingly, the Tribunal excludes from compensation all fees and expenses incurred by the Claimants in connection with Chevron's opposition to Mr John Keker's *pro hac vice* application.

v. *(CLA) Work related solely to the Second Amended Complaint / (RES) Work related to the Second Amended Complaint*

1358. The Respondent faults the Claimants for claiming "considerable fees for pursuing activities that it later abandoned", including work relating to the preparation of a Second Amended Complaint that Chevron never filed.²¹⁷³ According to the Respondent's expert, Mr John Trunko, Chevron's lawyers collectively billed USD 302,317.07 for work relating to the unfiled Second Amended Complaint.²¹⁷⁴

²¹⁷¹ **R-1896**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1140 Memorandum of Law Response to Motions for Leave to Withdraw as Counsel, 11 May 2013, pp. 2-3 (emphasis by the Tribunal).

²¹⁷² **R-1896**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1140 Memorandum of Law Response to Motions for Leave to Withdraw as Counsel, 11 May 2013, p. 3.

²¹⁷³ Rejoinder, para. 873; **RE-51**, Trunko Expert Report, **SM K-8**.

²¹⁷⁴ **RE-51**, Trunko Expert Report, **SM K-10**.

1359. The Claimants do not specifically address the Respondent’s arguments in connection with this component, except to refer to the Expert Report of Mr Clyde Lea and assert that this component “overlaps with multiple components in the RICO category.”²¹⁷⁵ According to Mr Lea, “an abandoned or voluntarily dismissed matter should not automatically be considered ‘unreasonable’” as abandonment “may occur because facts have changed, the purpose of the motion is moot, the objective has been otherwise accomplished, or the likelihood of success has declined during the proceeding.”²¹⁷⁶

1360. While the Tribunal acknowledges that there could be a number of legitimate reasons behind a decision not to file a pleading, the Tribunal cannot overlook the fact that the Claimants have failed to explain fully the nature of Chevron’s Second Amended Complaint and the circumstances surrounding its decision not to file it. Here, the Tribunal distinguishes between litigation measures taken by Chevron in the ordinary course of litigation, for which it is entitled to a certain level of deference,²¹⁷⁷ and measures which it undertook but later abandoned for reasons not clearly explained to the Tribunal. In the absence of a proper explanation regarding the rationale behind Chevron’s decision not to proceed with the Second Amended Complaint, the Tribunal is unable to assess whether the substantial work invested in its preparation contributed to preventing the recognition and enforcement of the Lago Agrio Judgment, or indeed, whether the decision to abandon the Second Amended Complaint was reasonable under the circumstances.

1361. Accordingly, the Tribunal excludes from compensation all fees and expenses incurred by Chevron in connection with the preparation of Chevron’s unfiled Second Amended Complaint.

1362. The Tribunal notes that, aside from the Second Amended Complaint, the Respondent also asserts that it should not be ordered to bear the legal fees and expenses incurred by Chevron for exploring bringing additional separate lawsuits that Chevron never initiated, such as a “Delaware declaratory action to declare Chevron free from Texaco’s liabilities”

²¹⁷⁵ Letter from the Claimants dated 22 October 2022, Annex A, p. 7.

²¹⁷⁶ Lea Expert Report, para. 50.

²¹⁷⁷ See para. 340 above.

or a shareholder litigation.²¹⁷⁸ The legal fees and expenses incurred by the Claimants in this connection must be excluded from compensation for the same reasons underlying the Tribunal’s decision in respect of the legal fees and expenses incurred in connection with the Second Amended Complaint. The Tribunal shall address this question together with other issues relevant to the RICO Litigation in Section VIII.G.3(d)3.xvi below.

vi. *(CLA) Work relating solely to Unjust Enrichment / (RES) Work relating to Unjust Enrichment*

1363. The Respondent points to the Claimants’ continued pursuit of Chevron’s unjust enrichment claim under Count 6 of the RICO Litigation as an example of its “unreasonable in the extreme” conduct in the RICO Litigation.²¹⁷⁹ According to the Respondent, Chevron “wasted time and money” in prosecuting this claim and twice attempting to revive it after dismissal.²¹⁸⁰ The Respondent highlights that, in support of its first motion for reconsideration, Chevron submitted “two memoranda of law and over a thousand pages of exhibits”, which the SDNY summarily denied, characterising the claim as “*de minimis*”.²¹⁸¹ The Respondent also underscores that, despite the claim’s “maximum value of USD [358.92]”, Chevron allegedly spent “at least 1,206 attorney hours and USD 731,205.09” pursuing it.²¹⁸²

1364. During the Track III Hearing, Mr Peter Seley – a partner at Gibson, Dunn & Crutcher who, among other things, represented Chevron in the RICO Litigation – testified that the amount in dispute in the unjust enrichment claim “varied over time” but confirmed that it was a *de minimis* amount the first time it was dismissed without prejudice.²¹⁸³ Mr Seley further noted that the SDNY dismissed Count 6 “without prejudice to bringing it again if the [LAPs] had been successful in securing larger assets from Chevron.”²¹⁸⁴

²¹⁷⁸ Rejoinder, para. 873(3).

²¹⁷⁹ Rejoinder, para. 1285.

²¹⁸⁰ Counter-Memorial, paras. 556, 770-771.

²¹⁸¹ Counter-Memorial, paras. 556, 770.

²¹⁸² Rejoinder, paras. 1285-1286. According to Mr Trunko, Chevron’s lawyers collectively billed USD 731,205.09 for work relating to Chevron’s claim for unjust enrichment in the RICO Litigation (**RE-51**, Trunko Expert Report, **SM K-12**).

²¹⁸³ Track III Hearing Transcript, Day 3 (22 August 2022), pp. 648-649 (Seley).

²¹⁸⁴ Track III Hearing Transcript, Day 3 (22 August 2022), pp. 648-649 (Seley).

1365. The Tribunal recalls that the SDNY, in its Opinion dated 14 May 2012, dismissed Count 6 without prejudice for being premature.²¹⁸⁵

A plaintiff seeking damages on an unjust enrichment claim must allege that “(1) defendant was enriched; (2) the enrichment was at plaintiff’s expense; and (3) the circumstances were such that equity and good conscience require defendants to make restitution.”

...

As the Donziger Defendants have not recovered on the Judgment to date, the unjust enrichment claim is premature at best. “The essence of [an unjust enrichment] claim is that one party *has* received money or a benefit at the expense of another.” It cannot be said at this point that the Donziger Defendants have been enriched – unjustly or otherwise – especially considering that none of Chevron’s assets have been seized to satisfy the Judgment, and the Donziger Defendants have yet to receive any contingent fees. Indeed, “[w]here the party against whom a judgment has been rendered succeeds in postponing the execution or the effectiveness of the judgment pending review . . . [a claim in restitution as necessary to avoid unjust enrichment] will not arise because the judgment will not be paid.”

Moreover, any enrichment received by the Donziger Defendants to date – allegedly from litigation funding agreements – did not come at Chevron’s expense. Although an unjust enrichment claim in some circumstances can arise from the conferral on a defendant of a benefit by a third party, the plaintiff must have an interest in or right to the benefit thus conferred in order to recover for unjust enrichment. But Chevron has not alleged any right to the litigation funding received by the Donziger Defendants. . . .²¹⁸⁶

1366. On 12 February 2013, Chevron moved for reconsideration of the dismissal of Count 6.²¹⁸⁷

This prompted opposition from both the Stratus Defendants and the Donziger Defendants,²¹⁸⁸ followed by a reply from Chevron in further support of its motion.²¹⁸⁹

The SDNY denied the motion, again without prejudice, stating:

The only enrichment of the LAP Representatives – as opposed to restraint of Chevron or subsidiaries’ assets that may or may not be released – said to have occurred to date *pertains to \$358.92 in a TexPet account at Banco Pichincha*. Chevron’s own witness claims only that “the totality of those funds, in the sum of \$358.92, have been segregated by Banco Pichincha into a separate account, not controlled by TexPet, for the benefit of the LAPs” (Callejas Decl. ¶ 12) – not that the money has been paid to or placed under the control of the LAPs. Chevron’s reliance on a statement made on a radio show by one of the LAPs’ Ecuadorian lawyers to the effect that this is the first \$350 that Chevron has paid the LAPs just does not cut it in the face of the paper record. In any event, everyone in this \$18-19

²¹⁸⁵ See para. 1215 above.

²¹⁸⁶ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, pp. 47-49.

²¹⁸⁷ See para. 1217 above; **C-3037**, RICO Docket, ECF Nos. 782, 783, 784, 785 (12 February 2013).

²¹⁸⁸ **C-3037**, RICO Docket, ECF Nos. 869, 876 (1 March 2013).

²¹⁸⁹ **C-3037**, RICO Docket, ECF No. 885 (11 March 2013).

billion case has more important things to do than to deal with a claim that was dismissed previously as premature simply because \$358.92 now may – or may not – have changed hands. *De minimis non curat lex*.²¹⁹⁰

1367. Chevron later made a second attempt to reinstate its Count 6 claim,²¹⁹¹ which the LAPs opposed.²¹⁹² Chevron then submitted another reply memorandum with supporting documents.²¹⁹³ Thereafter, the SDNY summarily denied Chevron's second attempt to reinstate Count 6, stating that "[t]here is still no basis for any suggestion that any of the defendants has been enriched. Even if there were, the Court as a matter of sound case management would decline to inject this claim, which appears to rest on what may be fairly complicated facts and law, in the midst of a trial."²¹⁹⁴

1368. Based on the record before it, the Tribunal understands that Chevron filed Count 6 seeking pre-emptively to minimize the injury that might arise if the LAPs succeeded in their efforts to have the Lago Agrio Judgment recognized and enforced (item (iii) in paragraph 1286 above), thereby fulfilling the requirement of causation for the compensation of incidental damages under international law.

1369. By contrast, other factors call into question the reasonableness of Chevron's choice of measures. The Tribunal accepts that it was reasonable for Chevron to bring Count 6 pre-emptively at the outset of the RICO Litigation in case the LAPs' enforcement efforts eventually bore fruit. However, Chevron's insistence in seeking reconsideration of *de minimis* claim – valued at just USD 358.92 – after it was dismissed without prejudice for being premature strikes the Tribunal as unreasonable. As gleaned from the decisions of the SDNY denying reconsideration of Count 6, a reasonable litigant would not have attempted to seek reconsideration of Count 6 unless and until the LAPs had successfully derived some form of benefit from the enforcement of the Lago Agrio Judgment.

²¹⁹⁰ **R-1593**, Memorandum Endorsement, 12 March 2013, p. 2 (emphasis by the Tribunal); **C-3037**, RICO Docket, ECF No. 889 (12 March 2013).

²¹⁹¹ See para. 1217 above; **C-3037**, RICO Docket, ECF Nos. 1470-1473 (30 September 2013).

²¹⁹² **C-3037**, RICO Docket, ECF No. 1511 (8 October 2013).

²¹⁹³ **C-3037**, RICO Docket, ECF Nos. 1515-1517, 1579 (9 October 2013).

²¹⁹⁴ **C-3037**, RICO Docket, ECF No. 1662 (1 November 2013).

1370. Accordingly, having considered the particular circumstances of this case, the Tribunal excludes from compensation all fees and costs incurred by Chevron in connection with its unjust enrichment claim under Count 6 of the RICO Litigation after 14 May 2012 – the date on which the SDNY first dismissed Count 6 without prejudice.

vii. Work dedicated to withdrawn demand for money damages

1371. The Respondent faults Chevron for “abandoning” all of its damages claims in the RICO Litigation approximately one month before the start of trial²¹⁹⁵ without explaining why it “waited so long” to do so, especially in respect of the damages claims against the LAPs, who “resided in the Amazon rainforest and had no apparent wealth against which to recover.”²¹⁹⁶ On this basis, the Respondent asserts that all legal fees and expenses incurred in developing Chevron’s damages claims in the RICO Litigation should be excluded from compensation.²¹⁹⁷ According to Mr Trunko, Chevron’s lawyers collectively billed USD 314,660.15 in connection with Chevron’s damages claims.²¹⁹⁸

1372. The Tribunal recalls that in its Amended Complaint Chevron prayed for, *inter alia*, the recovery of treble general damages, pre-judgment interest, and attorneys’ fees under RICO (Counts 1 and 2); general damages (Counts 1 to 7) and punitive damages according to proof at trial (Counts 3, 4, 5 and 7); as well as treble general damages and attorneys’ fees under the Judiciary Law (Count 8). While Counts 4, 5, 6 and 9 were dismissed in their entirety, Counts 1, 2, 3, 7 and 8 survived to trial.²¹⁹⁹

1373. The Tribunal has partial insight into why Chevron decided to withdraw its money damages claims prior to trial. Chevron’s 8 September 2013 notice of waiver of its money damages claims reads, in its entirety, as follows:

TO ALL PARTIES AND COUNSEL OF RECORD, Chevron hereby gives notice that it will not seek money damages against Hugo Gerardo Camacho Naranjo and Javier Piaguaje Payaguaje (“LAP Defendants”) in this action. At trial and in all other phases of this action, Chevron will seek only equitable relief against the LAP Defendants. Chevron waives all

²¹⁹⁵ See para. 1249 above.

²¹⁹⁶ Counter-Memorial, para. 543.

²¹⁹⁷ Counter-Memorial, paras. 543, 757; Rejoinder, para. 873(1).

²¹⁹⁸ **RE-51**, Trunko Expert Report, **SM K-11**.

²¹⁹⁹ See **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, p. 299.

claims for money damages relief against the LAP Defendants for money damages that have accrued and are asserted in this action only.²²⁰⁰

1374. Shortly after Chevron withdrew its money damages claims, on 7 October 2013, the SDNY declined to order a jury trial.²²⁰¹ While the SDNY's Opinion is not in the record of this Arbitration, in view of the proximity in time between these two events, the Tribunal infers that Chevron's decision to withdraw its money damages claims sought to preclude the RICO Defendants from invoking a right to a jury trial, thus obtaining an advantage in the litigation. Counsel for the LAP Representatives confirmed as much during the RICO trial, where he stated that "Chevron waived millions of dollars in damages because it did not have the courage to face a jury."²²⁰²

1375. This set of circumstances suffices for the Tribunal to conclude that Chevron's decision to withdraw its money damages claims amounted to a substantive contribution to its pursuit of the RICO Litigation. As such, and having already ascertained that the RICO Litigation category of damages as a whole cannot be excluded from compensation, the Tribunal considers appropriate to apply the same logic to this damages component. The Tribunal does not otherwise consider it necessary to opine further on the appropriateness of Chevron's tactical litigation decisions. As already noted, it is not appropriate for the Tribunal to apply hindsight to the legal strategies employed in the course of the RICO Litigation.²²⁰³

1376. Accordingly, the Tribunal declines to exclude from compensation the fees and costs incurred by the Claimants in connection with Chevron's withdrawn demand for money damages.

²²⁰⁰ **R-1898**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1404 Notice of Waiver of Money Damages Against H. Naranjo and J. Payaguaje, 8 September 2013.

²²⁰¹ **C-3037**, RICO Docket, ECF No. 1500 (7 October 2013); **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, p. 300: "Chevron waived all claims for damages and sought only equitable relief. The case was tried without a jury from October 15 through November 26, 2013."

²²⁰² **C-2365**, RICO Trial Transcript, Day One, p. 41.

²²⁰³ See para. 341 above.

viii. Fees and costs claimed for period prior to filing complaint

1377. The Parties disagree on whether the Claimants may recover the legal fees and expenses Chevron incurred before the filing of its original RICO complaint on 1 February 2011, that is, prior to the issuance of the Lago Agrio Judgment and over a year before the Judgment became enforceable on 1 March 2012.²²⁰⁴

1378. According to the Claimants, Chevron incurred significant costs performing extensive preparatory work that spanned over two years, as well as planning for the service of its original Complaint to numerous defendants who resided in Ecuador.²²⁰⁵

1379. The Respondent, on the other hand, contends that Chevron's pre-filing fees are unreasonable and should not be reimbursed.²²⁰⁶ The Respondent notes that in its public application for attorney's fees in the RICO Litigation, Chevron did not seek compensation for any work performed before January 2011, effectively acknowledging that its two-year preparatory work was "excessive, unreasonable, and unworthy of compensation."²²⁰⁷ Moreover, the Respondent contends that much of the USD 8.67 million²²⁰⁸ spent during this period was either "abandoned" once Chevron settled on bringing a RICO claim before the SDNY,²²⁰⁹ or was undertaken on behalf of Mr Veiga and Dr Pérez in their individual capacities.²²¹⁰

1380. The Tribunal has already determined that incidental damages are only compensable in principle in this Arbitration if they were incurred starting as of 14 February 2011, the date of issuance of the Lago Agrio Judgment. This was the date upon which the risks attached to the enforcement of the Judgment became foreseeable and was thus also the date as of which the Claimants' mitigation efforts could be said to respond to the injury arising from the recognition and enforcement of that Judgment – *i.e.*, the injury flowing from the Respondent's internationally wrongful acts. Whatever harm the Claimants may have

²²⁰⁴ Rejoinder, para. 1237.

²²⁰⁵ Memorial, para. 298; Litvack Expert Report, paras. 95-96.

²²⁰⁶ Rejoinder, paras. 1291-1292.

²²⁰⁷ Counter-Memorial, paras. 570, 764.

²²⁰⁸ Rejoinder, para. 1291.

²²⁰⁹ Rejoinder, paras. 1291, 1294.

²²¹⁰ Rejoinder, para. 1293.

suffered by undertaking work before 14 February 2011 in preparation for the RICO Litigation was not caused by the Respondent's Treaty breaches and therefore falls outside the scope of the compensable injury in these proceedings.²²¹¹

1381. Accordingly, the Tribunal finds that the Claimants are not entitled to claim compensation for legal fees and expenses incurred in connection with the RICO Litigation before 14 February 2011. Legal fees and expenses corresponding to services provided from that date onwards are compensable in principle, subject to the Tribunal's determinations in this category section.

- ix. *(CLA) Work related solely to pursuing civil contempt proceedings against Donziger / (RES) Work related to pursuing civil contempt proceedings against Donziger*

1382. According to the Respondent, the RICO Litigation is part of Chevron's "anti-Donziger barrage" designed to cast Mr Donziger as a "criminal conspirator" to discredit him.²²¹² The Respondent posits that, as part of its strategy to "apply maximum pressure" on Mr Donziger, Chevron obtained a money judgment of USD 813,602.71 in litigation costs. To enforce that money judgment, says the Respondent, "Chevron has moved to compel Donziger to respond to post-judgment discovery requests, subpoenaed banks for documents concerning Donziger's personal finances, moved to compel Donziger's wife to produce personal financial information, and filed at least five motions to hold Donziger in civil contempt of court."²²¹³ The Respondent notes that after the SDNY found Mr Donziger in contempt, Chevron applied to recover more than USD 3.4 million of attorneys' fees it spent on the contempt proceedings, which the SDNY granted.²²¹⁴ In the Respondent's view, such legal fees and expenses are not recoverable in this Arbitration.²²¹⁵

²²¹¹ See paras. 362, 371, 397 above.

²²¹² Counter-Memorial, paras. 789, 791.

²²¹³ Counter-Memorial, para. 790; Rejoinder, paras. 1248-1249.

²²¹⁴ Counter-Memorial, para. 790; **R-1567**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 2264 Motion for Award of Attorneys' Fees, 16 July 2019.

²²¹⁵ Rejoinder, paras. 1250, 1251.

1383. In response, the Claimants deny any vendetta, asserting that Chevron’s post-judgment discovery requests and motions to hold Mr Donziger in contempt were “lawful and legitimate remedies available to Chevron in light of Mr Donziger’s continued refusal to voluntarily satisfy the RICO judgment of USD 813,602.71, his failure to transfer his shares in Amazonia and his attempts to monetize the Lago Agrio Judgment in violation of the RICO court’s orders.”²²¹⁶

1384. The Tribunal notes that on 23 May 2019, the SDNY granted in part four motions to hold the Donziger Defendants in civil contempt.²²¹⁷ Among other things, Mr Donziger was held in contempt for (i) failing to transfer to Chevron, as required under the RICO Judgment, contractual rights to a contingent fee under a retainer agreement with the ADF; (ii) failing to transfer to Chevron, as required under the RICO Judgment, his 6.3% contingency interest in the Lago Agrio Judgment; and (iii) attempting to monetize from the Lago Agrio Judgment “by selling, assigning, pledging, transferring or encumbering a portion of his own personal interest in the [Lago Agrio Judgment] in exchange for personal services”. The SDNY also found that Chevron was entitled to recover reasonable attorneys’ fees in prosecuting those applications.²²¹⁸ Thereafter, on 18 June 2019, Chevron filed a motion for attorneys’ fees seeking an award of USD 3,433,384.30 for “those activities directly related to the contempt motions that the Court granted in the May 23, 2019 order”.²²¹⁹ The SDNY granted this motion in all respects on 16 July 2019.²²²⁰

1385. In the Tribunal’s view, by seeking to thwart Mr Donziger’s attempts to monetize the Lago Agrio Judgment and to cause him to transfer his shares in Amazonia – a Gibraltar company created by the LAPs’ representatives “for receipt and distribution of any funds

²²¹⁶ Reply, para. 858.

²²¹⁷ See para. 1281 above.

²²¹⁸ **C-3116**, *Chevron Corporation v. Steven Donziger*, Case 1:11-cv-00691-LAK-RWL, Document 2209, Memorandum Opinion, 23 May 2019, pp. 8-9.

²²¹⁹ **R-1610**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 2244 Chevron Memorandum of Law ISO Motion for Attorneys’ Fees, 18 June 2019.

²²²⁰ **R-1567**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 2264 Motion for Award of Attorneys’ Fees, 16 July 2019.

in consequence of the Judgment”²²²¹ – Chevron reasonably sought both to prevent the enforcement of the Lago Agrio Judgment and to minimize the injury that might arise if the LAPs succeeded in their efforts to enforce it (items (i) and (iii) in paragraph 1286 above).

1386. Furthermore, to the extent Chevron’s pursuit of civil contempt proceedings sought to collect on Chevron’s money judgment of USD 813,602.71 against Mr Donziger in litigation costs, the Tribunal recalls that, as part of their duty to mitigate under international law, the Claimants were required pursue the collection of legal costs where there were reasonable chances of success so as to reduce their damages and must therefore be compensated for their collection efforts.²²²² Chevron’s partial collection of USD 150,000 is testament to the fact that Chevron’s efforts bore fruit.²²²³

1387. Overall, therefore, the Tribunal finds that Chevron’s pursuit of civil contempt proceedings against Mr Donziger sought reasonably to mitigate the injury arising from the recognition and enforcement of the Lago Agrio Judgment. This finding, does not extend to the pursuit of *criminal* contempt proceedings and disbarment proceedings against Mr Donziger, which is addressed separately in paragraphs 1462-1465 below.

1388. The Tribunal’s ruling on this component is also made in the understanding that, as stated in paragraph 494 above, any fees Chevron may collect under the SDNY’s order of 16 July 2019²²²⁴ must be deducted from the final amount of compensation to prevent any double recovery.

1389. For these reasons, the Tribunal declines to exclude from compensation the legal fees and expenses incurred by the Claimants for work related to pursuing civil contempt proceedings against Mr Donziger.

²²²¹ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, fn 1110.

²²²² See para. 490 above.

²²²³ Memorial, Appendix 9, para. 188.

²²²⁴ **R-1567**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 2264 Motion for Award of Attorneys’ Fees, 16 July 2019.

x. *Kobre & Kim LLP*

1390. Apart from the legal fees and expenses of its counsel of record in the RICO Litigation, Gibson, Dunn & Crutcher LLP and Stern Kilcullen & Rufolo LLC,²²²⁵ the Claimants seek the recovery of fees and costs for the services of 62 other vendors under this damages category.²²²⁶ This includes multiple law firms which, according to the Respondent, never appeared in the RICO Litigation or whose participation was never explained.²²²⁷ Kobre & Kim LLP is one such law firm that did not appear as counsel of record in the RICO Litigation but billed USD 3,373,921.28 for work performed in connection with those proceedings. The Claimants seek reimbursement of that amount in this Arbitration.

1391. According to the Respondent, the Claimants “chose the most expensive possible option” and acted unreasonably by spending USD 87 million on firms that did not even represent Chevron in the RICO Litigation.²²²⁸

1392. The Claimants, on the other hand, assert that “no one law firm could do it all”²²²⁹ and that Chevron’s hiring of the “best law firms” was reasonable.²²³⁰ The Claimants explain that (i) each law firm representing Chevron had its own role and assignments but all firms acted together as one team; (ii) Chevron’s outside counsel worked efficiently as needs arose; (iii) all outside counsel’s billing practices complied with Chevron’s expectations; and (iv) Chevron strategically used lower cost vendors wherever possible.²²³¹ The Claimants’ witness, Mr Peter Seley, similarly testified that the law firms engaged by Chevron worked together as if they were “one firm”, since Chevron “wanted to be sure that for every task on the Ecuador Disputes, the right attorney was doing the work, who had the right experience, with the right team, regardless of what firm they were attached

²²²⁵ See **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, p. 166; **C-3037**, RICO Docket, pp. 1-4.

²²²⁶ See **RE-51**, Trunko Expert Report, **SM J-1**.

²²²⁷ **RE-51**, Trunko Expert Report, **SM J-1**; Track III Hearing - Respondent’s Closing Presentation, Slide 129 (where the Respondent enumerates these firms to be Jones Day, Boies Schiller & Flexner LLP, Rivero Mestre LLP, Kobre & Kim LLP, Covington & Burling LLP, Gardere Wynne Sewell LLP, Three Crowns LLP, and Asesorias Bofill Escobar).

²²²⁸ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3593.

²²²⁹ Track III Hearing Transcript, Day 3 (22 August 2022), p. 462.

²²³⁰ Reply, para. 693.

²²³¹ Reply, paras. 693-698.

to.”²²³² Moreover, the Claimants argue that since their basis for claiming costs incurred in the RICO Litigation is not U.S. law but international law, it is irrelevant that certain law firms did not formally appear in the RICO Litigation: the Respondent’s breach of its international law obligations entitles Chevron to full compensation, including all legal fees and expenses it incurred in connection with the RICO Litigation.²²³³

1393. The Tribunal notes that 12 law firms reportedly worked in the RICO Litigation. From among them, nine are based or have operations in the United States (*i.e.*, Gibson, Dunn & Crutcher LLP, Jones Day, Boies Schiller & Flexner LLP, Rivero Mestre LLP, Kobre & Kim LLP, Covington & Burling LLP, Stern Kilcullen & Rufolo LLC, Gardere Wynne Sewell LLP, and Three Crowns LLP). Two additional law firms appear to be based in Chile (*i.e.*, Asesorias Bofill Escobar and Barros Letelier & Compania Abogados – the fees of which the Claimants identify as an expert expense, not a law firm expense)²²³⁴ and an additional law firm is based in Peru, the fees of which the Claimants identify as a vendor expense, not a law firm expense²²³⁵ (*i.e.*, Bullard, Falla & Ezcurra Abogados).²²³⁶ The Tribunal also notes that, save for Gibson Dunn and Stern Kilcullen, none of these other law firms appeared or are listed as Chevron’s representatives in the RICO Litigation.²²³⁷ The Claimants also do not provide a delineation of the roles and tasks of each of these law firms, save for what can be gleaned from the individual time entries in the underlying invoices.

1394. While, as already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants’ decisions as to which specific mitigation measures to undertake in real time,²²³⁸ the Tribunal has difficulty understanding how the participation of 8 law firms that did not act as counsel of record could have reasonably assisted the Claimants in preventing the recognition and enforcement of the unremedied Lago Agrio Judgment in

²²³² Track III Hearing Transcript, Day 3 (22 August 2022), p. 617 (Seley).

²²³³ Reply, paras. 854-855.

²²³⁴ Reply, Updated Appendix 2, p. 109.

²²³⁵ Reply, Updated Appendix 2, p. 125.

²²³⁶ Reply, Updated Appendix 2, pp. 3, 89, 109, 125; **RE-51**, Trunko Expert Report, **SM J-1**, pp. 1-3.

²²³⁷ See **C-3037**, RICO Docket, pp. 1-4.

²²³⁸ See para. 341 above.

the course of the RICO Litigation. Here, the Tribunal draws a distinction between firms identified by the Claimants as experts or vendors, for which a separate analysis is in order (*i.e.*, Barros Letelier & Compania Abogados and Bullard, Falla & Ezcurra Abogados) and firms properly identified as law firms (*i.e.*, Gibson, Dunn & Crutcher LLP, Jones Day, Boies Schiller & Flexner LLP, Rivero Mestre LLP, Kobre & Kim LLP, Covington & Burling LLP, Stern Kilcullen & Rufolo LLC, Gardere Wynne Sewell LLP, Three Crowns LLP, and Asesorias Bofill Escobar).

1395. While the Tribunal is prepared to accept that the complexity of Chevron's claims in the RICO Litigation might have required Chevron to engage multiple law firms, the Claimants have failed to explain in sufficient detail how the work of each of those firms contributed to mitigating specifically the injury arising from the recognition and enforcement of the Lago Agrio Judgment, as opposed to other sources of concern.

1396. Having regard to all relevant circumstances, the Tribunal is prepared to grant compensation to the Claimants for the legal fees and expenses charged by Chevron's first counsel of record in the RICO Litigation (Gibson, Dunn & Crutcher LLP) and by the first firm Chevron engaged in connection with the RICO Litigation that did not act as counsel of record, but rather provided additional capacity and coordination support with teams operating in other jurisdictions (Jones Day).²²³⁹ Otherwise, the Tribunal denies compensation for the legal fees and expenses charged by any other law firm in connection with the RICO Litigation, including Kobre & Kim LLP.

xi. Rivero Mestre LLP

1397. The Claimants claim USD 5,378,358.31 in fees and costs charged by Rivero Mestre LLP in connection with the RICO Litigation.²²⁴⁰ The Respondent rejects this request, noting that aside from not acting as counsel of record in the RICO Litigation, Rivero Mestre was retained to represent Chevron executive Dr Rodrigo Pérez Pallares in his individual capacity, not Chevron.²²⁴¹

²²³⁹ Seley Witness Statement, paras. 14, 20, 43, 50, 63, 64, 69, 85, 88.

²²⁴⁰ **RE-51**, Trunko Expert Report, **SM J-1**, p. 1.

²²⁴¹ Rejoinder, para. 1311.

1398. As explained in paragraph 1396 above, the Tribunal has decided to deny compensation for the legal fees and expenses charged by any law firm other than Gibson, Dunn & Crutcher LLP and Jones Day in connection with the RICO Litigation. Accordingly, the Tribunal excludes from compensation the legal fees and expenses charged by Rivero Mestre LLP in connection with the RICO Litigation.

xii. Covington & Burling LLP

1399. The Claimants claim USD 2,472,240.21 in legal fees and expenses paid to Covington & Burling LLP under this damages category.²²⁴² The Respondent highlights that Covington & Burling, like Rivero Mestre, did not appear in the RICO Litigation and was retained to represent Mr Ricardo Reis Veiga in his individual capacity, not Chevron.²²⁴³

1400. As explained in paragraph 1396 above, the Tribunal has decided to deny compensation for the legal fees and expenses charged by any law firm other than Gibson, Dunn & Crutcher LLP and Jones Day in connection with the RICO Litigation. Accordingly, the Tribunal excludes from compensation the legal fees and expenses charged by Covington & Burling LLP in connection with the RICO Litigation.

xiii. Stern Kilcullen & Rufolo LLC

1401. According to the Respondent, the Claimants failed to explain why Stern Kilcullen & Rufolo LLC billed a grand total of USD 4,518,754.98 in legal fees and expenses,²²⁴⁴ of which USD 3,579,778.36 pertain to this firm's work in the RICO Litigation.²²⁴⁵ In the Respondent's submission, there is "no evidence of added value provided" by Stern Kilcullen based on the time entries of its lawyers.²²⁴⁶

1402. As explained in paragraph 1396 above, the Tribunal has decided to deny compensation for the legal fees and expenses charged by any law firm other than Gibson, Dunn & Crutcher LLP and Jones Day in connection with the RICO Litigation. This finding holds

²²⁴² **RE-51**, Trunko Expert Report, **SM J-1**.

²²⁴³ Rejoinder, para. 1311.

²²⁴⁴ Track III Hearing - Respondent's Closing Presentation, Slides 151-152.

²²⁴⁵ **RE-51**, Trunko Expert Report, **SM J-1**, p. 1.

²²⁴⁶ Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3599-3600 (Finsterwald).

particular weight with respect to Stern Kilcullen & Rufolo LLC. The Tribunal notes that while Stern Kilcullen acted as counsel of record in the RICO Litigation,²²⁴⁷ the Claimants have failed to explain convincingly how this firm's involvement in the RICO Litigation contributed to the Claimants' mitigation efforts.²²⁴⁸

1403. It is also significant that the RICO Litigation case docket lacks any indication that any Stern Kilcullen lawyer became counsel of record in those proceedings before 2018. Notably, Mr Herbert J. Stern, a former U.S. Attorney and District Court Judge for New Jersey, moved to appear as counsel *pro hac vice* for Chevron in the RICO Litigation on 20 February 2018²²⁴⁹ – a motion granted by the SDNY the following day.²²⁵⁰ By the Claimants' own account, at this stage of the RICO Litigation the main RICO proceedings – including the appeal before the Second Circuit and the *certiorari* proceedings before the U.S. Supreme Court – had long since concluded. The SDNY issued its RICO Judgment on 4 March 2014,²²⁵¹ the Second Circuit affirmed it on 8 August 2016,²²⁵² and the Supreme Court denied *certiorari* on 19 June 2017.²²⁵³ Thus, by the time Stern Kilcullen entered its appearance, only post-judgment incidents remained, such as the contempt proceedings against Mr Donziger.²²⁵⁴ This further calls into question the extent of Stern Kilcullen's contribution to Chevron's mitigation efforts in the RICO Litigation.

1404. For these reasons, the Tribunal denies compensation under this heading for the legal fees and expenses charged by Stern Kilcullen & Rufolo LLC.

²²⁴⁷ See **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, p. 166; **C-3037**, RICO Docket, pp. 1-4.

²²⁴⁸ Track III Hearing - Respondent's Closing Presentation, Slides 151-152.

²²⁴⁹ **C-3037**, RICO Docket, ECF No. 1953 (20 February 2018).

²²⁵⁰ **C-3037**, RICO Docket, ECF No. 1954 (20 February 2018).

²²⁵¹ Track II Award, para. 4.481.

²²⁵² Memorial, Appendix 9, para. 174.

²²⁵³ Memorial, Appendix 9, para. 182.

²²⁵⁴ See Memorial, Appendix 9, paras. 192-207.

xiv. Barros Letelier & Compania Abogados

1405. The Claimants claim USD 298,056.00 in legal fees and expenses paid to Barros Letelier & Compania Abogados in connection with the RICO Litigation.²²⁵⁵ Once again, the Respondent underscores that this law firm did not enter its appearance in the RICO Litigation, and the Claimants do not otherwise provide a satisfactory explanation behind its participation in those proceedings.²²⁵⁶

1406. The Tribunal recalls that the Claimants have characterized the legal fees and expenses charged by Barros Letelier & Compania Abogados as an expert expense, not a law firm expense.²²⁵⁷ Dr Enrique Barros Bourie prepared an expert report on questions of *res judicata* for use in the RICO Litigation,²²⁵⁸ presumably concerning the *res judicata* effect of the 1995-1998 Settlement and Release Agreements, echoing his own expert reports in this Arbitration.²²⁵⁹ Among other things, Chevron proffered Dr Barros as an expert for the Count 9 trial.²²⁶⁰ This set of circumstances suffices for the Tribunal to conclude that Dr Barros made a substantive contribution to the pursuit of the RICO Litigation – including the pursuit of Count 9, which the Tribunal has already determined amounted to a reasonable mitigation measure.²²⁶¹ Having already ascertained that the RICO Litigation category of damages as a whole cannot be excluded from compensation, the Tribunal considers appropriate to apply the same logic to this damages component.

²²⁵⁵ RE-51, Trunko Expert Report, SM J-1, p. 1.

²²⁵⁶ Letter from the Respondent dated 21 October 2022, p. 10.

²²⁵⁷ Reply, Updated Appendix 2, p. 109.

²²⁵⁸ C-3359, CVX-Track III-20001128, Barros Letelier & Compania Abogados; R-1581, *Chevron Corp. v. Maria Aguinda Salazar et al.*, Case No. 1:11-cv-03718-LAK-JCF, ECF No. 188, p. 2.

²²⁵⁹ See, e.g., Sixth Barros Bourie Expert Report, para. 7: “In previous reports, my opinion has been that the Lago Agrio lawsuit should not have been successful because the judgment was rendered in contradiction to a settlement contract that released TEXPET and its affiliates from liability, with the effect of *res judicata*. My report on causation and punitive damages dated June 3, 2013 is subsidiary to this opinion, because *res judicata* excludes the legitimacy of the Ecuadorian courts deciding on matters that have been the object of a settlement, since a settlement contract produces the same effects as an unappealable judicial decision on the dispute.”

²²⁶⁰ R-1581, *Chevron Corp. v. Maria Aguinda Salazar et al.*, Case No. 1:11-cv-03718-LAK-JCF, ECF No. 188, p. 2.

²²⁶¹ See paras. 1340-1341 above.

1407. Accordingly, the Tribunal declines to exclude from compensation the legal fees and expenses charged by Barros Letelier & Compania Abogados in connection with the RICO Litigation.

xv. Gardere Wynne Sewell LLP

1408. The Claimants claim USD 149,315.86 in fees paid to Gardere Wynne Sewell LLP under this damages category.²²⁶² Once again, the Respondent highlights that this law firm did not enter its appearance in the RICO Litigation, and the Claimants do not otherwise provide a satisfactory explanation behind its participation in those proceedings.²²⁶³

1409. As explained in paragraph 1396 above, the Tribunal has decided to deny compensation for the legal fees and expenses charged by any law firm other than Gibson, Dunn & Crutcher LLP and Jones Day in connection with the RICO Litigation. Accordingly, the Tribunal excludes from compensation the legal fees and expenses charged by Gardere Wynne Sewell LLP in connection with the RICO Litigation.

xvi. Jan Paulsson (billed through Freshfields)

1410. The Claimants claim USD 79,578.41 in costs paid to Prof Jan Paulsson under this damages category.²²⁶⁴ Once again, the Respondent highlights that Prof Paulsson did not enter his appearance in the RICO Litigation, and the Claimants do not otherwise provide a satisfactory explanation behind his participation in those proceedings.²²⁶⁵

1411. The Tribunal observes that the USD 79,578.41 paid to Prof Paulsson was billed as a passthrough cost for Gibson, Dunn & Crutcher LLP, for what appears to be expert services rendered in connection with the RICO Litigation.²²⁶⁶ In particular, as gleaned from a motion filed by several of the RICO defendants, Prof Paulsson was engaged to provide expert evidence on “due process issues surrounding Lago Agrio [L]itigation” in

²²⁶² **RE-51**, Trunko Expert Report, **SM J-1**, p. 2.

²²⁶³ Letter from the Respondent dated 21 October 2022, p. 10.

²²⁶⁴ **RE-51**, Trunko Expert Report, **SM J-1**, p. 2.

²²⁶⁵ Letter from the Respondent dated 21 October 2022, p. 10.

²²⁶⁶ See **C-3287.003**, Gibson, Dunn & Crutcher LLP (Member) – 2011.xlsx, Invoice no. 2011051834, row 505; see also, **R-1581**, Letter from R. Mastro, 4 August 2011, p. 2, where Professor Paulsson is identified as one of Chevron’s 16 experts for the RICO Litigation.

connection with Count 9.²²⁶⁷ This suffices for the Tribunal to conclude that Prof Paulsson contributed his expertise to the pursuit of Count 9, which the Tribunal has already determined amounted to a reasonable mitigation measure.²²⁶⁸

1412. Accordingly, the Tribunal declines to exclude from compensation the legal fees and expenses charged by Prof Jan Paulsson in connection with the RICO Litigation.

xvii. Three Crowns LLP

1413. The Claimants claim USD 27,965.00 in legal fees and expenses paid to Three Crowns LLP under this damages category.²²⁶⁹ Once again, the Respondent highlights that this law firm did not enter its appearance in the RICO Litigation, and the Claimants do not otherwise provide a satisfactory explanation behind its participation in those proceedings.²²⁷⁰

1414. As explained in paragraph 1396 above, the Tribunal has decided to deny compensation for the legal fees and expenses charged by any law firm other than Gibson, Dunn & Crutcher LLP and Jones Day in connection with the RICO Litigation. Accordingly, the Tribunal excludes from compensation the legal fees and expenses charged by Three Crowns LLP in connection with the RICO Litigation.

xviii. Bullard, Falla & Ezcurra Abogados

1415. The Claimants claim USD 11,048.24 in costs paid to Bullard, Falla & Ezcurra Abogados under this damages category.²²⁷¹ Once again, the Respondent highlights that this law firm did not enter its appearance in the RICO Litigation.²²⁷²

²²⁶⁷ **R-2079**, *Chevron Corp. v. Steven Donziger*, et al., S.D.N.Y. Case No. 1:11-cv-00694-LAK-RWL, D.E. 968-7, Defendants Hugo Gerardo Camacho Naranjo, Javier Piaguaje Payaguaje, Steven Donziger, the Law Offices of Steven R. Donziger, and Donziger & Associates, PLLC's Motion to Strike Chevron's Excessive and Irrelevant Experts, 3 April 2013, p. 3.

²²⁶⁸ See paras. 1340-1341 above.

²²⁶⁹ **RE-51**, Trunko Expert Report, **SM J-1**, p. 2.

²²⁷⁰ Letter from the Respondent dated 21 October 2022, p. 10.

²²⁷¹ **RE-51**, Trunko Expert Report, **SM J-1**, p. 2.

²²⁷² Letter from the Respondent dated 21 October 2022, p. 10.

1416. The Tribunal recalls that the Claimants identify the legal fees and expenses charged by Bullard, Falla & Ezcurra Abogados as a vendor expense, not a law firm expense.²²⁷³ The USD 11,048.24 in costs paid to Bullard were billed as a passthrough cost for Gibson, Dunn & Crutcher LLP and are described as “administrative expenses regarding the hearing in Lima” and “assistance and advisement in the organization of hearing in Lima” taking place in or around July 2013.²²⁷⁴ The Tribunal infers that these charges correspond to the costs associated to the deposition of certain Ecuadorian witnesses in Lima, Peru, which the SDNY allowed in March 2013 in view of security risks in Ecuador raised by Chevron.²²⁷⁵ Therefore, Bullard’s engagement, albeit limited in scope, amounted to a substantive contribution to the RICO Litigation. Having already ascertained that the RICO Litigation category of damages as a whole cannot be excluded from compensation, the Tribunal considers appropriate to apply the same logic to this damages component.

1417. Accordingly, the Tribunal declines to exclude from compensation the legal fees and expenses charged by Bullard, Falla & Ezcurra Abogados in connection with the RICO Litigation.

xix. Boies Schiller & Flexner LLP

1418. The Claimants claim USD 5,643,437.86 in fees and costs paid to Boies Schiller & Flexner LLP under this damages category.²²⁷⁶ Once again, the Respondent highlights that this law firm did not enter its appearance in the RICO Litigation, and the Claimants do not otherwise provide a satisfactory explanation behind its participation in those proceedings.²²⁷⁷

1419. As explained in paragraph 1396 above, the Tribunal has decided to deny compensation for the legal fees and expenses charged by any law firm other than Gibson, Dunn & Crutcher LLP and Jones Day in connection with the RICO Litigation. Accordingly, the

²²⁷³ Reply, Updated Appendix 2, p. 125.

²²⁷⁴ **C-3287.005**, Gibson, Dunn & Crutcher LLP (Member) – 2013.xlsx, Invoice Number 2013070936, 19 July 2013, entries 698, 708.

²²⁷⁵ See para. 1235 above; Memorial, Appendix 9, paras. 107-108; **C-3037**, RICO Docket, ECF No. 941 (26 March 2013).

²²⁷⁶ **RE-51**, Trunko Expert Report, **SM J-1**, p. 2.

²²⁷⁷ Letter from the Respondent dated 21 October 2022, p. 10.

Tribunal excludes from compensation the legal fees and expenses charged by Boies Schiller & Flexner LLP in connection with the RICO Litigation.

xx. Asesorias Bofill Escobar

1420. The Claimants claim USD 18,160.00 in fees paid to Asesorias Bofill Escobar under this damages category.²²⁷⁸ Once again, the Respondent highlights that this law firm did not enter its appearance in the RICO Litigation, and the Claimants do not otherwise provide a satisfactory explanation behind its participation in those proceedings.²²⁷⁹

1421. As explained in paragraph 1396 above, the Tribunal has decided to deny compensation for the legal fees and expenses charged by any law firm other than Gibson, Dunn & Crutcher LLP and Jones Day in connection with the RICO Litigation. This finding holds particular weight with respect to Asesorias Bofill Escobar. The Tribunal notes that while the RICO Litigation arises entirely from claims under U.S. law, Asesorias Bofill Escobar is a Chilean law firm. This further calls into question the nature of Asesorias Bofill Escobar's contribution to Chevron's mitigation efforts in the RICO Litigation.

1422. Accordingly, the Tribunal excludes from compensation the legal fees and expenses charged by Asesorias Bofill Escobar in connection with the RICO Litigation.

xxi. Kroll Associates

1423. The Claimants claim USD 3,797,504.43 in costs paid to Kroll Associates for forensic accounting services and another USD 1,234,852.41 in costs paid for litigation support work.²²⁸⁰ The Respondent criticizes the vague billing entries behind this component, citing, for example, a pass-along charge of USD 373,885.15 for "legal services" purportedly performed by the law firm K&L Gates without providing the underlying invoice of this firm, which could have shed light on what these legal services entailed.²²⁸¹ The Respondent also faults the Claimants for failing to provide witness testimony to analyse and explain the fees and costs set forth in the invoices and note that Kroll's

²²⁷⁸ RE-51, Trunko Expert Report, SM J-1, p. 2.

²²⁷⁹ Letter from the Respondent dated 21 October 2022, p. 10.

²²⁸⁰ RE-51, Trunko Expert Report, SM J-1, p. 1.

²²⁸¹ Rejoinder, para. 890; Track III Hearing Transcript, Day 2 (19 August 2022), p. 316 (Ettinger).

billings for “professional services rendered” shed very little light on “what [it] was doing for over \$5 million”.²²⁸²

1424. The Tribunal agrees with the Respondent that the billing entries for Kroll Associates do not contain sufficient information to allow the Tribunal to make a determination on whether the work performed by Kroll contributed to Chevron’s mitigation efforts in the RICO Litigation. For example, as rightly noted by the Respondent, one billing entry contains a lump-sum charge of USD 373,885.15 for “legal services” purportedly performed by the law firm K&L Gates, without any further indication of what these services entailed.²²⁸³ Numerous entries contain the narrative “professional services rendered”, followed by the name of the timekeeper, without providing further information.²²⁸⁴ This lack of specificity pervades the billing entries for Kroll Associates’ services. The Claimants have therefore failed to establish that the legal fees and expenses allegedly paid by Chevron to Kroll Associates sought to mitigate the injury arising from the recognition and enforcement of the Lago Agrio Judgment.

1425. For these reasons, the Tribunal excludes from compensation the legal fees and expenses charged by Kroll Associates in connection with the RICO Litigation.

xxii. Daniel Cooperman

1426. The Claimants claim USD 64,116.59 in costs paid to Mr Daniel Cooperman under this damages category.²²⁸⁵ This amount was billed as a passthrough cost for Gibson Dunn for “professional services” rendered to Chevron Corporation.²²⁸⁶ Mr Cooperman was

²²⁸² Track III Hearing Transcript, Day 15 (7 September 2022), p. 3599 (Finsterwald); Track III Hearing - Respondent’s Closing Presentation, Slide 149-150.

²²⁸³ **C-3309.002**, Kroll Associates Inc. (Member) – 2011.xlsx, Invoice Number 1710948, 20 December 2011, row 6.

²²⁸⁴ See, e.g., **C-3309.002**, Kroll Associates Inc. (Member) – 2011.xlsx, Invoice Number 2711722, 28 December 2011, entries 6-11; **C-3309.003**, Kroll Associates Inc. (Member) – 2012.xlsx, Invoice Number 2711764 copy, 14 May 2012, entries 6-10, 12-13; **C-3309.004**, Kroll Associates Inc. (Member) – 2013.xlsx, Invoice Number 2712454, 17 December 2013, entries 6, 8-11, 14-15; **C-3309.005**, Kroll Associates Inc. (Member) – 2014.xlsx, Invoice Number 2712480, 29 January 2014, entries 8, 10-12.

²²⁸⁵ **RE-51**, Trunko Expert Report, **SM J-1**, p. 2.

²²⁸⁶ **C-3287.005**, Gibson, Dunn & Crutcher LLP (Member) – 2013.xlsx, Invoice Number 2013061050, 23 October 2013, entries 18, 19; **C-3287.005**, Gibson, Dunn & Crutcher LLP (Member) – 2013.xlsx, Invoice Number 2013100283, 6 October 2013, row 1319; **C-3287.005**, Gibson, Dunn & Crutcher LLP (Member) – 2013.xlsx, Invoice Number 2013120851, 4 December 2013, row 1414.

engaged by Chevron to provide an opinion on the reasonableness of the legal fees incurred by Chevron within the context of the Canada Enforcement Proceedings.²²⁸⁷

1427. The Tribunal understands the Respondent to imply that the legal fees and expenses charged by Mr Cooperman in connection with the RICO Litigation should be excluded from compensation because Chevron withdrew this expert in the course of the proceedings.²²⁸⁸ This being the case, the Tribunal will address this component as part of a more detailed analysis of Chevron's decision to withdraw expert witnesses in paragraphs 1467-1472 below.

xxiii. Anil Shivdasani

1428. The Claimants claim USD 49,329.78 in costs paid to Mr Anil Shivdasani under this damages category.²²⁸⁹ This amount was billed as a passthrough cost for Gibson Dunn for "professional services" rendered to Chevron Corporation.²²⁹⁰ Mr Shivdasani was engaged by Chevron to provide an expert evaluation of Chevron's alleged losses from the Argentina Embargo Order.²²⁹¹ The Tribunal understands that this expert report was meant to support, at least, Count 6 (Chevron's claim for unjust enrichment) and Chevron's claims for money damages.²²⁹²

²²⁸⁷ See **R-2087**, Supplemental Expert Report of Daniel Cooperman Regarding Attorneys' Fees Damages, 30 August 2013, p. 1.

²²⁸⁸ Respondent's Letter to the Tribunal dated 21 October 2022, p. 11; Counter-Memorial, para. 544; Rejoinder, para. 873(4).

²²⁸⁹ **RE-51**, Trunko Expert Report, **SM J-1**, p. 2.

²²⁹⁰ **C-3287.005**, Gibson, Dunn & Crutcher LLP (Member) – 2013.xlsx, Invoice Number 2013051263, 31 May 2013, entries 15, 539; **C-3287.005**, Gibson, Dunn & Crutcher LLP (Member) – 2013.xlsx, Invoice Number 2013110236A, 10 November 2013, row 2065; **C-3287.005**, Gibson, Dunn & Crutcher LLP (Member) – 2013.xlsx, Invoice Number 2013120851, 4 December 2013, row 51.

²²⁹¹ **C-1626**, Expert Report of Anil Shivdasani submitted in RICO proceedings, 1 March 2013.

²²⁹² **R-2079**, *Chevron Corp. v. Steven Donziger, et al.*, S.D.N.Y. Case No. 1:11-cv-00694-LAK-RWL, D.E. 968-7, Defendants Hugo Gerardo Camacho Naranjo, Javier Piaguaje Payaguaje, Steven Donziger, the Law Offices of Steven R. Donziger, and Donziger & Associates, PLLC's Motion to Strike Chevron's Excessive and Irrelevant Experts, 3 April 2013, p. 4: "The Court has thrice struck Chevron's unjust enrichment cause of action. Dkts. 472, 634, 889. Chevron cannot now claim that Defendants have been unjustly enriched via the enforcement actions in Ecuador or Argentina. The alleged fraud damages are limited to costs arising from certain litigation activities—not from any embargo orders. See, e.g., Dkt. 918-14 (Chevron's Response to Interrog. No. 1). Thus the following reports assessing foreign embargo orders are irrelevant: . . . Anil Shivdasani – Evaluating Chevron's alleged losses from Argentine embargo order".

1429. The Tribunal understands the Respondent to imply that the legal fees and expenses charged by Mr Shivdasani in connection with the RICO Litigation should be excluded from compensation because Chevron withdrew this expert in the course of the proceedings.²²⁹³ This being the case, the Tribunal will address this component as part of a more detailed analysis of Chevron's decision to withdraw expert witnesses in paragraphs 1467-1472 below.

3. Other issues

1430. In this Section, the Tribunal will address other issues raised by the Parties in connection with this damages category that have not been specifically identified by the Parties as a component. This being the largest damages category, the Tribunal has identified a number of these issues, which it will address *seriatim*.

i. Fees and costs for RICO Litigation awarded in the Gibraltar Proceedings

1431. The Respondent recalls that, in the context of the *Amazonia* Action in the Gibraltar Proceedings, the Supreme Court of Gibraltar allowed Chevron to recover from certain defendants in those proceedings sums of money "derived from" Chevron's RICO fee application, which, as noted above, amounted to USD 32,334,584.²²⁹⁴ According to the Respondent, by representing to the Supreme Court of Gibraltar that it would not seek to recover fees and costs against both the Gibraltar defendants and the defendants in the RICO Litigation, Chevron effectively acknowledged that the same activities underlie both sets of fees.²²⁹⁵ As such, the Respondent considers that the Claimants should not be permitted to recover under this damages category the RICO Litigation fees and costs already awarded in the Gibraltar Proceedings.²²⁹⁶ Critically, the Claimants acknowledge this and confirm that "to the extent that Chevron recovered RICO attorneys' fees from

²²⁹³ Respondent's Letter to the Tribunal dated 21 October 2022, p. 11; Counter-Memorial, para. 544; Rejoinder, para. 873(4).

²²⁹⁴ Counter-Memorial, paras. 758, 759. *See also* para. 1320 above.

²²⁹⁵ Counter-Memorial, para. 759.

²²⁹⁶ Counter-Memorial, para. 758.

Amazonia, ADF and Fromboliere, Chevron does not seek to recover those same fees from Ecuador.”²²⁹⁷

1432. The Tribunal’s analysis of the Gibraltar Proceedings is set out in detail in Section VIII.I below and shall not be repeated here. For context, however, the Tribunal recalls that the Supreme Court of Gibraltar awarded the following sums to Chevron:

- (i) USD 28,035,219.37 (not including interest) against Amazonia;²²⁹⁸
- (ii) USD 33,148,186.71 (not including interest) against Pablo Fajardo, Luis Francisco Yanza and Ermel Chavez;²²⁹⁹ and
- (iii) USD 32,753,048.66 (not including interest) against the ADF and Servicios Fromboliere Compania Limitada²³⁰⁰ (together, the “*Amazonia Damages Judgments*”).

1433. Since, by the Claimants’ own admission, the *Amazonia Damages Judgments* “derived from [the] application for attorneys’ fees filed by Chevron in the RICO action”, the Tribunal must ensure that the Claimants do not recover the same legal fees and expenses they incurred in connection with the RICO Litigation from the Respondent and, simultaneously, from the debtors of the *Amazonia Damages Judgments*.

1434. Accordingly, the Tribunal determines that any sums collected by Chevron in connection with the *Amazonia Damages Judgments* shall be deducted from compensation under the present damages category.

²²⁹⁷ Reply, para. 856.

²²⁹⁸ **C-2995**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Judgment, 9 December 2015. *See also* 1873 below.

²²⁹⁹ **C-3002**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Order, 14 May 2018. *See also* 1874 below.

²³⁰⁰ **C-3002**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Order, 14 May 2018. *See also* 1874 below.

ii. Work relating to sanctions in the RICO Litigation

1435. The Respondent faults Chevron for “squander[ing] innumerable resources” on repeated motions for sanctions against the LAPs and their counsel.²³⁰¹ According to the Respondent, Chevron “indulged its preoccupation with sanctions most enthusiastically in the RICO case”, where the Claimants seek approximately USD 2.5 million for approximately 4,000 hours spent investigating, researching, and litigating sanctions motions.²³⁰² In the Respondent’s view, these “serial motions” were “highly unusual and suggestive of an improper purpose.”²³⁰³ The legal fees and expenses claimed by the Claimants falling under this description, as particularised by the Respondent, amount to USD 2,493,941.70.²³⁰⁴

1436. The Tribunal notes that on 12 March 2013, Chevron filed a “Motion to Sanction and Hold the Donziger Defendants and LAP Representatives in Contempt of Court for Disobeying the Court’s Discovery Orders.”²³⁰⁵ This motion was accompanied by a Memorandum of Law and supporting documents.²³⁰⁶ Chevron’s sanctions motion prompted opposition filings from both the Donziger Defendants²³⁰⁷ and the LAP Representatives,²³⁰⁸ followed by a reply memorandum from Chevron in support of its motion.²³⁰⁹ On 10 April 2013, the SDNY ordered an evidentiary hearing on key issues, which it scheduled for up to three trial days beginning on 16 April 2013.²³¹⁰ Subsequently, Chevron filed multiple motions to supplement the record²³¹¹ – two of which were granted,²³¹² one unopposed and the

²³⁰¹ Rejoinder, para. 880.

²³⁰² Rejoinder, para. 883.

²³⁰³ Rejoinder, para. 880; **RE-66**, Wendel Expert Report, para. 46.

²³⁰⁴ Rejoinder, Annex K-1.

²³⁰⁵ See para. 1237 above; **C-3037**, RICO Docket, ECF No. 893 (12 March 2013).

²³⁰⁶ **C-3037**, RICO Docket, ECF Nos. 894-895 (12 March 2013).

²³⁰⁷ **C-3037**, RICO Docket, ECF Nos. 947-948 (26 March 2013).

²³⁰⁸ **C-3037**, RICO Docket, ECF Nos. 950-952 (26 March 2013).

²³⁰⁹ **C-3037**, RICO Docket, ECF Nos. 965-967 (2-3 April 2013).

²³¹⁰ See para. 1238 above; **C-3037**, RICO Docket, ECF No. 997 (10 April 2013).

²³¹¹ **C-3037**, RICO Docket, ECF No. 1180 (22 May 2013); **C-3037**, RICO Docket, ECF No. 1220 (7 June 2013).

²³¹² **C-3037**, RICO Docket, ECF No. 1228 (11 June 2013); **C-3037**, RICO Docket, ECF No. 1237 (12 June 2013).

other over objection.²³¹³ On 1 October 2013, Chevron again sought leave to supplement the record.²³¹⁴

1437. On 10 October 2013, the SDNY issued an opinion granting the sanctions motion in part and denying it in part.²³¹⁵

New York attorney Steven Donziger and his Ecuadorian clients have obtained an \$18.2 billion judgment against Chevron Corporation (“Chevron”) from an Ecuadorian court (the “Judgment”). Chevron sues here for equitable relief, claiming that the Judgment was obtained by fraud – including but not limited to bribery of the Ecuadorian judge – as part of a scheme to extort money from it. The defendants include Mr. Donziger’s Ecuadorian clients, their lead Ecuadorian counsel, and several other individuals and organizations allegedly complicit in the scheme. Other than Mr. Donziger and his law firms (the “Donziger Defendants”), all of the defendants save two individual Ecuadorians (the “LAP Representatives”) have defaulted.

Chevron has sought discovery – especially document production – from the Donziger Defendants and the LAP Representatives in an effort to substantiate its claims. Its efforts have largely been stonewalled. These defendants have not produced the requested documents or provided other requested information that is in the hands of their own Ecuadorian lawyers and associates. Chevron moved to compel production. While that motion was pending, the Ecuadorian lawyers – at the suggestion of U.S. counsel for the LAP Representatives – caused a collusive lawsuit to be brought in Ecuador, without notice to Chevron, that ultimately resulted in an injunction barring the Ecuadorian lawyers and other associates from turning documents over in this case. This has not stopped these defendants, however, from submitting documents in this case that they obtained from their Ecuadorian lawyers when it suited their purposes – in one case just days after denying that they had control over the documents submitted and claiming they could not produce them to Chevron.

The Court first ordered that the requested documents be produced. Defendants declined to comply. Chevron then moved for sanctions, including contempt and default judgments. The matter has been fully briefed, and the Court has had the benefit of an evidentiary hearing. The Court now concludes that (1) these defendants have the practical ability to produce the documents, (2) the collusive Ecuadorian injunction is no obstacle to the imposition of sanctions, and (3) these defendants have acted in bad faith in their failure to produce documents in the hands of their Ecuadorian attorneys and agents. While it declines to grant the more onerous sanctions sought by Chevron, sanctions narrowly tailored to their actions are appropriate.²³¹⁶

²³¹³ **C-3037**, RICO Docket, ECF No. 1230 (11 June 2013).

²³¹⁴ **C-3037**, RICO Docket, ECF Nos. 1482-1484 (1 October 2013).

²³¹⁵ See para. 1238 above; **C-3037**, RICO Docket, ECF No. 1529 (10 October 2013); **C-2434**, Opinion on Motions to Compel and for Sanctions, Case No. 1:11-cv-0691, *Chevron Corp. v. Donziger, et al.*, 10 October 2013.

²³¹⁶ **C-3037**, RICO Docket, ECF No. 1529 (10 October 2013); **C-2434**, Opinion on Motions to Compel and for Sanctions, Case No. 1:11-cv-0691, *Chevron Corp. v. Donziger, et al.*, 10 October 2013, pp. 1-2.

1438. As gleaned from above, Chevron pursued sanctions with a view to supporting its discovery efforts in the RICO Litigation, which were largely “stonewalled” by several of the RICO Defendants. As part of the relief granted by the SDNY in respect of its pursuit of sanctions, Chevron obtained an adverse inference:

Many of Chevron’s document requests seek information relating to the events the Court has found (1) were tainted by fraud, or (2) as to which there is probable cause to suspect fraud. Defendants have failed to produce the documents from their attorneys and agents in Ecuador that would shed light on these events. Their failure to produce may very seriously prejudice Chevron’s ability to prove various of its allegations. Thus, the Court in its discretion may infer from defendants’ failure to produce documents in the possession of their attorneys and agents that the evidence defendants refused to provide from their Ecuadorian attorneys and agents would have been unfavorable to them.²³¹⁷

1439. The SDNY also directed that the RICO Defendants would be prevented from introducing at trial documents “that were held by defendants’ attorneys and agents in Ecuador and responsive to Chevron’s requests but that were not produced” in accordance with the Court’s original discovery order.²³¹⁸

1440. Based on the above, the Tribunal determines that Chevron’s pursuit of sanctions sought to obtain critical procedural relief and therefore amounted to a substantive contribution to the RICO Litigation. Having already ascertained that the RICO Litigation category of damages as a whole cannot be excluded from compensation, the Tribunal considers it appropriate to apply the same logic to Chevron’s pursuit of sanctions in the context of the same litigation.

1441. Accordingly, the Tribunal declines to exclude from compensation all legal fees and expenses Chevron incurred for work relating to sanctions in the RICO Litigation.

iii. Work relating to other dismissed claims in the RICO Litigation (Counts 3, 4 and 5)

1442. In addition to the legal fees and expenses relating to Count 6 (Unjust Enrichment), which was addressed in paragraphs 1363-1370 above, the Respondent contends that the Claimants should also be barred from recovering fees and costs incurred in pursuing

²³¹⁷ C-2434, Opinion on Motions to Compel and for Sanctions, Case No. 1:11-cv-0691, *Chevron Corp. v. Donziger, et al.*, 10 October 2013, pp. 102-103.

²³¹⁸ C-2434, Opinion on Motions to Compel and for Sanctions, Case No. 1:11-cv-0691, *Chevron Corp. v. Donziger, et al.*, 10 October 2013, pp. 103-104.

Chevron’s “doomed” claims under Count 4 (Tortious Interference with Contract), Count 5 (Trespass to Chattels), and partially, Count 3 (Fraud) insofar as it alleged detrimental reliance.²³¹⁹ These claims were dismissed by the SDNY on 14 May 2012 – prior to trial – in response to a motion to dismiss filed by the Donziger Defendants.²³²⁰

1443. The Claimants reject this argument, maintaining that “while Chevron did not prevail on all of its claims, none of those claims was vexatious or patently unmeritorious”.²³²¹ The Claimants emphasize that Chevron “was the clear winner in the RICO Litigation”²³²² and that the key consideration is not success on every claim, but the “degree of success obtained”, which in their view was substantial.²³²³

1444. In its Opinion dated 14 May 2012, the SDNY rejected Count 3 (in part) and Counts 4 and 5 in their entirety in response to the Donziger Defendants’ motion to dismiss the Amended Complaint “for failure to state a claim upon which relief can be granted.”²³²⁴ A review of the grounds for the dismissal of these claims is first in order.

1445. First, the Tribunal recalls that Count 3 (Fraud) is based on the premise that the RICO Defendants “and their agents have knowingly misrepresented, omitted, and/or concealed material facts in their pleadings and representations before U.S. courts and before the Lago Agrio court, in their communications to federal and state government agencies and officials, and in their communications to Chevron, Chevron’s shareholders, investors, analysts, and the media”. According to Chevron, “[a]s a direct, proximate, and foreseeable result of Defendants’ fraud, Chevron has been harmed, including significant pecuniary, reputational, and other damages. These injuries include significant damage to Chevron’s reputation and goodwill, and the attorneys’ fees and costs to defend itself in objectively baseless, improperly motivated sham litigation in Ecuador and in related

²³¹⁹ Counter-Memorial, para. 769.

²³²⁰ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012.

²³²¹ Reply, para. 853.

²³²² Reply, para. 853.

²³²³ Reply, para. 853.

²³²⁴ See para. 1215 above; **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, p. 1.

litigation in the U.S., including the attorneys’ fees and costs associated with exposing the Defendants’ pervasive fraud in the Section 1782 proceedings”.²³²⁵

1446. In its Opinion dated 14 May 2012, the SDNY dismissed Count 3 only to the extent it was “premised on detrimental reliance by Chevron” (*i.e.*, first-party reliance).²³²⁶ In essence, the Donziger Defendants asserted that to the extent Count 3 rested on alleged reliance by third parties on the RICO Defendants’ representations, it was “legally insufficient because reliance by the plaintiff is an essential element of the tort.”²³²⁷

1447. At the outset, the SDNY found that there was no basis for Chevron to assert first-party reliance, as “Chevron incurred no attorneys’ fees or costs because it relied on any misrepresentations by the defendants.”²³²⁸ In respect of third-party reliance, however, the Donziger Defendants did not “argue that Chevron fails sufficiently to allege that third-parties relied on the allegedly false representations or that such reliance injured Chevron. Rather, they contend only that fraud claims may not be predicated on reliance by third parties.”²³²⁹ In this connection, the SDNY ruled that “the New York Court of Appeals’ previous decisions allowing recovery for common law fraud based on third party reliance remain authoritative and, in any case, that that Court, were it faced with the question anew, would adhere to that position. Accordingly, Chevron’s fraud claim cannot properly be entirely dismissed on the present motion for want of sufficient allegations of first-party reliance.”²³³⁰

1448. Second, Count 4 (Tortious Interference with Contract) is founded on the assertion that that “Defendants have intentionally caused and continued to cause the Republic of

²³²⁵ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, paras. 388-395.

²³²⁶ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, p. 53.

²³²⁷ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, p. 38.

²³²⁸ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, p. 40.

²³²⁹ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, p. 40.

²³³⁰ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, p. 43.

Ecuador to repeatedly breach the 1995 Settlement Agreement and the 1998 Final Release. Defendants have, through improper influence and the fabricated Cabrera Report, persuaded the Republic of Ecuador to refuse to defend Chevron’s rights and those of its subsidiaries under the contracts, to improperly dictate to the judiciary that Chevron be held liable in the Lago Agrio Litigation, and to bring criminal charges against Chevron’s employees”.²³³¹

1449. In its Opinion dated 14 May 2012, the SDNY dismissed Count 4 on the basis that it was time-barred:

The statute of limitations for tortious interference claims is three years, and it “begins to run when the defendant performs . . . the alleged interference.”

The contracts at issue are the 1995 Settlement Agreement and the 1998 Final Release . . . Chevron alleges that the Donziger Defendants and others “improper[ly] influence[d] and . . . persuaded the Republic of Ecuador to refuse to defend Chevron’s rights, causing Ecuador to renege on its alleged release of TexPet from all liability associated with the company’s Ecuadorian operations.”

The Donziger Defendants argue that this claim is time-barred because any alleged interference began in 1999 (when Ecuador enacted the Environmental Management Act of 1999 (“EMA”), which allowed a private right of action to sue for environmental damages) or in 2003 (when the LAPs, relying on the EMA, commenced the Lago Agrio litigation in Ecuador). Chevron does not dispute that the statute of limitations began to run at one of these junctures. Rather, it describes the tortious conduct as persisting and characterizes the Judgment and the Cabrera Report as a new breaches of the contracts.

Chevron’s attempt to avoid the bar of the statute of limitations by asserting that any tortious interference is ongoing fails because “tortious interference with contract is not a continuing tort.” Moreover, the Court is persuaded that the alleged tortious interference began no later than 2003 when the Lago Agrio litigation was filed and, as alleged in the amended complaint, the Donziger Defendants and others “persuaded the Republic of Ecuador to refuse to defend Chevron’s rights.” As more than three years have elapsed since the start of the Lago Agrio litigation, the claim is untimely and must be dismissed as to the Donziger Defendants.²³³²

1450. Lastly, Count 5 (Trespass to Chattels) proceeded on the basis that the same subset of defendants against whom Counts 1 and 2 were brought “have engaged in a pattern of extortion, collusion, wrongdoing, and deceit with an intent to interfere with Chevron’s property, and the Lago Agrio Plaintiffs have benefited and will continue to benefit from

²³³¹ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 398.

²³³² **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, pp. 47-49.

the RICO Defendants’ criminal scheme through a fraudulent judgment. Through these actions, and by prosecuting a fraudulent lawsuit, manufacturing false evidence, tampering with testimony, disseminating misleading statements to courts, the public, and U.S. government officials, and otherwise engaging in the pressure campaign described in the foregoing paragraphs of this Amended Complaint, Defendants have intentionally, and without justification or consent, interfered and intermeddled with Chevron’s use and enjoyment of its funds that were intended for Chevron’s business purposes and of its business reputation and goodwill”.²³³³

1451. Also in its Opinion dated 14 May 2012, the SDNY dismissed Count 5 on the ground that Chevron’s claims did not fit the doctrine of trespass to chattels:

In substance, Chevron alleges that the Donziger Defendants’ “fraudulent litigation” and the corresponding “misleading media campaign” has interfered with, disturbed, and damaged its “funds and goodwill” and that they therefore have committed trespass to chattels.

The essential elements of trespass to chattels are “(1) intent, (2) physical interference with (3) possession (4) resulting in harm.” Chevron’s claim is without merit for two reasons.

First, Chevron does not allege that the Donziger Defendants interfered with a chattel. The only interference alleged involved Chevron’s funds and goodwill. “Chattel” is defined as “[m]ovable or transferable property [such as] personal property.” Money is fungible and not properly characterized as a “chattel.” The same is true of goodwill.

Second, Chevron does not allege that the Donziger Defendants *physically* interfered with possession of its property. Chevron’s claim is essentially one for vexatious litigation – a tort that does not exist in New York – and one that cannot be fit into the narrow doctrine of trespass to chattels.²³³⁴

1452. The Tribunal notes that the Respondent’s criticisms of Counts 3, 4, and 5 stem from the fact that they were unsuccessful and, by implication, wasteful. The Respondent does not otherwise argue that Counts 3, 4, and 5 pursued litigation objectives wholly disconnected from mitigating the potential injury that could arise from an enforcement of the Lago Agrio Judgment. Rather, the criticism seems to rest solely on the fact that they were

²³³³ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 404.

²³³⁴ **R-1870**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 14 May 2012, pp. 47-49.

dismissed at an early stage due to failure to state a legally sufficient claim (for Count 3), time bar (for Count 4) and insufficient allegations (for Count 5).²³³⁵

1453. In this respect, the Tribunal recalls its above finding that all of Counts 3-7 and 9 concern relief seeking to mitigate the damage resulting from the breaches of the Treaty by preventing the enforcement of the Lago Agrio Judgment. Accordingly, Chevron's pursuit of Counts 3, 4, and 5 fulfils the requirement of causation for the compensation of incidental damages under international law.²³³⁶

1454. The Tribunal reaches the same conclusion in respect of the second requirement for compensation (reasonableness of the measures taken). As already noted by the Tribunal, reasonableness should be assessed contemporaneously and not with the benefit of hindsight.²³³⁷ Accordingly, the Tribunal is prepared to grant a certain level of deference to the Claimants' decisions as to which specific actions to bring as part of the RICO Litigation.²³³⁸ For the same reason, the ultimate success of Counts 3, 4, and 5 should not be a decisive factor when determining whether it was reasonable for the Claimants to pursue such action; rather, the relevant inquiry is whether the claims were reasonable steps towards the goal of removing the risk of enforcement. Having examined the grounds supporting Counts 3, 4, and 5 and the reasons for which the SDNY dismissed them, the Tribunal finds no basis to conclude that these claims were intrinsically frivolous or were devised by Chevron as something other than mitigation measures seeking to address specifically the injury arising from the recognition and enforcement of the Lago Agrio Judgment.

1455. Accordingly, the Tribunal declines to exclude from compensation the legal fees and expenses pertaining to work relating to Counts 3, 4 and 5 in the RICO Litigation on the basis that such actions were not successful.

²³³⁵ Counter-Memorial, para. 519.

²³³⁶ See paras. 1302, 1313 above.

²³³⁷ See para. 340 above.

²³³⁸ See para. 341 above.

iv. *Work relating to Count 8*

1456. As noted in paragraph 1302 above, while all of Counts 3-7 and 9 concern relief seeking to prevent the enforcement of the Lago Agrio Judgment, Count 8 concerns only a request “for general damages according to proof at trial, trebled according to statute” and “for Chevron’s reasonable attorneys’ fees and costs according to statute” under Judiciary Law § 487.²³³⁹ This provision, as reproduced in the Amended Complaint, reads in relevant part: “An attorney or counselor who . . . [i]s guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party . . . [i]s guilty of a misdemeanor, and in addition to the punishment prescribed therefore by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.”²³⁴⁰

1457. After Chevron withdrew its money damages claims, the relief sought by Chevron with respect to Count 8 was limited to an injunction barring Mr Donziger “from engaging in any deceit or collusion, or consenting to any deceit or collusion, with intent to deceive any court within the state of New York” and requiring him to attach a copy of the order to any initial appearance in any state or federal action” in New York.²³⁴¹

1458. In the RICO Judgment, the SDNY ruled on Count 8 and Chevron’s claims premised on third-party reliance as an ensemble. The SDNY noted the following facts:

*As the foregoing discussion makes clear, Donziger’s pressure campaign included a plethora of false and misleading representations to persons and entities – including among others members of the media, the New York Attorney General, the SEC, the New York State Comptroller, and Chevron shareholders – often in efforts to pressure Chevron into settlement. Likewise, Donziger, a member of the New York Bar, attempted to deceive the judges of this Court. Among other things, he suggested that Mark Quarles include statements that Donziger knew to be false in a declaration before the Honorable Leonard Sand to deceive the court into believing that Cabrera was an independent expert. In attempting to explain away the Prieto email, he offered a deliberately false explanation to this Court that contradicted his prior sworn testimony in an obvious attempt to avoid sanctions for failing to produce documents from Ecuador.*²³⁴²

²³³⁹ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, pp. 136-161.

²³⁴⁰ **C-976**, *Chevron Corp. v. Steven Donziger et al.*, Case No. 11 Civ. 0691 (LAK), Amended Complaint (SDNY), 20 April 2011, para. 421.

²³⁴¹ **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, p. 409.

²³⁴² **C-2135**, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, p. 408 (emphasis by the Tribunal).

1459. Against this background, the SDNY declined in the exercise of its discretion to grant equitable relief on Count 8, expressing a concern that the relief sought by Chevron was insufficiently specific and noting that the professional consequences of Mr Donziger’s behaviour could be addressed by other bodies:

It is debatable whether the injunctive relief sought by Chevron with respect to these claims would be sufficiently specific to satisfy Rule 65(d)(1). It is debatable also whether it makes practical sense to subject every future public statement by these defendants, or every future action by Donziger in connection with litigation in courts in New York, to the possibility of contempt proceedings for violating an injunction barring “acts of fraud” and any “deceit or collusion.” Moreover, the professional consequences of Donziger’s behavior, past and future, may be addressed quite adequately by other bodies. Accordingly, the Court, in the exercise of discretion, declines to grant equitable relief on Chevron’s claims of third party fraud and violation of Judiciary Law Section 487.²³⁴³

1460. The Tribunal infers from these materials that Chevron’s pursuit of Count 8 sought primarily to prevent Mr Donziger from pursuing his “pressure campaign” intended to compel Chevron to settle the Lago Agrio Judgment. In this respect, the Tribunal recalls that any harm suffered by the Claimants as a result of such campaign – including any legal fees and expenses incurred to oppose the campaign – falls outside the scope of the compensable injury in this case (*i.e.*, the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment).²³⁴⁴

1461. The legal fees and expenses incurred by the Claimants in connection with Count 8 must therefore be excluded from compensation. While neither Party has particularized the amounts incurred by Chevron specifically in connection with Count 8, this should not preclude the Tribunal from factoring this exclusion into the determination of the final amount of compensation owed to the Claimants: the fact remains that the onus is on the Claimants to prove every element of their damages claim²³⁴⁵ and they have failed to meet that burden in connection with their pursuit of Count 8. The Tribunal shall address this question together with other issues relevant to the RICO Litigation in Section (d)(3)xvi below.

²³⁴³ C-2135, Opinion of Judge Lewis A. Kaplan, *Chevron Corporation v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK), U.S. District Court, SDNY, 4 March 2014, p. 409.

²³⁴⁴ See para. 317 above.

²³⁴⁵ See para. 548 above.

v. *Work related to pursuing criminal contempt proceedings against Donziger*

1462. According to the Respondent, following the entry of judgement in Chevron’s favour in the RICO Litigation, Chevron engaged in a post-judgment campaign of “inflicting further pain and suffering” on Mr Donziger, including, eventually, assisting in criminal contempt proceedings against him.²³⁴⁶ The Respondent points out that Gibson Dunn partner Ms Anne Champion “not only testified at the criminal contempt proceedings” but “also met with the Federal Bureau of Investigation ‘on the order of 15 to 20’ times” to discuss the charges, each time accompanied by at least one other Gibson Dunn attorney.²³⁴⁷ The Respondent asserts that, in total, Gibson Dunn attorneys spent “approximately 286 hours meeting with U.S. law enforcement to support the criminal contempt charges against Donziger.”²³⁴⁸

1463. In respect, specifically, of the Claimants’ damages claim, the Respondent points out that “numerous Chevron attorneys billed time for investigating the standards for criminal contempt and for facilitating proceedings to disbar Donziger in New York” and that some of these fees for criminal contempt proceedings were allocated under the RICO Litigation category and are now being claimed as damages in this Arbitration.²³⁴⁹ According to the Respondent, it is highly unusual for a “multi-billion-dollar company to channel its resources into a multi-million-dollar takedown of a private individual”.²³⁵⁰ In its view, none of these activities can be understood as rational business judgments that could support a damages award in this case.²³⁵¹

1464. The Tribunal has already addressed Chevron’s pursuit of civil contempt proceedings against Mr Donziger in paragraphs 1382-1389 above. As already noted, on 23 May 2019

²³⁴⁶ Rejoinder, paras. 1247-1249.

²³⁴⁷ Rejoinder, para. 1249; **R-2123**, *United States v. Donziger*, S.D.N.Y. Case 1:19-cr-561-LAP, D.E. 315 Trial Transcript, 22 May 2021, pp. 459-460.

²³⁴⁸ Rejoinder, para. 1249; **R-2123**, *United States v. Donziger*, S.D.N.Y. Case 1:19-cr-561-LAP, D.E. 315 Trial Transcript, 22 May 2021, p. 463.

²³⁴⁹ Rejoinder, para. 1250.

²³⁵⁰ Rejoinder, para. 1251.

²³⁵¹ Rejoinder, para. 1251.

the SDNY granted in part four motions to hold the Donziger Defendants in contempt.²³⁵² A few months later, on 16 July 2019, the SDNY granted Chevron’s request for attorneys’ fees for all activities surrounding those four motions.²³⁵³ Two weeks later, on 31 July 2019, the SDNY issued an order to show cause why Mr Donziger should not be held in criminal contempt.²³⁵⁴ The local U.S. Attorney’s Office thereafter pursued criminal contempt charges against Mr Donziger.²³⁵⁵

1465. The Respondent has identified several materials evincing, in its submission, that “Chevron offered up its attorneys to assist in that criminal prosecution”.²³⁵⁶ However, these materials do not support the proposition that Chevron incurred fees in connection with those proceedings. First, Ms Anne Champion, a Gibson Dunn partner, testified under oath that she did not bill to Chevron any of the time she spent in meetings with FBI agents discussing the criminal charges against Mr Donziger.²³⁵⁷ Second, the Respondent has only identified five time entries, totalling less than 14 hours, allegedly corresponding to time “investigating the standards for criminal contempt and . . . facilitating proceedings to disbar Donziger”, many of which bear the label “[NOT CLAIMED]”.²³⁵⁸ In the circumstances, the Tribunal has been given no substantial reasons to exclude any amounts from compensation on account of the time spent by Chevron’s counsel in connection with the pursuit of criminal contempt proceedings against Mr Donziger.

²³⁵² **C-3116**, *Chevron Corporation v. Steven Donziger*, Case 1:11-cv-00691-LAK-RWL, Document 2209, Memorandum Opinion, 23 May 2019, pp. 8-9.

²³⁵³ **R-1567**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 2264 Motion for Award of Attorneys’ Fees, 16 July 2019.

²³⁵⁴ **R-1566**, *Chevron Corp. v. Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 2276 Order to Show Cause Why Def. Steven Donziger Should Not Be Held in Criminal Contempt, 31 July 2019.

²³⁵⁵ **R-2123**, *United States v. Donziger*, S.D.N.Y. Case 1:19-cr-561-LAP, D.E. 315 Trial Transcript, 22 May 2021.

²³⁵⁶ Rejoinder, para. 1249.

²³⁵⁷ **R-2123**, *United States v. Donziger*, S.D.N.Y. Case 1:19-cr-561-LAP, D.E. 315 Trial Transcript, 22 May 2021, p. 464. *See also id.*, p. 466: “Q. . . . Since you’re not billing for this, it essentially is a donation, correct? A. I don’t view it as a donation, no, to Chevron, or to anybody. I’m under federal subpoena. I would meet with the authorities regarding any crime that they wish to meet with me on. I don’t view it as a donation. It’s more like paying taxes.”

²³⁵⁸ Rejoinder, para. 1250.

vi. *Alleged unnecessary witnesses, experts, and exhibits*

1466. The Respondent argues that Chevron spent “inordinate amounts of time preparing unnecessary witnesses and compiling unnecessary exhibits” in the RICO Litigation.²³⁵⁹

1467. First, the Respondent points to Chevron’s admission that it prepared 13 witnesses whom it did not call at the RICO trial.²³⁶⁰ The Respondent’s expert, Mr David Paige, also points to the following as examples of “abandoned” work relating to witnesses and experts, the costs of which, according to him, “should not reasonably or fairly be shifted to Ecuador”:

- (i) *Expert witnesses in the RICO (Bifurcated Count [9]) action*: Chevron advised that it was withdrawing 10 experts as witnesses and that, out of the remaining 16 challenged expert witnesses, the number “will likely continue to shrink as the trial approaches, so [Chevron] do[es] not expect to call all of them”.²³⁶¹
- (ii) *Forensic expert in RICO action*: the SDNY ordered Chevron to propose an alternative “neutral forensic expert” because the expert that it previously put forward had assisted in the context of the Gibraltar Proceedings, and Chevron had offered to select a different one.²³⁶²

1468. According to the Respondent, working with “extra experts” caused Chevron to incur considerable fees for which Ecuador should not be held liable, as these activities were all later abandoned.²³⁶³

1469. Several documents in the record provide insight as to why Chevron decided to withdraw certain witnesses. For instance, Chevron’s decision to withdraw several expert witnesses during the Count 9 proceedings (*see* paragraph (i) above) was prompted by a request by the SDNY that Chevron “carefully review the number of expert witnesses [Chevron was]

²³⁵⁹ Counter-Memorial, para. 782.

²³⁶⁰ Counter-Memorial, para. 782; Memorial, Appendix 9, para. 139.

²³⁶¹ **RE-36**, First Paige Expert Report, para. 185(f); **R-1581**, *Chevron Corp. v. Maria Aguida Salazar et al.*, Case No. 1:11-cv-03718-LAK-JCF, ECF No. 188.

²³⁶² **RE-36**, First Paige Expert Report, para. 185(g); **R-1608**, *Chevron Corp. v. Donziger, et al.*, Case 1:11-cv-00691-LAK-RWL, ECF No. 2134.

²³⁶³ Rejoinder, para. 873(4).

designating as potential trial witnesses.”²³⁶⁴ Chevron’s counsel noted that they intended to present to the SDNY legal authorities instead of calling experts to the same effect:

Because Chevron believes that all 26 of the experts it originally designated would provide relevant testimony on one of the multiple grounds for non-recognition or unenforceability of the Ecuadorian judgment and therefore would assist the Court in resolving important issues at trial, it opposes the attempt by defendants Hugo Camacho Naranjo ("Camacho") and Javier Piaguaje Payaguaje ("Piaguaje") (collectively, the "LAP Representatives") to exclude any of them. Nevertheless, Chevron is prepared to withdraw its designations of the following 10 expert witnesses: William D. DiPaolo; Joseph Dooley; Timothy Dutton QC; Alejandro Guzman Brito; Gus R. Lesnevich; Hector A. Mairal; Professor Keith Rayner; Professor Mitchell A. Seligson; Walter Spurrier; and Dr. Theodore D. Tomasi. Two of those witnesses, Timothy Dutton QC and Hector A. Maira, would otherwise have provided relevant testimony relating to the appropriate remedy here, as experts on Commonwealth and Latin American law and the various enforcement vehicles the LAPs could pursue in those foreign jurisdictions to disrupt Chevron’s operations. *We believe that we can present directly to the Court the relevant legal authorities from those jurisdictions such that we do not necessarily have to call experts in that regard*, but we would appreciate hearing from the Court if Your Honor believes such testimony from both sides would be of assistance to the Court.²³⁶⁵

1470. Similarly, Chevron proposed an alternative forensic expert (*see* paragraph 1467(ii) above), in response to a direction from the SDNY:

Chevron Corporation indicated that its proposed neutral forensic expert performed document hosting services for it in litigation in Gibraltar . . . While it contends that this is not disqualifying, it stated that it would propose an [alternative] expert ‘in the coming days.’ It has not yet done so.

Chevron shall file the name and qualifications of any alternative proposed expert on or before November 28, 2018 at 10 a.m.²³⁶⁶

1471. Lastly, in respect of the RICO trial, the Claimants note that “Chevron prepared over 38 fact and expert witnesses for trial, *including preparing statements for each witness as required by the Court*, and ultimately called 25 witnesses at trial.”²³⁶⁷ A letter prepared by Chevron’s counsel prior to the Count 9 trial (not the RICO trial) provides further

²³⁶⁴ **R-1581**, *Chevron Corp. v. Maria Aguinda Salazar et al.*, Case No. 1:11-cv-03718-LAK-JCF, ECF No. 188, p. 1.

²³⁶⁵ **R-1581**, *Chevron Corp. v. Maria Aguinda Salazar et al.*, Case No. 1:11-cv-03718-LAK-JCF, ECF No. 188, fn 1 (emphasis by the Tribunal).

²³⁶⁶ **R-1608**, *Chevron Corp. v. Donziger, et al.*, Case 1:11-cv-00691-LAK-RWL, ECF No. 2134.

²³⁶⁷ Memorial, Appendix 9, para. 139 (emphasis by the Tribunal).

insight into Judge Kaplan's practices in respect of the submission of sworn written statements instead of oral testimony:

As for the total number of experts called at trial, as I advised the Court on Tuesday, I anticipate that in the normal course this list will likely continue to shrink as the trial approaches, so I do not expect to call all of them as witnesses at trial. In any event, *this Court will undoubtedly adopt procedures to streamline the trial, for example, by, if a bench trial, requiring sworn written statements in lieu of oral direct testimony from expert witnesses, as contemplated in Your Honor's individual practices*, or by placing caps on the total amount of time allocated for each party for its questioning of witnesses, expert or otherwise.²³⁶⁸

1472. In the Tribunal's view, these materials support the proposition that Chevron's decision not to call certain witnesses to testify sought to streamline the trials held in the course of the RICO Litigation, often at the SDNY's behest. It is also apparent that Chevron's decision not to call certain experts to trial at different stages of the RICO Litigation did not necessarily have the effect of excluding their evidence from the SDNY's consideration, since these experts also provided written reports at the SDNY's request. Overall, therefore, the Tribunal rejects the Respondent's request to exclude from compensation the legal fees and expenses incurred by Chevron to engage and prepare such witnesses on the basis that they were "unnecessary".²³⁶⁹

1473. Second, the Respondent is critical of the purportedly excessive time spent by Chevron compiling "unnecessary exhibits" in the RICO Litigation.²³⁷⁰ The Respondent refers in this respect to Chevron's list of 2,561 exhibits, which Judge Kaplan called out for being excessive.²³⁷¹

1474. The Tribunal declines to draw any consequences from the fact that Chevron relied on this number of exhibits in the RICO Litigation. Having already addressed the extent to which the requirements of causation and reasonableness for the reimbursement of incidental damages are met as regards the RICO Litigation, the Tribunal does not consider it necessary to opine on the appropriateness of the number of exhibits supporting them. As

²³⁶⁸ **R-1581**, *Chevron Corp. v. Maria Aguinda Salazar et al.*, Case No. 1:11-cv-03718-LAK-JCF, ECF No. 188, pp. 1-2 (emphasis by the Tribunal).

²³⁶⁹ Counter-Memorial, para. 782.

²³⁷⁰ Counter-Memorial, para. 782.

²³⁷¹ Counter-Memorial, para 782; **R-1600**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1804 Transcript of Proceedings, 10 December 2013, p. 1379.

already noted, it is not appropriate for the Tribunal to apply hindsight to the legal strategies employed in the course of the RICO Litigation.²³⁷²

vii. Alleged unsuccessful work

1475. The Respondent also criticizes the Claimants for engaging in “unsuccessful” activities in the RICO Litigation.²³⁷³ As an example of allegedly non-compensable work, the Respondent cites Chevron’s “series of mostly unsuccessful and largely duplicative motions for summary judgment”, where Judge Kaplan warned Chevron’s counsel of a “significant risk . . . that you will all be wasting your time.” Despite this, Chevron proceeded to file a motion that was largely denied without waiting for an opposition filing and ultimately denied as moot after trial.²³⁷⁴ In addition to work already addressed as components earlier in this Section – *i.e.*, Counts 6 and 9 and Chevron’s opposition to Mr Keker’s *pro hac vice* appearance – Mr Paige identifies further examples of unsuccessful efforts in the RICO Litigation, which he opines fail to meet the legal standards of reasonableness and necessity:²³⁷⁵

- (i) *Motion for Summary Judgement on Chevron’s Eighth Claim for Relief* (Violation of New York Judiciary Law § 487).²³⁷⁶ Mr Paige observes that on 5 October 2012, Chevron filed a “Motion for Summary Judgement on Its Eighth Claim for Relief (Violation of New York Judiciary Law § 487),” which was later denied by the SDNY on 4 March 2013.²³⁷⁷ Mr Paige further observes that Chevron claims between USD 5 million and USD 11.5 million in fees for each month from October 2012 to March 2013, yet the Claimants provide insufficient information to determine how many staff, hours, or expenses were dedicated to this unsuccessful effort.²³⁷⁸

²³⁷² See para. 341 above.

²³⁷³ Counter-Memorial, para. 772.

²³⁷⁴ Counter-Memorial, para. 772.

²³⁷⁵ Track III Hearing - Paige Opening Presentation, Slide 13.

²³⁷⁶ **RE-36**, First Paige Expert Report, para. 188(e)(i); **C-3037**, RICO Docket, ECF No. 583 (5 October 2012).

²³⁷⁷ **RE-36**, First Paige Expert Report, para. 188(e)(i); **LFA-44**, *Chevron Corporation v. Donziger, et al.*, Case 1:11-cv-00691-LAK-RWL (SDNY), ECF No. 878 (4 March 2013).

²³⁷⁸ **RE-36**, First Paige Expert Report, para. 188(e)(i).

- (ii) *Motion for Leave to Serve a Second Document Subpoena on Amazon Watch.*²³⁷⁹ Mr Paige notes that on 10 April 2013, Chevron filed a “Motion for Leave to Serve a Second Document Subpoena on Amazon Watch” which Judge Kaplan denied shortly thereafter, stating that the “essence of Chevron’s problem is of its own making” due to the overbroad nature of the original subpoena and failure to comply with the law in the Ninth Circuit.²³⁸⁰ According to Mr Paige, in April 2013 alone, eight law firms billed for the RICO Litigation, involving 250 timekeepers and close to 17,000 hours for a total of approximately USD 7.5 million in fees. Yet the Claimants provide insufficient information to determine how much of this effort and cost was devoted to this unsuccessful motion.²³⁸¹
- (iii) *Motion for Partial Summary Judgment on its RICO Claim, Summary Judgment on Certain Affirmative Defenses, and an Order Establishing Findings of Fact Pursuant to Fed. R. Civ. P. 56(g).*²³⁸² On 16 August 2013, Chevron filed a “Motion for Partial Summary Judgment on Its RICO Claim, Summary Judgment on Certain Affirmative Defenses, and an Order Establishing Findings of Fact Pursuant to Fed. R. Civ. P. 56(g),” a portion of which was denied on 22 August 2013 without even requiring a response from the defendants.²³⁸³ The remaining portions were denied as moot on 4 March 2014.²³⁸⁴ Mr Paige states that between August 2013 and February 2014, over USD 46 million in fees were claimed for the RICO Litigation. However, due to insufficient information provided by the Claimants, it is not known what portion of this amount relates to this unsuccessful motion.²³⁸⁵

²³⁷⁹ **RE-36**, First Paige Expert Report, para. 188(e)(iv); **LFA-45**, *Chevron Corporation v. Donziger, et al.*, Case 1:11-cv-00691-LAK-RWL (S.D. NY), ECF No. 1000 (10 April 2013).

²³⁸⁰ **RE-36**, First Paige Expert Report, para. 188(e)(iv); **LFA-46**, *Chevron Corporation v. Donziger, et al.*, Case 1:11-cv-00691-LAK-RWL (S.D. NY), ECF No. 1051 (19 April 2013).

²³⁸¹ **RE-36**, First Paige Expert Report, para. 188(e)(iv).

²³⁸² **RE-36**, First Paige Expert Report, para. 188(e)(v); **C-3037**, RICO Docket, ECF No. 1348 (16 August 2013).

²³⁸³ **RE-36**, First Paige Expert Report, para. 188(e)(v); **R-1561**, *Chevron Corporation v. Donziger, et al.*, Case 1:11-cv-00691-LAK-RWL (S.D. NY), ECF No. 1362 (22 October 2013).

²³⁸⁴ **RE-36**, First Paige Expert Report, para. 188(e)(v); **C-3037**, ECF No. 1880 (4 March 2014).

²³⁸⁵ **RE-36**, First Paige Expert Report, para. 188(e)(v).

1476. The Tribunal notes that, unlike in other motions filed by Chevron in the RICO Litigation, the Respondent's main criticism of the motions identified in the preceding paragraph rests solely on the fact that they were ultimately unsuccessful.

1477. In this respect, and as already noted by the Tribunal, reasonableness should be assessed contemporaneously and not with the benefit of hindsight.²³⁸⁶ Accordingly, the Tribunal is prepared to grant a certain level of deference to the Claimants' decisions as to which specific actions to bring as part of the RICO Litigation.²³⁸⁷ For the same reason, the ultimate success of the motions falling under the present heading should not be a decisive factor when determining whether it was reasonable for the Claimants to pursue them; rather, the relevant inquiry is whether it was reasonable for the Claimants to bring such motions in the first place.

1478. It is unnecessary to perform such inquiry as regards the first motion falling under the present heading (identified in paragraph 1475(i) above), as it relates to Count 8 – an action for which, as found in paragraph 1461 above, the Claimants are not entitled to compensation.

1479. As to the remaining motions falling under the present heading (*i.e.*, those identified in paragraph (ii) and 1475(iii) above), having examined the grounds supporting them and the reasons for which the SDNY dismissed them,²³⁸⁸ the Tribunal finds no basis to conclude that such motions were intrinsically frivolous or were devised by Chevron as

²³⁸⁶ See para. 340 above.

²³⁸⁷ See para. 341 above.

²³⁸⁸ **LFA-46**, *Chevron Corporation v. Donziger, et al.*, Case 1:11-cv-00691-LAK-RWL (S.D. NY), ECF No. 1051 (19 April 2013) ("The essence of Chevron's problem is of its own making. The Law in the Ninth Circuit, notably the *Perry* case, was relatively clear when Chevron served the first Amazon Watch subpoena. By framing the subpoena as broadly as it did, it tool its chances of the result reached by Magistrate Judge Cousins. Nor did it seek to modify its first subpoena to Amazon Watch during the pendency of the extensive proceedings on the motion to quash in the California district court despite the approach and then expiration of the deadline for the service of document requests in this action and despite earlier litigation in this Court concerning the timeliness of the service of the first Amazon Watch subpoena . . . Thus, while Chevron is free to seek review of the Magistrate Judge's ruling with respect to the first subpoena and to make whatever arguments and suggestions it thinks appropriate to the California district court, leave to serve another is denied."); **R-1561**, *Chevron Corporation v. Donziger, et al.*, Case 1:11-cv-00691-LAK-RWL (S.D. NY), ECF No. 1362 (22 October 2013), p. 11 ("In this case, there is nothing questionable about the application of the summary judgment rule. But other considerations counsel the exercise of discretion against considering the merits of this motion at this moment of the litigation.").

something other than mitigation measures seeking to address specifically the injury arising from the recognition and enforcement of the Lago Agrio Judgment.

1480. Accordingly, the Tribunal declines to exclude from compensation all legal fees and expenses incurred by Chevron in connection with its pursuit of the motions identified in paragraph (ii) and 1475(iii) above.

viii. Alleged overstaffing and excessive attendance at hearings and trial

1481. According to the Respondent, Chevron also “egregiously overstaffed” the RICO Litigation, sending “at least five or six attorneys to most hearings” when, “[a]t almost every hearing, only one or two of those attorneys spoke.”²³⁸⁹ The Respondent points to several instances, including a 20 December 2012 hearing on a motion to compel in which six Chevron attorneys appeared but only one (Mr Randy Mastro) intervened,²³⁹⁰ compared to a single attorney each for the LAP Representatives and Mr Donziger.²³⁹¹ The Respondent infers that Chevron routinely sent more than six attorneys to some hearings, pointing to a sanctions hearing attended by between nine and eleven Gibson Dunn attorneys,²³⁹² where Mr Peter Seley examined a witness even though he was not listed in the attendance on the transcript’s cover page.²³⁹³

1482. The Respondent’s expert, Mr Trunko, similarly explains that “hearings and depositions were often attended by multiple attorneys from multiple firms”, in marked departure from Chevron’s own Billing Guidelines.²³⁹⁴ Mr Trunko highlights several instances, as follows:

²³⁸⁹ Counter-Memorial, para. 778.

²³⁹⁰ Counter-Memorial, para. 778; **R-1883**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 747 Transcript of Proceedings (28 January 2013).

²³⁹¹ Counter-Memorial, para. 778.

²³⁹² Counter-Memorial, para. 779, fn 1548; **R-1604**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1891 Declaration of Christopher M. Joralemon in Support of Chevron Corporation’s Fee Application, 18 March 2014, pp. 234-235. According to the Respondent, “[t]he bills indicate that the following attorneys attended the hearing: J. Bell, R. Brodsky, R. Brook, A. Champion, R. Mastro, A. Neuman, P. Seley, J. Stavers, and D. Sullivan. In addition, J. Coren spent eight hours “assist[ing] with sanctions hearing,” and M.B. Maloney spent eight hours “assist[ing] R. Mastro during sanctions hearing”.

²³⁹³ Counter-Memorial, para. 779; **R-1895**, *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1084 Transcript of Proceedings (29 April 2013), pp. 1, 216.

²³⁹⁴ **RE-51**, Trunko Expert Report, para. 30.

- (i) The RICO trial, which lasted for 20 days, was typically attended each day by 15 to 20 timekeepers.²³⁹⁵ The Claimants admit that there were two teams of lawyers in court each day during trial – one in the courtroom and one in a jury room – along with a third team at a nearby location providing support.²³⁹⁶ According to the Respondent, based on Mr Trunko’s audit of the invoices, at least 43 different timekeepers attended the RICO trial.²³⁹⁷
- (ii) The RICO closing argument was attended by no less than 22 timekeepers, including 21 from Gibson Dunn and one from Jones Day.²³⁹⁸ This is even though only one of Chevron’s attorneys, Mr Mastro, actually delivered the closing statement.²³⁹⁹
- (iii) The 9 December 2010 Second Circuit argument was attended by no less than 10 timekeepers from four different law firms.²⁴⁰⁰
- (iv) The 20 April 2015 Second Circuit argument was attended by no less than 10 timekeepers from two different law firms.²⁴⁰¹
- (v) The sanctions hearing from 16 April 2013 to 18 April 2013 was attended by at least 12, 20 and 16 timekeepers respectively on each of the three days.²⁴⁰²
- (vi) The 20 December and 21 December 2012 discovery hearing was attended by at least 8 and 9 timekeepers respectively on each of the two days.²⁴⁰³

²³⁹⁵ **RE-51**, Trunko Expert Report, para. 31; **SM D-1**. *See also* Track III Hearing - Trunko Direct Presentation (31 August 2022), Slide 49.

²³⁹⁶ Memorial, Appendix 9, paras. 141-142.

²³⁹⁷ Rejoinder, para. 1317; **RE-51**, Trunko Expert Report, **SM D-2**.

²³⁹⁸ **RE-51**, Trunko Expert Report, para. 31; **SM D-2**.

²³⁹⁹ Rejoinder, para. 1317; **C-2384**, *Chevron Corp. v. Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL, D.E. 1826 Trial Transcript (26 November 2013), pp. 2833-2878.

²⁴⁰⁰ **RE-51**, Trunko Expert Report, para. 32; **SM D-3**.

²⁴⁰¹ **RE-51**, Trunko Expert Report, para. 32; **SM D-4**.

²⁴⁰² **RE-51**, Trunko Expert Report, para. 32; **SM D-5**.

²⁴⁰³ **RE-51**, Trunko Expert Report, para. 32; **SM D-6**.

- (vii) The 8 February 2011 preliminary injunction hearing was attended by at least 9 timekeepers from at least two firms.²⁴⁰⁴
- (viii) The 18 February 2011 preliminary injunction hearing was attended by at least 9 timekeepers from at least two firms.²⁴⁰⁵
- (ix) The 5 March 2012 Rule 16 (pre-trial) hearing was attended by at least 9 timekeepers from at least two firms.²⁴⁰⁶
- (x) The 15 March 2012 hearing on temporary restraining order was attended by at least 10 timekeepers from at least two firms.²⁴⁰⁷
- (xi) The 26 September 2013 argument before the Second Circuit was attended by at least 9 timekeepers from at least two firms.²⁴⁰⁸

1483. The Respondent reiterates its observations on overstaffing in its Rejoinder,²⁴⁰⁹ highlighting that Chevron “may have simply employed too many attorneys”.²⁴¹⁰ Other examples of overstaffing include the payment of USD 71,657.76 for nearly 60 timekeepers to review the Second Circuit’s opinion vacating the global preliminary injunction and USD 35,052.64 for at least 40 timekeepers to review the SDNY’s decisions on Chevron’s motions to dismiss and for attachment.²⁴¹¹

1484. The Tribunal notes that it has already addressed the participation of multiple law firms in Section VIII.G.3(d)2.x above. All other matters raised by the Parties under this heading – including the attendance of multiple Gibson Dunn lawyers in several hearings and during trial at the RICO Litigation – will be addressed by the Tribunal as part of its

²⁴⁰⁴ RE-51, Trunko Expert Report, para. 32; SM D-7.

²⁴⁰⁵ RE-51, Trunko Expert Report, para. 32; SM D-8.

²⁴⁰⁶ RE-51, Trunko Expert Report, para. 32; SM D-9.

²⁴⁰⁷ RE-51, Trunko Expert Report, para. 32; SM D-10.

²⁴⁰⁸ RE-51, Trunko Expert Report, para. 32; SM D-11.

²⁴⁰⁹ Rejoinder, para. 1317.

²⁴¹⁰ Rejoinder, para. 1318.

²⁴¹¹ Rejoinder, para. 678; RE-51, Trunko Expert Report, SM E-1, SM E-2.

analysis of cross-cutting “elements” impacting multiple categories (in particular, “Multiple Attendance at Events”) in Section VIII.N below.²⁴¹²

ix. Alleged duplicative activities

1485. According to the Respondent’s expert, Mr Trunko, in many instances multiple timekeepers from multiple firms billed to review the same pleading or document.²⁴¹³ Mr Trunko highlights, in particular, two instances in the RICO Litigation:

- (i) Review of the Second Circuit’s Opinion of 26 January 2012 dismissing Count 9, where at least nearly 60 timekeepers from Gibson Dunn and Jones Day billed to review the same decision,²⁴¹⁴ and
- (ii) Review of Judge Kaplan’s 14 May 2012 rulings on the Donziger Defendants’ motion to dismiss and Chevron’s motion for an order of attachment, where at least 40 timekeepers from Gibson Dunn and Jones Day billed to review the decision.²⁴¹⁵

1486. The Tribunal notes that it has already addressed the participation of multiple law firms in Section VIII.G.3(d)2.x above. All other overstaffing issues raised by the Parties under this heading will be addressed by the Tribunal as part of its analysis of cross-cutting “elements” impacting multiple categories (in particular, “Multiple Attendance at Events”) in Section VIII.N below.²⁴¹⁶

x. Alleged unrelated activities

1487. In its Rejoinder, the Respondent states that, in addition to the audit performed by Mr Trunko and his team, it conducted its own review of the Claimants’ invoices, which revealed a number of “unrelated, duplicative, abandoned, frivolous, excessive, and/or

²⁴¹² See para. 571 above.

²⁴¹³ **RE-51**, Trunko Expert Report, para. 35.

²⁴¹⁴ **RE-51**, Trunko Expert Report, para. 35; **SM E-1**; Track III Hearing - Trunko Direct Presentation (31 August 2022), Slide 52.

²⁴¹⁵ **RE-51**, Trunko Expert Report, para. 35; **SM E-2**; Track III Hearing - Trunko Direct Presentation (31 August 2022), Slide 52.

²⁴¹⁶ See para. 571 above.

otherwise improperly billed” activities that should be deemed unreasonable and therefore non-compensable.²⁴¹⁷

1488. In relation to allegedly unrelated activities, the Respondent faults Chevron for having developed arguments that had no discernible connection to the Treaty breaches, including searching for evidence that the LAPs spent excessively on litigation.²⁴¹⁸ Some of these activities – including reviewing Crude outtakes and forensic accounting documents for evidence of excessive spending by the LAPs – were billed under the RICO Litigation category.²⁴¹⁹

1489. In addition, the Respondent points to Chevron’s other “extra-legal side projects” claimed under the RICO Litigation, including efforts to “burnish[] its image to the [i] public, [ii] the U.S. government, and [iii] its own shareholders.”²⁴²⁰ In this connection, the Respondent highlights the time entries of Mr Luke Sobota, then of Jones Day, which show that he spent at least 33.2 hours and charged approximately USD 21,580.00 in the RICO Litigation “just for reading news clips”.²⁴²¹ The Respondent further points to billing for time spent “boosting Chevron’s party line” through law school presentations, law review articles, op-eds, and other commentary.²⁴²² This includes, among others, time spent preparing for a presentation at University of Wyoming Law School, drafting a letter to Penn Law Symposium, presenting at Duke Law School, drafting an op-ed, drafting “fraud one-pagers” for a Harvard event, and responding to a law review article on *Aguinda v. Chevron* and mass toxic tort claims against U.S. companies – all claimed under the RICO Litigation category.²⁴²³

1490. As regards government relations activities, the Respondent states that certain invoices corresponding to the RICO Litigation include entries pertaining to “extensive lobbying and other government relations activity”, including expenses claimed by Chevron’s

²⁴¹⁷ Rejoinder, para. 848.

²⁴¹⁸ Rejoinder, para. 852.

²⁴¹⁹ Rejoinder, para. 852; **C-3287.003**, Gibson, Dunn & Crutcher LLP Invoices.

²⁴²⁰ Rejoinder, para. 862.

²⁴²¹ Rejoinder, para. 864; **C-3303.005**, Jones Day Invoices.

²⁴²² Rejoinder, para. 865; **C-3287.004**, **C-3287.005**, and **C-3287.006**, Gibson, Dunn & Crutcher LLP Invoices.

²⁴²³ Rejoinder, para. 865; **C-3287.004**, **C-3287.005**, and **C-3287.006**, Gibson, Dunn & Crutcher LLP Invoices.

counsel for attendance at U.S. Department of State meetings and meetings with various Congressional aides and journalists.²⁴²⁴

1491. Activities relating to shareholder relations were also billed under the RICO Litigation category, including time entries by Chevron’s counsel and pass-through costs totalling approximately USD 194,686.02, charged through Gibson Dunn for Splendidvid, LLC invoices relating to the preparation of multilingual video presentations for Chevron’s shareholders.²⁴²⁵ In Annex D-1 of its Rejoinder, the Respondent identifies over USD 200,000 worth of entries relating to shareholder relations improperly claimed under the RICO Litigation category alone.²⁴²⁶

1492. The Tribunal notes that the activities identified under the present heading overlap with certain cross-cutting “elements” impacting multiple categories, including “(CLA) Activities allegedly relating to Media and Public Relations / (RES) Activities relating to Media and Public Relations”, “(CLA) Activities allegedly relating to Government Relations (including but not limited to USTR) / (RES) Activities relating to Government Relations (including but not limited to USTR)”, and “(CLA) Allegedly Nondefense-Related Activities / (RES) Nondefense-Related Activities”.²⁴²⁷ The Tribunal will address these issues together with other elements in Section VIII.N below.

xi. Alleged excessive activities

1493. The Respondent also criticizes Chevron’s counsel for the “extraordinary amounts of time [billed] for tasks, including tasks that are standard, if not mundane”.²⁴²⁸ Specifically in the RICO Litigation, the Respondent points, *inter alia*, to the time spent by Chevron’s attorneys electronically filing motions and exhibits with the court, printing and assembling exhibits, revising submissions to reflect team edits, coordinating translations, gathering and preparing documents for deposition, revising briefs, and reviewing

²⁴²⁴ Rejoinder, para. 867; **C-3287.003** and **C-3287.004**, Gibson, Dunn & Crutcher LLP Invoices.

²⁴²⁵ Rejoinder, para. 869; **C-3287.004**, **C-3287.005**, and **C-3287.006**, Gibson, Dunn & Crutcher LLP Invoices. The sum of USD 194,686.02 was derived by adding the entries pertaining to Splendidvid LLC in the table presented by the Respondent in paragraph 869 of its Rejoinder.

²⁴²⁶ Rejoinder, Annex D-1. *See also* Rejoinder, para. 1312.

²⁴²⁷ *See* para. 571 above.

²⁴²⁸ Rejoinder, para. 878.

documents – each of which showed individual time entries of more than eight hours.²⁴²⁹ Further, the Respondent points to instances of overbilling, such as a Gibson Dunn associate billing more than 42 hours for summarizing RICO decisions in preparation for a Second Circuit oral argument.²⁴³⁰

1494. The Respondent also singles out the time entries of Mr Alan Vinegard, a partner at Covington & Burling, for billing at least 99.1 hours or USD 93,178 just to review RICO filings, orders and correspondence.²⁴³¹

1495. The Tribunal recalls that it has excluded from compensation the legal fees and expenses charged by Covington & Burling LLP in connection with the RICO Litigation, including those billed by Mr Vinegard.²⁴³² All other alleged “excessive activities” falling under the present heading will be addressed by the Tribunal as part of its analysis of cross-cutting “elements” impacting multiple categories (in particular, “(CLA) Alleged Excessively Long Billing Days and Excessive Time; (RES) Excessively Long Billing Days and Excessive Time”)²⁴³³ in Section VIII.N below.

xii. Alleged double billing entries

1496. The Respondent asserts that Chevron double-billed some activities and spent “extravagantly” in many instances without exercising the requisite diligence in reviewing and approving its external counsel’s billings.²⁴³⁴ For example, in its Counter-Memorial the Respondent pointed to multiple instances in Chevron’s “carefully-curated” RICO fee application before the SDNY in which Mr Christopher Joralemon, a Gibson Dunn partner, billed twice for the same activity.²⁴³⁵ In the Respondent’s view, considering that this fee application was presumably reviewed by Chevron and Gibson Dunn attorneys before it was filed, yet double-billed entries remained, the logical inference is that double-

²⁴²⁹ Rejoinder, para. 878; C-3287.001, C-3287.003, C-3287.004, C-3287.005, and C-3287.006, Gibson, Dunn & Crutcher LLP Invoices.

²⁴³⁰ Rejoinder, para. 1304; C-3243, Representative Invoice Sample.

²⁴³¹ Rejoinder, para. 879.

²⁴³² See para. 1400 above.

²⁴³³ See para. 571 above.

²⁴³⁴ Counter-Memorial, paras. 774, 777.

²⁴³⁵ Counter-Memorial, para. 775.

billing did occur and “probably occurred in many more instances than the cleansed RICO fee application”.²⁴³⁶

1497. In its Rejoinder, the Respondent highlights that Chevron approved invoices that demonstrate that two different attorneys from Jones Day performed precisely the same task on the same day,²⁴³⁷ or that the same attorney from Kobre & Kim billed twice for performing the same task on the same day.²⁴³⁸ The Respondent argues that these instances clearly negate the Claimants’ assertions that Chevron exercised the requisite diligence in reviewing and approving fees.

1498. The Tribunal recalls that double billing has been identified by the Parties as a cross-cutting element impacting multiple damages categories (*i.e.*, “(CLA) Alleged Double Billing Entries; (RES) Double Billing Entries”).²⁴³⁹ Accordingly, the Tribunal will address this issue together with other elements in Section VIII.N below.

xiii. Alleged administrative and clerical activities

1499. The Respondent also faults the Claimants for claiming time billed for billing-related and administrative or clerical tasks under the RICO Litigation damages category.²⁴⁴⁰ This includes entries such as attending to billing issues, calling a client regarding billing and budgeting issues, and following up on internal billing and staffing issues.²⁴⁴¹ In its Rejoinder, the Respondent also identifies a number of invoices reflecting charges for clerical activities such as basic software tutorials, organizing files, data entry and management, updating charts, storing documents, and assembling binders.²⁴⁴² In addition, the Respondent points to billing entries showing that Chevron’s lawyers also hand

²⁴³⁶ Counter-Memorial, para. 776. In respect of Chevron’s RICO fee application, *see* paras. 1320-1330 above.

²⁴³⁷ Rejoinder, para. 1315; **C-3303.006**, Jones Day Invoices.

²⁴³⁸ Rejoinder, para. 1316; **C-3307.002**, Kobre & Kim LLP Invoices.

²⁴³⁹ Rejoinder, paras. 1484-1497.

²⁴⁴⁰ Rejoinder, paras. 884, 885.

²⁴⁴¹ Rejoinder, para. 884; **C-3303.003**, **C-3303.004**, **C-3303.005**, Jones Day Invoices.

²⁴⁴² Rejoinder, para. 885.

delivered documents to the court, “charg[ing] hundreds of dollars per hour for these messenger tasks.”²⁴⁴³

1500. The Tribunal recalls that administrative and clerical activities have been identified by the Parties as a cross-cutting element impacting multiple damages categories (*i.e.*, “(CLA) Alleged Administrative and Clerical Activities; (RES) Administrative and Clerical Activities”).²⁴⁴⁴ Accordingly, the Tribunal will address this issue together with other elements in Section VIII.N below.

xiv. Alleged vaguely described activities and vague billing entries

1501. The Respondent criticizes “countless vague time entries” in the Claimants’ invoices, which it argues violates Chevron’s own Billing Guidelines. In the RICO Litigation in particular, the Respondent identifies a number of vague billing entries, including narrative entries such as “Review documents”, “Legal research”, “Prepare package”, “Review documents in connection with special project”, “Review cases and developments”, “Review and revise drafts and e-mails regarding same”, “Correspondence”, “Meetings”, and “Review materials”, among others.²⁴⁴⁵

1502. Furthermore, the Respondent identifies numerous allegedly vague billing entries from a Gibson Dunn partner, Mr Randy Mastro, “offer[ing] almost no insight into what work he was performing for nearly \$1,000/hour”.²⁴⁴⁶ The Respondent also notes instances of “wholly inadequate descriptions of the work performed”, which in its view preclude the Tribunal from relying on the Claimants’ experts assurances that Chevron’s counsel’s bills in the RICO Litigation were, on the whole, reasonable.²⁴⁴⁷ These “inadequate narratives”

²⁴⁴³ Rejoinder, para. 886.

²⁴⁴⁴ Rejoinder, paras. 1484-1497.

²⁴⁴⁵ Rejoinder, para. 891; **C-3260.003**, Boies Schiller & Flexner Invoices; **C-3287.004** and **C-3287.003**, Gibson, Dunn & Crutcher LLP Invoices; **C-3342.009**, Stern Kilcullen & Rufolo LLC Invoices; **C-3268.003**, Covington & Burling LLP.

²⁴⁴⁶ Rejoinder, para. 1305; **C-3243**, Representative Invoice Sample.

²⁴⁴⁷ See Rejoinder, paras. 1307, 1309.

include entries such as “Communicate”, “Continued review”, “Reviewing papers”, and “Brainstorming on strategy” from different timekeepers in different law firms.²⁴⁴⁸

1503. Lastly, the Respondent has identified several purportedly vague billing entries from some of Chevron’s highest-paid attorneys, who charged more than USD 1,000/hour. As an example, the Respondent points to the time charges of Mr Theodore Olson, a Gibson Dunn partner who allegedly charged USD 1,800/hour on such “fruitless” tasks as reading a finalized and filed certiorari petition, preparing for an “April program”, and preparing for a “California trip and program”.²⁴⁴⁹

1504. The Tribunal recalls that vague billing entries have been identified by the Parties as a cross-cutting element impacting multiple damages categories (*i.e.*, “(CLA) Allegedly Vague Billing Entries / (RES) Vague Billing Entries”).²⁴⁵⁰ Accordingly, the Tribunal will address this issue together with other elements in Section VIII.N below.

xv. Alleged illegitimate tactics

1505. The Respondent focuses on several observations made by Judge Kaplan and other magistrate judges in the RICO Litigation expressing concern over the behaviour of Chevron’s counsel for alleged abuse of process, unreasonable behaviour, and wasteful conduct.²⁴⁵¹ In particular, aside from a series of admonitions from Judge Kaplan to counsel at different stages of the RICO Litigation,²⁴⁵² the Respondent cites two instances where (i) a magistrate judge “called out Chevron for improper, hypocritical conduct in discovery”;²⁴⁵³ and (ii) a different magistrate judge found that Chevron’s subpoena for a deposition “was, at least in part, meant to harass.”²⁴⁵⁴

²⁴⁴⁸ Rejoinder, para. 1310; **C-3303.006**, Jones Day Invoices; **C-3260.004**, Boies Schiller & Flexner Invoices; **C-3342.007**, Stern Kilcullen & Rufolo LLC Invoices; and **C-3287.004**, Gibson, Dunn & Crutcher LLP Invoices.

²⁴⁴⁹ Rejoinder, para. 1313; **C-3287.004** and **C-3287.009**, Gibson, Dunn & Crutcher LLP Invoices.

²⁴⁵⁰ Rejoinder, paras. 1484-1497.

²⁴⁵¹ Counter-Memorial, para. 783-785.

²⁴⁵² Counter-Memorial, para. 783.

²⁴⁵³ Counter-Memorial, para. 784; **R-1837**, *Chevron Corp. v. Maria Salazar and Steven Donziger*, S.D.N.Y. Case 1:11-cv-03718-LAK-JCF, D.E. 360 Memorandum and Order, 20 September 2011.

²⁴⁵⁴ Counter-Memorial, para. 785; **R-1585**, *Chevron Corp. v. Maria Salazar*, D. OR. Case 6:11-mc-07003-TC, D.E. 36 Granting ELAW’s Petition for \$32,945.20 in Fees, 30 November 2011 (Order entered in *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL), p. 6.

1506. According to the Respondent, the RICO Litigation “is replete with such examples”, which should be considered “strong evidence” that Chevron engaged in many “unreasonable, unprofessional, wasteful, and sanctionable” activities and thus should not be compensated for its “vexatious antics”.²⁴⁵⁵

1507. Overall, the Tribunal declines to draw any consequences from the instances of purported misconduct by Chevron and its counsel identified by the Respondent. It would be inappropriate for the Tribunal to determine with the benefit of hindsight that a particular tactical litigation decision pursued an illegitimate goal simply because a judge made an admonition to Chevron without, for example, backing up the admonition with a costs order.²⁴⁵⁶ Strong litigation tactics, or tactics whose outcomes are uncertain in advance, may still rest on a reasonable rationale, even if they ultimately fail and result in an admonition.

1508. However, the Tribunal must make an exception in respect of procedural misconduct for which Chevron was sanctioned by local courts. In particular, the Tribunal recalls that Chevron was sanctioned for serving a subpoena on non-parties ELAW and its director, Bern Johnson. The magistrate judge noted the following:

The underlying record here, presented largely through ELAW’s declarations and attached exhibits, reveals that ELAW provided over two thousand pages of non-privileged documents and a privilege log to Chevron. Despite being required by the terms of the stipulation to challenge the privilege log by August 5, 2011, Chevron raised numerous concerns about the log starting after August 10, 2011. Given that the parties had stipulated that challenges to the log were to be made by August 5, 2011 (and, as part of the negotiation for the stipulation, ELAW agreed to forego challenges to what it believed was an invalid subpoena), it was unreasonable for Chevron to continue to request clarification of ELAW’s privilege log. *It is a reasonable conclusion that Chevron’s subpoena for Johnson’s deposition was, at least in part, meant to harass.* Chevron served Johnson with the deposition subpoena after numerous exchanges between the parties about clarification of the privilege log. ELAW’s counsel requested that Chevron limit or explain the scope of Johnson’s deposition, but Chevron declined to do so. Ultimately, Johnson spent an entire day in deposition, part of which consisted of Chevron going through the list of 300+ people name-by-name asking after each if Johnson was familiar with the name. In short, after reviewing the record, I find that Chevron’s conduct is sanctionable under Rule 45(c)(1).²⁴⁵⁷

²⁴⁵⁵ Counter-Memorial, para. 786.

²⁴⁵⁶ See para. 340 above.

²⁴⁵⁷ **R-1585**, *Chevron Corp. v. Maria Salazar*, D. OR. Case 6:11-mc-07003-TC, D.E. 36 Granting ELAW’s Petition for \$32,945.20 in Fees, 30 November 2011 (Order entered in *Chevron Corp. v. Steven Donziger*, S.D.N.Y. Case 1:11-cv-00691-LAK-RWL), p. 6 (emphasis by the Tribunal).

1509. In the Tribunal's view, the fact that the magistrate judge sanctioned this tactic as an instance of harassment precludes the conclusion that it amounted to a reasonable mitigation measure. Accordingly, any amounts spent by Chevron in connection with the subpoena on ELAW and its director must be excluded from compensation.

1510. While neither Party has particularized the amounts incurred by Chevron specifically in connection with this subpoena, this should not preclude the Tribunal from factoring this exclusion into the determination of the final amount of compensation owed to the Claimants: the fact remains that the onus is on the Claimants to prove every element of their damages claim²⁴⁵⁸ and they have failed to meet that burden in connection with this subpoena. The Tribunal shall address this question together with other issues relevant to the RICO Litigation in the sub-section that follows.

xvi. Other alleged frivolous, wasteful or excessive spending

1511. The Respondent criticizes Chevron for pursuing "frivolous, unnecessary, duplicative, unrelated, and/or unsuccessful" activities in the RICO Litigation.²⁴⁵⁹ According to the Respondent, legal fees and expenses incurred in connection with activities that are "petty, wasteful, hopeless, or abusive" should not be recoverable as damages resulting from its Treaty breaches.²⁴⁶⁰ Beyond the matters already addressed earlier in this sub-section, the Respondent identifies other allegedly problematic billing entries that, in the Tribunal's understanding, speak to a general condemnation of Chevron's behaviour in the RICO Litigation, characterizing it as frivolous, vexatious, excessive, or wasteful.

1512. For alleged frivolous billings, the Respondent highlights miscellaneous entries in certain Gibson Dunn invoices such as costs pertaining to purchasing an iPad; fees for analysing whether a RICO injunction could be used to shut down the movie "Rumble in the Jungle";

²⁴⁵⁸ See para. 548 above.

²⁴⁵⁹ Counter-Memorial, para. 772.

²⁴⁶⁰ Rejoinder, para. 874.

and time charges for team dining activities.²⁴⁶¹ Regarding meals, Mr Trunko also identifies entries where Chevron’s counsel billed for team meetings and lunches.²⁴⁶²

1513. Similarly, the Respondent refers to Chevron’s renting of office space for the RICO trial as another example of needless spending. According to the Claimants, in addition to the two teams of lawyers assembled at the SDNY court, Chevron funded a third team based at a facility close to the courthouse rented specifically for the trial. This location functioned as “a fully functional satellite firm office” equipped with industrial printing capabilities and meeting areas to support the trial team.²⁴⁶³ The Respondent criticizes this as wasteful, noting that Claimants fail to explain why such rental was necessary.²⁴⁶⁴ In particular, the Respondent notes that the Claimants have not disclosed the location of this rental office or confirmed that it was closer to the courthouse than the New York offices of Jones Day – located less than a mile away from the SDNY courthouse²⁴⁶⁵ – or Gibson Dunn, just two subway stops away.²⁴⁶⁶

1514. The Respondent also challenges certain time entries in the RICO Litigation, alleging that Claimants seek the reimbursement of legal fees and expenses for non-working travel time and clerical tasks such as making travel arrangements. According to the Respondent, these billings violate Chevron’s own Billing Guidelines, and Claimants have not produced any evidence of prior approval to bill for such non-working travel time.²⁴⁶⁷ For instance, the Respondent identified entries for travel to New York and Quito, Ecuador; transport of documents from Quito to Houston; travel to the offices of Boies Schiller for

²⁴⁶¹ Rejoinder, paras. 875-877; **C-3287.003**, **C-3287.007**, **C-3287-008**, and **C-3287-009**, Gibson, Dunn & Crutcher LLP Invoices.

²⁴⁶² See **RE-51**, Trunko Expert Report, **SM K-9**.

²⁴⁶³ Memorial, Appendix 9, para. 142.

²⁴⁶⁴ Counter-Memorial, para. 781. The Respondent contends that renting office space was unnecessary for the reasons cited by the Claimants. For mass printing needs, Chevron used couriers to deliver materials to the courthouse, reportedly spending over USD 38,000 on courier services alone during the two months of trial. (See Counter-Memorial, para. 781, citing Memorial, Appendix 2, p. 115). The Respondent also questions why Chevron could not have used Jones Day’s facilities for printing or why its couriers could not travel less than a mile. It further asserts that the extra office space was not needed for meetings, as the entire team, including the two courthouse teams, apparently assembled daily at “counsel’s New York office.” (See Counter-Memorial, para. 781; Memorial, Appendix 9, para. 144.)

²⁴⁶⁵ Counter-Memorial, paras. 576, 781.

²⁴⁶⁶ Counter-Memorial, para. 781.

²⁴⁶⁷ Rejoinder, para. 894.

a meeting; and time spent on airport check-in, security, baggage claim and immigration procedures, among others.²⁴⁶⁸ Citing entries for time billings of a Gibson Dunn paralegal, the Respondent argues that the Claimants improperly seek compensation for clearly non-compensable activities like airport processing.²⁴⁶⁹ The Respondent also criticizes Chevron’s counsel for failing to “exercise good judgment” in cost control, pointing to charges for expensive flights and hotels;²⁴⁷⁰ an unused airline reservation;²⁴⁷¹ and a car service on stand-by throughout a hearing.²⁴⁷²

1515. Lastly, another example of billing practices that the Respondent considers unreasonable concerns invoice entries for time spent not working, including two entries in the RICO Litigation during which two timekeepers from Huron Consulting appear not to be working due to access problems and computer downtime.²⁴⁷³

1516. The Claimants do not address the Respondent’s many criticisms of specific invoice entries. However, in response to Respondent’s broader arguments against reasonableness, the Claimants cite their experts Messrs Litvack, Lea, and Ryan, who opine that Chevron’s actions were reasonable given the potential injury of approximately USD 18.2 billion and the need to mitigate this extraordinary risk.²⁴⁷⁴ Additionally, they reference the opinions of fee experts Professors Silver and Miller, who state that “[a]ll available empirical evidence indicates that Chevron’s fees and costs bore an ‘appropriate relationship to the litigation stakes’”²⁴⁷⁵ and that the rates paid to outside U.S. counsel were reasonable for a matter of such scale and complexity.²⁴⁷⁶ The Claimants also cite the “data-driven

²⁴⁶⁸ Rejoinder, para. 894; **C-3287.003**, **C-3287.004**, and **C-3287.009**, Gibson, Dunn & Crutcher LLP Invoices; **C-3303.004** and **C-3303.006**, Jones Day Invoices; **C-3342.003**, **C-3342.004**, **C-3342.005**, and **C-3342.006**, Stern Kilcullen & Rufolo LLC.

²⁴⁶⁹ Rejoinder, para. 1314; **C-3287.003**, Gibson, Dunn & Crutcher LLP Invoices.

²⁴⁷⁰ Rejoinder, para. 895, citing a 28 November 2012 entry from Stern Kilcullen for USD 10,358.70 airfare to and USD 1,927.92 hotel in London (**C-3342.003**).

²⁴⁷¹ Rejoinder, para. 895, citing a 28 February 2013 entry from Jones Day for a non-refundable ticket that was never used (**C-3303.006**).

²⁴⁷² Rejoinder, para. 895, citing a 5 July 2011 entry from Gibson Dunn for car services during hearing (**C-3287.003**).

²⁴⁷³ Rejoinder, paras. 896, 1319.

²⁴⁷⁴ Reply, para. 316.

²⁴⁷⁵ Reply, para. 316; Silver Expert Report, para. 30.

²⁴⁷⁶ Reply, para. 316; Miller Expert Report, para. 153.

findings” of their expert, Mr Mark McGrath, who identified “metrics, trends, and patterns” in the claimed invoices and concluded that “Chevron had strong processes in place to manage and control its legal spend and invoice review.”²⁴⁷⁷

1517. At the outset, the Tribunal notes that, unlike other purported deficiencies addressed in the preceding sub-sections, which have been identified by the Parties as cross-cutting elements impacting multiple categories,²⁴⁷⁸ the issues addressed by the Tribunal under the present heading are specific to the RICO Litigation. A separate analysis of these alleged deficiencies in thus in order.

1518. The Tribunal has carefully reviewed the evidence identified under the present heading supporting the Respondent’s argument that many activities undertaken by the Claimants in the course of the RICO Litigation were unreasonable. In the Tribunal’s view, it is unclear how many of those activities served reasonably to mitigate the injury arising from the recognition and enforcement of the Lago Agrio Judgment. Most of the instances of purported frivolous conduct identified by the Respondent point to excessive billing or to conduct disconnected from the goal of swaying the decision of a U.S. court in Chevron’s favour to prevent the enforcement of the Lago Agrio Judgment.

1519. Critically, the Respondent has not particularized the time entries corresponding to each of the perceived deficiencies identified in the preceding paragraphs: the Respondent states that “there are simply far too many” and has thus provided only a “selection of examples . . . to illustrate the sort of non-compensable activities that pervade the damages claim”.²⁴⁷⁹ However, irrespective of their precise prevalence across the RICO Litigation damages category, the Tribunal considers that these deficiencies, viewed in the aggregate, cast doubts on the overall reasonableness of Chevron’s spending in the RICO Litigation. The Tribunal also recalls that the Claimants bear the burden of establishing every element

²⁴⁷⁷ Reply, para. 320; McGrath Expert Report, paras. 1, 26, 145.

²⁴⁷⁸ See sub-sections VIII.G.3(d)3.viii, VIII.G.3(d)3.ix, VIII.G.3(d)3.x, VIII.G.3(d)3.xi, VIII.G.3(d)3.xii, VIII.G.3(d)3.xiii, and VIII.G.3(d)3.xiv.

²⁴⁷⁹ Rejoinder, para. 849.

of their damages claim²⁴⁸⁰ and they have failed generally to meet that burden in respect to the activities falling under the present heading.

1520. In the circumstances, the Tribunal considers appropriate to apply a discount to the final amount of compensation owed to the Claimants in connection with the RICO Litigation. This discount should also encompass other non-compensable activities for which the Parties have not provided an itemized breakdown of costs, such as (i) work related to bringing additional separate lawsuits that Chevron never initiated;²⁴⁸¹ (ii) Chevron's pursuit of Count 8;²⁴⁸² or (iii) procedural tactics for which Chevron was sanctioned by local courts.²⁴⁸³

1521. When determining the amount of the discount, the Tribunal must also have regard to its decision to (i) apply an 80% discount to the legal fees and expenses incurred in connection with the RICO Litigation damages category as a whole;²⁴⁸⁴ (ii) exclude a number of components of the RICO Litigation from compensation, as set out earlier in this section; and (iii) apply a 15% discount to the total amount of compensation due to the Claimants for all damages categories comprising legal fees and expenses (*see* Section VIII.N below on cross-cutting elements).

1522. Taking into account all of the above factors, and having considered the particular circumstances of this case, the Tribunal assesses that it would be appropriate to increase the 80% discount it has already applied to the total amount of fees and costs claimed under the RICO Litigation category of damages to 85%.

4. Conclusion on RICO Litigation

1523. For the foregoing reasons, the Tribunal, subject to co-arbitrator Horacio A. Grigera Naon's separate dissenting opinion:

²⁴⁸⁰ See para. 548 above.

²⁴⁸¹ See para. 1362 above.

²⁴⁸² See para. 1461 above.

²⁴⁸³ See para. 1470 above.

²⁴⁸⁴ See para. 1317 above.

- (i) Declines to exclude from compensation the RICO Litigation category of damages as a whole;
- (ii) Excludes from compensation 85% of the total amount claimed by the Claimants in connection with the RICO Litigation, without prejudice to the exclusion from compensation of additional legal fees and expenses as set out in this paragraph;
- (iii) Excludes from compensation any costs Chevron has collected or may in the future collect in the RICO Litigation, including USD 150,000 collected by Chevron pursuant to the SDNY's Order of 28 February 2018 (*see* paragraphs 1328-1329 above);
- (iv) Excludes from compensation all legal fees and expenses corresponding to the component "Work related to bringing a Complaint Against NY State Comptroller DiNapoli";
- (v) Excludes from compensation all legal fees and expenses corresponding to the component "Work related to opposing John Keker's *pro hac vice* application";
- (vi) Excludes from compensation all legal fees and expenses corresponding to the component "(CLA) Work related solely to the Second Amended Complaint / (RES) Work related to the Second Amended Complaint";
- (vii) Excludes from compensation all legal fees and expenses corresponding to the component "(CLA) Work relating solely to Unjust Enrichment / (RES) Work relating to Unjust Enrichment" corresponding to services rendered after 14 May 2012;
- (viii) Excludes from compensation all fees and expenses incurred by the Claimants in connection with the RICO Litigation corresponding to services rendered before 14 February 2011;
- (ix) Excludes from compensation all fees and expenses incurred by the Claimants in connection with the RICO Litigation corresponding to services provided by the firms Boies Schiller & Flexner LLP, Rivero Mestre LLP, Kobre & Kim LLP,

Covington & Burling LLP, Stern Kilcullen & Rufolo LLC, Gardere Wynne Sewell LLP, Three Crowns LLP, Asesorias Bofill Escobar, and Kroll Associates;

- (x) Declares that any sums collected by Chevron in connection with the *Amazonia* Damages Judgments shall be deducted from compensation;
- (xi) Defers its determination of the amount of compensation corresponding to the activities identified in paragraphs 1484, 1486, 1492, 1495, 1498, 1500 and 1504 above to its analysis of cross-cutting elements set out in Section VIII.N below;
- (xii) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the RICO Litigation category of damages, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below;²⁴⁸⁵ and
- (xiii) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the RICO Litigation category of damages. The Tribunal will determine the exact amount of compensation corresponding to the RICO Litigation category in Section VIII.O below.

* * *

²⁴⁸⁵ See paras. 564-566 above.

H. SECTION 1782 PROCEEDINGS

1. The Claimants' Position

(a) *Description of the Proceedings*²⁴⁸⁶

1524. According to the Claimants, Chevron's successful efforts to obtain discovery through the U.S. District Courts pursuant to Section 1782 of Title 28 of the U.S. Code ("**Section 1782**") was "critical" to its ability both to uncover the nature and extent of the fraud underlying the Lago Agrio Judgment and prove Ecuador's violations of international law.²⁴⁸⁷ The Ecuadorian courts, the Claimants recall, failed to investigate Chevron's allegations (dating back to 2007) of procedural fraud and judicial misconduct, while Ecuador's prosecutorial authorities left this fraud unremedied, despite the available evidence and the recognition by U.S. courts of the "untenable circumstances" that forced Chevron to incur the expense of the Section 1782 Proceedings.²⁴⁸⁸

1525. The Claimants explain that the relevant statute required Chevron to initiate Section 1782 actions wherever the witnesses were located, while the LAPs, occasionally aided by Ecuador, opposed the actions with "obstructive" and "bad-faith delay tactics", including multiple appeals at numerous Circuit Courts.²⁴⁸⁹ According to the Claimants, Ecuador also availed itself of Section 1782 actions to validate the Lago Agrio Judgment, forcing Chevron to defend itself and incur significant costs, which likewise qualify as damages to the extent that the 1995-1998 Settlement and Release Agreements barred Ecuador's effort to re-litigate the environmental issues.²⁴⁹⁰

1526. The Claimants stress the importance of the Section 1782 Proceedings and insist that Chevron made "extensive use" of the resulting evidence in other proceedings,²⁴⁹¹ recalling that:

²⁴⁸⁶ For a detailed description of the procedural history of these proceedings, *see generally* Memorial, Appendices 11, 12, 14-42, 44.

²⁴⁸⁷ Memorial, para. 244; Track II Award, para. 4.327.

²⁴⁸⁸ Memorial, paras. 245-246; Track II Award, paras. 8.28, 8.60; **C-2738**, *In re Chevron*, 749 F. Supp. 2d 170, 173 (SDNY 2010), 30 November 2010.

²⁴⁸⁹ Memorial, para. 247.

²⁴⁹⁰ Memorial, paras. 248-249; Track II Award, paras. 7.28-7.45.

²⁴⁹¹ Memorial, para. 250.

- (i) the Tribunal cited extensively to, and relied on, evidence uncovered through the Section 1782 Proceedings in the Track II Award;²⁴⁹²
- (ii) Chevron continuously submitted evidence of the LAPs' fraud obtained through the Section 1782 actions to the Lago Agrio Court and to the Appellate Court, requesting that certain actions be taken in response, although these requests were either denied or reserved for later decision;²⁴⁹³
- (iii) evidence from the Section 1782 Proceedings was relevant and material to the RICO Litigation, including to streamline costs and to assist Judge Kaplan's decisions;²⁴⁹⁴
- (iv) from the outset of the Brazil Recognition Proceedings, Chevron cited to, relied on and submitted evidence collected during the Section 1782 proceedings, to which the court referred in its decisions, including in denying recognition and enforcement of the Lago Agrio Judgment;²⁴⁹⁵ and
- (v) Chevron submitted substantial evidence obtained through the Section 1782 Proceedings in defence of the Argentina Enforcement Proceedings.²⁴⁹⁶

(b) *Costs Incurred*

1527. The Claimants explain that Chevron filed 23 actions against 27 individuals and entities pursuant to Section 1782 across the United States generally falling into six respondent groups:

(1) the LAPs' U.S.-based scientific expert in the Lago Agrio two-party judicial inspections [Dr Charles Calmbacher]; (2) the LAP's then-current and former U.S.-based counsel; (3) the LAPs' U.S.-based consultants participating in the Cabrera Fraud; (4) the LAPs' U.S.-based "cleansing experts" who were hired in an attempt to erase the impact of the Cabrera Fraud on the Lago Agrio Litigation; (5) the media and public relations entities affiliated with the LAPs' and/or . . . Ecuador's propaganda campaigns against Chevron; and (6) the situs of the LAPs' secret bank account, Banco Pichincha.²⁴⁹⁷

²⁴⁹² Memorial, paras. 251-253; Track II Award, paras. 4.213, 4.216, 4.219, 4.224-4.225, 4.241, 4.251, 4.258, 4.308-4.318, 4.328, 4.343, 4.377-4.378, 4.388, 8.54, Part V, Annex 8.

²⁴⁹³ Memorial, paras. 254-258.

²⁴⁹⁴ Memorial, para. 259.

²⁴⁹⁵ Memorial, paras. 260-262.

²⁴⁹⁶ Memorial, paras. 263-265.

²⁴⁹⁷ Memorial, Appendix 44, p. 2.

1528. According to the Claimants, these proceedings involved depositions of 25 witnesses as well as the collection and review of over 550,000 pages of documents and over 600 hours of outtakes of the film *Crude*.²⁴⁹⁸ The Claimants also claim to have incurred significant legal fees and expenses “combatting” the opposition of the LAPs and Ecuador to this discovery, as well as defending against the Section 1782 actions that Ecuador initiated against 12 individuals and entities engaged by Chevron during the Lago Agrio Litigation.²⁴⁹⁹

1529. In sum, the Claimants seek USD 62,363,592.93 for legal fees and expenses incurred between January 2009 and March 2018 in the Section 1782 Proceedings, as evidenced by the underlying invoices, the witness statements of Ms Kent, Mr Rankin and Mr Turner, the expert report of Mr Stanton, and Appendix 2 to the Claimants’ Memorial (as updated with the Claimants’ Reply), which provides a monthly breakdown of law firm fees by type of timekeeper, as well as the costs of law firms, experts and vendors.²⁵⁰⁰

(c) Request for Full Reparation

1530. The Claimants submit that the Respondent must make full reparation for the legal fees and expenses incurred by Chevron in connection with the Section 1782 Proceedings as direct damages, since they are the natural and foreseeable consequence of Ecuador’s Denial of Justice, Umbrella Clause and Interim Awards Breaches.²⁵⁰¹

1531. In the Claimants’ view, it was “natural and foreseeable” that Chevron, facing the imminent prospect of a multibillion-dollar fraudulent judgment and being unable to obtain any relief from the Ecuadorian authorities, would pursue other means of obtaining evidence of procedural fraud and judicial misconduct, which in this case included the Section 1782 Proceedings given that some of the LAPs’ “co-conspirators” and other relevant parties were based in the United States²⁵⁰² The Claimants explain that the

²⁴⁹⁸ Memorial, para. 267.

²⁴⁹⁹ Memorial, paras. 267-268; Reply, para. 762.

²⁵⁰⁰ Memorial, paras. 269, 281; Reply, paras. 761, 763, Updated Appendix 2, p. 737; **C-3462**, Indices of Claimed Invoices by Damage Category (“1782 Actions” tab).

²⁵⁰¹ Memorial, para. 270; Reply, paras. 761-762, 764, 779; **CLA-406**, *Case Concerning the Factory at Chorzów (Germany v. Poland)*, 1928 P.C.I.J. (Ser. A) No. 17, Judgment, 13 September 1928, para. 47.

²⁵⁰² Memorial, paras. 271-272; Reply, paras. 767-768; Track II Award, paras. 4.223, 4.330, 4.369, 5.239. The Claimants also assert that their conduct in pursuing the Section 1782 actions was reasonable, even if reasonableness is “irrelevant” to their entitlement to these expenses as direct damages. Reply, para. 767.

suspected fraudulent activity of an officer of Ecuador’s judicial branch triggered these discovery efforts, which foreseeably revealed new indicia of fraud and collusion that also required investigation, and they provided the evidence of fraud that was produced to the Ecuadorian courts and prosecutorial authorities on a rolling basis, “but to no avail”.²⁵⁰³ Accordingly, the Claimants say that Ecuador’s Denial of Justice was the proximate cause of all the fees and costs Chevron incurred in the affirmative Section 1782 Proceedings it initiated, which amount to direct damages.²⁵⁰⁴ To the extent that “other factors” aside from foreseeability “may also be relevant” to a causation analysis, the Claimants assert that those expenses qualify as direct damages because the Respondent’s conduct “intentionally” harmed the Claimants and caused them to file the Section 1782 Proceedings.²⁵⁰⁵

1532. Further, the Claimants note, it is irrelevant that the majority of the Section 1782 Proceedings were initiated by Chevron or that the actions aimed to obtain discovery from parties other than Ecuador, since the existence of other concurrent events that are not attributable to the State would not “diminish the State’s responsibility”.²⁵⁰⁶ The Claimants also insist that cost issues before domestic courts have no bearing on the Tribunal’s assessment of damages under international law, stressing that Chevron never stipulated that it would not seek its legal fees and expenses as damages against the Respondent.²⁵⁰⁷ The fact that the Claimants decided to discontinue certain Section 1782 Proceedings is equally irrelevant, since, in their view, the decision to file Section 1782 Proceedings and the legal fees and expenses incurred in connection with them were caused by Ecuador’s delicts.²⁵⁰⁸

1533. The Claimants also reject the Respondent’s assertion that the Section 1782 Proceedings bore little fruit, and assert that those proceedings yielded “critical evidence demonstrating

²⁵⁰³ Reply, paras. 769-770; Fourth Veiga Witness Statement, paras. 61, 65.

²⁵⁰⁴ Reply, paras. 769-771; Track II Award, paras. 5.235, 8.33-8.34, 8.76.

²⁵⁰⁵ Reply, paras. 777-778; **CLA-291**, ILC Articles on State Responsibility, Commentary to Article 31, para. 10; **CLA-652**, Sergey Ripinsky & Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2008), p. 137.

²⁵⁰⁶ Memorial, paras. 273-274; **CLA-291**, ILC Articles on State Responsibility, Commentary to Article 31, para. 12; **CLA-664**, *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Award, 18 April 2017, paras. 269-270.

²⁵⁰⁷ Reply, para. 772.

²⁵⁰⁸ Reply, para. 773.

Ecuador's breaches".²⁵⁰⁹ In particular, the Claimants reiterate that the Tribunal cited and relied on the evidence that Chevron obtained in the Section 1782 Proceedings in reaching several significant factual conclusions underlying the Respondent's liability, including that (i) the LAPs' representatives "ghostwrote" the Lago Agrio Judgment; (ii) Mr Donziger and Mr Fajardo had blackmailed Judge Yanez to cancel the remaining judicial inspections and appoint Mr Cabrera as the court's "impartial" expert; and (iii) Mr Cabrera "improperly favoured" the case of the LAPs and "improperly colluded with and permitted certain of the LAPs' representatives and experts to write, covertly, the Cabrera Report" in exchange for bribes.²⁵¹⁰

1534. Moreover, the Claimants contend that Ecuador's own improper conduct in the Section 1782 Proceedings caused further delay and expense, exacerbating Chevron's harm for which the Respondent is responsible.²⁵¹¹

1535. The Claimants further submit that they are also entitled to recover as direct damages the expenses incurred between January 2009 and July 2017 in connection with the Section 1782 Proceedings initiated by Ecuador against Chevron, as those expenses were proximately caused by Ecuador's breaches.²⁵¹² The Claimants dispute the assertion that they were "unsuccessful" in these proceedings, and explain that Chevron intervened to avoid a privilege waiver and to preclude privileged and confidential information from being improperly disclosed, noting that none of the evidence obtained by Ecuador was used by the Tribunal in its Track II Award.²⁵¹³ In addition, the Claimants contend that Ecuador's use of Section 1782 actions to support its efforts to defend the Lago Agrio Judgment was a breach of the Tribunal's Interim Orders and Awards and proximately caused Chevron's losses in the form of the legal fees and expenses incurred to defend against those actions.²⁵¹⁴

²⁵⁰⁹ Reply, paras. 774-776; Track II Award, paras. 4.272-4.275, 4.277, 4.327.

²⁵¹⁰ Memorial, paras. 275-279; Reply, para. 776; Track II Award, paras. 4.29-4.30, 4.33, 4.35, 4.213, 4.216, 4.235, 4.239-4.240, 4.245-4.248, 4.250-4.251, 4.253, 4.258-4.259, 4.263, 4.273-4.279, 4.282, 4.287-4.288, 4.291-4.292, 4.294-4.295, 4.299, 4.301-4.303, 4.310, 4.318, 4.326-4.327, 4.377-4.378, 4.387, 4.473, 5.227, 5.245.

²⁵¹¹ Memorial, para. 280.

²⁵¹² Reply, paras. 761-762, 779-783.

²⁵¹³ The Claimants also deny that their activities were unreasonable. Reply, paras. 780-781; Seley Witness Statement, para. 62.

²⁵¹⁴ Reply, paras. 782-783; Order for Interim Measures, 9 February 2011, p. 3.

1536. In the alternative, the Claimants submit that they are entitled to recover USD 15,951,000 in legal fees and expenses incurred as direct damages after 1 March 2012 in the Section 1782 Proceedings as a natural and foreseeable result of Ecuador's breaches.²⁵¹⁵ By that date, the Claimants recall, the Respondent had defied the First Interim Award and consummated its Denial of Justice Breach by rendering the Lago Agrio Judgment enforceable.²⁵¹⁶

1537. Additionally, and in the alternative to their primary claim under this category, the Claimants submit that they are entitled to recover the legal fees and expenses they incurred in connection with the Section 1782 Proceedings as incidental damages, since these proceedings mitigated the Claimants' harm arising from Ecuador's wrongdoings and the enforceability of the Lago Agrio Judgment.²⁵¹⁷ Indeed, the Claimants assert that their pursuit and defence of the Section 1782 actions meets the tests applicable to incidental damages, since (i) the evidence procured was extensively relied upon by the Tribunal in adjudicating Ecuador's Treaty breaches, and hence "successful in averting the harm"; and (ii) the costs and expenses incurred by the Claimants were largely proportionate to the extent and character of the harm threatened, namely, the worldwide enforceability of a (then) USD 18 billion judgment.²⁵¹⁸ As such, the Claimants posit that the Section 1782 Proceedings were reasonable and calculated mitigation measures to defend themselves against the Lago Agrio Judgment and Ecuador's efforts to support its enforcement, rejecting any criticism made with the benefit of hindsight.²⁵¹⁹

2. The Respondent's Position

1538. The Respondent submits that the Claimants have failed to meet their burden of proof regarding the legal fees and expenses incurred in connection with the Section 1782 Proceedings, since they were "the result of a campaign that was unreasonable, unnecessary, punitive, and not compatible with a measured and proportionate legal

²⁵¹⁵ Reply, paras. 784, 786.

²⁵¹⁶ Reply, para. 785; Track II Award, para. 7.130.

²⁵¹⁷ Reply, para. 787.

²⁵¹⁸ Reply, paras. 788-790; **RLA-738**, Sergey Ripinsky & Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2016), p. 306.

²⁵¹⁹ Paras. 791-793; **CLA-633**, *Himpurna California Energy Ltd v. PT (Persero) Perusahaan Listrik Negara (PLN)*, Final Award of 4 May 1999 (2000) 25 YCA 13, para. 258.

strategy”.²⁵²⁰ To the extent that the Claimants have not substantiated their assertion that these legal fees and expenses were a “natural and foreseeable consequence” of Ecuador’s breaches, the Respondent says, they are not direct damages, and even if they were, they must be proven to be reasonable.²⁵²¹ The Respondent likewise rejects the characterization of these expenses as incidental damages, stressing that the amount of the Lago Agrio Judgment does not “automatically” make any action the Claimants took reasonable and compensable.²⁵²² Indeed, the Respondent insists that the case records and invoice data show that the Claimants’ claimed fees and costs were not reasonable and necessary, noting, for instance, that (i) there are numerous examples of waste; (ii) no “critical evidence” emanated from 20 of these proceedings; and (iii) Chevron obstructed Ecuador’s legitimate discovery requests and funded the resistance efforts of non-parties.²⁵²³

(a) Section 1782 Actions Initiated by Chevron

1539. The Respondent submits that the Claimants are not entitled to the fees and costs claimed for the Section 1782 Proceedings filed by Chevron, referring to various instances of “waste and abuse” and criticizing the company’s “undisciplined approach”.²⁵²⁴

1540. First, the Respondent claims that Chevron “exploited Section 1782 to wage an expensive and wasteful campaign to divert its opponents’ resources and to harass third parties”, exceeding the scope of the statute and engaging in various frivolous, unsuccessful and abusive activities for which the Claimants should not recover fees and costs.²⁵²⁵ In particular, the Respondent highlights that Chevron improperly treated the Section 1782 Proceedings as opportunities to re-litigate the Lago Agrio Litigation and to obtain

²⁵²⁰ Counter-Memorial, paras. 686-687, 729; Rejoinder, paras. 1162-1163, 1207.

²⁵²¹ In particular, the Respondent recalls that the breaches had not yet occurred at the time Chevron began its Section 1782 Proceedings and that Chevron was not a party to the Section 1782 Proceedings initiated by Ecuador. Rejoinder, paras. 1164-1165.

²⁵²² Rejoinder, para. 1166.

²⁵²³ Rejoinder, paras. 1166-1169.

²⁵²⁴ Counter-Memorial, paras. 151-153; Rejoinder, para. 1170.

²⁵²⁵ Counter-Memorial, para. 688.

discovery outside of the United States, which was rejected by U.S. courts.²⁵²⁶ Moreover, the Respondent explains, Chevron drove up the fees and costs with excessively voluminous filings and by unnecessarily overstaffing its teams.²⁵²⁷ The Respondent further criticizes that Chevron (i) fought “even the most benign requests” from other parties; (ii) attacked law firms representing the Section 1782 targets; (iii) failed to conduct basic diligence regarding certain Section 1782 Proceedings, which were “ill-conceived and frivolous” in their inception; and (iv) filed redundant actions.²⁵²⁸

1541. Second, the Respondent asserts that the Claimants’ decisions to discontinue certain actions, or to prepare but not pursue them, shows that they were not necessary or even useful, and hence the Claimants should not be permitted to recover any fees or costs related to them.²⁵²⁹

1542. Third, the Respondent argues that many of Chevron’s Section 1782 Proceedings had little or no impact on the Track II Award or the Lago Agrio Litigation, and hence the Claimants should not recover any legal fees incurred in pursuing unnecessary actions.²⁵³⁰ In particular, the Respondent observes that (i) the materials obtained in seven actions were not used in either this Arbitration or the Lago Agrio Litigation; (ii) the Claimants allege that the Tribunal relied on a significant amount of material that is not even mentioned in the Track II Award, in which the Tribunal supported its opinion with evidence from only two Section 1782 Proceedings; (iii) the Tribunal made limited citations to documents from other actions as background for its award, but it did not discuss them in its substantive analysis; and (iv) the Tribunal did not cite any of the materials from seven actions that Chevron supposedly presented to the Lago Agrio Court.²⁵³¹

1543. Fourth, the Respondent posits that the Claimants should not recover fees and costs for Section 1782 actions in which each party, including Chevron (and sometimes Ecuador),

²⁵²⁶ Counter-Memorial, paras. 689-693. *See e.g. R-1802, In re The Application of Chevron Corporation*, D. Mass. Case 3:10-mc-30022-MAP, D.E. 47 Memorandum with Regard to Applications for Discovery, 22 December 2010, pp. 4-5; **R-1787**, Wray 1782 Docket, p. 14 (Minute Order dated 27 July 2010).

²⁵²⁷ Counter-Memorial, paras. 694-695.

²⁵²⁸ Counter-Memorial, paras. 696-699.

²⁵²⁹ Counter-Memorial, paras. 698, 705-707; Rejoinder, para. 1171.

²⁵³⁰ Counter-Memorial, paras. 708, 713.

²⁵³¹ Counter-Memorial, paras. 709-712; Track II Award, paras. 4.171, 4.213, 4.216, 4.251, 4.272-4.273, 4.278, 4.292, 4.294, 4.309-4.319, 4.357, 4.362, 4.368, 4.388.

stipulated that it would bear its own fees and costs, such as the actions relating to the Weinberg Group, Kohn, and MCSquared.²⁵³² The Respondent notes that, while the Claimants later withdrew their damages claims related to the actions for Kohn and MCSquared, the invoices that remain in the claim still contain specific fee and cost entries for work done on those actions, which must be rejected.²⁵³³

1544. Fifth and last, the Respondent contends that the legal expenses allegedly paid to law firms that represented Mr Veiga and Dr Pérez individually and filed parallel Section 1782 Proceedings on their behalf are not compensable, since those individuals are neither investors under the Treaty nor claimants in this Arbitration.²⁵³⁴ While these individuals sought to gather evidence to aid their criminal defence, the Respondent reiterates that the Criminal Proceedings were litigated separately from the Lago Agrio Litigation and were not found by the Tribunal to constitute a breach of the Treaty.²⁵³⁵ Accordingly, it insists that it is not liable for the “significant” fees and expenses that Chevron “voluntarily” assumed on behalf of these non-parties, including any legal fees paid for the purpose of coordinating with Mr Veiga and Dr Pérez’s lawyers.²⁵³⁶

(b) Section 1782 Actions Initiated by Ecuador and the LAPs

1545. The Respondent underscores that it had every right to initiate Section 1782 actions against Chevron for the purposes of this Arbitration, and submits that the Claimants are not entitled to a reimbursement of the legal fees and expenses they incurred in connection with those proceedings.²⁵³⁷ According to the Respondent, Ecuador initiated these actions to obtain evidence from third parties for use in this Arbitration because it had not been a party to the Lago Agrio Litigation and Chevron refused to provide the underlying data

²⁵³² Counter-Memorial, paras. 701-704. See **R-1587**, *Chevron Corp. v. Weinberg Group*, DDC Case 1:11-mc-00030-CKK, D.E. 46 Joint Stipulation for Voluntary Dismissal, 15 October 2012.

²⁵³³ Rejoinder, paras. 1172-1174. See e.g. **C-3287.002**, Gibson, Dunn & Crutcher LLP (Member) – 2010.xlsx; **C-3303.007**, Jones Day (Member) – 2014.xlsx.

²⁵³⁴ Counter-Memorial, para. 727; Rejoinder, para. 1175.

²⁵³⁵ Counter-Memorial, paras. 725-726.

²⁵³⁶ Counter-Memorial, para. 728; Rejoinder, paras. 1176-1179; **RE-51**, Trunko Expert Report, **SM J-8**. See e.g. **C-3287.002**, Gibson, Dunn & Crutcher LLP (Member) – 2010.xlsx.

²⁵³⁷ These fees and costs, the Respondent notes, include those that the Claimants spent on their own counsel and those that they voluntarily spent on counsel for the non-party discovery targets who are not investors in Ecuador or parties to this Arbitration. Rejoinder, paras. 1180-1182.

supporting its reports in that action.²⁵³⁸ The Respondent argues that the Claimants cannot justify attempting to intervene in these actions, stressing that there is no provision in the 1995-1998 Settlement and Release Agreements barring the Respondent from pursuing U.S. discovery in aid of this Arbitration, and that the Tribunal never ordered the Respondent not to engage in discovery through Section 1782 actions.²⁵³⁹

1546. The Respondent accuses Chevron of attempting to stop it from taking discovery in its Section 1782 actions and thereby forcing the Respondent to spend more time and resources in “unnecessary litigation”, even if the U.S. district courts rejected the company’s attempts to “stonewall” discovery.²⁵⁴⁰ The Respondent provides examples of Chevron’s “overzealousness”, “wastefulness” and “pointless effort[s]” in these Section 1782 actions, and it recalls that courts admonished it for taking positions that were “diametrically opposed” to those it took when seeking discovery through its own Section 1782 actions.²⁵⁴¹ Similarly, the Respondent also refers to claimed fees for “unnecessary work” on preparing to intervene in proceedings in which the Claimants did not enter an appearance or file any papers, such as the Hansen Section 1782 Proceeding.²⁵⁴² Lastly, and contrary to the Claimants’ assertions, the Respondent notes that protecting privilege comprised only a fraction of the significant legal costs they allegedly incurred.²⁵⁴³

(c) Further Non-compensable Activities

1547. The Respondent contends that the invoices produced by the Claimants contain numerous wasteful and non-compensable activities and, in particular, that they used their “General

²⁵³⁸ The Claimants seek compensation for 15 of these Section 1782 proceedings, 13 of which were initiated by Ecuador and two brought by the LAPs. Chevron intervened in all of these actions except for one. The Respondent further notes that the Claimants have not included any legal fees attributable to the GSI Section 1782 action in Appendix 2 to their Memorial, and therefore conveys the understanding that the Claimants have waived any claim to fees and costs from this action. Counter-Memorial, paras. 714-715.

²⁵³⁹ Rejoinder, paras. 1180-1182.

²⁵⁴⁰ Counter-Memorial, paras. 716, 720; Rejoinder, para. 1183.

²⁵⁴¹ Counter-Memorial, paras. 718-719, 721-723. The Respondent further considers that Chevron’s purported fees from the Stratus § 1782 actions are especially “[s]uspect”, noting that the Claimants’ Memorial does not distinguish between fees from the “offensive” and “defensive” proceedings and that Chevron performed very limited work in the latter. *See* Counter-Memorial, para. 724.

²⁵⁴² Counter-Memorial, para. 717; Rejoinder, para. 1185; **RE-51**, Trunko Expert Report, **J-8**, p. 3; *see e.g.* **C-3303.003**, Jones Day (Member) – 2010.xlsx.

²⁵⁴³ Rejoinder, paras. 1183-1184; **C-3287.003**, Gibson, Dunn & Crutcher LLP (Member) – 2011.xlsx; **C-3287.004**, Gibson, Dunn & Crutcher LLP (Member) – 2012.xlsx.

1782” subcategory to house dubious fees and costs relating to various Section 1782 Proceedings which did not provide any “streamlining or efficiency benefits”.²⁵⁴⁴ The work described in the time entries under this subcategory, says the Respondent, is frequently far from “general” and could have been allocated to a specific Section 1782 action, while numerous entries contain alleged fees and costs that are entirely unrelated to the Section 1782 campaign.²⁵⁴⁵ The Respondent further criticizes the three subcategories of work within the “General 1782” subcategory.²⁵⁴⁶

1548. First, the Respondent notes that the “General 1782 Work” subcategory contains fees and costs for activities with no meaningful connection to the Section 1782 Proceedings and which have not been proven to have resulted in any substantive action with positive results.²⁵⁴⁷ This category also includes work done in connection with certain Section 1782 actions that the Claimants did not pursue and for which they are not claiming directly, which, in the Respondent’s view, confirms that they were not reasonable or necessary.²⁵⁴⁸ Other types of non-compensable tasks for which the Claimants’ attorneys billed, the Respondent says, include administrative and clerical tasks, which are considered overhead costs and cannot be billed even under Chevron’s Guidelines, and those concerning the coordination of support services and vendors.²⁵⁴⁹

1549. Second, the Respondent asserts that the Claimants have used the “Indeterminate 1782 Work” subcategory to “camouflage” non-compensable activity that they cannot rationalize, as it includes tasks that are vaguely described and whose objectives and relevance cannot be determined.²⁵⁵⁰

²⁵⁴⁴ Rejoinder, paras. 1186-1187.

²⁵⁴⁵ Rejoinder, paras. 1188-1191; *see e.g.* **C-3287.003**, Gibson, Dunn & Crutcher LLP (Member) – 2011.xlsx; **C-3287.006**, Gibson, Dunn & Crutcher LLP (Member) – 2014.xlsx.

²⁵⁴⁶ Rejoinder, para. 1192.

²⁵⁴⁷ Rejoinder, paras. 1193-1194; *see e.g.* **C-3287.001**, Gibson, Dunn & Crutcher LLP (Member) – 2009.xlsx.

²⁵⁴⁸ Rejoinder, para. 1195; *see e.g.* **C-3287.002**, Gibson, Dunn & Crutcher LLP (Member) – 2010.xlsx.

²⁵⁴⁹ Rejoinder, paras. 1196-1198; *see e.g.* **C-3303.003**, Jones Day (Member) - 2010.xlsx; **C-3287.002**, Gibson, Dunn & Crutcher LLP (Member) – 2010.xlsx; **RE-51**, Trunko Expert Report, paras. 21–22; **RE-61**, Second Leigh Expert Report, para. 28, fns. 46-47.

²⁵⁵⁰ Rejoinder, paras. 1199-1201; *see e.g.* **C-3303.002**, Jones Day (Member) - 2009.xlsx; **C-3287.003**, Gibson, Dunn & Crutcher LLP (Member) – 2011.xlsx.

1550. Third and last, the Respondent disputes the purported efficiencies created by combining Section 1782 work, and opines that the Claimants’ “disorganized approach” during their Section 1782 campaign resulted in large amounts of “duplicative and fruitless work”.²⁵⁵¹ This excess, it explains, was the consequence of the Claimants’ overstaffing, which involved more than 200 timekeepers in the “General 1782” subcategory and led to inefficiencies, repeated efforts, unnecessary time spent discussing tasks and reviewing work product for consistency, and overall “inflated” fees and costs.²⁵⁵²

3. The Tribunal’s Analysis

(a) Introduction

1551. In Track III, the Claimants seek a total of USD 62,363,592.93 as legal fees and expenses incurred between January 2009 and March 2018 in connection with the Section 1782 Proceedings.²⁵⁵³

1552. Section 1782 of Title 28 of the U.S. Code permits a U.S. District Court, upon the application of any interested person, to order a person found or residing within the district “to give testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal”. The factors to be considered in exercising this discretionary power are set out in the U.S. Supreme Court’s judgment in *Intel Corp. v. Advanced Micro Devices Inc.* 542 US 241 (2004). Section 1782 does not apply to persons not subject to the jurisdiction of U.S. courts.²⁵⁵⁴

1553. As noted by the Tribunal in its Track II Award, beginning in December 2009 Chevron initiated numerous legal proceedings in several U.S. District Courts in the United States of America under Section 1782 in order to obtain discovery for use in the Lago Agrio Litigation, the Criminal Proceedings, and this Arbitration. These proceedings were directed at (*inter alios*) Mr Donziger, Mr Berlinger, Mr Bonifaz, Mr Kohn, Mr Wray, Dr Calmbacher, Mr Champ, Mr Rourke, Stratus Consulting Inc. (“**Stratus**”), E-Tech International (“**E-Tech**”) and Banco Pichincha. The Respondent, in turn, later initiated

²⁵⁵¹ Rejoinder, paras. 1202-1203.

²⁵⁵² Rejoinder, paras. 1204-1206; **RE-51**, Trunko Expert Report, **SM T**; **RE-61**, Second Leigh Expert Report, para. 28, fns. 41, 48.

²⁵⁵³ Reply, para. 761; Updated Appendix 2, pp. 737-1061.

²⁵⁵⁴ Track II Award, para. 4.107.

legal proceedings in the United States under Section 1782 in order to obtain discovery for use in this Arbitration.²⁵⁵⁵

1554. Before beginning its analysis of the Claimants' damages claim in respect of the Section 1782 Proceedings, the Tribunal recalls the Claimants' position that all of their claimed legal fees and expenses incurred in connection with these proceedings constitute direct damages and are recoverable in the alternative as incidental damages.²⁵⁵⁶ As explained in paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages. The expenses incurred by the Claimants to mitigate any other form of harm or geared towards any other goal are *not* compensable in these proceedings.²⁵⁵⁷

1555. Following the methodology laid out in Section VII.G.5 for the assessment of incidental damages in this case, the Tribunal finds that the Claimants' claim for compensation in respect of the Section 1782 Proceedings must be granted for the reasons and to the extent set out below.

(b) First Step: Analysis of Incidental Damages "Category"

1556. As a first step of its analysis, the Tribunal must determine whether the Section 1782 Proceedings category of damages meets the requirements of causation and reasonableness for the compensation of incidental damages under international law.

1557. First, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555, the Claimants' efforts must have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio

²⁵⁵⁵ Track II Award, para. 4.106.

²⁵⁵⁶ Reply, para. 760.

²⁵⁵⁷ See para. 317 above.

Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.

1558. Second, as noted in paragraph 556 above, incidental damages are subject to an additional requirement of reasonableness: to warrant compensation, legal fees and expenses must have been *reasonably* incurred to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. At this level of analysis, the Tribunal's determination concerns the reasonableness of the mitigation *measures* undertaken by the Claimants, not of the *amounts* they spent, which will be examined in a subsequent step of the analysis.²⁵⁵⁸

1559. As particularised by the Claimants, the Section 1782 Proceedings category comprises three distinct sub-categories:

(i) The Affirmative Section 1782 Actions (“**Affirmative 1782s**”) comprised 23 Section 1782 actions filed starting in December 2009 “to pursue U.S.-based discovery aimed at uncovering what [Chevron] then believed to be extensive fraud and corruption in the Lago Agrio Litigation in large part because its efforts to obtain redress through the Ecuadorean courts had proven futile.”²⁵⁵⁹ According to the Claimants, these actions

fell into six respondent categories: (1) the LAPs' U.S.-based scientific expert in the Lago Agrio two-party judicial inspections; (2) the LAPs' then-current and former U.S.-based counsel; (3) the LAPs' U.S.-based consultants participating in the Cabrera Fraud; (4) the LAPs' U.S.-based ‘cleansing experts’ who were hired in an attempt to erase the impact of the Cabrera Fraud on the Lago Agrio Litigation; (5) the media and public relations entities affiliated with the LAPs' and/or the Ecuador's propaganda campaigns against Chevron; and (6) the situs of the LAPs' secret bank account, Banco Pichincha.²⁵⁶⁰

²⁵⁵⁸ See para. 556 above.

²⁵⁵⁹ Memorial, Appendix 44, pp. 1-2.

²⁵⁶⁰ Memorial, Appendix 44, p. 2. Chevron initiated the Affirmative 1782s by filing the following applications: **C-2941**, Allen 1782 Docket, ECF No. 1 (22 October 2010) (“**Allen 1782**”); **C-2935**, Banco Pichincha 1782 Docket, ECF No. 1 (22 December 2011) (“**Banco Pichincha 1782**”); **C-2897**, Barnthouse 1782 Docket, ECF No. 1 (22 October 2010) (“**Barnthouse 1782**”); **C-3048**, Berlinger 1782 Docket, ECF No. 1 (9 April 2010)

- (ii) The Defensive Section 1782 Actions (“**Defensive 1782s**”) are described by the Claimants as follows: “After seeing that Chevron had obtained discovery for use in the Lago Agrio Litigation, Ecuador and the LAPs began filing 1782 actions as well. Chevron was involved in thirteen such cases that are the subject of this submission, falling within the following three categories: (1) Chevron scientists and experts, including actions brought against Bjorn Bjorkman, TestAmerica Laboratories, Inc. (formerly Severn Trent Laboratories), Dr Douglas M. Mackay, Dr Michael A. Kelsh and his employer, Exponent, Inc., Robert Hinchee, John A. Connor and his environmental consulting firm, GSI, and Gregory S. Douglas; (2) targets aimed at undermining Ecuador’s bribery scandal involving Judge Nuñez (including Diego Borja, Wayne Hansen, and the Mason Investigative Group); and (3) Stratus Consulting, against whom Ecuador brought a 1782 action in 2013 after Stratus disavowed its work on the Ecuador case and finally admitted to its role in fabricating evidence and ghostwriting the Cabrera Report. In most of these actions, Chevron had to intervene to protect applicable privileges and correct misrepresentations made by Ecuador and/or the LAPs as to the facts of the Lago Agrio Litigation. These proceedings did not reveal any ‘key’ evidence or admissions for Ecuador.”²⁵⁶¹

(“**Berlinger 1782**”); C-2931, Bonifaz 1782 Docket, ECF No. 1 (19 November 2010) (“**Bonifaz 1782**”); C-2837, Calmbacher 1782 Docket, ECF No. 1 (19 February 2010) (“**Calmbacher 1782**”); C-2928, Champ 1782 Docket, ECF No. 1 (16 August 2010) (“**Champ 1782**”); C-3027, Donziger 1782 Docket, ECF No. 11 (18 August 2010) (“**Donziger 1782**”) (according to the Claimants, the Donziger 1782 was initially filed on 4 August 2010, *see* Memorial, Appendix 21, para. 3); C-2929, Kohn 1782 Docket, ECF No. 1 (16 November 2010) (“**Kohn 1782**”); C-2938, MCSquared 1782 Docket, ECF No. 1 (24 November 2014) (“**MCSquared 1782**”); C-2813, E-Tech/Kamp 1782 Docket, ECF No. 1 (16 August 2010) (“**E-Tech/Kamp 1782**”); C-2811, E-Tech/Powers 1782 Docket, ECF No. 1 (27 May 2010) (“**E-Tech/Powers 1782**”); C-2810, Netflix 1782 Docket, ECF No. 1 (9 April 2010) (“**Netflix 1782**”); C-2933, Page 1782 Docket, ECF No. 1 (1 November 2011) (“**Page 1782**”); C-2907, Picone 1782 Docket, ECF No. 4 (22 October 2010) (“**Picone 1782**”); C-2926, Quarles 1782 Docket, ECF No. 1 (16 July 2010) (“**Quarles 1782**”); C-2908, Rourke 1782 Docket, ECF No. 5 (22 October 2010) (“**Rourke 1782**”); C-2903, Scardina 1782 Docket, ECF No. 1 (4 November 2010) (“**Scardina 1782**”); C-2905, Shefftz 1782 Docket (“**Shefftz 1782**”) (according to the Claimants, the Shefftz 1782 was initially filed on 22 October 2010, *see* Memorial, Appendix 33, para. 3); C-2864, Stratus 1782 Docket, ECF No. 2 (18 December 2009) (“**Stratus 1782**”); C-2939, UBR 1782 Docket, ECF No. 1 (26 May 2010) (“**UBR 1782**”); C-2899, Weinberg 1782 Docket, ECF No. 1 (21 January 2011) (“**Weinberg 1782**”); C-2943, Wray 1782 Docket, ECF No. 1 (8 June 2010) (“**Wray 1782**”).

²⁵⁶¹ Memorial, Appendix 44, pp. 8-9. The Defensive 1782s were initiated with the filing of the following applications: C-978, Application of the Republic of Ecuador and Dr Diego García Carrión, the Attorney General of The Republic of Ecuador, For the Issuance of a Subpoena Under § 1782(A) to Bjorn Bjorkman For The Taking of A Deposition And the Production of Documents for Use in a Foreign Proceeding, *In re Application of Republic of Ecuador and Dr Diego García Carrión, the Attorney General of The Republic of Ecuador*, No. 11-CV-01470-WYD (D.C. Colo.), 6 June 2011; C-2947, Borja 1782 Docket, ECF No. 1 (10 September 2010); C-2889, Connor

(iii) General Section 1782 Work (“**General 1782 Work**”) is described by the Claimants as follows: “In addition to the fees and expenses expended in connection with the various individual Section 1782 actions, Chevron incurred fees and expenses for Section 1782-related expenses that cannot be allocated to a single 1782 action. These expenses fall into three categories: (1) general Section 1782 work; (2) indeterminate Section 1782 work; and (3) efficiencies created by combining Section 1782 work.”²⁵⁶²

1560. Each of these three sub-categories requires a differentiated analysis for present purposes. They are addressed consecutively in the paragraphs that follow.

1. Affirmative 1782s

1561. Reduced to its essence, the Claimants’ position is that their decision to pursue the Affirmative 1782s starting in 2009 “aimed at uncovering what [Chevron] then believed to be extensive fraud and corruption in the Lago Agrio Litigation”.²⁵⁶³ According to the Claimants, Chevron’s efforts through the Affirmative 1782s were “critical to its ability to

1782 Docket, ECF No. 1 (28 November 2011); **C-2851**, Douglas 1782 Docket, ECF No. 1 (31 October 2011); **C-980**, Application Of the Republic of Ecuador and Dr Diego García Carrión For the Issuance of a Subpoena Under 28 U.S.C. § 1782 to Exponent, Inc. D/B/A Delaware Exponent, Inc. for The Production of Documents for Use in a Foreign Proceeding, *In re Application of The Republic of Ecuador and Dr Diego García Carrión, the Attorney General of the Republic of Ecuador*, No. 11-MC-80171-SI (N.D. Cal.), 21 July 2011; **C-2892**, GSI Environmental 1782 Docket, ECF No. 1 (28 November 2011); **C-2948**, Hansen 1782 Docket, ECF No. 1 (14 September 2010); **C-979**, Republic of Ecuador and Dr Diego García Carrión’s Application For An Order Under 28 U.S.C. § 1782(A) To Issue a Subpoena To Robert E. Hinchee For The Taking Of A Deposition And The Production of Documents For Use In A Foreign Proceeding, *In re Application of Republic of Ecuador and Dr Diego García Carrión, the Attorney General of The Republic of Ecuador*, No. 11-MC- 00073-RH-WCS (N.D. Fla.), 20 July 2011; **C-981**, Application of the Republic of Ecuador and Dr Diego García Carrión For the Issuance of a Subpoena Under 28 U.S.C. § 1782 To Dr Michael A. Kelsh For the Taking of a Deposition And the Production of Documents For Use In A Foreign Proceeding, *In re Application of The Republic of Ecuador and Dr Diego García Carrión, the Attorney General of the Republic of Ecuador*, No. 11- CV-80171-SI (N.D. Cal.), 21 July 2011; **C-977**, Application For An Order Under 28 U.S.C. § 1782 For The Issuance of a Subpoena To Douglas M. Mackay For The Taking Of A Deposition And The Production of Documents For Use In A Foreign Proceeding, *In re Application of Republic of Ecuador and Dr Diego García Carrión, the Attorney General of The Republic of Ecuador*, No. 11-MC-00052-GSA (E.D. Cal.), 3 June 2011; **C-2949**, Mason Investigative Group, Mason and Parisi 1782 Docket, ECF No. 1 (16 May 2011); **C-2950**, Mason, Parisi and Mason Investigative Group 1782 Docket, ECF No. 1 (27 April 2011); **C-2870**, Stratus 1782 Docket, ECF Nos. 1, 4 (25 April 2013); **C-992**, *In re Application of Republic of Ecuador et al.*, Case No. 4:11-mc-00088-RH-WCS, Ecuador’s Application for an Order under 28 U.S.C. § 1782, (N.D. Fla.), Oct. 20, 2011.

²⁵⁶² Memorial, Appendix 44, pp. 9-11.

²⁵⁶³ Memorial, Appendix 44, pp. 1-2.

uncover the nature and extent of both the fraud that underlay the Lago Agrio Judgment and prove Ecuador’s violations of international law.”²⁵⁶⁴

1562. Against this background, the first question the Tribunal must address is whether the Affirmative 1782s fulfil the requirement of causation for the compensation of incidental damages under international law. In other words, the Tribunal must determine whether by attempting to uncover “extensive fraud and corruption”²⁵⁶⁵ in the Lago Agrio Litigation through the Affirmative 1782s Chevron sought to (i) prevent the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter sought to render the Judgment unenforceable; or (iii) minimize the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution, or howsoever otherwise.²⁵⁶⁶

1563. At the outset, the Tribunal observes that a key feature of all but two²⁵⁶⁷ of the Affirmative 1782s is that they were brought by Chevron *before* the issuance of the Lago Agrio Judgment on 14 February 2011.²⁵⁶⁸ At their inception, then, most of the Affirmative 1782s could not have been initiated by Chevron in response to the Lago Agrio Judgment because such judgment had not yet come into existence. Rather, the Claimants’ attempts to uncover “fraud and corruption in the Lago Agrio Litigation”²⁵⁶⁹ before 14 February 2011 arose principally in reaction to the conduct of third-party individuals Chevron suspected were involved in fraudulent activities: the LAPs’ representatives and other related actors.²⁵⁷⁰ While the “prolonged, malign conduct” of those individuals “towards the Respondent’s legal system” was later found by this Tribunal to constitute a necessary condition for the “ghostwriting” of the Lago Agrio Judgment, the Tribunal also determined that such conduct was not the immediate cause of the Respondent’s Treaty

²⁵⁶⁴ Memorial, para. 244.

²⁵⁶⁵ Memorial, Appendix 44, p. 2.

²⁵⁶⁶ See para. 1557 above.

²⁵⁶⁷ **C-2935**, Banco Pinchincha 1782 Docket, ECF No. 1 (22 December 2011); **C-2933**, Page 1782 Docket, ECF No. 1 (1 November 2011).

²⁵⁶⁸ See fn 2560 above.

²⁵⁶⁹ Memorial, Appendix 44, pp. 1-2.

²⁵⁷⁰ Reply, para. 762 (“Claimants’ damages consist of: the legal fees and costs incurred in connection with Section 1782 actions that Claimants initiated against 27 individuals and entities, each of whom Claimants had reason to believe possessed evidence relating to the fraud being perpetrated by the LAPs, their representatives, and Mr. Cabrera”).

breaches.²⁵⁷¹ The cause came from the “ghostwriting” exercise of the Lago Agrio Judgment by Judge Zambrano, who was acting as an Ecuadorian judge within the scope of his professional duties.²⁵⁷²

1564. In this connection, the Tribunal remains mindful that the Claimants initiated the Affirmative 1782s upon the failure of the Ecuadorian judicial and prosecutorial activities to investigate their allegations of procedural fraud and judicial misconduct at the heart of the Lago Agrio Litigation.²⁵⁷³ The Tribunal is also mindful that the Claimants’ efforts were ultimately successful at proving the existence of corruption.²⁵⁷⁴ However, the Tribunal is not called upon to assess the harm arising from any inaction on the part of the

²⁵⁷¹ Track II Award, para. 5.229. *See also* Track II Award, paras. 5.244, 5.246-5.247, 5.249, 8.53-8.56; Partial Award on Track III, paras. 118-124; paras. 357-363, 371, 377, 397 above. *See in particular* Track II Award, paras. 8.55-8.56: “As found by the Tribunal in Parts IV and V above, two of the Lago Agrio Plaintiffs’ representatives who were privy to the ‘ghostwriting’ exercise were Mr Donziger and Mr Fajardo. As the Respondent acknowledged at the Track II Hearing, the participation of Mr Fajardo in ‘ghostwriting’ for Judge Zambrano, if correct (which the Respondent denies), would suffice to support the Claimants’ claims for denial of justice. The Tribunal agrees: the Claimants’ inability to identify by name with sufficient probability others of the Lago Agrio Plaintiffs’ representatives, also involved in ‘ghostwriting’ (in addition to Mr Donziger), cannot by itself exculpate the Respondent from liability for denial of justice. If it were otherwise, the more successful the ghostwriting exercise, the less culpability would result. In any event, for denial of justice, the relevant actor is Judge Zambrano; and his participation in the ‘ghostwriting’ of the Lago Agrio Judgment is firmly established on the evidence before this Tribunal. On such evidence, the Tribunal has found that Judge Zambrano acted corruptly, in return for a bribe promised to him by certain of the Lago Agrio Plaintiffs’ representatives. Judge Zambrano’s collusive conduct in the ‘ghostwriting’ of the Lago Agrio Judgment was not authorised under Ecuadorian law. Nor was it under judicial standards long established under international law. He was far from acting as an independent or impartial judge deciding the Lago Agrio Litigation fairly between the parties, under minimum standards for judicial conduct long recognized under international law.”

²⁵⁷² Track II Award, para. 5.224. *See also* Track II Award, paras. 4.5, 5.229-5.230, 5.246-5.247, 5.249, 8.53-8.56.

²⁵⁷³ Track II Award, paras. 8.28-8.33: “In Part V above, the Tribunal has found that the Lago Agrio Court, the Appellate Court, the Cassation Court and the Constitutional Court did not investigate Chevron’s allegations of procedural fraud and judicial misconduct; and the Appellate, Cassation and Constitutional Courts also did not investigate the allegedly corrupt ‘ghostwriting’ of the Lago Agrio Judgment. This was not done in ignorance of Chevron’s specific allegations at the time. In the Tribunal’s view, these Courts had sufficient information available to them so as to amount (at least) to a strong prima facie case of judicial misconduct, procedural fraud in the Lago Agrio Litigation and (as regards the Appellate, Cassation and Constitutional Courts) the ‘ghostwriting’ of the Lago Agrio Judgment . . . There is little in this Award (or the RICO Judgment) that would add to the substance of the allegations made by Chevron to the Lago Agrio Appellate, Cassation and Constitutional Courts in 2011, 2012 and 2018. In all material respects, at these times, there was before these three Courts at least strong prima facie evidence of judicial misconduct, procedural fraud and (particularly) ‘ghostwriting’, raising justifiable concerns as to the judicial propriety of the Lago Agrio Litigation and the Lago Agrio Judgment. The same situation prevailed as regards the Respondent’s prosecutorial authorities, beginning at an earlier time.”

²⁵⁷⁴ Track II Award, paras. 8.53-8.56. *See also* Track II Award, para. 4.327: “Chevron also obtained other documentation, in the US Section 1782 Litigation, from Mr Donziger, Stratus Consulting and several others. Chevron also took depositions and witness statements from several persons, including Dr Calmbacher, Mr Beltman, Dr Maest and, for 13 days, Mr Donziger himself. This unprecedented mass of evidential material, ordinarily protected by journalistic or legal privileges, was a major development for Chevron’s case, both for its RICO Litigation in New York and also for this arbitration under the Treaty. It was the product of more than 20 actions brought by Chevron in different US Federal Courts across the USA.”

Respondent's authorities: the analysis required of the Tribunal in Track III is circumscribed to the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment.²⁵⁷⁵

1565. As already explained, the date of issuance of the Lago Agrio Judgment (14 February 2011) was the date upon which the risks connected to the enforcement of the Lago Agrio Judgment became foreseeable and was thus also the date as of which the Claimants' mitigation efforts could be said to respond to the injury arising from the recognition and enforcement of that Judgment – *i.e.*, the injury flowing from the Respondent's internationally wrongful acts.²⁵⁷⁶ Whatever harm the Claimants may have suffered by undertaking work before 14 February 2011 to uncover "fraud and corruption in the Lago Agrio Litigation"²⁵⁷⁷ was not caused by the Respondent's Treaty breaches and therefore falls outside the scope of the compensable injury in Track III.²⁵⁷⁸

1566. For the avoidance of doubt, the Tribunal confirms that the determination in the preceding paragraph pertains only to the Claimants' claim for damages arising from the Respondent's Treaty breaches. It is without prejudice to any costs claim the Claimants might bring in Track IV of the Arbitration under Articles 38 and 40 of the UNCITRAL Rules in respect of legal fees and expenses incurred before 14 February 2011 in connection with the Affirmative 1782s.²⁵⁷⁹

1567. Notwithstanding the above, the fact that the Claimants initiated most of the Affirmative 1782s before the issuance of the Lago Agrio Judgment does not mean that their continued efforts to uncover "fraud and corruption in the Lago Agrio Litigation"²⁵⁸⁰ *after* the issuance of the Judgment did not amount to a reasonable mitigation measure. By the time the Lago Agrio Judgment was issued, the Claimants had amassed substantial evidence of a corrupt scheme at the heart of the Lago Agrio Litigation – including, among many

²⁵⁷⁵ See para. 317 above.

²⁵⁷⁶ See paras. 362, 371, 397 above.

²⁵⁷⁷ Memorial, Appendix 44, pp. 1-2.

²⁵⁷⁸ See paras. 362, 371, 397 above.

²⁵⁷⁹ Procedural Order No. 84, para. 13(i).

²⁵⁸⁰ Memorial, Appendix 44, pp. 1-2.

others, Mr Donziger’s personal notebook,²⁵⁸¹ the outtakes of the film *Crude*,²⁵⁸² the Invictus Memorandum,²⁵⁸³ and a chart assigning drafting tasks for the “ghostwriting” of the so-called “Cabrera Reports”.²⁵⁸⁴ In the circumstances then prevailing, it was reasonable for the Claimants to believe that any additional evidence they might obtain pointing to fraud and corruption at the heart of the Lago Agrio Litigation could eventually become instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment. This was later evidenced by the Claimants’ successful attempt at obtaining relief to that effect before this Tribunal.²⁵⁸⁵

1568. In other words, the Claimants’ efforts to obtain evidence of “fraud and corruption in the Lago Agrio Litigation”²⁵⁸⁶ in the Affirmative 1782s *after 14 February 2011* sought ultimately, and to varying extents, (i) to prevent the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seek to render the Judgment unenforceable; and (iii) to minimize the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution, or howsoever otherwise.²⁵⁸⁷

1569. For this reason, the Tribunal determines, as a matter of principle, that any legal fees and expenses reasonably incurred by the Claimants in connection with the Affirmative 1782s

²⁵⁸¹ **C-716**, Donziger Diary (Steven Donziger Deposition, 8 December 2010, Exhibit 422 [DONZ00027156, DONZ00027256]). *See also* Track II Award, para. 4.29.

²⁵⁸² **C-360**, *Crude* Outtakes. *See also* Track II Award, paras. 4.33, 4.324-4.327.

²⁵⁸³ **C-903**, “Invictus, Path Forward: Securing and Enforcing Judgment and Reaching Settlement” by Patton Boggs, undated; Fourth Veiga Witness Statement, para. 33 (“At this point, there can be no doubt—not that there had ever been any—that the Plaintiffs were planning for aggressive enforcement efforts and that the risk was both real and imminent. Indeed, the Lago Agrio Plaintiffs had already implemented various steps envisioned in the Invictus memorandum by the time we obtained it in January 2011”).

²⁵⁸⁴ **C-2909**, E-mail from D. Beltman to S. Donziger, Subject: Annex tracking table, 5 March 2008 [STRATUS-NATIVE057599 through STRATUS-NATIVE057601]; Memorial, Appendix 11, para. 13; Track II Award, para. 4.312.

²⁵⁸⁵ Track II Award, para. 4.327: “Subsequently, as a result of these ‘Crude outtakes’, Chevron also obtained other documentation, in the US Section 1782 Litigation, from Mr Donziger, Stratus Consulting and several others. Chevron also took depositions and witness statements from several persons, including Dr Calmbacher, Mr Beltman, Dr Maest and, for 13 days, Mr Donziger himself. This unprecedented mass of evidential material, ordinarily protected by journalistic or legal privileges, was a major development for Chevron’s case, both for its RICO Litigation in New York and also for this arbitration under the Treaty. It was the product of more than 20 actions brought by Chevron in different US Federal Courts across the USA”.

²⁵⁸⁶ Memorial, Appendix 44, pp. 1-2.

²⁵⁸⁷ *See* para. 1557 above.

after 14 February 2011 to attempt to uncover fraud and corruption in the Lago Agrio Litigation amount to incidental damages caused by the Respondent's Treaty breaches.

1570. The ensuing question for the Tribunal is how to assess the second requirement for the compensation of incidental damages – reasonableness – vis-à-vis the Affirmative 1782s. In the Tribunal's view, two factors govern the question of reasonableness of the Claimants' choice of mitigation measures in this particular context.

1571. The first factor impacting upon the Tribunal's assessment of reasonableness is the nature of the exercise underlying the Affirmative 1782s, whereby the Claimants initiated discovery actions without being aware of the exact nature of the suspected fraud or being able to anticipate precisely what evidence their discovery efforts would yield. As already noted by the Tribunal, reasonableness should be assessed contemporaneously and not with the benefit of hindsight.²⁵⁸⁸ Accordingly, the Tribunal is prepared to grant a certain level of deference to the Claimants' decisions as to which Affirmative 1782s to initiate and when to stop pursuing them.²⁵⁸⁹ For the same reason, the ultimate success of the Affirmative 1782s should not be a decisive factor when determining whether it was reasonable for the Claimants to pursue those proceedings; rather, the relevant inquiry is whether the Claimants had a reasonable basis to initiate the Affirmative 1782s and to continue pursuing them after the Lago Agrio Judgment was issued.

1572. Second, a more flexible inquiry as to the reasonableness of the Affirmative 1782s is also warranted in view of the fact that the Lago Agrio Court issued the Lago Agrio Judgment in spite of Chevron's allegations of procedural fraud and misconduct before the Respondent's judicial and prosecutorial authorities. As already explained, the Tribunal determined in its Track II Award that the Respondent's authorities failed to investigate Chevron's allegations despite having sufficient information available to them so as to amount (at least) to a strong *prima facie* case of judicial misconduct and procedural fraud in the Lago Agrio Litigation.²⁵⁹⁰ In these circumstances, it was reasonable for Chevron to deploy significant efforts to attempt to uncover by itself any existing fraud. The Tribunal considers that the Respondent's failure to investigate Chevron's fraud allegations should

²⁵⁸⁸ See para. 340 above.

²⁵⁸⁹ See para. 341 above.

²⁵⁹⁰ Track II Award, paras. 8.28-8.34.

result in a more relaxed application of the requirement of reasonableness as regards the Affirmative 1782s when compared to other categories of damages addressed in this Award.

1573. Flowing from the above two factors, the Tribunal determines that the dispositive question as regards reasonableness is whether the Claimants were in possession of *prima facie* evidence signalling that initiating Affirmative 1782s after 14 February 2011, or continuing to pursue such proceedings to the extent they had already been initiated before that date, was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation.

1574. In this connection, the Claimants have identified “six respondent categories”, hereinafter referred to as “groups”, against whom they initiated the Affirmative 1782s.²⁵⁹¹ The respondents in each of these groups share common traits that are relevant for the present analysis. As such, the Tribunal believes it is useful to make a preliminary assessment on whether the Claimants were in possession of *prima facie* evidence at the relevant times signalling that pursuing Affirmative 1782s against the respondents included in each of these groups was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. Each respondent group is addressed consecutively in the paragraphs that follow.

1575. *Group One: The LAPs’ Judicial Inspection Experts.* According to the Claimants:

The first [group] of 1782 respondents include only Dr. Charles Calmbacher, a scientist hired by Donziger and the LAPs in the summer of 2004 to serve as a LAP judicial inspection expert. That action sought discovery based [on] irregularities in Dr. Calmbacher’s work, including an instance in which a report submitted to the Lago Agrio court ostensibly drafted and signed by Dr. Calmbacher misspelled his own name as ‘Dr. Chuck Calbacher.’ This 1782 revealed one of the LAPs’ earliest frauds in the Lago Agrio Litigation: submitting reports in Dr. Calmbacher’s name that he did not author. Dr. Calmbacher’s testimony in this 1782 was not only used at the RICO trial and in this arbitration, but it was also relied on to support nearly all of the 1782s that Chevron subsequently filed.²⁵⁹²

1576. As explained below, the legal fees and expenses incurred by the Claimants in connection with the Calmbacher 1782 must be excluded from the final amount of compensation,

²⁵⁹¹ Memorial, Appendix 44, p. 2.

²⁵⁹² Memorial, Appendix 44, pp. 3-4.

essentially because they originate at a time prior to the issuance of the Lago Agrio Judgment.²⁵⁹³ It thus is unnecessary to address this respondent group of the Affirmative 1782s any further.

1577. *Group Two: The LAPs' Then-Current and Former U.S.-Based Counsel.* According to the Claimants,

This second [group] of respondents includes the lawyers who oversaw the LAPs' litigation team and who also funded the Litigation. It was anticipated that, as a group, they would have extensive evidence of the ongoing fraud and corruption in the Lago Agrio Litigation. This [group] of 1782 respondents includes: (A) Steven Donziger, the LAPs' lead U.S. counsel and ringleader; (B) Aaron Marr Page, an attorney who worked extensively with Donziger since approximately 2005; (C) Joseph Kohn, an attorney who financed the Lago Agrio Litigation from its initiation through the Cabrera Fraud, including by paying Donziger and Stratus; he also served as co-lead counsel during the early *Aguinda* litigation and continued to litigate the matter with Donziger until he became aware of the Cabrera Fraud; (D) Cristobal Bonifaz, co-lead American counsel, along with Kohn, to the LAPs from the *Aguinda* litigation until approximately 2005; and (E) Alberto Wray, as the LAPs' first lead Ecuadorian lawyer in the Lago Agrio Litigation until Pablo Fajardo replaced him in 2005, and who interacted with Ecuador. While taking discovery from a litigant's current and former and opposing counsel is rare, it was wholly warranted under the circumstances of this case; nevertheless, each of these 1782s was heavily litigated while the courts determined the proper balance between necessary discovery and valid claims of privilege and work protection.²⁵⁹⁴

1578. Against this background, the Tribunal is persuaded that the Claimants were in possession of *prima facie* evidence signalling that seeking discovery from the LAPs' then-current and former U.S.-based counsel was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. As already explained, by 14 February 2011 the Claimants had uncovered evidence of fraud and corruption in the Lago Agrio Litigation involving (at the very least) Mr Steven Donziger.²⁵⁹⁵ It was thus reasonable for the Claimants to continue to seek discovery from Mr Donziger and from any other person who had acted as co-counsel for the LAPs together with him at any point in time.

²⁵⁹³ See paras. 1670-1672 below.

²⁵⁹⁴ Memorial, Appendix 44, p. 4.

²⁵⁹⁵ See para. 1567 above.

1579. The Tribunal recalls that the Claimants have withdrawn their claim for the Kohn 1782, which was also included by the Claimants in this respondent group of the Affirmative 1782s.²⁵⁹⁶ It is therefore unnecessary to address that particular proceeding any further.

1580. The Tribunal further recalls for context that Chevron ultimately obtained relevant discovery from the LAPs' counsel in the Section 1782 Proceedings, as noted by the Tribunal in its Track II Award:

Chevron also obtained other documentation, in the US Section 1782 Litigation, from Mr Donziger, Stratus Consulting and several others. Chevron also took depositions and witness statements from several persons, including Dr Calmbacher, Mr Beltman, Dr Maest and, for 13 days, Mr Donziger himself. This unprecedented mass of evidential material, ordinarily protected by journalistic or legal privileges, was a major development for Chevron's case, both for its RICO Litigation in New York and also for this arbitration under the Treaty. It was the product of more than 20 actions brought by Chevron in different US Federal Courts across the USA.²⁵⁹⁷

The Tribunal has also made extensive use of Mr Donziger's personal notebook (or "diary"). This was originally a private document written by Mr Donziger for his own personal use only. It was disclosed by Mr Donziger to Chevron under court orders in the US Section 1782 and RICO Litigation brought by Chevron against Mr Donziger, along with his private email correspondence and computer hard drives. As a resident of New York, Mr Donziger was (and remains) subject to the jurisdiction of the courts of the USA.²⁵⁹⁸

1581. *Group Three: The LAPs' U.S.-Based Consultants Participating in the Cabrera Fraud.*
According to the Claimants,

This [group] of 1782s includes: (A) Stratus Consulting, an environmental group whose scientists served as primary ghostwriters of the Cabrera Report; (B) E-Tech International, an environmental consulting firm that was also involved in the Cabrera ghostwriting, including separate actions against its then-Chief Engineer William Powers and its then-director Richard Kamp; (C) Mark Quarles, a scientist affiliated with E-Tech; (D) Charles Camp, a scientist who traveled to Ecuador in 2007 to assist Donziger and Stratus with the planning of the Cabrera Report; and (E) Uhl, Baron, Rana & Associates, an environmental consulting firm the LAPs hired to further assist with the Cabrera Fraud. Chevron's impetus for seeking discovery from these environmental consultants arose when similarities between the Cabrera Report and documents published by people working with Stratus and documents produced by Stratus in a mediation proceeding led to its suspicion that Stratus had written all or at least part of the Cabrera Report. Chevron sought the discovery to substantiate the ghostwriting fraud and also to prove that the work of these consultants—which formed the 'scientific' support for the Cabrera Report—in fact had no basis in

²⁵⁹⁶ Reply, fn 1412.

²⁵⁹⁷ Track II Award, para. 4.327.

²⁵⁹⁸ Track II Award, paras. 4.29-4.30.

science but were instead directed by Donziger to support his claims in the Lago Agrio Litigation.²⁵⁹⁹

1582. The Tribunal accepts the Claimants' explanation that Chevron decided to seek discovery from the above-listed U.S.-based consultants of the LAPs after similarities arose "between the Cabrera Report and documents published by people working with Stratus and documents produced by Stratus in a mediation proceeding".²⁶⁰⁰ This amounts to *prima facie* evidence signalling to the Claimants that seeking discovery from Stratus, as well as any scientist or environmental consultant connected with that group, was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation.

1583. The Tribunal recalls for context the following excerpts of its Track II Award concerning Stratus Consulting and other related individuals:

13-19 January 2008: Mr Beltman (in charge of Stratus Consulting's "Ecuador Project" for the Lago Agrio Plaintiffs) and Dr Maest travel to Ecuador, at Mr Donziger's request, to meet Mr Cabrera privately, with certain of the Lago Agrio Plaintiffs' representatives. This meeting is not disclosed to or known by Chevron at the time. In his later witness statement, Mr Beltman testifies that:

"15. Based on that meeting with Cabrera and a review of his background, Cabrera lacked the skill, qualifications, and experience to conduct or review a multidisciplinary environmental damages assessment himself.

16. At no time did I ever see any indication of an independent Cabrera "team" nor did I ever meet anyone I understood to be a member of Cabrera's "independent team." To the contrary, individuals that I am aware of who assisted in preparing the Cabrera Report were affiliated with or working at the direction of Donziger and the LAPs' representatives.

17. At no point during Stratus's time working on the Ecuador Project, including at the January 2008 meeting, did I have an understanding that Cabrera was preparing his own report. It was clear from statements Donziger and others made that the LAPs' team expected the Lago Agrio court to rely upon the Cabrera Report in rendering its judgment."

22 February 2008: In his email message to his colleagues at Stratus Consulting, Mr Beltman writes: "The project is at a key point right now. We have to write, over the next 2 to 3 weeks, probably the single most important technical document for the case. The document will pull together all of the work over the last 15 or so years on the case and make recommendations for the court to consider in making its judgment . . ." This "document" was to be the "Cabrera Report".

²⁵⁹⁹ Memorial, Appendix 44, pp. 5-6.

²⁶⁰⁰ Memorial, Appendix 44, p. 5.

26 February 2008: Mr Beltman sends to his colleagues within Stratus Consulting an outline and chart showing how they should falsely “attribute” their work on the Cabrera Report to Mr Cabrera’s “team.” The chart identifies who would be responsible for drafting each section, the reviewer/approver, and to whom it would be falsely attributed.

12 March 2008: Stratus Consulting exchanges English language drafts of the “Cabrera Report” (Mr Cabrera does not speak English). Mr Beltman emails the English draft report for Spanish translation to “info@translatingspanish.com,” stating that “[t]he main [Cabrera] report (the one attached to this email) is the highest priority.” Mr Beltman notes that he would travel to Quito to review and make revisions to the report in Spanish

...

31 March 2008: The Lago Agrio Plaintiffs’ representatives and advisers work on the so-called “Cabrera Report” until its filing in the Lago Agrio Court.

According to Mr McGowan’s expert testimony (of Stroz Friedberg, for Chevron in the US Litigation), the Lago Agrio Plaintiffs’ representatives saved the latest version of the “Cabrera Report” on 31 March 2008 at 11:09 EST, and, “[t]he text of [the Lago Agrio Plaintiffs’ report] . . . is identical to text of the report filed by Richard Stalin Cabrera Vega on April 1, 2008.”

1 April 2008: Mr Cabrera formally files the Cabrera Report with the Lago Agrio Court. It advises the Court that Chevron should pay compensation in excess of US\$ 16 billion. Mr Cabrera files an amended expert report in November 2008, with a revised figure for compensation of US\$ 27.3 billion. . .

Later, in US legal proceedings, Mr Beltman and Mr Donziger both admitted that Stratus Consulting covertly wrote Mr Cabrera’s Report. In this arbitration, the Respondent does not dispute that certain of the Lago Agrio Plaintiffs’ experts wrote the Cabrera Report.²⁶⁰¹

21 March 2013: In his witness statement in the RICO Litigation, Mr Beltman (of Stratus Consulting) admits that Mr Cabrera did not write the Cabrera Report filed in April 2008, as follows:

“I prepared the first drafts of substantial parts of . . . the main body of the Cabrera Report. At Donziger’s direction, I drafted my portions of the report in the first person as though it was written by Richard Cabrera. I supervised the preparation by Dr Maest and other Stratus personnel or subcontractors of 11 of the 24 sub-reports and appendices, known as Annexes, to the Cabrera Report” . . . “Donziger and Fajardo told me to whom authorship of the various Cabrera Report Annexes should be attributed, and I recorded those names in a table. Donziger told me that the reason for the attribution was to make it more difficult to uncover that Stratus had written the Annexes. Donziger told Stratus to indicate on the draft Summary Report that it was written ‘By Richard Cabrera’ and instructed Stratus to draft its portions of the Summary Report in the first person ” . . . “I understood that portions of the Cabrera Response that Stratus was drafting would be filed with the Lago Agrio court as if written by Cabrera. My discussions about this work with Donziger and the LAPs’ representatives confirmed that Donziger and the LAPs’ team wanted the Cabrera’s Responses to increase the damages assessed by billions of dollars.” . . . “I understood that Cabrera filed the ‘Cabrera Response’ based at least in part on text written by the LAPs’ representatives and consultants, including Stratus, on

²⁶⁰¹ Track II Award, paras. 4.310-4.318.

*November 17, 2008. The Cabrera Response incorporated work, calculations, and text written by Stratus, among others, and increased the damages assessed in the Cabrera Report from \$16 billion to \$27 billion*²⁶⁰²

1584. *Group Four: U.S.-based Cleansing Experts.* According to the Claimants,

When it became clear in March 2010 that the Stratus 1782 would eventually reveal irrefutable evidence of the ghostwriting of the Cabrera Report, ‘[t]he LAP team quickly developed a plan to ‘cleanse’ the Cabrera Report in Ecuador—that is, to provide an alternative evidentiary basis for the Lago Agrio case against the possibility that the Cabrera Report would be stricken or discredited or be relied upon as evidence of fraud in a foreign court where the LAPs would seek enforcement of any favorable judgment.’ As part of that plan, in September 2010 the LAPs submitted seven purported supplemental expert reports to the Lago Agrio court. Chevron subsequently filed 1782 actions against the following respondents, each of whom played a role in the cleansing scheme: (A) Douglas C. Allen, who submitted a report on alleged environmental remediation damages; (B) Jonathan S. Sheffitz, who submitted a report on alleged unjust enrichment damages; (C) Daniel L. Rourke, a statistician who submitted a report on alleged excess cancer deaths; (D) Carlos E. Picone, who submitted a report on the costs of providing health care to the purportedly affected population in Ecuador; (E) Lawrence Barnthouse, who submitted a report on purported natural resources damages; (F) Robert Scardina, who submitted a report on the purported costs of providing a potable water system to the allegedly affected area; and (G) the Weinberg Group, the entity involved in retaining and managing all of these cleansing experts, as Chevron learned through discovery from the six U.S.-based cleansing experts.

Each of the cleansing expert 1782s was necessary to reveal that there was no independent scientific basis for any of their opinions—many of which had been misrepresented by the LAPs in their pleadings—and that the cleansing experts had all reviewed the Cabrera Report and, in some instances, adopted its findings.²⁶⁰³

1585. The Tribunal recalls for context the following excerpts of its Track II Award concerning these so-called “cleansing experts”:

2 August 2010: The false origins of the “Cabrera Reports” are raised by Chevron in the Lago Agrio Litigation. Chevron had received the off-cuts from “Crude” in July 2010. Following an application in the Lago Agrio Litigation, the Lago Agrio Court (Judge Ordóñez) issues an order allowing the reports attributed to Mr Cabrera to be substituted by ‘cleansing’ expert reports, to be submitted within 45 days.

18 August 2010: The Lago Agrio Plaintiffs’ representatives consider the effect of Mr Cabrera’s departure as the Lago Agrio Court’s sole global assessment expert and his replacement with the parties’ cleansing experts. This includes an email message, marked “privileged and confidential – attorney work product”, from Mr Small (of Patton Boggs) to Mr Donziger: “While our new expert [sic] will most likely rely on some of the same data as Cabrera (and come to the same conclusions as Cabrera) . . . we probably wouldn’t want to draw that much attention to Cabrera . . . our expert might address Cabrera’s findings in such a subtle way that someone reading the new expert report (the Court in Lago or an

²⁶⁰² Track II Award, para. 4.473.

²⁶⁰³ Memorial, Appendix 44, pp. 6-7.

enforcement court elsewhere) might feel comfortable concluding that certain parts of Cabrera are a valid basis for damages.”

None of the Lago Agrio Plaintiffs’ cleansing experts visit Ecuador, inspect the former concession area or conduct any sampling or environmental testing, as Mr Donziger later confirmed during his testimony in the RICO Litigation. The Lago Agrio Plaintiffs produce their seven expert reports on 16 September 2010, submitted to the Lago Agrio Court within the 45 days’ time limit.

One of the Lago Agrio Plaintiffs’ cleansing experts, Dr Lawrence W. Barnthouse, relies upon the Cabrera Report “to see exactly how he [Cabrera] had done it.” The Lago Agrio Judgment in turn relies upon Dr Barnthouse to arrive at its damages of US\$ 200,000,000 for the recovery of flora, fauna and aquatic life. Hence, the Lago Agrio Judgment indirectly relies upon the Cabrera Report.²⁶⁰⁴

1586. Thus, Chevron decided to bring Affirmative 1782s against these cleansing experts after it had become aware of the false origins of the Cabrera Reports and the Lago Agrio Court decided to allow the reports attributed to Mr Cabrera to be substituted by cleansing expert reports. This amounts to *prima facie* evidence signalling to the Claimants that seeking discovery from the cleansing experts retained by the LAPs’ representatives to replace Mr Cabrera, or any person or entity connected to them, was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation.

1587. *Group Five: Crude and other Media and Public Relations Entities.* According to the Claimants,

Chevron filed two groups of 1782 actions within this [respondent group], one concerning the film *Crude* and the other concerning a public relations firm whose retention demonstrated that Ecuador colluded with the LAPs to attack Chevron.

In 2010 Chevron sought discovery from Joseph Berlinger, a filmmaker and producer of the documentary film *Crude: The Real Price of Oil* about the Ecuadorian litigation, as well as from Netflix, which had produced the film and provided a streaming version of the film that differed from the versions otherwise publicly available. The *Crude* outtakes provided some of the most significant evidence of wrongdoing in the Lago Agrio Litigation, including proof that the LAPs had improper meetings with Cabrera, judges and representatives of Ecuador. The *Crude* outtakes also contained outright admissions of the corruption of the Ecuadorian litigation.

In addition, in 2014 Chevron pursued 1782 discovery against MCSquared PR, Inc., a New York-based public relations company that entered into a \$6.4 million contract with Ecuador to implement an anti-Chevron public relations campaign. Discovery revealed that Ecuador

²⁶⁰⁴ Track II Award, paras. 4.385-4.388.

was working hand-in-glove with the LAPs to denigrate Chevron and extort a settlement payout on the fraudulent judgment.²⁶⁰⁵

1588. The Tribunal recalls for context the following excerpts of its Track II Award concerning the film *Crude*:

January 2009: The film “Crude”, directed by Mr Joseph Berlinger, is shown at the Sundance Film Festival in Utah, USA. The film was principally funded by Mr Russell DeLeon, at the time a major non-party funder for the Lago Agrio Plaintiffs in the Lago Agrio Litigation.

The film was subsequently released to the public. Chevron’s legal advisers noted that one of these public releases was differently edited, suggesting that the unpublished outtakes might contain relevant material. In particular, that public version showed Dr Carlos Martín Beristain (a member of Mr Cabrera’s team) appearing to work privately with the Lago Agrio Plaintiffs’ representatives. Mr Berlinger testified that he had removed from other versions of the film these scenes of Dr Beristain at the express request of the Lago Agrio Plaintiffs’ representatives. (It is not clear why the other public version was not similarly edited; but it had significant consequences for the Lago Agrio Litigation).

Chevron brought legal proceedings in New York against Mr Berlinger and others to produce unpublished outtakes from the film “Crude” showing the representatives for the Lago Agrio Plaintiffs, private or court-appointed experts in that proceeding and current or former officials of the Government of Ecuador. On 15 July 2010, Chevron obtained copies of these outtakes, amounting to about 600 hours (compared to some 90 minutes of edited film), by court order made by the US District Court for the Southern District of New York (Judge Kaplan) under Section 1782 affirmed (as modified) on appeal by the US Court of Appeals for the Second Circuit on 15 July 2010.

Subsequently, as a result of these “Crude outtakes”, Chevron also obtained other documentation, in the US Section 1782 Litigation, from Mr Donziger, Stratus Consulting and several others. Chevron also took depositions and witness statements from several persons, including Dr Calmbacher, Mr Beltman, Dr Maest and, for 13 days, Mr Donziger himself. This unprecedented mass of evidential material, ordinarily protected by journalistic or legal privileges, was a major development for Chevron’s case, both for its RICO Litigation in New York and also for this arbitration under the Treaty. It was the product of more than 20 actions brought by Chevron in different US Federal Courts across the USA. As of January 2009, however, all this still lay in the future.²⁶⁰⁶

1589. As noted in this excerpt, Chevron brought this set of Affirmative 1782s after Chevron’s legal advisers noted that one of these public releases of the film *Crude* was differently edited, suggesting that the unpublished outtakes might contain relevant material. This amounts to *prima facie* evidence signalling to the Claimants that seeking discovery from Mr Joseph Berlinger, Netflix Inc. (“Netflix”), and any other individual or entity connected with the production of the film *Crude* was a reasonable step towards locating

²⁶⁰⁵ Memorial, Appendix 44, p. 8.

²⁶⁰⁶ Track II Award, paras. 4.324-4.327.

evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation.

1590. The Tribunal recalls that the Claimants have withdrawn their claim for the MCSquared 1782, which was also included by the Claimants in this respondent group of the Affirmative 1782s.²⁶⁰⁷ It is therefore unnecessary to address that particular proceeding any further.

1591. *Group Six: Banco Pichincha.* The Claimants explain that

Prior to the filing [of] the Banco Pichincha 1782 and based in large part on Donziger 1782 discovery, Chevron had determined that more than US\$ 100,000 in payments appeared to have been made from the LAPs' 'secret account' (as it was referred to in their internal e-mails) to the individual code-named 'Wao' (which Chevron suspected was Cabrera).²⁶⁰⁸

According to the Claimants, "[t]he Banco Pichincha 1782 revealed direct evidence of the LAPs' bribery of Cabrera, including via wire transfer payments from what they described as a 'secret' bank account."²⁶⁰⁹

1592. The Tribunal accepts the Claimants' explanation that the Donziger Section 1782 discovery had yielded evidence of the existence of a "secret" bank account in Banco Pichincha connected to the LAPs and Mr Cabrera. This amounts to *prima facie* evidence signalling to the Claimants that seeking discovery from the Banco Pichincha was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation.

1593. The Tribunal recalls for context the following excerpts of its Track II Award concerning the LAPs' representatives' account in Banco Pichincha:

3 September 2007: . . .

By now, the Lago Plaintiffs' representatives maintain a "secret" bank account at the Banco Pichincha for the purpose of making covert payments to Mr Cabrera. This was one of the accounts used by Selva Viva, an Ecuadorian legal entity controlled by certain of the Lago Agrio Plaintiffs' representatives for the purpose of the Lago Agrio Litigation. Mr Donziger is the president of Selva Viva. One of its employees involved in banking transactions, is Ms Ximera Centeno. The Lago Agrio Plaintiffs' internal documents identify her as the

²⁶⁰⁷ Reply, fn 1412.

²⁶⁰⁸ Memorial, Appendix 25, para. 1.

²⁶⁰⁹ Memorial, Appendix 44, p. 8.

Lago Agrio Plaintiffs’ librarian, receptionist and payment administrator. (As described below, Ms Centeno also made monetary deposits to Mr Guerra on behalf the Lago Agrio Plaintiffs’ representatives).

12 September 2007: The Lago Agrio Plaintiffs’ representatives are now paying more than US\$ 100,000 to Mr Cabrera through the “secret” bank account, including a single payment of US\$ 30,000.

...

At the RICO trial in New York, Mr Donziger testified that he could not recall “any other purpose for which this secret account was established”, other than to pay Mr Cabrera.

On the evidence adduced in this arbitration, the Tribunal finds that these payments to Mr Cabrera were made corruptly as bribes by certain of the Lago Agrio Plaintiffs’ representatives, including Mr Fajardo, Mr Yanza and Mr Donziger.²⁶¹⁰

1594. *Conclusion on Affirmative 1782s.* For the above reasons, the Tribunal determines that the requirements of causation and reasonableness for the compensation of incidental damages under international law are met as regards the Affirmative 1782s sub-category of damages as a whole.

1595. This conclusion does not exhaust the Tribunal’s analysis of the Affirmative 1782s. The Tribunal’s determination that it must assess the existing evidence on damages at an appropriate level of detail²⁶¹¹ requires a particularized consideration of the Claimants’ damages claim in respect of each Affirmative 1782 individually, that is, as a “component” in the sense given to this term in the methodology laid out in Section VII.G.5 above.²⁶¹² While the Parties chose not to identify individual Affirmative 1782s as “components” in their agreed list of components,²⁶¹³ the Tribunal indicated previously in its Procedural Order No. 83 that each Section 1782 Proceeding should be addressed as a component going forward.²⁶¹⁴

1596. The Tribunal’s analysis of components falling under the Section 1782 Proceedings category of damages is set out in Section (c) below.

²⁶¹⁰ Track II Award, paras. 4.299-4.303.

²⁶¹¹ See para. 549 above.

²⁶¹² See para. 552(ii) above.

²⁶¹³ See para. 568 above.

²⁶¹⁴ See Procedural Order No. 83, para. 8(ii): “‘component’ shall refer to distinguishable subcategories of costs or actions that are specific to each category or main proceeding for which damages are claimed (e.g., count IX of the RICO proceedings, each of the § 1782 actions, etc.)”.

2. Defensive 1782s

1597. As already noted in paragraph 1559(ii) above, the Defensive 1782s comprise thirteen Section 1782 actions brought by Ecuador and the LAPs against individuals and entities other than Chevron, including scientists and experts retained by Chevron in connection with the Lago Agrio Litigation, “targets aimed at undermining Ecuador’s bribery scandal involving Judge Nuñez”, and Stratus.²⁶¹⁵

1598. Chevron did not act as applicant or defendant in any of the Defensive 1782s. Rather, as explained by the Claimants, by participating in most of the Defensive 1782s Chevron sought to “intervene to protect applicable privileges and correct misrepresentations made by Ecuador and/or the LAPs as to the facts of the Lago Agrio Litigation”.²⁶¹⁶ The testimony of Mr Peter Seley, a partner with the law firm Gibson Dunn & Crutcher LLP who acted as “one of the leaders of . . . the team defending the § 1782 actions filed by the Republic of Ecuador”²⁶¹⁷ provides further context:

The issues being litigated in the defensive § 1782 cases centered on protection of Chevron’s attorney-client privilege and attorney-work product. The Republic of Ecuador (and the LAPs) argued that all communications with Chevron’s experts in the Lago Agrio Case were discoverable, regardless of who sent them and whether they revealed attorney thought processes, under a then-repealed version of the rules of procedure in United States federal courts. Chevron had to litigate those cases to avoid any waiver of privilege, a particularly important issue given the ongoing RICO litigation and the LAPs’ repeated efforts to obtain privileged and protected documents.²⁶¹⁸

1599. Based on the evidence on record, the Tribunal understands that the Claimants’ legal spending in the Defensive 1782s was incurred in reaction to Section 1782 actions brought by Ecuador and the LAPs and *not* in reaction to concrete efforts to render the Lago Agrio

²⁶¹⁵ Memorial, Appendix 44, p. 9.

²⁶¹⁶ Memorial, Appendix 44, p. 9. The Tribunal understands that the only Defensive 1782 in which Chevron did not intervene as an interested party was that initiated by Ecuador against Wayne Hansen, who according to the Claimants took it upon himself, together with Diego Borja, “to secretly record a series of private meetings between Judge Juan Nuñez, who was then presiding over the Lago Agrio Litigation, and remediation contractors”. Memorial, Appendix 29, para. 1. The Claimants explain that “Ecuador ultimately was unable to locate and serve Hansen; accordingly, Hansen did not produce documents or sit for a deposition, and the action did not proceed further. As a result, although Chevron never entered an appearance or filed any papers in this Section 1782 proceeding, it nonetheless incurred expenses in anticipation of discovery and motion practice”. Memorial, Appendix 29, para. 9. In the Tribunal’s view, this set of circumstances is indicative of further remoteness between the legal fees and expenses incurred by the Claimants in connection with the Defensive 1782 against Wayne Hansen and the injury flowing from the recognition and enforcement of the unremedied Lago Agrio Judgment.

²⁶¹⁷ Seley Witness Statement, para. 5.

²⁶¹⁸ Seley Witness Statement, para. 62.

Judgment enforceable, defend its enforceability, or actually seek to enforce it.²⁶¹⁹ This is indicative of remoteness between the injury flowing from the Respondent’s Treaty breaches and the legal fees and expenses claimed under this heading. The link between the Claimants’ efforts to protect “Chevron’s attorney-client privilege and attorney-work product”²⁶²⁰ by intervening in the Defensive 1782s and the goal of mitigating the injury arising from the recognition and enforcement of the Lago Agrio Judgment remains insufficiently explained by the Claimants. The Tribunal remains uninformed as to the precise nature of the attorney-client-privileged information and attorney-work product which, if produced to the LAPs, could have improperly contributed to their attempts to enforce the Lago Agrio Judgment. Indeed, there was nothing improper *per se* in the Respondent’s decision to seek discovery from third parties connected with Chevron. The Tribunal would therefore be reluctant to grant compensation to the Claimants for the costs they incurred to intervene in discovery proceedings initiated by the Respondent against third parties. A different conclusion would create a significant hurdle for discovery actions, thus impairing the Respondent’s right of access to justice.

1600. For these reasons, the Tribunal excludes from compensation the legal fees and expenses claimed by the Claimants in connection with the Defensive 1782s sub-category of damages as a whole.

3. General 1782 Work

1601. According to the Claimants, the General 1782 Work sub-category includes “fees and expenses for Section 1782-related expenses that cannot be allocated to a single 1782 action”,²⁶²¹ totalling USD 9,774,728.94 in legal fees and USD 3,469,935.57 in expenses.²⁶²² The Claimants, in turn, sub-divide General 1782 Work into three sub-categories:

- (i) “General Section 1782 Work”, which, as per the Claimants, concerns “work in general preparation for and execution of Section 1782 actions that is not attributable to any specific proceeding”, including (1) “[p]lanning and

²⁶¹⁹ See para. 1557 above.

²⁶²⁰ Seley Witness Statement, para. 62.

²⁶²¹ Memorial, Appendix 44, p. 9.

²⁶²² Reply, Updated Appendix 2, p. 739.

coordinating strategy relating to the Section 1782 applications as a whole”; (2) “[f]act development, including drafting and updating factual narratives, timelines, and document/deposition summaries relevant to briefs across simultaneous Section 1782 actions”; (3) “maintaining overarching system records and effective case management procedures for efficiency and pursuing a multi-pronged discovery effort”; and (4) “coordinating global ancillary Section 1782 action support services such as e-discovery vendors and protocols for attorneys to use in reviewing documents.”²⁶²³

- (ii) “Indeterminate Section 1782 actions work”, which is explained by the Claimants as follows:

The urgency of the pending criminal charges against Chevron attorneys in Ecuador and the looming threat of the imminent issuance of the fraudulent Lago Agrio judgment necessitated work at a breakneck pace for Chevron’s legal counsel. On occasion, lawyers were working on multiple Section 1782 actions simultaneously and their time cannot always be allocated to a single matter. Where, because of the timing and nature of the work, time could not be certainly allocated to a single Section 1782 action, that time has been allocated to this category.²⁶²⁴

- (iii) “Efficiencies created by combining Section 1782 work”, which, according to the Claimants, arise from the fact that “Chevron frequently had to simultaneously litigate many different Section 1782 actions across multiple courts and jurisdictions.”²⁶²⁵ For instance, in respect of the Affirmative 1782s against the so-called cleansing experts,²⁶²⁶ the Claimants explain that “[b]ecause those Section 1782 actions and the targets involved had a shared background, many tasks related to these cases were combined to cover all six actions, creating efficiencies, but also leading to more general Section 1782 timekeeping.”²⁶²⁷ For these reasons, “[w]here a single time entry covers work done for more than one

²⁶²³ Memorial, Appendix 44, pp. 9-10.

²⁶²⁴ Memorial, Appendix 44, p. 10.

²⁶²⁵ Memorial, Appendix 44, p. 10.

²⁶²⁶ See para. 1584 above.

²⁶²⁷ Memorial, Appendix 44, pp. 10-11.

specific Section 1782 action, it has been allocated to this category instead of to any of its component actions.”²⁶²⁸

1602. In sum, as described by the Claimants, General 1782 Work comprises legal fees and expenses that could not be allocated to individual Section 1782 Proceedings for one of three reasons: (i) they were incurred in connection with coordination and support work underlying all Section 1782 Proceedings; (ii) at times, counsel were unable to allocate legal fees and expenses to a single Section 1782 Proceeding in real time because “[t]he urgency of the pending criminal charges against Chevron attorneys in Ecuador and the looming threat of the imminent issuance of the fraudulent Lago Agrio judgment necessitated work at a breakneck pace”;²⁶²⁹ or (iii) they were incurred as a result of tasks impacting multiple Section 1782 Proceedings at a time.

1603. These circumstances create significant difficulties for the Tribunal’s damages assessment of the legal fees and expenses incurred by the Claimants for General 1782 Work. On the one hand, the Tribunal infers from the underlying invoices and billing records that a portion of all General 1782 Work corresponds generally to work performed in connection with the Affirmative 1782s and related coordination efforts, meaning that such work is compensable in principle.²⁶³⁰ On the other hand, another portion of General 1782 Work was performed in connection with the Defensive 1782s, for which the Tribunal has determined it will not grant any compensation.²⁶³¹ The Respondent has also alerted the Tribunal to the existence of General 1782 Work entries corresponding to potentially non-compensable activities, including entries related to the Kohn and MCSquared 1782s, for which the Claimants no longer claim compensation.²⁶³² Overall, the Tribunal has not been presented with sufficient elements to ascertain which portion of General 1782 Work was

²⁶²⁸ Memorial, Appendix 44, p. 11.

²⁶²⁹ Memorial, Appendix 44, p. 10.

²⁶³⁰ See para. 1594 above. See also, e.g., **C-3287.003**, Invoice Number 2011071741, row 16, 30 June 2011: “Analyze case file documents in 1782 databases identifying and analyzing key documents for evidence of contacts with Cabrera Team members. (7.8) [1782s: Gnl 1782];”; Invoice Number 2011061707B, row 67, 30 June 2011: “E-mails and telephone conferences regarding UBR and Donziger. (.5) [1782s: Gnl 1782]”.

²⁶³¹ See para. 1600 above. See also, e.g., **C-3287.004**, Invoice Number 2012120498, row 104, 5 December 2012: “Review Kelsh and Bjorkman filings and e-mail exchange with team regarding same. (1.2) [1782s: Gnl 1782]”; entry 110, 5 December 2012 “Compile notice of appeals for Kelsh, Mackay and Bjorkman at R. Gray’s request. (.2) [1782s: Gnl 1782]”. As noted at para. 1559(ii) above, Mr Bjorn Bjorkman, Dr Douglas M. Mackay, and Dr Michael A. Kelsh were defendants in the Defensive 1782s.

²⁶³² Rejoinder, paras. 1173, 1191-1198. See Reply, fn 1412.

performed in connection with compensable activities (*e.g.*, Affirmative 1782s) or, conversely, which portion formed part of other non-compensable efforts (*e.g.*, Defensive 1782s, Kohn and MCSquared 1782s).

1604. Even to the extent General 1782 Work could be deemed to correspond to work performed in connection with the Affirmative 1782s, the Claimants' own inability to fit the legal fees and expenses corresponding to General 1782 Work within specific Affirmative 1782s means that the Tribunal is unable to make precise assessments as to how the Claimants' General 1782 Work contributed to minimizing the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment in the context of each of the Affirmative 1782s. As already noted in paragraph 1595 above, the Tribunal's determination that it must assess the existing evidence on damages at an appropriate level of detail requires a particularized consideration of the Claimants' damages claim in respect of each Affirmative 1782 individually. The same holds true for any General 1782 Work performed in connection with each of the Affirmative 1782s.

1605. In fact, the Tribunal's analysis of individual Affirmative 1782s, as set out below, has resulted in the exclusion from compensation of all legal fees and expenses corresponding to several of the Affirmative 1782s.²⁶³³ This means that any General 1782 Work connected with those proceedings would also be non-compensable.

1606. In sum, while the Claimants have established that a portion of all General 1782 Work corresponds to compensable activities, they have generally failed to meet their burden to establish the required causal link clearly and in an itemized fashion for General 1782 Work to warrant compensation as incidental damages.²⁶³⁴

1607. Having considered all of the above circumstances, and in view of the uncertainty surrounding the connection between General 1782 Work and the goal of uncovering "fraud and corruption in the Lago Agrio Litigation" by way of the Affirmative 1782s,²⁶³⁵ the Tribunal assesses that 90% of the legal fees and expenses claimed in connection with

²⁶³³ See Section VIII.H.3(c) below.

²⁶³⁴ See para. 330 above.

²⁶³⁵ See para. 1569 above.

General 1782 Work that were incurred after 14 February 2011 must be excluded from compensation.

4. Conclusion on Section 1782 Proceedings Category

1608. In sum, for the above reasons, the Tribunal declines to exclude from compensation the Section 1782 Proceedings category of damages as a whole. However, the Tribunal excludes from compensation (i) all legal fees and expenses incurred in connection with the Defensive 1782s, as determined in paragraph 1600 above; and (ii) General 1782 Work, to the extent indicated in paragraph 1607 above.

(c) *Second Step: Analysis of Incidental Damages “Components”*

1609. As a second step of its analysis, the Tribunal must determine, within the Section 1782 Proceedings category, whether the Claimants have established the requirement for each individual costs “component” identified by the Parties and the Tribunal to qualify as incidental damages.²⁶³⁶ The Tribunal must also examine other issues raised by the Parties in connection with this particular damages category to determine whether any other portion of the legal fees and expenses claimed under the present heading should be excluded from the final amount of compensation.²⁶³⁷

1610. As stated in paragraph 1595 above, the Tribunal considers it necessary to address each of the Affirmative 1782s as a component. In addition, the Parties have also identified three components involving the legal fees and expenses incurred by the Claimants in connection with the Section 1782 Proceedings.²⁶³⁸ The Tribunal has already addressed and disposed of one of those components – the Defensive 1782s.²⁶³⁹

1611. Therefore, the Affirmative 1782s are addressed *seriatim* below, followed by the two additional components falling under this category. Other issues raised by the Parties in

²⁶³⁶ See para. 559 above.

²⁶³⁷ See para. 569 above.

²⁶³⁸ See para. 568 above. The three components falling under the Section 1782 Proceedings category are: (i) “(C) Work related solely to pursuing sanctions against the LAPs’ law firms / (R) Pursuing sanctions against the LAPs’ law firms”; (ii) “(C) Fees and costs billed by Rivero Mestre and Covington & Burling in connection with their representation of Perez and Veiga (Rivero Mestre and Covington & Burling) / (R) Fees and costs billed by Perez and Veiga’s law firms (Rivero Mestre and Covington & Burling)”; and (iii) “‘Defensive’ 1782s”.

²⁶³⁹ See para. 1600 above.

connection with this damages category but not expressly identified by them as a component are addressed immediately thereafter.

1612. Before embarking on its analysis of each of the Affirmative 1782s, the Tribunal clarifies that its description of the background of each of those proceedings is drawn largely from the corresponding Appendices to the Claimants' Memorial, which are largely uncontested by the Respondent as regards the underlying facts, albeit not as regards their implications for the Tribunal's current analysis. The Tribunal has also consulted extensively the case docket sheets for each of the Affirmative 1782s.

1613. The Tribunal does not purport for its summary descriptions of the Affirmative 1782s to be exhaustive or to recount those proceedings in full. They are only meant to place in context its decisions regarding the compensation of the legal fees and expenses allegedly incurred in connection with each of those proceedings. The Tribunal's analysis and decision on each of the Affirmative 1782s is identified expressly as such.

1. Allen 1782

1614. *Background.* The Claimants describe Mr Douglas Allen as "a consultant based in Vermont who was retained by the LAPs as one of their Cleansing Experts in an attempt to whitewash, or 'cleanse,' the LAPs' fraudulent ghostwriting of the reports falsely submitted by court-appointed expert Richard Stalin Cabrera Vega."²⁶⁴⁰

1615. Chevron filed an application on 22 October 2010 before the U.S. District Court for the District of Vermont for discovery against Mr Allen, seeking an order issuing a subpoena to obtain documents and deposition testimony to expose the LAPs' counsel wrongdoing – including, particularly documents and testimony regarding the genesis and development of Mr Allen's expert opinion in the Lago Agrio Litigation.²⁶⁴¹

1616. While Mr Allen and the LAPs opposed the issuance of the subpoena,²⁶⁴² the District Court eventually granted Chevron's discovery motion in part on 2 December 2010 (as amended

²⁶⁴⁰ Memorial, Appendix 30, para. 1. *See generally* Memorial, Appendix 30; C-2941, Allen 1782 Docket.

²⁶⁴¹ Memorial, Appendix 30, para. 5; C-2941, Allen 1782 Docket, ECF No. 1.

²⁶⁴² Memorial, Appendix 30, para. 6; C-2941, Allen 1782 Docket, ECF No. 21 (16 November 2010).

the following day).²⁶⁴³ Mr Allen produced documents on 3 December 2010, 6 December 2010, 7 December 2010, 10 December 2010, 13 December 2010, 14 December 2010, and 6 January 2011.²⁶⁴⁴ He was also deposed on 16 December 2010.²⁶⁴⁵

1617. According to the Claimants, Mr Allen produced documents just 36 hours before his deposition, preventing Chevron from deposing him on those documents.²⁶⁴⁶ On 14 January 2011, Chevron filed a motion “seeking additional deposition time with Allen because of substantial gaps in Allen’s discovery responses”,²⁶⁴⁷ which was opposed by Mr Allen and the LAPs through written exchanges leading to 18 February 2011.²⁶⁴⁸

1618. The Claimants explain that while that motion for additional deposition was pending, Chevron filed the RICO action in New York and served Allen with a subpoena in that action.²⁶⁴⁹ The Claimants do not describe the Allen 1782 Proceedings further beyond 18 February 2011.²⁶⁵⁰

1619. The Claimants seek USD 425,339.95 as damages corresponding to the legal fees and expenses they allegedly incurred in connection with the Allen 1782 between September 2010 and July 2012.²⁶⁵¹

1620. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent’s Treaty breaches and therefore is non-compensable as damages.²⁶⁵² As gleaned from the above timeline, all key events in the Allen 1782 took place before 14 February 2011: Chevron’s discovery application was granted on 19 November 2010, while all production, as well as Mr Allen’s deposition, had taken place by 6 January 2011.

²⁶⁴³ **C-2941**, Allen 1782 Docket, ECF Nos. 38-39.

²⁶⁴⁴ Memorial, Appendix 30, p. 8.

²⁶⁴⁵ Memorial, Appendix 30, para. 10.

²⁶⁴⁶ Memorial, Appendix 30, para. 9; **C-2941**, Allen 1782 Docket, ECF No. 52 (14 January 2011).

²⁶⁴⁷ Memorial, Appendix 30, p. 10; **C-2941**, Allen 1782 Docket, ECF No. 52.

²⁶⁴⁸ Memorial, Appendix 30, p. 10; **C-2941**, Allen 1782 Docket, ECF No. 54 (31 January 2011).

²⁶⁴⁹ Memorial, Appendix 10, p. 11.

²⁶⁵⁰ Memorial, Appendix 30, p. 10.

²⁶⁵¹ Reply, Updated Appendix 2, p. 1019.

²⁶⁵² See para. 1565 above.

The docket sheet for the Allen 1782 records the exchange of further written briefs on Chevron's 14 January 2011 application for additional deposition time, ending in May 2011, but does not indicate whether or how the District Court ruled on that application.²⁶⁵³

1621. While the Claimants claim compensation for legal fees and expenses incurred until July 2012, the Tribunal has not been informed of the outcome of Chevron's 14 January 2011 application for additional deposition time and is also unaware of whether additional discovery took place after that date. Thus, the Tribunal is not in a position to determine whether the Claimants' continued pursuit of the Allen 1782 after 14 February 2011 – to the limited extent such pursuit actually took place – was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation.

1622. For these reasons, the Tribunal determines that (i) all legal fees and expenses incurred by the Claimants in connection with the Allen 1782s before 14 February 2011 are not compensable; and (ii) to the extent the Claimants incurred legal fees and expenses in connection with the Allen 1782 after that date, they have failed to establish that by incurring those fees they sought to uncover fraud and corruption in the Lago Agrio Litigation. Accordingly, all legal fees and expenses claimed by the Claimants in connection with the Allen 1782 are excluded from compensation.

2. Banco Pichincha 1782

1623. *Background.* The Claimants describe Banco Pichincha as “the bank the LAPs’ counsel used to fund bribery payments in the Lago Agrio Litigation.”²⁶⁵⁴ As explained by the Claimants:

The LAPs’ counsel maintained their self-designated “secret account” used, among other things, to fund bribery payments to Mr. Cabrera at Banco Pichincha, at an Ecuadorian bank which maintains a branch in Miami, Florida. Prior to the filing the Banco Pichincha 1782 [sic] and based in large part on Donziger 1782 discovery, Chevron had determined that more than US\$ 100,000 in payments appeared to have been made from the LAPs’ “secret account” (as it was referred to in their internal e-mails) to the individual code-named, “Wao” (which Chevron suspected was Cabrera). In his 1782 deposition, Donziger claimed

²⁶⁵³ C-2941, Allen 1782 Docket, ECF No. 61 (9 May 2011).

²⁶⁵⁴ Memorial, Appendix 25, para. 1. *See generally* Memorial, Appendix 25; C-2935, Banco Pinchincha 1782 Docket; C-2937, Banco Pichincha 1782 Court of Appeals Docket.

“not to recall” the meaning of the code words used in his e-mail communications nor would he confirm the occurrence, timing or amounts of any payments made to Mr. Cabrera.²⁶⁵⁵

1624. According to the Claimants, Chevron filed an application on 22 December 2011 before the U.S. District Court for the Southern District of Florida seeking an order for the issuance of a subpoena to Banco Pichincha “for deposition testimony and the production of all records related to the ‘secret account’ and other accounts maintained by the LAPs, including those known to be used by the LAPs’ counsel, as well as any other documents in the bank’s possession associated with the LAPs, their counsel, or their representatives.”²⁶⁵⁶

1625. Banco Pichincha and the LAPs opposed the issuance of the subpoena – as defendant and intervening parties, respectively. However, on 11 June 2012 the Magistrate Judge recommended that the application be granted and the subpoena be issued.²⁶⁵⁷ The District Court concluded that “Chevron has obtained mounds of evidence, in multiple § 1782 proceedings, that suggests that the judgment itself was also ghostwritten.”²⁶⁵⁸

1626. While Banco Pichincha continued to resist production, it eventually produced approximately 6,600 pages of documents between 1 May and 17 May 2013.²⁶⁵⁹

1627. The Claimants seek USD 1,688,229.70 as damages corresponding to the legal fees and expenses they allegedly incurred in connection with the Banco Pichincha 1782 between August 2010 and June 2017.²⁶⁶⁰

1628. *Analysis and decision.* At the outset, the Tribunal observes that the entirety of the Banco Pichincha 1782 proceedings took place after 14 February 2011, which, as explained above, is the critical date for the compensation of incidental damages in this Arbitration.²⁶⁶¹ However, some preparatory work appears to have taken place before that

²⁶⁵⁵ Memorial, Appendix 25, para. 1; **C-2935**, Banco Pichincha 1782 Docket, ECF Nos. 1 (22 December 2011), 5 (23 December 2011).

²⁶⁵⁶ Memorial, Appendix 25, para. 2; **C-2935**, Banco Pichincha 1782 Docket, ECF No. 23 (25 January 2012).

²⁶⁵⁷ Memorial, Appendix 25, para. 4; **C-2935**, Banco Pichincha 1782 Docket, ECF No. 82 (11 June 2012).

²⁶⁵⁸ Memorial, Appendix 25, para. 4; **C-2935**, Banco Pichincha 1782 Docket, ECF No. 82 (11 June 2012).

²⁶⁵⁹ Memorial, Appendix 25, para. 9.

²⁶⁶⁰ Reply, Updated Appendix 2, pp. 893-904.

²⁶⁶¹ See para. 1565 above.

date, starting in August 2010.²⁶⁶² As already determined by the Tribunal, all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable.²⁶⁶³

1629. Furthermore, as gleaned from the above timeline, all key events in the Banco Pichincha 1782 had taken place by 17 May 2013, by which date Banco Pichincha had completed its document production. The Claimants have failed to explain why they incurred legal fees and expenses after that date and ending in June 2017.²⁶⁶⁴ The Tribunal is prepared to grant compensation for work performed until 31 July 2013 on account of the need for Chevron to review and analyse the discovery obtained in the Banco Pichincha 1782,²⁶⁶⁵ but has otherwise not been provided with sufficient elements to assess whether any fees and expenses incurred after that date fulfil the requirements for the compensation of incidental damages under international law. Accordingly, the Tribunal excludes from compensation all legal fees and expenses incurred by the Claimants after 31 July 2013.

1630. Otherwise, the Tribunal considers that all fees incurred by the Claimants between 14 February 2011 and 31 July 2013 in connection with the Banco Pichincha 1782 are compensable in this Arbitration. As explained in paragraph 1592 above, the Tribunal accepts the Claimants' explanation that the Donziger 1782 discovery had yielded evidence of the existence of a "secret" bank account in Banco Pichincha connected to the LAPs and Mr Cabrera. This amounts to *prima facie* evidence signalling to the Claimants that seeking discovery from the Banco Pichincha was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. It was therefore reasonable for the Claimants to pursue the Banco Pichincha

²⁶⁶² Reply, Updated Appendix 2, p. 893.

²⁶⁶³ See para. 1565 above.

²⁶⁶⁴ Reply, Updated Appendix 2, pp. 902-904.

²⁶⁶⁵ The Tribunal also notes that the last entry recorded in the docket sheets for the Banco Pichincha 1782 is dated 19 July 2013: "ORDER of Dismissal from USCA, pursuant to Appellant Banco Pichincha motion for voluntary dismissal, was dismissed on July 19, 2013 as to 137 Notice of Appeal,, filed by Banco Pichincha, 157 Notice of Appeal,, filed by Banco Pichincha, USCA # 13- 11049-FF; 13-11611-FF (hh) (Entered: 07/19/2013)". **C-2935**, Banco Pichincha 1782 Docket, ECF No. 183 (19 July 2013). See also **C-2937**, Banco Pichincha 1782 Court of Appeals Docket, p. 4 (19 July 2013).

1782 as a way of obtaining evidence that could be instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment.²⁶⁶⁶

1631. For these reasons, the Tribunal determines that the Claimants should receive compensation for the legal fees and expenses they incurred in connection with the Banco Pichincha 1782 between 14 February 2011 and 31 July 2013.

3. Barnthouse 1782

1632. *Background.* The Claimants describe Mr Lawrence W. Barnthouse as “a consultant based in Hamilton, Ohio who was retained by the LAPs as one of their Cleansing Experts in an effort to whitewash the so-called Cabrera Fraud.”²⁶⁶⁷ As explained by the Claimants:

In that role, Barnthouse signed an expert report filed by the LAPs in Lago Agrio Litigation. Barnthouse’s report concluded that Chevron should be responsible for damages ranging from \$1.42 million to \$874.5 million for alleged losses of natural resources in the oil concession area in Ecuador, despite the fact that Barnthouse never visited Ecuador or the purportedly contaminated area. Instead, Dr. Barnthouse’s opinion was not derived from original, untainted work, but instead relied almost entirely on the discredited report of Richard Stalin Cabrera Vega, a purportedly independent expert appointed by the Ecuadorian court, who made a \$27 billion fraudulent “damage assessment” against Chevron. That Barnthouse report was part of the LAPs’ efforts to “cleanse” the Cabrera Report by submitting new damages reports to justify and substantiate a large damages award against Chevron without directly relying on the assessment in the Cabrera Report.²⁶⁶⁸

1633. Chevron filed an application on 22 October 2010 before the U.S. District Court for the Southern District of Ohio for an order allowing Chevron to serve a subpoena on Mr Barnthouse to take his deposition and obtain his documents.²⁶⁶⁹

1634. The Claimants explain that Mr Barnthouse and the LAPs objected to Chevron’s subpoena.²⁶⁷⁰ However, on 26 November 2010 the District Court granted the Barnthouse 1782 and ordered Chevron to modify its proposed subpoena.²⁶⁷¹

²⁶⁶⁶ See para. 1573 above.

²⁶⁶⁷ Memorial, Appendix 31, para. 1. See generally Memorial, Appendix 31; **C-2897**, Barnthouse 1782 Docket.

²⁶⁶⁸ Memorial, Appendix 31, para. 1.

²⁶⁶⁹ Memorial, Appendix 31, para. 5; Barnthouse 1782 Docket, ECF No. 1.

²⁶⁷⁰ Memorial, Appendix 31, para. 6.

²⁶⁷¹ **C-2897**, Barnthouse 1782 Docket, ECF No. 36.

1635. According to the Claimants, Mr Barnthouse produced over 2,400 pages of documents on 1 December 2010.²⁶⁷² He was also deposed on 10 December 2010.²⁶⁷³

1636. The Claimants seek USD 200,485.99 as damages corresponding to the legal fees and expenses they allegedly incurred in connection with the Barnthouse 1782 between July 2010 and March 2012.²⁶⁷⁴

1637. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable as damages.²⁶⁷⁵ As gleaned from the above timeline, all key events in the Barnthouse 1782 took place before 14 February 2011: Chevron's discovery application was granted on 26 November 2010, while all production, as well as Mr Barnthouse's deposition, had taken place by 10 December 2010.

1638. The Tribunal has not been informed of further developments in the Barnthouse 1782 after that date.²⁶⁷⁶ Thus, the Tribunal is not in a position to determine whether the Claimants' continued pursuit of the Barnthouse 1782 after 14 February 2011 – to the limited extent such pursuit actually took place – was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation.

1639. For these reasons, the Tribunal determines that (i) all legal fees and expenses incurred by the Claimants in connection with the Barnthouse 1782s before 14 February 2011 are not compensable; and (ii) to the extent the Claimants incurred legal fees and expenses in connection with the Barnthouse 1782 after that date, they have failed to establish that by incurring those fees they sought to uncover fraud and corruption in the Lago Agrio Litigation. Accordingly, all legal fees and expenses claimed by the Claimants in connection with the Barnthouse 1782 are excluded from compensation.

²⁶⁷² Memorial, Appendix 31, para.6.

²⁶⁷³ Memorial, Appendix 31, para. 6; **Exhibit C-899**, *Chevron Corp. v. Barnthouse*, Civil Action No. 1:10-MC-00053-SSB-KLL (D. Ohio), Deposition Lawrence W. Barnthouse, Dec. 10, 2010.

²⁶⁷⁴ Reply, Updated Appendix 2, pp. 1047-1048.

²⁶⁷⁵ See para. 1565 above.

²⁶⁷⁶ See generally Memorial, Appendix 31; **C-2897**, Barnthouse 1782 Docket.

4. Berlinger 1782

1640. *Background.* The Claimants describe Mr Joseph Berlinger as “a filmmaker and producer, best known for his documentary films.”²⁶⁷⁷ As explained by the Claimants:

In 2005, Steven Donziger, the LAPs’ lead U.S. counsel, solicited Berlinger to make a film depicting the Lago Agrio Litigation from the perspective of Donziger and the LAPs and assisted in arranging financing for the film. Berlinger accepted, and for the next three years, Berlinger’s film crew shadowed the LAPs’ lawyers, filmed the events surrounding the trial, and compiled more than 600 hours of raw footage, which was ultimately used to create the film, *Crude: The Real Price of Oil*. According to its press package, *Crude* “capture[d] the evidentiary phase of the Lago Agrio trial, including field inspections and the appointment of independent expert Richard Cabrera to assess the region.” In reality, however, the result was commissioned by Donziger to serve as propaganda for himself and the LAPs, and to pressure Chevron into settlement by manipulating public opinion.

On April 9, 2010, after considerable time conducting research and preparation, and after carefully considering the issues to be raised in an action against a well-known documentary film-maker, Chevron filed a petition in the U.S. District Court for the Southern District of New York, pursuant to 28 U.S.C. § 1782 (In re Application of Chevron Corporation, No. M-19-111 (S.D.N.Y.)), seeking to obtain from Berlinger and his affiliates the “outtakes” (i.e., the more than 600 hours of video not contained in the movie itself) shot by Berlinger and his affiliates in connection with the filming of *Crude*. On the same day, Chevron employee Ricardo Reis Veiga and outside counsel Rodrigo Perez Pallares, who each faced retaliatory, sham criminal charges in Ecuador for their role in defending the Company, filed a parallel Section 1782 Application.²⁶⁷⁸

1641. In sum, on 9 April 2010, Chevron, as well as Mr Veiga and Dr Pérez, filed two parallel Section 1782 applications before the U.S. District Court for the Southern District of New York to obtain discovery from Mr Berlinger – seeking, in particular, the outtakes of the film *Crude*.²⁶⁷⁹

1642. The Claimants assert that Mr Berlinger and the LAPs opposed the Section 1782 applications by arguing, *inter alia*, that the *Crude* outtakes were subject to journalist privilege and that the discovery would undermine the Ecuadorian proceedings.²⁶⁸⁰

²⁶⁷⁷ Memorial, Appendix 14, para. 1. *See generally* Memorial, Appendix 14; **C-3048**, Berlinger 1782 Docket; **C-3049**, Berlinger 1782 Docket; **C-3093a**, In re Application of Chevron Corporation, Case No. M19-111 (SDNY), Memorandum Opinion (Corrected), 20 May 2010.

²⁶⁷⁸ Memorial, Appendix 14, paras. 1-2.

²⁶⁷⁹ Memorial, Appendix 14, para. 2; **C-3049**, Berlinger 1782 Docket, ECF No. 4.

²⁶⁸⁰ Memorial, Appendix 14, para. 4; **C-3093a**, In re Application of Chevron Corporation, Case No. M19-111 (SDNY), Memorandum Opinion (Corrected), 20 May 2010.

1643. On 10 May 2010, the District Court ordered the production of the *Crude* outtakes.²⁶⁸¹

After several motions and appeals, Mr Berlinger eventually produced certain *Crude* footage following a 15 July 2010 order from the Second Circuit.²⁶⁸²

1644. On 3 August 2010, Chevron requested additional discovery from Mr Berlinger, including, among others: (i) communications with the LAPs and Ecuadorian officials; (ii) directions by the LAPs to stop filming; and (iii) what Berlinger saw and heard after the camera stopped filming.²⁶⁸³ The application for additional discovery was granted on 7 September 2010.²⁶⁸⁴ Thus, after the filing of several motions to compel Mr Berlinger to comply with the court's orders, Mr Berlinger produced the original footage log, back up tapes, and a revised privilege log, among others.²⁶⁸⁵

1645. Mr Berlinger was eventually deposed on 28 October 2010, 5 November 2010, 6 November 2010, and 10 March 2011.²⁶⁸⁶ Mr Michael Bonfiglio, who the Claimants describe as an associate of Mr Berlinger, was also deposed in connection with the Berlinger 1782 on 23 November 2010, 30 November 2010, 2 December 2010, and 12 January 2011.²⁶⁸⁷ The last event recorded by the Claimants in their timeline of the Berlinger 1782 is an order issued by the District Court on 8 November 2015 denying a motion for reconsideration that had been filed by the LAPs on 14 September 2010.

²⁶⁸¹ Memorial, Appendix 14, para. 5; **C-3093a**, *In re Application of Chevron Corporation*, Case No. M19-111 (SDNY), Memorandum Opinion (Corrected), 20 May 2010, p. 2.

²⁶⁸² Memorial, Appendix 14, paras. 6-9; **Exhibit C-3049**, Berlinger 1782 Docket, ECF No. 45; **C-3075**, Berlinger 1782 Court of Appeals Docket; **C-3076**, Berlinger 1782 Court of Appeals Docket, ECF Nos. 8, 68, 187, 278.

²⁶⁸³ Memorial, Appendix 14, para. 10.

²⁶⁸⁴ Memorial, para. 10, p. 21; **C-649**, Order, *In re Application of Chevron Corp.*, No. 10-mc-00001 (SDNY), 7 September 2010.

²⁶⁸⁵ Memorial, Appendix 14, para. 10.

²⁶⁸⁶ Memorial, Appendix 14, para. 19, pp. 21, 23; **C-3047**, Berlinger Deposition, 28 October 2010, Vol. 1; **C-3050**, *In re Application of Chevron*, SDNY, Case No. 10 MC 00001, Joseph Berlinger Deposition Transcript, 5 November 2010; **C-3055**, *In re Chevron*, SDNY, Case. No. 10 MC 0001, Berlinger Deposition Transcript, 6 November 2010; **C-3056**, *In re Chevron*, SDNY, Case. No. 10 MC 0001, Berlinger Deposition Transcript, 10 March 2011.

²⁶⁸⁷ Memorial, para. 19, p. 22; **C-3057**, *In re Chevron*, SDNY, Case. No. 10 MC 0001, Deposition of Michael Bonfiglio, 23 November 2010; **C-3058**, *In re Chevron*, SDNY, Case. No. 10 MC 0001, Deposition of Michael Bonfiglio, 30 November 2010; **C-3059**, *In re Chevron*, SDNY, Case. No. 10 MC 0001, Deposition of Michael Bonfiglio, 2 December 2010; **C-3100**, *In re Application of Chevron Corporation*, Case No. 10-mc-00001 (LAK) Michael Bonfiglio Deposition, 12 January, 2011, Vol. 4.

1646. According to the Claimants, “Berlinger eventually produced hundreds of hours of raw *Crude* footage and approximately 249,000 pages of documents”, all of which, in the Claimants’ submission, were reviewed by with the help of Spanish-speaking attorneys and technical consultants for transcription, subtitling, and coding for filing.²⁶⁸⁸

1647. The Claimants seek USD 5,449,152.86 and USD 2,097.55 as damages corresponding, respectively, to the legal fees and expenses they allegedly incurred in connection with the Berlinger 1782 between August 2009 and February 2016.²⁶⁸⁹

1648. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent’s Treaty breaches and therefore is non-compensable as damages.²⁶⁹⁰ In respect of work performed in connection with the Berlinger 1782 after 14 February 2011, the Tribunal has determined in paragraph 1589 above that the Claimants were in possession of *prima facie* evidence signalling that seeking discovery from Mr Berlinger, Netflix, and any other individual or entity connected with the film *Crude* was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. The Tribunal has also determined in paragraph 1571 above that it is prepared to grant a certain level of deference to the Claimants’ decisions as to which Affirmative 1782s to initiate and when to stop pursuing them.

1649. Thus, despite the fact that the Berlinger 1782 was initiated before the critical date of 14 February 2011, the Tribunal determines that it was reasonable for the Claimants to continue pursuing those proceedings after that date as a way of obtaining evidence that could be instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment.²⁶⁹¹ The Tribunal observes in this respect that the evidence obtained by the Claimants after 14 February 2011 includes, *inter alia*, Mr Berlinger’s 10 March 2011

²⁶⁸⁸ Memorial, Appendix 14, para. 18.

²⁶⁸⁹ Reply, Updated Appendix 2, pp. 807-822.

²⁶⁹⁰ See para. 1565 above.

²⁶⁹¹ See para. 1573 above.

deposition.²⁶⁹² The case continued to be active until at least 8 November 2015, at which time the District Court issued an order denying a motion for reconsideration.²⁶⁹³

1650. Lastly, the Tribunal has taken note of the Respondent’s argument that the Netflix 1782 sought discovery of the same materials as the Berlinger 1782 and that, accordingly, any duplicative work should be excluded from compensation.²⁶⁹⁴ In view of the Tribunal’s decision (below) to deny compensation for the Netflix 1782, this argument has been rendered moot.²⁶⁹⁵

1651. For these reasons, the Tribunal determines that the Claimants should receive compensation for the legal fees and expenses they incurred in connection with the Berlinger 1782 after 14 February 2011.

1652. To the extent that the legal fees and expenses claimed by the Claimants under this heading may relate to the representation of Mr Veiga and Dr Pérez, they are addressed separately in Section VIII.K below.

5. Bonifaz 1782

1653. *Background.* The Claimants assert that Mr Cristobal Bonifaz “served as a member of the LAPs legal team from 2003 to 2006 . . . [and] assisted in the initiation of the Lago Agrio lawsuit in 2003. Although Bonifaz was fired from the LAPs’ legal team in 2006, he continued to maintain an economic interest in the case, and materials Chevron obtained through other Section 1782 Petitions revealed that he may have continued to coordinate with the LAPs’ counsel even after his dismissal”.²⁶⁹⁶

1654. On 19 November 2010 Chevron, as well as Mr Veiga and Dr Pérez filed two parallel Section 1782 actions before the U.S. District Court for the District of Massachusetts seeking an order granting leave to serve a subpoena seeking documents and deposition

²⁶⁹² Memorial, Appendix 14, para. 19; **C-3047**, Berlinger Deposition, 28 October 2010, Vol. 1; **C-3050**, In re Application of Chevron, SDNY, Case No. 10 MC 00001, Joseph Berlinger Deposition Transcript, 5 November 2010; **C-3055**, In re Chevron, SDNY, Case. No. 10 MC 0001, Berlinger Deposition Transcript, 6 November 2010; **C-3056**, In re Chevron, SDNY, Case. No. 10 MC 0001, Berlinger Deposition Transcript, 10 March 2011.

²⁶⁹³ Memorial, Appendix 14, p. 23.

²⁶⁹⁴ Counter-Memorial, para. 510.

²⁶⁹⁵ See para. 1718 below.

²⁶⁹⁶ Memorial, Appendix 23, para. 1. See generally Memorial, Appendix 23; **C-2931**, Bonifaz 1782 Docket.

testimony from Mr Bonifaz.²⁶⁹⁷ The two actions were later consolidated upon Mr Bonifaz's motion without opposition by Mr Veiga and Dr Pérez.²⁶⁹⁸

1655. The Claimants explain that Mr Bonifaz himself did not oppose the 1782 applications, but both the LAPs and Ecuador filed separate memoranda in opposition and in partial opposition to the applications, respectively.²⁶⁹⁹

1656. The District Court granted Chevron's 1782 application on 22 December 2010 in part with respect to the Lago Agrio Litigation and denied the application without prejudice as regards this Arbitration.²⁷⁰⁰

1657. The Claimants state that Mr Bonifaz produced 11,566 pages of documents. He was also deposed on 30 December 2010 by counsel for Mr Veiga and Dr Pérez, followed by counsel for Chevron on 25 March 2011.²⁷⁰¹ The case was eventually dismissed on 6 May 2011.²⁷⁰²

1658. The Claimants seek USD 809,822.58 and USD 82.00 corresponding, respectively, to the legal fees and expenses they allegedly incurred in connection with the Bonifaz 1782 between September 2009 and October 2013.²⁷⁰³

1659. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable as damages.²⁷⁰⁴

1660. Furthermore, as gleaned from the above timeline, all key events in the Bonifaz 1782 had taken place by 6 May 2011. The Claimants have failed to explain why they incurred legal

²⁶⁹⁷ Memorial, Appendix 23, para. 2; **C-2931**, Bonifaz 1782 Docket, ECF No. 1; **Exhibit C-2932**, Veiga/Perez Bonifaz 1782 Docket, ECF No. 1.

²⁶⁹⁸ Memorial, Appendix 23, para. 2. *See* **C-2931**, Bonifaz 1782 Docket, ECF Nos. 13 (29 November 2010), 32 (9 December 2010).

²⁶⁹⁹ Memorial, Appendix 23, para. 8. *See* **C-2931**, Bonifaz 1782 Docket, ECF Nos. 23 (7 December 2010), 26 (7 December 2010).

²⁷⁰⁰ Memorial, Appendix 23, para. 11. *See* **C-2931**, Bonifaz 1782 Docket, p. 8.

²⁷⁰¹ Memorial, Appendix 23, para. 15.

²⁷⁰² **C-2931**, Bonifaz 1782 Docket, ECF No. 61.

²⁷⁰³ Reply, Updated Appendix 2, pp. 981-990.

²⁷⁰⁴ *See* para. 1565 above.

fees and expenses after that date and ending in October 2013. The Tribunal is prepared to grant compensation for work performed until 31 May 2011 on account of the need for Chevron to perform closing tasks after the case was dismissed, but has otherwise not been provided with sufficient elements to assess whether any fees and expenses incurred after that date fulfil the requirements for the compensation of incidental damages under international law. Accordingly, the Tribunal excludes from compensation all legal fees and expenses incurred by the Claimants after 31 May 2011.

1661. Otherwise, the Tribunal considers that all fees incurred by the Claimants between 14 February 2011 and 31 May 2011 in connection with the Bonifaz 1782 are compensable in this Arbitration. The Tribunal has determined in paragraph 1578 above that by 14 February 2011 the Claimants were in possession of *prima facie* evidence signalling that seeking discovery from the LAPs' then-current and former U.S.-based counsel, including Mr Bonifaz, was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. It was thus reasonable for the Claimants to continue pursuing those proceedings after that date as a way of obtaining evidence that could be instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment.²⁷⁰⁵

1662. Furthermore, the Tribunal has taken note of the Respondent's argument that Chevron treated the Bonifaz 1782 as an opportunity to relitigate the Lago Agrio Litigation by submitting extensive briefs and exhibits.²⁷⁰⁶ The Tribunal, however, does not consider it necessary to opine on the substance or magnitude of the Claimants' submissions in those proceedings. It is not appropriate for the Tribunal to apply hindsight to the legal strategies employed in the course of the Affirmative 1782s.²⁷⁰⁷

1663. Lastly, the Tribunal has also taken note of the Respondent's argument that the Bonifaz 1782 "was duplicative of a prior suit that Chevron had brought against Bonifaz in

²⁷⁰⁵ See para. 1573 above.

²⁷⁰⁶ Counter-Memorial, para. 689.

²⁷⁰⁷ See para. 341 above. In any event, it appears that the submissions criticised by the Respondent were filed by Chevron prior to 14 February 2011, meaning that any costs they may have generated have already been determined to fall outside the scope of compensable injury. See **R-1802**, *In re The Application of Chevron Corporation*, D. Mass. Case 3:10-mc-30022-MAP, D.E. 47 Memorandum with Regard to Applications for Discovery, 22 December 2010, p. 4.

California for malicious prosecution”.²⁷⁰⁸ In the Tribunal’s view, the Respondent has not sufficiently informed the Tribunal regarding the particulars of Chevron’s prior suit, or the discovery it might have obtained in those proceedings. The Tribunal is therefore unable to conclude that Chevron’s efforts in each of those actions were duplicative. Accordingly, the Tribunal rejects this argument.

1664. For these reasons, the Tribunal determines that the Claimants should receive compensation for the legal fees and expenses they incurred in connection with the Bonifaz 1782 between 14 February 2011 and 31 May 2011.

1665. To the extent that the legal fees and expenses claimed by the Claimants under this heading may relate to the representation of Mr Veiga and Dr Pérez, they are addressed separately in Section VIII.K below.

6. Calmbacher 1782

1666. *Background.* As described by the Claimants, “Dr. Charles William Calmbacher served as a Judicial Inspection expert for the LAPs in the Lago Agrio Litigation. The LAPs hired him in the summer of 2004 to serve as a Judicial Inspection expert for four sites, although he ultimately only inspected two.”²⁷⁰⁹

1667. On 19 February 2010, Chevron filed an *ex parte* application in the United States District Court for the Northern District of Georgia seeking document discovery and a deposition from Dr Calmbacher.²⁷¹⁰ According to the Claimants, Chevron’s application was based on evidence that two reports filed under Dr Calmbacher’s name asserting a \$27 billion “damage assessment” might have been forged.²⁷¹¹

²⁷⁰⁸ Counter-Memorial, para. 514; **R-1793**, *Chevron Corp. v. Cristóbal Bonifaz* N.D. Cal. Case 4:09-cv-05371-CW, D.E. 70 Order, 8 October 2010.

²⁷⁰⁹ Memorial, Appendix 12, para. 1 (internal citations omitted). *See generally* Memorial, Appendix 12; **C-2837**, Calmbacher 1782 Docket.

²⁷¹⁰ Memorial, Appendix 12, para. 2; **C-2837**, Calmbacher 1782 Docket, ECF No. 1.

²⁷¹¹ Memorial, Appendix 12, para. 3.

1668. The Claimants state that the District Court granted Chevron's application on 2 March 2010.²⁷¹² Dr Calmbacher produced 249 pages of documents on 24 March 2010 and appeared for his deposition on 29 March 2010.²⁷¹³

1669. The Claimants seek USD 373,234.24 as damages corresponding to the legal fees and expenses they allegedly incurred in connection with the Calmbacher 1782 between September 2009 and January 2013.²⁷¹⁴

1670. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable as damages.²⁷¹⁵ As gleaned from the above timeline, all key events in the Calmbacher 1782 took place before 14 February 2011: Chevron's discovery application was granted on 2 March 2010, while all production, as well as Mr Calmbacher's deposition, had taken place by 29 March 2010.

1671. While the Claimants claim compensation for legal fees and expenses incurred until January 2013, the Tribunal is not sufficiently informed as to whether additional discovery took place after 29 March 2010. Thus, the Tribunal is not in a position to determine whether the Claimants' continued pursuit of the Calmbacher 1782 after 14 February 2011 – to the limited extent such pursuit actually took place – was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation.

1672. For these reasons, the Tribunal determines that (i) all legal fees and expenses incurred by the Claimants in connection with the Calmbacher 1782 before 14 February 2011 are not compensable; and (ii) to the extent the Claimants incurred legal fees and expenses in connection with the Calmbacher 1782 after that date, they have failed to establish that by incurring those fees they sought to uncover fraud and corruption in the Lago Agrio Litigation. Accordingly, all legal fees and expenses claimed by the Claimants in connection with the Calmbacher 1782 are excluded from compensation.

²⁷¹² Memorial, Appendix 12, para. 3. *See* C-2837, Calmbacher 1782 Docket, ECF No. 5.

²⁷¹³ Memorial, Appendix 12, p. 6.

²⁷¹⁴ Reply, Updated Appendix 2, pp. 1029-1033.

²⁷¹⁵ *See* para. 1565 above.

7. Champ 1782

1673. *Background.* The Claimants describe Mr Charles W. Champ Sr. as “an environmental consultant located in Asheville, North Carolina who participated in the Cabrera Fraud by authoring portions of [the Cabrera Report] that a supposedly independent court-appointed expert in the Lago Agrio Litigation, Richard Stalin Cabrera Vega, falsely claimed to have drafted.”²⁷¹⁶

1674. On 16 August 2010, Chevron filed an application before the U.S. District Court for the Western District of North Carolina for an order granting leave to serve a subpoena seeking documents and deposition testimony from Mr Champ.²⁷¹⁷ Mr Veiga and Dr Pérez also filed a Section 1782 application seeking discovery from Champ in aid of the then-pending Criminal Proceedings.²⁷¹⁸

1675. Mr Champ filed a response to Chevron’s application.²⁷¹⁹ The Magistrate Judge later granted Chevron’s application on 30 August 2010.²⁷²⁰ Mr Champ filed an appeal to the District Court’s order and a motion to stay,²⁷²¹ both of which were denied.²⁷²²

1676. According to the Claimants, Mr Champ produced 7,744 pages of responsive documents on 1 September, 2 September, and 8 September 2010.²⁷²³ He was deposed by Chevron on 9 and 10 September 2010.²⁷²⁴ The last event recorded by the Claimants in their timeline of the Champ 1782 is a decision issued by the District Court on 30 November 2010 denying Mr Champ’s appeal of the order granting Chevron’s application.²⁷²⁵

²⁷¹⁶ Memorial, Appendix 20, para. 1. *See generally* Memorial, Appendix 20; C-2928, Champ 1782 Docket.

²⁷¹⁷ C-2928, Champ 1782 Docket, ECF No. 1.

²⁷¹⁸ Memorial, Appendix 20, para. 3.

²⁷¹⁹ C-2928, Champ 1782 Docket, ECF No. 20 (24 August 2010).

²⁷²⁰ Memorial, Appendix 20, para. 6; C-2928, Champ 1782 Docket, ECF No. 26.

²⁷²¹ Memorial, Appendix 20, para. 8; C-2928, Champ 1782 Docket, ECF Nos. 27 (30 August 2010), 28 (30 August 2010).

²⁷²² Memorial, Appendix 20, para. 8; C-2928, Champ 1782 Docket, ECF Nos. 32 (31 August 2010); 54 (31 November 2010).

²⁷²³ Memorial, Appendix 20, p. 9.

²⁷²⁴ Memorial, Appendix, p. 9.

²⁷²⁵ Memorial, Appendix 20, p. 10; C-2928, Champ 1782 Docket, ECF No. 54.

1677. The Claimants seek USD 426,543.86 as damages corresponding to the legal fees and expenses they allegedly incurred in connection with the Champ 1782 between July 2010 and November 2014.²⁷²⁶

1678. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable as damages.²⁷²⁷ As gleaned from the above timeline, all key events in the Champ 1782 took place before 14 February 2011: Chevron's discovery application was granted on 30 August 2010, while all production, as well as Mr Champ's deposition, had taken place by 10 September 2010.

1679. The Tribunal has not been informed of further significant developments in the Champ 1782 after 30 November 2010.²⁷²⁸ Thus, the Tribunal is not in a position to determine whether the Claimants' continued pursuit of the Champ 1782 after 14 February 2011 – to the limited extent such pursuit actually took place – was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation.

1680. For these reasons, the Tribunal determines that (i) all legal fees and expenses incurred by the Claimants in connection with the Champ 1782s before 14 February 2011 are not compensable; and (ii) to the extent the Claimants incurred legal fees and expenses in connection with the Champ 1782 after that date, they have failed to establish that by incurring those fees they sought to uncover fraud and corruption in the Lago Agrio Litigation. Accordingly, all legal fees and expenses claimed by the Claimants in connection with the Champ 1782 are excluded from compensation.

²⁷²⁶ Reply, Updated Appendix 2, pp. 1014-1017.

²⁷²⁷ See para. 1565 above.

²⁷²⁸ Memorial, Appendix 20, p. 10; **C-2928**, Champ 1782 Docket, ECF No. 54. The docket sheet for the Champ 1782 records a single event taking place after 30 November 2010, dated 6 May 2015, described as "CLERK'S NOTICE of return to the filing Attorney of the Electronic Exhibit X - CD of excerpts from unreleased footage from the movie CRUDE filed with the Court, Attachment # 4 to Doc. 51 Declaration filed by Chevron Corporation. (ejb)". **C-2928**, Champ 1782 Docket, ECF No. 55. This entry refers to a notice issued by the District Court clerk and is not indicative of any action taken by Chevron in the Champ 1782 at the time.

8. Donziger 1782

1681. *Background.* The Claimants describe Mr Steven Donziger as “the lead U.S. lawyer for the LAPs who resides in New York, [and who] was the mastermind of the fraudulent scheme to procure through corrupt means the Lago Agrio Judgment against Chevron.”²⁷²⁹

1682. On 4 August 2010, Chevron filed a petition with the U.S. District Court for the Southern District of New York seeking the Court’s authorization to issue subpoenas to take discovery from Mr Donziger.²⁷³⁰ Mr Veiga and Dr Pérez also filed a Section 1782 application seeking discovery from Mr Donziger in aid of the then-pending Criminal Proceedings.²⁷³¹

1683. On 6 August 2010, the District Court granted the discovery petitions, subject to Mr Donziger’s right to quash the subpoenas.²⁷³² Mr Donziger, the LAPs, and Ecuador all appeared in the proceeding through counsel.²⁷³³ On 27 August 2010, Mr Donziger and the LAPs filed separate motions to quash the subpoenas.²⁷³⁴ These motions to quash were denied by the District Court on 20 October 2010, at which point the Court also appointed a Special Master to supervise Mr Donziger’s deposition and to issue preliminary rulings on any objections during the course of the deposition.²⁷³⁵ After the filing of additional motions (regarding, in particular, Mr Donziger’s assertions of privilege), an oral hearing and an appeal on the order of the District Court by Mr Donziger and the LAPs, on 30 November 2010 the District Court ordered Mr Donziger to produce all documents responsive to the subpoenas regardless of any claimed privilege, while the Second Circuit affirmed in full the orders of the District Court on 12 December 2010.²⁷³⁶

²⁷²⁹ Memorial, Appendix 21, para. 1. *See generally* Memorial, Appendix 21; **C-3027**, Donziger 1782 Docket.

²⁷³⁰ Memorial, Appendix 21, para. 3.

²⁷³¹ Memorial, Appendix 21, para. 3.

²⁷³² Memorial, Appendix 21, para. 3; **C-3027**, Donziger 1782 Docket, ECF No. 2.

²⁷³³ Memorial, Appendix 21, para. 6. *See also* **C-3027**, Donziger 1782 Docket, pp. 1-5.

²⁷³⁴ Memorial, Appendix 21, para. 6; **C-3027**, Donziger 1782 Docket, ECF Nos. 23, 27.

²⁷³⁵ Memorial, Appendix 21, para. 9; **C-3027**, Donziger 1782 Docket, ECF No. 86.

²⁷³⁶ Memorial, Appendix 21, paras. 10-13; **C-3027**, Donziger 1782 Docket, ECF Nos. 88 (25 October 2010), 105 (17 November 2010), 113 (19 November 2010), 124 (30 November 2010); **C-3029**, *Lago Agrio Plaintiffs v. Chevron Corp.*, 409 F. App’x 393 (2d Cir. 2010), p. 395.

1684. Earlier, on 19 November 2010, Ecuador had filed a Notice of Appearance in the District Court, but the District Court denied it as untimely.²⁷³⁷

1685. According to the Claimants, Mr Donziger was deposed on 29 November 2010, 1 December 2010, 8 December 2010, 10 December 2010, 13 December 2010, 22 December 2010, 23 December 2010, 29 December 2010, 8 January 2011, 14 January 2011, 15 January 2011, 18 January 2011, 19 January 2011, 29 January 2011, 31 January 2011, 23 March 2011, and 19 July 2011.²⁷³⁸

1686. On 10 January 2011, Chevron filed a motion for an order to show cause to hold Mr Donziger in contempt for failing to produce all responsive documents, leading the District Court to issue further document production orders.²⁷³⁹ On 29 August 2011, Chevron filed a supplemental memorandum of law in further support of its application to hold Mr Donziger in contempt for failing to produce all responsive documents in his control, including documents in the possession of Mr Andrew Woods, Ms Laura Garr, and Mr Joseph Kohn.²⁷⁴⁰ Eventually, on 8 May and 22 May 2013, the District Court signed stipulations submitted by parties including Chevron, Mr Donziger, Ms Garr, and Mr John that allowed Chevron to review certain documents in the possession of Ms Garr, Mr Kohn, and Mr Kohn's law firm.²⁷⁴¹

1687. The Claimants seek USD 11,824,059.31 and USD 719.04 corresponding, respectively, to the legal fees and expenses they allegedly incurred in connection with the Donziger 1782 between November 2009 and March 2018.²⁷⁴²

²⁷³⁷ Memorial, Appendix 21, para. 12; **C-3027**, Donziger 1782 Docket, ECF Nos. 113 (19 November 2010), 123 (29 November 2010).

²⁷³⁸ Memorial, Appendix 21, pp. 16-19.

²⁷³⁹ Memorial, Appendix 21, para. 15; **C-3027**, Donziger 1782 Docket, ECF Nos. 147 (10 January 2011), 161 (13 January 2010).

²⁷⁴⁰ Memorial, Appendix 21, para. 16; **C-3027**, Donziger 1782 Docket, ECF No. 204.

²⁷⁴¹ Memorial, Appendix 21, para. 16; **C-3027**, Donziger 1782 Docket, ECF Nos. 208, 211.

²⁷⁴² Reply, Updated Appendix 2, p. 784-805.

1688. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent’s Treaty breaches and therefore is non-compensable as damages.²⁷⁴³

1689. Furthermore, as gleaned from the above timeline, all key events in the Donziger 1782 had taken place by May 2013, by which date Chevron gained access to documents in the possession of Ms Garr, Mr Kohn, and Mr Kohn’s law firm. The Claimants have failed to explain why they incurred legal fees and expenses after that date and ending in March 2018. The Tribunal is prepared to grant compensation for work performed until 31 July 2013 on account of the need for Chevron to review and analyse the discovery obtained in the Donziger 1782, but has otherwise not been provided with sufficient elements to assess whether any fees and expenses incurred after that date fulfil the requirements for the compensation of incidental damages under international law.²⁷⁴⁴ Accordingly, the Tribunal excludes from compensation all legal fees and expenses incurred by the Claimants after 31 July 2013.

1690. Otherwise, the Tribunal considers that all fees incurred by the Claimants between 14 February 2011 and 31 July 2013 in connection with the Donziger 1782 are compensable in this Arbitration. The Tribunal has determined in paragraph 1578 above that by 14 February 2011 the Claimants were in possession of *prima facie* evidence signalling that seeking discovery from the LAPs’ then-current and former U.S.-based counsel – including, in particular, Mr Donziger – was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. It was thus reasonable for the Claimants to continue to seek discovery from Mr Donziger as a way of obtaining evidence that could be instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment.²⁷⁴⁵

²⁷⁴³ See para. 1565 above.

²⁷⁴⁴ The docket sheet for the Donziger 1782 records only two events taking place after May 2013, described as “C ORDER terminating 78 Motion (HEREBY ORDERED by Judge Lewis A. Kaplan)” and “ORDER terminating 144 Motion to Appear Pro Hac Vice (HEREBY ORDERED by Judge Lewis A. Kaplan)”, both dated 8 November 2015. C-3027, Donziger 1782 Docket, ECF Nos. 212-213. These entries refer to orders issued by the District Court and are not indicative of any action taken by Chevron in the Donziger 1782 at the time.

²⁷⁴⁵ See para. 1573 above.

1691. For these reasons, the Tribunal determines that the Claimants should receive compensation for the legal fees and expenses they incurred in connection with the Donziger 1782 between 14 February 2011 and 31 July 2013.

9. E-Tech/Kamp 1782

1692. *Background.* The Claimants describe Mr Richard Kamp as the director of E-Tech.²⁷⁴⁶ As already explained,²⁷⁴⁷ the Claimants state that

E-Tech and Kamp were hired by the LAPs' counsel to assist them in developing their claims of alleged environmental contamination in the Lago Agrio Litigation. E-Tech sampled groundwater, soil, and surface water for the LAPs ostensibly to determine the extent, if any, of environmental contamination and calculate the cost of remediating any alleged environmental damage. Cabrera undertook to conduct nearly identical sampling as part of his inspection process, and Chevron suspected E-Tech was secretly sharing its data or analysis, or both, with Cabrera."²⁷⁴⁸

1693. On 16 August 2010, Chevron filed a discovery application before the U.S. District Court for the District of New Mexico for an order granting leave to serve subpoenas on E-Tech and Mr Kamp, seeking the deposition testimony of Mr Kamp and the production of documents related to the work E-Tech performed for the LAPs, E-Tech's contributions to the Cabrera Reports, and communications between E-Tech and Mr Cabrera.²⁷⁴⁹

1694. On 20 August 2010, the Magistrate Judge entered an order to show cause why the subpoenas should not be issued.²⁷⁵⁰ On 25 August 2010, the LAPs, whose counsel also purported to represent E-Tech and Mr Kamp according to the Claimants, opposed the subpoenas.²⁷⁵¹ On 1 September 2010 (as amended on 2 September 2010), the Magistrate

²⁷⁴⁶ Memorial, Appendix 17, para. 1. *See generally* Memorial, Appendix 17; **C-2813**, E-Tech/Kamp 1782 Docket.

²⁷⁴⁷ Regarding E-Tech and Mr Powers, *see* para. 1702 below.

²⁷⁴⁸ Memorial, Appendix 17, para. 1.

²⁷⁴⁹ Memorial, Appendix 17, paras. 3, 5; **C-2813**, E-Tech/Kamp 1782 Docket, ECF Nos. 2, 17.

²⁷⁵⁰ Memorial, Appendix 17, para. 8. *See* **C-2813**, E-Tech/Kamp 1782 Docket, ECF No. 50.

²⁷⁵¹ Memorial, Appendix 17, para. 8. *See* **C-2813**, E-Tech/Kamp 1782 Docket, ECF No. 60. The Claimants explain that Chevron had instituted a separate 1782 against E-Tech in the U.S. District Court for the Southern District of California, to which E-Tech, a New Mexico company, objected to on jurisdictional grounds. Memorial, Appendix 17, fn 10; **C-2811**, E-Tech/Powers 1782 Docket, ECF No. 1 (27 May 2010).

Judge granted the application to issue, subpoenas and ordered E-Tech and Mr Kamp to respond.²⁷⁵²

1695. Eventually, following the LAPs and E-Tech's objections to the Magistrate Judge's on 13 September 2010 the District Court ordered the discovery of non-privileged documents and, on the same day, the Magistrate Judge conducted an in-camera review of these purportedly privileged documents and confirmed that none of them were afforded that protection.²⁷⁵³

1696. According to the Claimants, Mr Kamp was deposed on 7 October 2010 and 8 October 2010. E-Tech and Kamp produced jointly 2,252 pages of documents.²⁷⁵⁴

1697. On 10 December 2010, the District Court closed and dismissed the case.²⁷⁵⁵

1698. The Claimants seek USD 922,519.21 as damages corresponding to the legal fees and expenses they allegedly incurred in connection with the E-Tech/Kamp 1782 between June 2010 and January 2012.²⁷⁵⁶

1699. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable as damages.²⁷⁵⁷ As gleaned from the above timeline, all key events in the E-Tech/Kamp 1782 took place before 14 February 2011, as the District Court dismissed the case on 10 December 2010.

1700. The Tribunal has not been informed of further developments in the E-Tech/Kamp 1782 after 10 December 2010.²⁷⁵⁸ The Claimants have failed to explain why they incurred legal fees and expenses after that date.

²⁷⁵² Memorial, Appendix 17, para. 9; **C-2813**, E-Tech/Kamp 1782 Docket, ECF Nos. 76 (1 September 2010), 77 (2 September 2010).

²⁷⁵³ Memorial, Appendix 17, paras. 10-11; **C-2813**, E-Tech/Kamp 1782 Docket, ECF Nos. 78 (7 September 2010), 80 (8 September 2010), 84 (10 September 2010), 173-174 (13 September 2010).

²⁷⁵⁴ Memorial, Appendix 17, para. 12.

²⁷⁵⁵ Memorial, Appendix 17, para. 12; **C-2813**, E-Tech/Kamp 1782 Docket, ECF No. 200.

²⁷⁵⁶ Reply, Updated Appendix 2, pp. 960-963.

²⁷⁵⁷ See para. 1565 above.

²⁷⁵⁸ Memorial, Appendix 17, p. 11.

1701. For these reasons, the Tribunal determines that (i) all legal fees and expenses incurred by the Claimants in connection with the E-Tech/Kamp 1782 before 14 February 2011 are not compensable; and (ii) to the extent the Claimants incurred legal fees and expenses in connection with the E-Tech/Kamp 1782 after that date, they have failed to establish that by incurring those fees they sought to uncover fraud and corruption in the Lago Agrio Litigation. This is considering that the District Court had dismissed the case already on 10 December 2010. Accordingly, all legal fees and expenses claimed by the Claimants in connection with the E-Tech/Kamp 1782 are excluded from compensation.

10. E-Tech/Powers 1782

1702. *Background.* The Claimants describe E-Tech and Mr William Powers as “an environmental consulting firm and its chief engineer, respectively.”²⁷⁵⁹ According to the Claimants,

E-Tech and Powers were hired by the LAPs’ counsel to assist them in developing their claims of alleged environmental contamination in the Lago Agrio Litigation. E-Tech sampled groundwater, soil, and surface water for the LAPs ostensibly to determine the extent, if any, of environmental contamination and calculate the cost of remediating any alleged environmental damage. Cabrera undertook to conduct nearly identical sampling as part of his inspection process, and Chevron suspected E-Tech was secretly sharing its false data or analysis, or both, with Cabrera.²⁷⁶⁰

1703. On 27 May 2010, Chevron filed a discovery application before the U.S. District Court for the Southern District of California, seeking an order granting leave to serve subpoenas on E-Tech and Mr Powers.²⁷⁶¹ On 26 June 2010, E-Tech and Mr Powers moved to quash the subpoenas.²⁷⁶² The Parties filed several more motions.²⁷⁶³ On 20 July 2020, Chevron also

²⁷⁵⁹ Memorial, Appendix 16, para. 1. *See generally* Memorial, Appendix 16; **C-2811**, E-Tech/Powers 1782 Docket; **C-2812**, *Chevron Corporation v. E-Tech International*, Civil Docket No. 10-56410, 9th Circuit Court of Appeals.

²⁷⁶⁰ Memorial, Appendix 16, para. 1.

²⁷⁶¹ Memorial, Appendix 16, para. 4; **C-2811**, E-Tech/Powers 1782 Docket, ECF No. 1.

²⁷⁶² Memorial, Appendix 16, para. 7; **C-2811**, E-Tech/Powers 1782 Docket, ECF No. 18 (26 June 2010).

²⁷⁶³ *See C-2811*, E-Tech/Powers 1782 Docket, ECF Nos. 20 (30 June 2010), 21 (6 July 2010).

filed a motion to supplement the record with discovery obtained in the Stratus 1782,²⁷⁶⁴ to which E-Tech and Mr Powers objected.²⁷⁶⁵

1704. On 27 August 2010 and 2 September 2010, the District Court held hearings and ordered that Mr Powers produce written discovery and be deposed.²⁷⁶⁶ On 2 September 2010, the LAPs also filed an emergency motion to stay the Magistrate Judge's order.²⁷⁶⁷ On the same day, the District Court ordered the stay of the discovery until 7 September 2010, on which date it lifted the stay.²⁷⁶⁸ On that same date, Chevron voluntarily dismissed E-Tech from the proceeding.²⁷⁶⁹ The proceedings continued until 4 April 2012, when Chevron and Mr Powers filed a joint motion to dismiss.²⁷⁷⁰ The District Court dismissed the action with prejudice on 6 April 2012.²⁷⁷¹

1705. According to the Claimants, Mr Powers produced documents at least on 21 September 2011, 27 September 2011, and 15 February 2012.²⁷⁷² He was also deposed in September 2010.²⁷⁷³

1706. The Claimants seek USD 513,443.31 as damages corresponding to the legal fees and expenses they allegedly incurred in connection with the E-Tech/Powers 1782 between October 2009 and March 2014.²⁷⁷⁴

²⁷⁶⁴ Memorial, Appendix 16, p. 9; **C-2811**, E-Tech/Powers 1782 Docket, ECF No. 23.

²⁷⁶⁵ Memorial, Appendix 16, p. 9; **C-2811**, E-Tech/Powers 1782 Docket, ECF Nos. 24 (22 July 2010) 27 (5 August 2010). *See also* **C-2811**, E-Tech/Powers 1782 Docket, ECF Nos. 28 (9 August 2010), 30 (12 August 2010).

²⁷⁶⁶ Memorial, para. 9. *See* **C-2811**, E-Tech/Powers 1782 Docket, ECF Nos. 45, 54-55.

²⁷⁶⁷ Memorial, para. 10; **C-2811**, E-Tech/Powers 1782 Docket, ECF No. 43.

²⁷⁶⁸ Memorial, Appendix 16, paras. 10-11, **C-2811**, E-Tech/Powers 1782 Docket, ECF Nos. 44, 58, Between 2 and 7 September 2011, Chevron filed an Emergency Motion to lift the stay, which was denied, and E-Tech and Mr Powers requested an extension of the stay, which a Magistrate Judge granted on 7 September before lifting the stay on the same date. **C-2811**, E-Tech/Powers 1782 Docket, ECF Nos. 50, 55-56, 58.

²⁷⁶⁹ Memorial, Appendix 16, p. 11; **C-2811**, *In re: Application of Chevron Corporation*, Civil Docket No. 3:10-CV-01146-IEG-WMC (S.D. Cal.), ECF No. 61.

²⁷⁷⁰ Memorial, Appendix 16, p. 13; **C-2811**, *In re: Application of Chevron Corporation*, Civil Docket No. 3:10-CV-01146-IEG-WMC (S.D. Cal.), ECF No. 125.

²⁷⁷¹ Memorial, Appendix 16, p. 13; **C-2811**, *In re: Application of Chevron Corporation*, Civil Docket No. 3:10-CV-01146-IEG-WMC (S.D. Cal.), ECF No. 126.

²⁷⁷² Memorial, Appendix 16, pp. 12-13.

²⁷⁷³ Memorial, Appendix 16, pp. 11-12.

²⁷⁷⁴ Reply, Updated Appendix 2, pp. 1000-1007.

1707. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable as damages.²⁷⁷⁵

1708. Furthermore, as gleaned from the above timeline, all key events in the E-Tech/Powers 1782 had taken place by 6 April 2012, when the District Court dismissed Chevron's discovery action with prejudice. The Claimants have failed to explain why they incurred legal fees and expenses after that date and ending in March 2014. The Tribunal is prepared to grant compensation for work performed until 30 April 2012 on account of the need for Chevron to perform closing tasks after the action was dismissed, but has otherwise not been provided with sufficient elements to assess whether any fees and expenses incurred after that date fulfil the requirements for the compensation of incidental damages under international law. Accordingly, the Tribunal excludes from compensation all legal fees and expenses incurred by the Claimants after 30 April 2012.

1709. Otherwise, the Tribunal considers that all fees incurred by the Claimants between 14 February 2011 and 30 April 2012 in connection with the E-Tech/Powers 1782 are compensable in this Arbitration. The Tribunal has determined in paragraph 1582 above that seeking discovery from Stratus Consulting, as well any scientist or environmental consultant connected with that group (including Mr Powers), was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. It was thus reasonable for the Claimants to continue to seek discovery from Mr Powers after 14 February 2011 as a way of obtaining evidence that could be instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment.²⁷⁷⁶

1710. For these reasons, the Tribunal determines that the Claimants should receive compensation for the legal fees and expenses they incurred in connection with the E-Tech/Powers 1782 between 14 February 2011 and 30 April 2012.

²⁷⁷⁵ See para. 1565 above.

²⁷⁷⁶ See para. 1573 above.

11. Kohn & MCSquared 1782s

1711. As previously noted by the Tribunal, the Claimants withdrew their claim for damages in respect to the Kohn and MCSquared 1782 applications.²⁷⁷⁷ Consequently, the Tribunal will not address these actions any further.²⁷⁷⁸

12. Netflix 1782

1712. *Background.* According to the Claimants, Netflix, “through its Red Envelope Entertainment production label, produced the movie *Crude: The Real Price of Oil*. *Crude* was a purported documentary that followed two years of the litigation against Chevron, then pending in the Provincial Court of Justice of Sucumbíos in Lago Agrio, Ecuador”.²⁷⁷⁹

1713. On 9 April 2010, Chevron filed an application before the U.S. District Court for the Northern District of California seeking an order permitting Chevron to issue a subpoena for the production of documents and testimony from Netflix.²⁷⁸⁰

1714. According to Chevron, while the Netflix 1782 was pending, the Berlinger 1782 was granted.²⁷⁸¹ Chevron believed that Mr Berlinger was likely in possession, custody and control of the entirety of the required information, and as a result voluntarily dismissed the Netflix Section 1782 on 19 May 2010.²⁷⁸²

1715. The Claimants seek a total of USD 43,655.90 corresponding to the legal fees and expenses they allegedly incurred in connection with the Netflix 1782 between December 2009 and November 2012.²⁷⁸³

1716. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the

²⁷⁷⁷ Reply, fn 1063.

²⁷⁷⁸ The Tribunal has noted and dealt with the Respondent’s assertion that work related to the Kohn and MCSquared 1782s remains claimed in its analysis of General 1782 Work in paragraphs 1603-1607 above.

²⁷⁷⁹ Memorial, Appendix 15, para. 1. *See generally* Memorial, Appendix 15; **C-2810**, Netflix 1782 Docket.

²⁷⁸⁰ Memorial, Appendix 15, para. 1; **C-2810**, Netflix 1782 Docket, ECF No. 1.

²⁷⁸¹ Memorial, Appendix 15, para. 10.

²⁷⁸² Memorial, Appendix 15, para. 10; **C-2810**, Netflix 1782 Docket, ECF No. 8.

²⁷⁸³ Reply, Updated Appendix 2, pp. 1056-1057.

Respondent's Treaty breaches and therefore is non-compensable as damages.²⁷⁸⁴ As gleaned from the above timeline, all key events in the Netflix 1782 took place before 14 February 2011: Chevron dismissed this action on 19 May 2010.²⁷⁸⁵

1717. The Tribunal has not been informed of further developments in the Netflix 1782 after 19 May 2010.²⁷⁸⁶ The Claimants have failed to explain why they incurred legal fees and expenses after that date.

1718. For these reasons, the Tribunal determines that (i) all legal fees and expenses incurred by the Claimants in connection with the Netflix 1782s before 14 February 2011 are not compensable; and (ii) to the extent the Claimants incurred legal fees and expenses in connection with the Netflix 1782 after that date, they have failed to establish that by incurring those fees they sought to uncover fraud and corruption in the Lago Agrio Litigation. As noted in the preceding paragraph, the Netflix 1782 was dismissed on 19 May 2010. Accordingly, all legal fees and expenses claimed by the Claimants in connection with the Netflix 1782 are excluded from compensation.

13. Page 1782

1719. *Background.* The Claimants describe Mr Aaron Marr Page as

an attorney who played a central role in the LAPs' fraudulent scheme. Page started working with the LAPs and Steven Donziger in 2005, while he was still in law school. Over the past fourteen years, Page has become one of Donziger's staunchest supporters and continues to help Donziger's efforts to pursue the fraudulent Ecuadorian judgment.²⁷⁸⁷

1720. On 1 November 2011, Chevron filed an application before the U.S. District Court for the District of Maryland seeking an order to subpoena Mr Page for discovery for use in the Lago Agrio Litigation and this Arbitration.²⁷⁸⁸

²⁷⁸⁴ See para. 1565 above.

²⁷⁸⁵ Memorial, Appendix 15, para. 10; **C-2810**, Netflix 1782 Docket, ECF No. 8.

²⁷⁸⁶ Memorial, Appendix 20, p. 10.

²⁷⁸⁷ Memorial, Appendix 24, para. 1. See generally Memorial, Appendix 24; **C-2933**, Page 1782 Docket; **C-3102**, Page and Fisher Page 1782 Docket; **C-3103**, Page and Fisher Page 1782 Court of Appeals Docket; **C-3104**, Page 1782 Court of Appeals Docket.

²⁷⁸⁸ Memorial, Appendix 24, para. 2. See **C-2933**, ECF No. 1.

1721. This action proceeded in parallel with the RICO Litigation pending in New York, where Chevron also sought discovery from Mr Page.²⁷⁸⁹ Among other things, on 15 July 2011 Chevron requested the District Court of Maryland to order Mr Page to comply with the subpoena issued in the RICO Litigation.²⁷⁹⁰ Mr Page produced responsive documents on 2 September 2011, but the Court ordered Chevron to return those documents on 14 December 2011 following the Second Circuit’s stay of proceedings in a severed portion of the RICO Litigation.²⁷⁹¹ On 28 February 2013, the District Court ordered Mr Page to re-produce those same documents, following which Mr Page appealed that decision to the Fourth Circuit.²⁷⁹²

1722. Earlier, on 25 January 2013, the District Court held a hearing on the Page 1782 application.²⁷⁹³ The Court ordered the parties to submit by 4 February 2013 their positions on the scope of Chevron’s subpoena and for Mr Page to testify at a deposition.²⁷⁹⁴

1723. The Page 1782 proceedings continued between January 2013 and May 2015.²⁷⁹⁵ Mr Page was deposed on 15 September 2011 in the RICO Litigation and on 23 August 2013 in the Page 1782.²⁷⁹⁶ According to the Claimants, Mr Page produced documents on a rolling basis until June 2013. Thereafter, “Chevron discovered through forensic examination that Page’s production failed to include thousands of responsive emails sent to or received from Page that were produced by Donziger”²⁷⁹⁷ and “sought to engage Page to rectify the deficiencies in his production”, including by moving to compel the production of his hard drive.²⁷⁹⁸ The Claimants state that a District Court-appointed forensic expert (FTI) produced Mr Page’s responsive documents in November 2014 and that the “production

²⁷⁸⁹ Memorial, Appendix 24, para. 3.

²⁷⁹⁰ Memorial, Appendix 24, para. 3; **C-3102**, Page and Fisher Page 1782 Docket, ECF No. 1.

²⁷⁹¹ Memorial, Appendix 24, para. 3; **C-3102**, Page and Fisher Page 1782 Docket, ECF Nos. 42, 43 (14 December 2011).

²⁷⁹² Memorial, Appendix 24, para. 3; **C-3102**, Page and Fisher Page 1782 Docket, ECF No. 50; **C-3103**, Page and Fisher Page 1782 Court of Appeals Docket, ECF Nos. 1-3 (20 August 2013).

²⁷⁹³ Memorial, Appendix 24, para. 2; **C-2933**, Page 1782 Docket, ECF No. 54.

²⁷⁹⁴ Memorial, Appendix 24, para. 2; **C-2933**, Page 1782 Docket, ECF No. 51.

²⁷⁹⁵ See Memorial, Appendix 24, pp. 9-17.

²⁷⁹⁶ Memorial, Appendix 24, paras. 9-10.

²⁷⁹⁷ Memorial, Appendix 24, para. 6.

²⁷⁹⁸ Memorial, Appendix 24, para. 7.

led to Page making [an] additional attempt to narrow his production, including a motion to claw back certain documents and a motion for clarification.”²⁷⁹⁹

1724. The last event recorded by the Claimants in their timeline of the Page 1782 is an order issued on 20 May 2015 by the District Court of Maryland granting in part a motion from Mr Page to claw back documents, as well as “Chevron’s motion for an order directing FTI to produce document families.”²⁸⁰⁰

1725. In turn, the last event recorded in the docket sheet for the Page 1782 is a letter/order issued by the District Court on 15 December 2015 “regarding review of ‘family member’ documents and directing FTI to disclose the listed documents.”²⁸⁰¹

1726. The Claimants seek USD 2,764,491.17 and USD 342,017.76 corresponding, respectively, to the legal fees and expenses they allegedly incurred in connection with the Page 1782 between August 2010 and April 2016.²⁸⁰²

1727. *Analysis and decision.* At the outset, the Tribunal observes that the entirety of the Page 1782 proceedings took place after 14 February 2011, which, as explained above, is the critical date for the compensation of incidental damages in this Arbitration.²⁸⁰³ However, some preparatory work appears to have taken place before that date, starting in August 2010.²⁸⁰⁴ As already determined by the Tribunal, all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent’s Treaty breaches and therefore is non-compensable.²⁸⁰⁵

1728. Furthermore, as gleaned from the above timeline, all key events in the Page 1782 had taken place by 15 December 2015.²⁸⁰⁶ The Claimants have failed to explain why they incurred legal fees and expenses after that date and ending in April 2016. The Tribunal is

²⁷⁹⁹ Memorial, Appendix 24, para. 8, p. 15.

²⁸⁰⁰ Memorial, Appendix 24, p. 17; **C-2933**, Page 1782 Docket, ECF No. 171.

²⁸⁰¹ **C-2933**, Page 1782 Docket, ECF No. 181.

²⁸⁰² Reply, Updated Appendix 2, pp. 841-854.

²⁸⁰³ See para. 1565 above.

²⁸⁰⁴ Reply, Updated Appendix 2, p. 841.

²⁸⁰⁵ See para. 1565 above.

²⁸⁰⁶ **C-2933**, Page 1782 Docket, ECF No. 181.

prepared to grant compensation for work performed until 28 February 2016 as a reasonable approximation to the date by which Chevron's review should have been completed after FTI produced documents further to the District Court's 15 December 2015 order, but has otherwise not been provided with sufficient elements to assess whether any fees and expenses incurred after that date fulfil the requirements for the compensation of incidental damages under international law. Accordingly, the Tribunal excludes from compensation all legal fees and expenses incurred by the Claimants after 28 February 2016.

1729. Otherwise, the Tribunal considers that all fees incurred by the Claimants between 14 February 2011 and 28 February 2016 in connection with the Page 1782 are compensable in this Arbitration. As explained in paragraph 1578 above, by 14 February 2011 the Claimants were in possession of *prima facie* evidence signalling that seeking discovery from the LAPs' then-current and former U.S.-based counsel, including Mr Page, was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. It was therefore reasonable for the Claimants to pursue the Page 1782 as a way of obtaining evidence that could be instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment.²⁸⁰⁷

1730. Lastly, the Tribunal has taken note of the Respondent's argument that the Page 1782 was duplicative of a parallel discovery action in the RICO Litigation and of the Donziger 1782. In particular, the Respondent argues that "the discovery that Chevron sought from Page was substantially similar, if not identical, to the discovery that Chevron had already obtained from Donziger, who had been Page's boss on the Lago Agrio Litigation team."²⁸⁰⁸ The Tribunal rejects these arguments: as noted above, the Tribunal is inclined to grant a certain level of deference to the Claimants' decisions as to which Affirmative 1782s to initiate and when to stop pursuing them, particularly in circumstances where the Claimants could not anticipate precisely what evidence their discovery efforts would yield in each proceeding.²⁸⁰⁹

²⁸⁰⁷ See para. 1573 above.

²⁸⁰⁸ Counter-Memorial, para. 512.

²⁸⁰⁹ See para. 1571 above.

1731. For these reasons, the Tribunal determines that the Claimants shall receive compensation for the legal fees and expenses they incurred in connection with the Page 1782 between 14 February 2011 and 28 February 2016.

14. Quarles 1782

1732. *Background.* The Claimants describe Mr Mark Quarles as “a participant in the Cabrera Fraud who had also acted as an expert for Ecuador in a related U.S. proceeding on the issue of Cabrera’s purported ‘independence.’”²⁸¹⁰

1733. On 16 July 2010, Chevron filed an application before the U.S. District Court for the Middle District of Tennessee to obtain discovery from Mr Quarles.²⁸¹¹ On 16 August 2010, over Mr Quarles’ and the LAPs’ objections, the District Court granted Chevron’s application authorising, on an expedited basis, the requested discovery of documents and the service of deposition subpoenas.²⁸¹² The proceedings continued through 12 October 2010, when, according to the Claimants, Chevron completed its deposition of Mr Quarles.²⁸¹³

1734. The Claimants seek a total of USD 506,544.96 corresponding to the legal fees and expenses they allegedly incurred in connection with the Quarles 1782 between November 2009 and May 2011.²⁸¹⁴

1735. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent’s Treaty breaches and therefore is non-compensable as damages.²⁸¹⁵ As gleaned from the above timeline, all key events in the Quarles 1782 took place before 14 February 2011: Chevron completed its deposition of Mr Quarles on 12 October 2010.

²⁸¹⁰ Memorial, Appendix 19, para. 1. *See generally* Memorial, Appendix 19; **C-2926**, Quarles 1782 Docket; **C-2927**, Quarles 1782 Court of Appeals Docket.

²⁸¹¹ Memorial, Appendix 19, para. 1; **Exhibit C-2926**, Quarles 1782 Docket, ECF No. 1.

²⁸¹² Memorial, Appendix 19, para. 2; **Exhibit C-2926**, Quarles 1782 Docket, ECF No. 56.

²⁸¹³ Memorial, Appendix 19, p. 11; **Exhibit C-2926**, Quarles 1782 Docket, ECF Nos. 113 (30 September 2010); 114 (8 October 2010).

²⁸¹⁴ Reply, Updated Appendix 2, pp. 1009-1012.

²⁸¹⁵ *See* para. 1565 above.

1736. The Tribunal has not been informed of further developments in the Quarles 1782 after 12 October 2010.²⁸¹⁶ The Claimants have failed to explain why they incurred legal fees and expenses after that date.

1737. For these reasons, the Tribunal determines that (i) all legal fees and expenses incurred by the Claimants in connection with the Quarles 1782s before 14 February 2011 are not compensable; and (ii) to the extent the Claimants incurred legal fees and expenses in connection with the Quarles 1782 after that date, they have failed to establish that by incurring those fees they sought to uncover fraud and corruption in the Lago Agrio Litigation. Accordingly, all legal fees and expenses claimed by the Claimants in connection with the Quarles 1782 are excluded from compensation.

15. Rourke and Picone 1782s

1738. *Background.* According to the Claimants, Mr Daniel Rourke

served as a testifying expert and signed two expert reports in the Lago Agrio Litigation, which alleged that the oil exploration and production activities in the former Concession area caused an increase in cancer deaths in certain provinces in Ecuador. Rourke also opined that Chevron should be liable for damages in the amount of \$69.7 billion.²⁸¹⁷

1739. In turn, the Claimants describe Mr Carlos Picone as

a medical doctor based in Chevy Chase, Maryland. He proffered an opinion in the Lago Agrio Litigation about the cost of delivering health care to the residents of the former Concession area, concluding that the region's medical needs 'can be tied back to the long-standing environmental damages caused by Texaco's oil exploitation' and that '[d]eforestation due to the oil exploration has impacted the ability of people in the Concession to obtain their traditional medical treatment.' Chevron alleged that Picone '[did] not say why he [thought] Texaco [was] guilty of 'exploitation' or how oil exploration has led to deforestation or a need for health care.' Rather, he assumed the facts set forth in the Cabrera Report to be true, and by relying on his opinion, the LAPs were 'perpetuat[ing] the fraud by placing distance between the assumed facts and their fraudulent origin.'²⁸¹⁸

²⁸¹⁶ Memorial, Appendix 19, p. 11. The last event recorded in the docket sheet for the Quarles 1782 is dated 2 August 2011, described as "ORDER: Respondent and Interest[e] Parties' 67 Motion for Review of the Magistrate Judge's Order Granting Chevron Corporation's Application is DENIED AS MOOT. The discovery at issue in Quarles' motion has already occurred, and no appeal is currently pending. Signed by Senior Judge John T. Nixon on 8/2/11." The Motion for Review referred to was filed on 23 August 2010. No actions were taken by Chevron after 14 February 2011 in the Quarles 1782 Docket. See C-2926, Quarles 1782 Docket, p. 10.

²⁸¹⁷ Memorial, Appendix 32, para. 3. See generally Memorial, Appendix 32; C-2908, Rourke 1782 Docket.

²⁸¹⁸ Memorial, Appendix 32, para. 4. See generally Memorial, Appendix 32; C-2907, Picone 1782 Docket.

1740. On 22 October 2010, Chevron filed applications before the U.S. District Court for the District of Maryland for an order granting leave to serve a subpoena seeking documents and deposition testimony from Mr Rourke and Mr Picone.²⁸¹⁹ On 16 November 2010, Mr Rourke and Mr Picone filed responses in opposition to Chevron’s applications.²⁸²⁰ After further briefing and a hearing, on 24 November 2010 the District Court granted Chevron’s applications.²⁸²¹

1741. According to the Claimants, on 1 December 2010 Mr Picone produced approximately 6,400 pages of documents, followed by Mr Rourke on 4 December 2010, who provided approximately 800 pages.²⁸²² However, “many documents were withheld and logged on a privilege log”.²⁸²³ On 10 December 2010, Chevron filed a motion to compel production of all the documents listed in the privilege logs.²⁸²⁴ On 14 December 2010, Mr Picone produced the documents he had withheld; Chevron thus notified the court that its motion was moot as to Picone, but remained pending as to Rourke.²⁸²⁵

1742. On 15 December 2010, Mr Rourke filed a cross-motion for a protective order.²⁸²⁶ Eventually, on 3 March 2011 the District Court entered an order granting in part Chevron’s motion to compel and granting in part Mr Rourke’s motion for a protective order, which, *inter alia*, limited the use of the discovery to the Section 1782 action and related Section 1782 Proceedings, the Lago Agrio Litigation, and this Arbitration.²⁸²⁷

²⁸¹⁹ Memorial, Appendix 31, para. 1, p. 8.

²⁸²⁰ Memorial, Appendix 31, p. 8; **C-2907**, Picone 1782 Docket, ECF No. 18; **C-2908**, Rourke 1782 Docket, ECF No. 24.

²⁸²¹ Memorial, Appendix 31, p. 8; **C-2907**, ECF Nos. 20 (19 November 2010), 32 (23 November 2010), 28 (24 November 2011); **C-2908**, Rourke 1782 Docket, ECF Nos. 24 (16 November 2010), 26 (19 November 2010), 34 (24 November 2010), 39 (6 December 2010)..

²⁸²² Memorial, Appendix 32, para. 6.

²⁸²³ Memorial, Appendix 32, para. 6.

²⁸²⁴ Memorial, Appendix 32, para. 7; **C-2907**, Picone 1782 Docket, ECF No. 35; **C-2908**, Rourke 1782 Docket, ECF No. 42.

²⁸²⁵ Memorial, Appendix 32, para. 8.

²⁸²⁶ Memorial, Appendix 32, para. 10, p. 10; **C-2908**, Rourke 1782 Docket, ECF No. 46.

²⁸²⁷ Memorial, Appendix 32, p. 11; **C-2908**, Rourke 1782 Docket, ECF Nos. 61-63 (3 March 2010), 65 (10 March 2010).

1743. The Claimants state that Chevron took Mr Picone's deposition on 16 December 2010.²⁸²⁸

Mr Rourke provided deposition testimony on 20 December 2010 and 21 April 2011.²⁸²⁹

Following completion of the discovery, Chevron filed an unopposed motion to close the Rourke 1782 on 22 November 2011.²⁸³⁰

1744. The Claimants seek a total of (i) USD 317,290.86 corresponding to the legal fees and expenses they allegedly incurred in connection with the Rourke 1782 between July 2010 and February 2016,²⁸³¹ and (ii) USD 87,699.55 corresponding to the legal fees and expenses they allegedly incurred in connection with the Picone 1782 between September 2010 and June 2012.²⁸³²

1745. *Analysis and decision.* In respect, first, of the Picone 1782, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable.²⁸³³ As gleaned from the above timeline, all key events in connection with the Picone 1782 took place before 14 February 2011: after Mr Picone produced all documents, Chevron notified the District Court that its motion against Mr Picone was moot on 14 December 2010.²⁸³⁴ The Claimants have failed to explain why they incurred legal fees and expenses after that date.

1746. Accordingly, the Tribunal determines that (i) all legal fees and expenses incurred by the Claimants in connection with the Picone 1782 before 14 February 2011 are not compensable; and (ii) to the extent the Claimants incurred legal fees and expenses in connection with the Picone 1782 after that date, they have failed to establish that by incurring those fees they sought to uncover fraud and corruption in the Lago Agrio Litigation. Accordingly, all legal fees and expenses claimed by the Claimants in connection with the Picone 1782 are excluded from compensation.

²⁸²⁸ Memorial, Appendix 32, para. 9.

²⁸²⁹ Memorial, Appendix 32, pp. 10-12.

²⁸³⁰ Memorial, Appendix 32, p. 12; **C-2908**, Rourke 1782 Docket, ECF No. 73.

²⁸³¹ Reply, Updated Appendix 2, pp. 1035-1038.

²⁸³² Reply, Updated Appendix 2, pp. 1053-1054.

²⁸³³ See para. 1565 above.

²⁸³⁴ Memorial, Appendix 32, p. 10; **C-2907**, Picone 1782 Docket, ECF No. 38.

1747. Second, as gleaned from the above timeline, all key events in the Rourke 1782 had taken place by 22 November 2011, when Chevron filed an unopposed motion to close the case.²⁸³⁵ The Claimants have failed to explain why they incurred legal fees and expenses after that date and ending in February 2016. The Tribunal is prepared to grant compensation for work performed until 31 December 2011 on account of the need for Chevron to perform closing tasks after the case was dismissed, but has otherwise not been provided with sufficient elements to assess whether any fees and expenses incurred after that date fulfil the requirements for the compensation of incidental damages under international law. Accordingly, the Tribunal excludes from compensation all legal fees and expenses incurred by the Claimants after 31 December 2011.

1748. Otherwise, the Tribunal considers that all fees incurred by the Claimants between 14 February 2011 and 31 December 2011 in connection with the Rourke 1782 are compensable in this Arbitration. The Tribunal has determined in paragraph 1586 above that seeking discovery from any of the cleansing experts appointed by the LAPs to replace Mr Cabrera, including Mr Rourke, was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. It was thus reasonable for the Claimants to continue to seek discovery from Mr Rourke after 14 February 2011 as a way of obtaining evidence that could be instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment.²⁸³⁶

1749. For these reasons, the Tribunal determines that the Claimants shall receive compensation for the legal fees and expenses they incurred in connection with the Rourke 1782 between 14 February 2011 and 31 December 2011.

16. Scardina 1782

1750. *Background.* The Claimants describe Mr Scardina as “a consultant and professor based in Blacksburg, Virginia who was retained by the LAPs as one of their Cleansing Experts in an effort to whitewash the Cabrera Fraud. In this role, Scardina signed an expert report filed by the LAPs in . . . the Lago Agrio Litigation.”²⁸³⁷

²⁸³⁵ C-2908, Rourke 1782 Docket, ECF No. 73.

²⁸³⁶ See para. 1573 above.

²⁸³⁷ Memorial, Appendix 34, para. 1. See generally Memorial, Appendix 34; C-2903, Scardina 1782 Docket.

1751. On 4 November 2010, Chevron filed an application before the U.S. District Court for the Western District of Virginia for an order granting leave to serve a subpoena seeking documents and deposition testimony from Mr Scardina.²⁸³⁸ Following Mr Scardina's opposition, subsequent briefing, and a hearing, the District Court entered an order on 24 November 2025 granting Chevron's application.²⁸³⁹ Chevron filed a motion to compel production of certain documents on 9 December 2010, which was never ruled on.²⁸⁴⁰

1752. According to the Claimants, Mr Scardina produced 296 pages of documents on 15 December 2010 and was deposed by Chevron on 22 December 2010.²⁸⁴¹

1753. The Claimants state that Chevron notified the District Court on 4 February 2011 that it had filed an action against Mr Donziger in the Southern District of New York, after which there was no further activity in this matter.²⁸⁴²

1754. The Claimants seek a total of USD 201,476.06 corresponding to the legal fees and expenses they allegedly incurred in connection with the Scardina 1782 between October 2010 and June 2011.²⁸⁴³

1755. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable as damages.²⁸⁴⁴ As gleaned from the above timeline, all key events in the Scardina 1782 took place before 14 February 2011: the Claimants state that there was no further activity in this matter after 4 February 2011.²⁸⁴⁵ The Claimants have failed to explain why they incurred legal fees and expenses after that date.

²⁸³⁸ Memorial, Appendix 23, p. 6; **C-2903**, Scardina 1782 Docket, ECF No. 1.

²⁸³⁹ Memorial, Appendix 34, p. 6; **C-2903**, Scardina 1782 Docket, ECF Nos. 14 (16 November 2010), 22 (19 November 2010), 31 (23 November 2010), 33-34 (24 November 2010).

²⁸⁴⁰ Memorial, Appendix 23, para. 8; **C-2903**, Scardina 1782 Docket, ECF No. 37.

²⁸⁴¹ Also on 15 December 2010, Mr Scardina filed a brief in opposition to Chevron's motion to compel filed on 9 December 2010. Memorial, Appendix 34, para. 8; **C-2903** Scardina 1782 Docket, ECF No. 44.

²⁸⁴² Memorial, Appendix 34, para. 10; **C-2903**, Scardina 1782 Docket, ECF No. 46, p. 4.

²⁸⁴³ Reply, Updated Appendix 2, pp. 1044-1045.

²⁸⁴⁴ See para. 1565 above.

²⁸⁴⁵ **C-2903**, Scardina 1782 Docket, p. 4.

1756. For these reasons, the Tribunal determines that (i) all legal fees and expenses incurred by the Claimants in connection with the Scardina 1782s before 14 February 2011 are not compensable; and (ii) to the extent the Claimants incurred legal fees and expenses in connection with the Scardina 1782 after that date, they have failed to establish that by incurring those fees they sought to uncover fraud and corruption in the Lago Agrio Litigation. Accordingly, all legal fees and expenses claimed by the Claimants in connection with the Scardina 1782 are excluded from compensation.

17. Shefftz 1782

1757. *Background.* The Claimants describe Mr Jonathan Shefftz as

an economic consultant based in Amherst, Massachusetts who was retained by the LAPs as one of their Cleansing Experts in an attempt to ‘whitewash’ or ‘cleanse’ the Cabrera Fraud. In this role, Shefftz signed an expert report filed by the LAPs on September 16, 2010 in the Lago Agrio Litigation in Ecuador. Shefftz’s report concluded that Chevron’s liability for unjust enrichment damages was anywhere between \$4.57 billion and \$37.86 billion.²⁸⁴⁶

1758. On 22 October 2010, Chevron filed an application before the U.S. District Court for the District of Massachusetts, requesting an order allowing Chevron to serve a subpoena on Mr Shefftz to take his deposition and obtain documents.²⁸⁴⁷ In response to a Show Cause Order issued by the Court, Mr Shefftz and the LAPs filed a brief in opposition to the application, as well as objections to the subpoena.²⁸⁴⁸

1759. On 7 December 2010, following further briefings and a hearing, the District Court granted Chevron’s application in part.²⁸⁴⁹

1760. According to the Claimants, Mr Shefftz produced documents on 10 December 2010.²⁸⁵⁰ On 13 December 2010, Chevron moved to compel the production of certain documents. That same day, the Claimants state, Mr Shefftz “argued that the motion was moot because

²⁸⁴⁶ Memorial, Appendix 33, para. 1. *See generally* Memorial, Appendix 33; **C-2905**, Shefftz 1782 Docket.

²⁸⁴⁷ Memorial, Appendix 33, para. 3.

²⁸⁴⁸ Memorial, Appendix 33, para. 4; **C-2905**, Shefftz 1782 Docket, ECF Nos. 9 (27 October 2010), 12 (1 November 2011), 21 (16 November 2010), 23 (16 November 2010).

²⁸⁴⁹ Memorial, Appendix 33, para. 6; **C-2905**, Shefftz 1782 Docket, ECF No. 44.

²⁸⁵⁰ Memorial, Appendix 33, p. 6.

he would already produce the documents previously identified as privileged” and produced over 600 pages of documents.²⁸⁵¹

1761. Chevron took deposition from Mr Shefftz on 16 December 2010.²⁸⁵² The District Court denied Chevron’s motion to compel as moot on 7 February 2011.²⁸⁵³

1762. The Claimants seek a total of USD 287,136.99 and USD 1,031.20 corresponding, respectively, to the legal fees and expenses they allegedly incurred in connection with the Shefftz 1782 between September 2010 and April 2012.²⁸⁵⁴

1763. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent’s Treaty breaches and therefore is non-compensable as damages.²⁸⁵⁵ As gleaned from the above timeline, all key events in the Shefftz 1782 took place before 14 February 2011: Chevron took deposition from Mr Shefftz on 16 December 2010 and the District Court denied Chevron’s motion to compel as moot on 7 February 2011.²⁸⁵⁶ No activity is recorded in this case until it was formally terminated on 10 August 2012.²⁸⁵⁷

1764. The Tribunal has not been informed of further relevant developments in the Shefftz 1782 after 7 February 2011.²⁸⁵⁸ The Claimants have failed to explain why they incurred legal fees and expenses after that date.

1765. For these reasons, the Tribunal determines that (i) all legal fees and expenses incurred by the Claimants in connection with the Shefftz 1782s before 14 February 2011 are not compensable; and (ii) to the extent the Claimants incurred legal fees and expenses in connection with the Shefftz 1782 after that date, they have failed to establish that by

²⁸⁵¹ Memorial, Appendix 33, p. 6; **C-2905**, Shefftz 1782 Docket, ECF No. 49.

²⁸⁵² Memorial, Appendix 33, p. 6; **C-2906**, *Chevron v. Jonathan S. Shefftz*, Case No. 1:10-mc-10352-JLT (D. Mass.), Deposition of Jonathan S. Shefftz, 16 December 2010.

²⁸⁵³ Memorial, Appendix 33, p. 6; **C-2905**, Shefftz 1782 Docket, ECF No. 53.

²⁸⁵⁴ Reply, Updated Appendix 2, pp. 1040-1042.

²⁸⁵⁵ See para. 1565 above.

²⁸⁵⁶ **C-2905**, Shefftz 1782 Docket, ECF No. 53; **C-2906**, *Chevron v. Jonathan S. Shefftz*, Case No. 1:10-mc-10352-JLT (D. Mass.), Deposition of Jonathan S. Shefftz, 16 December 2010.

²⁸⁵⁷ **C-2905**, Shefftz 1782 Docket, p. 5.

²⁸⁵⁸ Memorial, Appendix 33, p. 6.

incurring those fees they sought to uncover fraud and corruption in the Lago Agrio Litigation. Accordingly, all legal fees and expenses claimed by the Claimants in connection with the Shefftz 1782 are excluded from compensation.

18. Stratus 1782

1766.*Background.* The Claimants describe Stratus as “a known environmental consultant for the LAPs’ legal team”.²⁸⁵⁹

1767. On 18 December 2009, Chevron filed an application before the U.S. District Court for the District of Colorado seeking discovery from Stratus, Stratus’ then-Principal, Mr David J. Chapman; Executive Vice President, Mr Douglas Beltman; Managing Scientist, Ms Ann Maest; Senior Scientist, Ms Jennifer M.H. Peers; and Senior Analyst, Mr David M. Mills.²⁸⁶⁰ According to the Claimants, Chevron also named as respondents Mr Peter N. Jones and Ms Laura Belanger, two consultants that Stratus retained or otherwise relied upon.²⁸⁶¹

1768. On 4 March 2010, the District Court granted Chevron’s discovery application.²⁸⁶² Numerous procedural incidents followed, including assertions of privilege and motions for sanctions, until 27 June 2011, when the District Court issued an order concerning the allocation of costs.²⁸⁶³ According to the Claimants, during that time and until 12 December 2012 the respondents in the Stratus 1782 produced 123,455 pages of documents for review and sat for nine days of deposition.²⁸⁶⁴ In particular, the Claimants took deposition from Mr Chapman on 23 April 2010; from Mr Beltman on 6 October 2010; from Mr Mills on 20 October 2010; from Ms Peers on 6 November 2010; Ms Belanger on 30 November 2010; and from Ms Maest on 19 January and 20 January 2011.²⁸⁶⁵

²⁸⁵⁹ Memorial, Appendix 11, para. 2. *See generally* Memorial, Appendix 11; **C-2864**, Stratus 1782 Docket.

²⁸⁶⁰ Memorial, Appendix 11, para. 2; *see* **C-2864**, Stratus 1782 Docket, pp. 2-5.

²⁸⁶¹ Memorial, Appendix 11, fn 1; *see* **C-2864**, Stratus 1782 Docket, pp. 2-5.

²⁸⁶² Memorial, Appendix 11, para. 3; **C-2864**, Stratus 1782 Docket, ECF No. 23.

²⁸⁶³ *See* Memorial, Appendix 11, pp. 11-44; *see generally* **C-2864**, Stratus 1782 Docket.

²⁸⁶⁴ Memorial, Appendix 11, para. 16.

²⁸⁶⁵ Memorial, Appendix 11, pp. 17, 36, 39.

1769. The Claimants seek a total of USD 5,315,741.18 in legal fees, USD 131,118.02 in expert costs, and USD 217.93 in other costs they allegedly incurred in connection with the Stratus 1782 between July 2009 and March 2015.²⁸⁶⁶

1770. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable as damages.²⁸⁶⁷

1771. Furthermore, as gleaned from the above timeline, all key events in the Stratus 1782 had taken place by 12 December 2012, when all production in connection with these proceedings was completed. The Claimants have failed to explain why they incurred legal fees and expenses after that date and ending in March 2015. The Tribunal is prepared to grant compensation for work performed until 31 January 2013 on account of the need for Chevron to review the 362 pages of documents that were produced on 12 December 2012, but has otherwise not been provided with sufficient elements to assess whether any fees and expenses incurred after that date fulfil the requirements for the compensation of incidental damages under international law. Accordingly, the Tribunal excludes from compensation all legal fees and expenses incurred by the Claimants after 31 January 2013.

1772. Otherwise, the Tribunal considers that all fees incurred by the Claimants between 14 February 2011 and 31 January 2013 in connection with the Stratus 1782 are compensable in this Arbitration. The Tribunal has determined in paragraph 1582 above that seeking discovery from Stratus Consulting, as well any scientist or environmental consultant connected with that group, was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. It was thus reasonable for the Claimants to continue to seek discovery from Stratus and the remaining named respondents in the Stratus 1782 after 14 February 2011 as a way of obtaining evidence that could be instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment.²⁸⁶⁸

²⁸⁶⁶ Reply, Updated Appendix 2, pp. 824-839.

²⁸⁶⁷ See para. 1565 above.

²⁸⁶⁸ See para. 1573 above.

1773. Lastly, the Tribunal has taken note of the Respondent’s argument that “Chevron needlessly drove up costs by fighting even the most benign requests from other parties”, referring, in particular, to a motion for a one-day hearing extension in the Stratus 1782.²⁸⁶⁹

1774. Having already ascertained that the requirements of causation and reasonableness for the reimbursement of incidental damages are met as regards the Stratus 1782 (to the extent set out above), the Tribunal does not consider it necessary to opine on the substance or magnitude of Chevron’s submissions in those proceedings. As already noted, it is not appropriate for the Tribunal to apply hindsight to the legal strategies employed in the course of the Affirmative 1782s, more so in the absence of evidence pointing to the abusive use of court procedures.²⁸⁷⁰

1775. For these reasons, the Tribunal determines that the Claimants should receive compensation for the legal fees and expenses they incurred in connection with the Stratus 1782 between 14 February 2011 and 31 January 2013.²⁸⁷¹

19. UBR 1782

1776. *Background.* The Claimants describe UBR as

an environmental consulting firm hired by the LAPs’ counsel to assist them in developing their claims of alleged environmental contamination in the Lago Agrio Litigation. UBR was hired and paid by the LAPs to develop a potable water report . . . which ultimately became an appendix to the fraudulent Cabrera Report. The UBR Report was attributed to Juan Cristóbal Villao Yopez . . . an employee of UBR, who was identified as a supposedly independent expert on Cabrera’s supposedly independent technical team.²⁸⁷²

1777. On 26 May 2010, Chevron filed an application before the U.S. District Court for the District of New Jersey for an order granting leave to serve a subpoena seeking documents and deposition testimony from UBR and Mr Villao Yopez.²⁸⁷³ On 15 June 2010,

²⁸⁶⁹ Counter-Memorial, para. 696.

²⁸⁷⁰ See para. 340 above. In any event, the motion criticised by the Respondent was filed by Chevron before 14 February 2011 (*i.e.*, in May 2010) meaning that any costs it may have generated have already been determined to fall outside the scope of compensable injury. See **R-1770**, *Chevron Corp. v. Stratus Consulting*, D. Colo. Case 1:10-cv-00047-MSK-MEH, D.E. 97 Opposition to Motion for Extension of Time, 5 May 2010.

²⁸⁷¹ For clarity, the Tribunal recalls that it excludes from compensation the legal fees and expenses claimed by the Claimants in connection with the Defensive 1782s, including the Defensive 1782 involving Stratus. See paras. 1559(ii), 1600 above.

²⁸⁷² Memorial, Appendix 28, para. 1. See generally Memorial, Appendix 28; **C-2939**, UBR 1782 Docket; **C-2940**, UBR 1782 Court of Appeals Docket.

²⁸⁷³ Memorial, Appendix 28, para. 1; **C-2939**, UBR 1782 Docket, ECF No. 1.

following briefings and a hearing, the District Court granted the application as to UBR and dismissed the application as to Mr Villao Yopez because he was not located within the district.²⁸⁷⁴ The same day, UBR and the LAPs filed a notice of appeal and emergency motion to stay the District Court's order.²⁸⁷⁵

1778. Numerous procedural incidents followed, including a stay pending an appeal before the Third Circuit, until on 3 February 2011 the Court of Appeals affirmed in part the District Court's ruling of 15 June 2010.²⁸⁷⁶ On remand, the District Court entered an order on 17 February 2011 to which the parties had stipulated, mandating discovery from UBR.²⁸⁷⁷

1779. According to the Claimants, UBR's chief executive, Mr Vincent Uhl, was deposed on 19 April 2011, 27 July 2011, and 10 July 2012. During that period, UBR produced documents, while Chevron filed several motions to compel additional production from UBR, including as regards Mr Villao Yopez's documents.²⁸⁷⁸

1780. On 26 November 2013, UBR produced a declaration stating that it was unable to locate the last documents it had been ordered to produce.²⁸⁷⁹ The case was terminated on 29 May 2014.²⁸⁸⁰

1781. The Claimants seek USD 2,205,784.11 and USD 172.10 corresponding, respectively, to the legal fees and expenses they allegedly incurred in connection with the UBR 1782 between April 2010 and November 2013.²⁸⁸¹

²⁸⁷⁴ Memorial, Appendix 28, para. 5; **C-2939**, UBR 1782 Docket, ECF Nos. 6 (7 June 2010), 12 (9 June 2010), 15 (11 June 2010), 21 (15 June 2010).

²⁸⁷⁵ Memorial, Appendix 28, para. 5; **C-2939**, UBR 1782 Docket, ECF Nos. 24-25.

²⁸⁷⁶ Memorial, Appendix 28, paras. 6-8; *see* **C-2940**, UBR 1782 Court of Appeals Docket, p. 7.

²⁸⁷⁷ Memorial, Appendix 28, para. 9; **C-2939**, UBR 1782 Docket, ECF No. 44.

²⁸⁷⁸ Memorial, Appendix 28, pp. 11-12.

²⁸⁷⁹ Memorial, Appendix 28, para. 19; **Exhibit C-2939**, UBR 1782 Docket, ECF No. 103.

²⁸⁸⁰ Memorial, Appendix 28, para. 19; **Exhibit C-2939**, UBR 1782 Docket, p. 9.

²⁸⁸¹ Reply, Updated Appendix 2, pp. 870-881.

1782. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable as damages.²⁸⁸²

1783. Otherwise, the Tribunal considers that all fees incurred by the Claimants after 14 February 2011 in connection with the UBR 1782 are compensable in this Arbitration. The Tribunal has determined in paragraph 1582 above that seeking discovery from Stratus Consulting, as well any scientist or environmental consultant connected with that group (including UBR), was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. It was thus reasonable for the Claimants to continue to seek discovery from UBR after 14 February 2011 as a way of obtaining evidence that could be instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment.²⁸⁸³

1784. Lastly, the Tribunal has taken note of the Respondent's argument that Chevron attempted to use the UBR 1782 improperly to obtain discovery outside the United States.²⁸⁸⁴ In particular, the Respondent notes that the District Court rejected Chevron's motion to serve a subpoena on Mr Villao Yopez because he did not reside in the judicial district.²⁸⁸⁵ The Respondent is also critical of Chevron's "numerous filings in support of a 'show cause' application" extending to 1,187 pages, which was denied by the District Court as "procedurally deficient".²⁸⁸⁶

1785. Having already ascertained that the requirements of causation and reasonableness for the reimbursement of incidental damages are met as regards the UBR 1782, the Tribunal does not consider it necessary to opine on the substance or magnitude of Chevron's submissions in those proceedings – much less on questions seemingly concerning the territorial scope of the jurisdiction of a U.S. District Court, a matter on which this Tribunal has not been sufficiently briefed. As already noted, it is not appropriate for the Tribunal

²⁸⁸² See para. 1565 above.

²⁸⁸³ See para. 1573 above.

²⁸⁸⁴ Counter-Memorial, paras. 692-693.

²⁸⁸⁵ Counter-Memorial, paras. 692-693.

²⁸⁸⁶ Counter-Memorial, para. 694.

to apply hindsight to the legal strategies employed in the course of the Affirmative 1782s.²⁸⁸⁷

1786. For these reasons, the Tribunal determines that the Claimants should receive compensation for the legal fees and expenses they incurred in connection with the UBR 1782 after 14 February 2011.

20. Weinberg 1782

1787. *Background.* According to the Claimants, Weinberg Group Inc. (“**Weinberg**”)

directed the work of the Cleansing Experts, drafted significant portions of at least two reports filed on behalf of the Cleansing Experts, directed one Cleansing Expert to remove important qualifications from his report, and provided the Cleansing Experts with limited information to influence their reports. The Weinberg Group also provided the fraudulent Cabrera Report to each of the Cleansing Experts and instructed them to rely on it, without disclosing its fraudulent nature and the fact that it was not an independent assessment. Notwithstanding its substantial involvement—and its authorship of two of the reports—the Weinberg Group was not mentioned in any of the Cleansing Expert’s reports, and its involvement only came to light through discovery Chevron sought from the Cleansing Experts in other Section 1782 actions.²⁸⁸⁸

1788. On 21 January 2011, Chevron submitted an application before the U.S. District Court for the District of Columbia for an order granting leave to serve a subpoena seeking documents and deposition testimony from Weinberg, Mr Matthew R. Weinberg, Mr Ted Dunkelberger, Mr S. Thomas Golojuch, Mr Christopher Arthur, Mr Kerry Roche, and Ms Marla Scarola.²⁸⁸⁹

1789. According to the Claimants, following the submission of additional briefing, status reports, and notices regarding developments in other related actions, the District Court encouraged the parties to consent to have the case assigned to the District Court for the Southern District of New York, where a related action was pending (*Chevron v. The*

²⁸⁸⁷ See para. 340 above.

²⁸⁸⁸ Memorial, Appendix 35, para. 3 (internal citations omitted). See generally Memorial, Appendix 35; **C-2899**, Weinberg 1782 Docket; **C-2900**, Chevron v. Salazar Docket (DDC); **C-2901**, Chevron v. Salazar SDNY Docket; **C-2902**, Weinberg 1782 Court of Appeals Docket.

²⁸⁸⁹ Memorial, Appendix 35, para. 1; **C-2899**, Weinberg 1782 Docket, ECF No. 1.

Weinberg Group, Case No. 11-409 (JMF) (DDC)) (the “**Related Action**”).²⁸⁹⁰ The parties consented to the assignment and the case was referred on 4 August 2011.²⁸⁹¹

1790. The Claimants assert that, in the Related Action, Chevron sought to enforce a subpoena it had served on Weinberg on 23 May 2011 in the separate case of *Chevron Corp. v. Salazar*, No. 11 Civ. 3718 (LAK) (SDNY), which was a declaratory judgment action regarding the enforceability of the Lago Agrio Judgment also pending before the District Court for the Southern District of New York.²⁸⁹² The reason, the Claimants explain, is that there was “substantial overlap between the *Salazar* subpoena and the proposed subpoenas in the 1782 action” and that “the Weinberg Group had withheld at least 1,115 documents and redacted at least 348 more based on meritless privilege claims in *Salazar*”.²⁸⁹³ Chevron’s motion to enforce the *Salazar* subpoena was granted in the Related Action on 8 September 2011.²⁸⁹⁴ This decision was appealed by Weinberg and the LAPs.²⁸⁹⁵

1791. After a prolonged stay, on 12 June 2012 the U.S. Court of Appeals for the District of Columbia vacated the 8 September 2011 motion.²⁸⁹⁶ On 26 September 2012, the District Court for the Southern District of New York issued another order in the Related Action, granting in part Chevron’s 23 May 2011 motion to compel production.²⁸⁹⁷ According to the Claimants, the District Court ruled that Weinberg’s privilege log “was inadequate to support its privilege claims” and ordered Weinberg to make a rolling production of 100 documents per day until the production was complete.²⁸⁹⁸

1792. Subsequently, the Claimants explain that on 3 October 2012 the District Court for the Southern District of New York ordered the parties to “show cause as to why Chevron’s

²⁸⁹⁰ Memorial, Appendix 35, paras. 6-8; **C-2899**, Weinberg 1782 Docket, ECF Nos. 8 (28 January 2011), 17 (11 February 2011), 25 (16 February 2011), 26 (23 February 2011), 28 (1 March 2011), 30 (16 March 2011), 31 (21 March 2011), 32 (2 June 2011), p. 10 (8 August 2011).

²⁸⁹¹ Memorial, Appendix 35, para. 8; **C-2899**, Weinberg 1782 Docket, ECF Nos. 35, 37 (30 September 2011).

²⁸⁹² Memorial, Appendix 35, para. 9.

²⁸⁹³ Memorial, Appendix 35, para. 9.

²⁸⁹⁴ Memorial, Appendix 35, para. 9; **C-2900**, *Chevron v. Salazar* Docket (DDC), ECF No. 24.

²⁸⁹⁵ Memorial, Appendix 35, para. 10; **C-2902**, Weinberg 1782 Court of Appeals Docket.

²⁸⁹⁶ Memorial, Appendix 35, para. 12.

²⁸⁹⁷ Memorial, Appendix 35, para. 17; **C-2900**, *Chevron v. Salazar* Docket (DDC), ECF Nos. 53-54.

²⁸⁹⁸ Memorial, Appendix 35, para. 18.

1782 Application and the LAPs’ motion to intervene should not be denied as moot in light of the court’s recent order on the *Salazar* motion to compel in the Related Action.”²⁸⁹⁹
According to the Claimants,

On 15 October 2012, the parties filed a Joint Stipulation for Voluntary Dismissal, in which the Weinberg Group agreed that Chevron would have “the same rights, if any, to use documents obtained through the RICO proceeding [the Related Action] in foreign proceedings as Chevron would have if the documents were obtained through this [Section 1782] action,” and that any ruling of the court in the Related Action would apply as if it had been made in [this] Section 1782 proceeding.”²⁹⁰⁰

1793. According to the Claimants, Weinberg ultimately produced approximately 3,400 pages of documents.²⁹⁰¹

1794. The Claimants seek USD 897,330.23 corresponding to the legal fees and expenses they allegedly incurred in connection with the Weinberg 1782 between December 2010 and November 2013.²⁹⁰²

1795. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent’s Treaty breaches and therefore is non-compensable as damages.²⁹⁰³

1796. As gleaned from the above timeline, all key events in the Weinberg 1782 had taken place by 15 October 2012, when the parties filed a Joint Stipulation for Voluntary Dismissal.²⁹⁰⁴ The Claimants have failed to explain why they incurred legal fees and expenses in connection with the Weinberg 1782 after that date and ending in November 2013. The Tribunal is prepared to grant compensation for work performed until 31 October 2012 on account of the need for Chevron to perform closing tasks after the Weinberg 1782 was dismissed, but has otherwise not been provided with sufficient elements to assess whether any fees and expenses incurred after that date fulfil the requirements for the compensation of incidental damages under international law. Accordingly, the Tribunal excludes from

²⁸⁹⁹ Memorial, Appendix 35, para. 19; **C-2899**, Weinberg 1782 Docket, p. 19.

²⁹⁰⁰ Memorial, Appendix 35, para. 20.

²⁹⁰¹ Memorial, Appendix 35, para. 20.

²⁹⁰² Reply, Updated Appendix 2, pp. 965-970.

²⁹⁰³ See para. 1565 above.

²⁹⁰⁴ **C-2899**, Weinberg 1782 Docket, ECF No. 46; **R-1587**, *Chevron Corp. v. Weinberg Group*, DDC Case 1:11-mc-00030-CKK, D.E. 46 Joint Stipulation for Voluntary Dismissal, 15 October 2012.

compensation all legal fees and expenses incurred by the Claimants after 31 October 2012.

1797. Otherwise, the Tribunal considers that all fees incurred by the Claimants between 14 February 2011 and 31 October 2012 in connection with the Weinberg 1782 are compensable in this Arbitration. The Tribunal has determined in paragraph 1586 above that seeking discovery from any of the cleansing experts appointed by the LAPs to replace Mr Cabrera or any person or entity connected to them, such as Weinberg and related individuals, was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. It was thus reasonable for the Claimants to continue to seek discovery from Weinberg after 14 February 2011 as a way of obtaining evidence that could be instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment.²⁹⁰⁵

1798. Furthermore, the Tribunal has taken note of the Respondent's argument that the Claimants cannot recover fees for the Weinberg 1782, as Chevron agreed in the 15 October 2012 Joint Stipulation for Voluntary Dismissal that it would bear its own costs.²⁹⁰⁶ However, as already noted in paragraph 500 above, the settlement on costs included in that stipulation stated that all costs orders in the action, or all costs obligations, were acknowledged as fully satisfied between the parties to the Weinberg 1782.²⁹⁰⁷ The Tribunal has explained in paragraph 501 above that this language cannot be understood as a waiver by the Claimants of their claims for incidental damages arising from the Respondent's Treaty breaches, nor an acknowledgement that the Claimants have been made whole for those international wrongs or an agreement that the Claimants will be reimbursed any portion of their costs in those proceedings by the opposing parties – meaning that as of yet the Claimants have not recovered any of those costs. The

²⁹⁰⁵ See para. 1573 above.

²⁹⁰⁶ Counter-Memorial, paras. 701-702; **R-1587**, *Chevron Corp. v. Weinberg Group*, DDC Case 1:11-mc-00030-CKK, D.E. 46 Joint Stipulation for Voluntary Dismissal, 15 October 2012.

²⁹⁰⁷ **R-1587**, *Chevron Corp. v. Weinberg Group*, DDC Case 1:11-mc-00030-CKK, D.E. 46 Joint Stipulation for Voluntary Dismissal, 15 October 2012, p. 2: "[t]he Parties agree that all costs and expenses related to this action shall be borne solely by the party incurring the same and that neither party will file any applications for costs in the 1782 proceeding."

Claimants' claim for damages in the present proceedings is thus entirely outside the scope of any settlement agreement reached in the Weinberg 1782.

1799. Accordingly, the Tribunal reiterates its ruling in paragraph 505(iv): the Claimants may recover their reasonable legal costs in this Arbitration, even if they were settled in the Weinberg 1782, insofar as they qualify as incidental damages under the Treaty and international law and such settlements do not breach their duty to mitigate under international law. The burden to prove such a breach of the duty to mitigate falls upon the Respondent.²⁹⁰⁸ In this regard, the Tribunal observes that the Respondent has not put forward substantial reasons why the Claimants might have breached their duty to mitigate by settling costs in the Weinberg 1782.²⁹⁰⁹

1800. Lastly, the Tribunal has also taken note of the Respondent's argument that Chevron "voluntarily dismissed the Weinberg 1782 without a deposition and should be denied recovery of fees and costs from that action".²⁹¹⁰ The Tribunal rejects this argument: as explained above, Weinberg produced 3,400 pages of documents to Chevron.²⁹¹¹ There is therefore no basis for the Tribunal to conclude that the Weinberg 1782 was somehow futile. As already explained, the ultimate outcome of the Affirmative 1782s has limited bearing on whether they amounted to a reasonable mitigation measure in this case.²⁹¹²

1801. For these reasons, the Tribunal determines that the Claimants shall receive compensation for the legal fees and expenses they incurred in connection with the Weinberg 1782 between 14 February 2011 and 31 October 2012.

²⁹⁰⁸ See paras. 503, 505(iv) above.

²⁹⁰⁹ Counter-Memorial, paras. 701-704.

²⁹¹⁰ Counter-Memorial, para. 707.

²⁹¹¹ See para. 1793 above.

²⁹¹² See para. 1571 above.

21. Wray 1782

1802. *Background.* The Claimants describe Mr Norman Nelson Alberto Wray Espinosa “as lead counsel for the LAPs from the filing of the Lago Agrio Complaint in 2003 until early 2006”.²⁹¹³

1803. On 8 June 2010, Chevron filed an application before the U.S. District Court for the District of Columbia for an order granting leave to serve a subpoena seeking documents and deposition testimony from Mr Wray for use in the Lago Agrio Litigation and this Arbitration.²⁹¹⁴ Mr Veiga and Dr Pérez filed simultaneous applications for their defence in the Criminal Proceedings.²⁹¹⁵ Ecuador filed an opposition to the application on 23 June 2010, followed by the LAPs on 28 June 2010, and Mr Wray on 29 June 2010.

1804. On 22 July 2010, the District Court granted Chevron’s application – clarifying, however, that it would only require Mr Wray to produce documents that were located in D.C. and in his possession, custody, or control. The court ordered the parties to meet and confer regarding the appropriate scope of discovery and required the discovery to be completed by 5 August 2010.²⁹¹⁶

1805. After additional proceedings and the submission of additional briefs, on 20 October 2010 the District Court granted the full scope of Chevron’s discovery request (with discovery limited to documents located within the United States and electronically stored information accessible from the United States).²⁹¹⁷ On 21 October and 22 October 2010, Chevron served Mr Wray with subpoenas to produce documents and for a deposition.²⁹¹⁸

1806. Thereafter, production took place in parallel with several procedural incidents, including the filing of motions to compel production by Chevron on 29 October 2010 and

²⁹¹³ Memorial, Appendix 18, para. 1. *See generally* Memorial, Appendix 18; **C-2943**, Wray 1782 Docket; **C-2945**, Wray 1782 Court of Appeals Docket.

²⁹¹⁴ Memorial, Appendix 18, paras. 2-3; **C-2943**, Wray 1782 Docket, ECF No. 1.

²⁹¹⁵ Memorial, Appendix 18, para. 2; **C-2942**, Wray 1782 Docket (Pérez & Veiga); **C-2944**, Wray 1782 Docket (Pérez & Veiga).

²⁹¹⁶ Memorial, Appendix 18, para. 7; **C-2943**, Wray 1782 Docket, p. 11.

²⁹¹⁷ Memorial, Appendix 18, paras. 8-11; **C-2943**, Wray 1782 Docket, ECF No. 70.

²⁹¹⁸ Memorial, Appendix 18, para. 12.

17 December 2010; of motions to stay and appeals by Mr Wray, the LAPs and Ecuador on 3 November 2010; and a joint motion for a protective order on 8 November 2010.²⁹¹⁹

1807. On 11 April 2011, Mr Wray filed a joint stipulation voluntarily dismissing the appeal.²⁹²⁰

On 22 April 2011, the District Court granted Chevron's second motion to compel in part.²⁹²¹ On 29 April 2011, the District Court granted an application from Chevron to vacate the protective order that the court had enacted.²⁹²² Ultimately, on 30 July 2013 the parties informed the court that there were no remaining disputes, and the District Court closed the matter.²⁹²³

1808. According to the Claimants, Mr Wray produced documents on or around 22 October 2010 and late December 2010. He was also deposed on 2 November and 3 November 2010.²⁹²⁴

1809. The Claimants seek USD 1,491,154.99 and USD 11,742.45 corresponding, respectively, to the legal fees and expenses they allegedly incurred in connection with the Wray 1782 between July 2009 and November 2014.²⁹²⁵

1810. *Analysis and decision.* At the outset, the Tribunal recalls that all work performed in connection with the Affirmative 1782s before 14 February 2011 was not caused by the Respondent's Treaty breaches and therefore is non-compensable as damages.²⁹²⁶

1811. Furthermore, as gleaned from the above timeline, all key events in the Wray 1782 had taken place by 30 July 2013, when all production in connection with these proceedings was deemed completed.²⁹²⁷ The Claimants have failed to explain why they incurred legal fees and expenses after that date and ending in November 2014. The Tribunal is prepared to grant compensation for work performed until 31 August 2013 on account of the need

²⁹¹⁹ Memorial, Appendix 18, paras. 13-17; **C-2943**, Wray 1782 Docket, ECF Nos. 72, 81-82, 84, 86, 93.

²⁹²⁰ Memorial, Appendix 18, para. 19; **C-2944**, Wray 1782 Docket (Pérez & Veiga), p. 12.

²⁹²¹ Memorial, Appendix 18, p. 19; **C-2943**, Wray 1782 Docket, ECF No. 110.

²⁹²² Memorial, Appendix 18, para. 19, p. 19; **C-2943**, Wray 1782 Docket, p. 24.

²⁹²³ Memorial, Appendix 18, para. 20; **C-2943**, Wray 1782 Docket, p. 24.

²⁹²⁴ Memorial, Appendix 18, paras. 12, 15.

²⁹²⁵ Reply, Updated Appendix 2, pp. 916-930.

²⁹²⁶ See para. 1565 above.

²⁹²⁷ **C-2943**, Wray 1782 Docket, ECF No. 115.

for Chevron to perform closing tasks after the District Court closed the matter, but has otherwise not been provided with sufficient elements to assess whether any fees and expenses incurred after that date fulfil the requirements for the compensation of incidental damages under international law. Accordingly, the Tribunal excludes from compensation all legal fees and expenses incurred by the Claimants after 31 August 2013.

1812. Otherwise, the Tribunal considers that all fees incurred by the Claimants between 14 February 2011 and 31 August 2013 in connection with the Wray 1782 are compensable in this Arbitration. The Tribunal has determined in paragraph 1578 above that by 14 February 2011 the Claimants were in possession of *prima facie* evidence signalling that seeking discovery from the LAPs' then-current and former U.S.-based counsel – including Mr Wray – was a reasonable step towards locating evidence of any fraud or corruption that might have taken place in the Lago Agrio Litigation. It was thus reasonable for the Claimants to continue to seek discovery from Mr Wray as a way of obtaining evidence that could be instrumental in preventing the recognition and enforcement of the Lago Agrio Judgment.²⁹²⁸

1813. Lastly, the Tribunal has taken note of the Respondent's argument that Chevron attempted to use the Wray 1782 improperly to obtain discovery outside the United States.²⁹²⁹ The Tribunal notes that the District Court granted Chevron's discovery motion "except that Wray shall only be required to produce documents within his possession, custody, or control and located within the United States, including electronically stored information accessible from this District."²⁹³⁰

1814. Having already ascertained that the requirements of causation and reasonableness for the reimbursement of incidental damages are met as regards the Wray 1782 (to the extent set out above), the Tribunal does not consider it necessary to opine on the substance of Chevron's submissions in those proceedings – much less on questions seemingly concerning the territorial scope of the jurisdiction of a U.S. District Court, a matter on which this Tribunal has not been sufficiently briefed. As already noted, it is not

²⁹²⁸ See para. 1573 above.

²⁹²⁹ Counter-Memorial, para. 691.

²⁹³⁰ **R-1795**, *In re Application of Chevron Corp.*, DDC Case 1:10-mc-00371-CKK, D.E. 69 Order, 20 October 2010, p. 1.

appropriate for the Tribunal to apply hindsight to the legal strategies employed in the course of the Affirmative 1782s.²⁹³¹

1815. For these reasons, the Tribunal determines that the Claimants shall receive compensation for the legal fees and expenses they incurred in connection with the Wray 1782 between 14 February 2011 and 31 August 2013.

1816. To the extent that the legal fees and expenses claimed by the Claimants under this heading may relate to the representation of Mr Veiga and Dr Pérez, they are addressed separately in Section VIII.K below.

22. (CLA) Work related solely to pursuing sanctions against the LAPs' law firms / (RES) Pursuing sanctions against the LAPs' law firms

1817. The Respondent requests that the Tribunal deny compensation for the legal fees and expenses incurred by the Claimants in connection with the pursuit of sanctions under U.S. Rule of Civil Procedure 11 against the law firms representing the LAPs in the Section 1782 Proceedings (in particular, the Donziger 1782) in an attempt to bar them from future appearances in the proceeding.²⁹³² In the Respondent's view, these "serial motions" were "highly unusual and suggestive of an improper purpose."²⁹³³ The legal fees and expenses claimed by the Claimants falling under this description, as particularised by the Respondent, amount to USD 203,173.00.²⁹³⁴

1818. The Tribunal has carefully reviewed the evidence on the record and the time entries identified by the Respondent corresponding to the activities falling under the present heading.²⁹³⁵ A central element emerging from this analysis is Chevron's 10 January 2011 request for sanctions against the three law firms representing the LAPs in the Donziger 1782 – Emery Celli Brinckerhoff & Abady LLP, Motley Rice LLC, and Patton Boggs LLP – "including by barring them from future appearances in this proceeding—for

²⁹³¹ See para. 341 above.

²⁹³² Counter Memorial, para. 697; Rejoinder, paras. 880-881, Annex K-2.

²⁹³³ Rejoinder, para. 880; **RE-66**, Wendel Expert Report, para. 46.

²⁹³⁴ Rejoinder, para. 880, Annex K-2, p. 1.

²⁹³⁵ Rejoinder, Annex K-2; **R-1570**, *In re Application of Chevron Corporation*, SDNY Case 1:10-mc-00002-LAK, D.E. 145 Order to Show Cause regarding Donziger, 10 January 2011, pp. 1-2.

purporting to represent the plaintiffs when they are not authorized to do so.”²⁹³⁶ As further detailed in Chevron’s memorandum in support of this motion:

The small subset of documents Donziger has produced establish that the U.S. firms have intentionally engaged in obstructionist delay tactics before this Court and other U.S. courts while seemingly lacking any authority to act at all on behalf of the plaintiffs they purport to represent. The firms’ unauthorized representation violates ethical rules and standards of professional responsibility, and this Court should issue an order to show cause why Emery Celli, Motley Rice and Patton Boggs should not be barred from this proceeding and sanctioned for their ongoing, extensive, and unauthorized representation of plaintiffs. . .

As detailed above, there is no evidence that any of these firms has a valid retainer agreement with plaintiffs, and the available evidence strongly suggests that the firms’ appearances are unauthorized. Indeed, the unauthorized representation by Emery Celli, Motley Rice, and Patton Boggs makes possible the delay and obstruction Donziger is using in hopes of extorting a settlement from Chevron.²⁹³⁷

1819. Following the filing of this motion, Emery Celli moved to withdraw from the case.²⁹³⁸

While it did not oppose withdrawal, on 12 February 2011 Chevron filed a response to Emery Celli’s motion stating that the District Court should still impose sanctions against Emery Celli:

Regardless of whether Emery Celli is now permitted to withdraw, Chevron’s motion for sanctions against that firm remains outstanding and should be decided. Emery Celli’s withdrawal would not obviate the need for it to be sanctioned for its prior unauthorized appearance . . . Nor would Emery Celli’s withdrawal affect in any way the ample cause for this Court *sua sponte* to sanction that firm for its role in the knowing cover-up of the Cabrera fraud, a role that included misrepresentations to this Court and other courts around the country.²⁹³⁹

1820. The Tribunal understands that the court did not rule on Emery Celli’s motion to withdraw or Chevron’s motion for sanctions.²⁹⁴⁰

1821. Against this background, the Tribunal observes that the Claimants have not convincingly explained how pursuing sanctions against the LAPs’ counsel in the context of the

²⁹³⁶ **R-1570**, *In re Application of Chevron Corporation*, SDNY Case 1:10-mc-00002-LAK, D.E. 145 Order to Show Cause regarding Donziger, 10 January 2011, pp. 1-2.

²⁹³⁷ **R-1571**, *In re Application of Chevron Corporation*, SDNY Case 1:10-mc-00002-LAK, D.E. 147 Memorandum of Law ISO Order to Show Cause, 10 January 2011, pp. 30-31.

²⁹³⁸ *In re Application of Chevron Corporation*, SDNY. Case 1:10-mc-00002-LAK, D.E. 181 Notice of Motion for Leave to Withdraw as Counsel (7 Feb. 2011) (**R-1814**).

²⁹³⁹ **R-1574**, *In re Application of Chevron Corporation*, SDNY Case 1:10-mc-00002-LAK, D.E. 182 Response to Motion for Leave to Withdraw as Counsel, 11 February 2011, p. 7.

²⁹⁴⁰ Counter-Memorial, para. 697; **C-3027**, Donziger 1782 Docket.

Donziger 1782 could have substantially furthered any of the mitigation goals warranting compensation identified in paragraph 1557 above, namely: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment.

1822. The Tribunal notes that Chevron filed its request for sanctions against the LAPs' counsel prior to 14 February 2011.²⁹⁴¹ As already explained, any legal fees and expenses corresponding to activities performed before then were not incurred in reaction to the injury flowing from the Respondent's Treaty breaches and must therefore be excluded from compensation.²⁹⁴²

1823. To the extent the legal fees and expenses falling under this heading correspond to activities that took place after 14 February 2011, the Tribunal has not been presented with sufficient elements to determine whether such activities resulted in any concrete action in the context of the Donziger 1782, particularly in circumstances where the District Court never ruled on Emery Celli's motion to withdraw or Chevron's motion for sanctions.²⁹⁴³ In particular, as gleaned from the time entries identified by the Respondent in connection with this component, all post-14 February 2011 activities falling under this component concerned the preparation of sanctions motions that were never filed in the Donziger

²⁹⁴¹ **C-3027**, Donziger 1782 Docket, ECF No. 147 (10 January 2011); **R-1570**, *In re Application of Chevron Corporation*, SDNY Case 1:10-mc-00002-LAK, D.E. 145 Order to Show Cause regarding Donziger, 10 January 2011; **R-1571**, *In re Application of Chevron Corporation*, SDNY Case 1:10-mc-00002-LAK, D.E. 147 Memorandum of Law ISO Order to Show Cause, 10 January 2011; **R-1572**, *In re Application of Chevron Corporation*, SDNY Case 1:10-mc-00002-LAK, D.E. 157 Reply Memorandum of Law ISO Order to Show Cause, 13 January 2011; **R-1573**, *In re Application of Chevron Corporation*, SDNY Case 1:10-mc-00002-LAK, D.E. 173 Second Reply Memorandum of Law ISO Order to Show Cause, 24 January 2011; **R-1574**, *In re Application of Chevron Corporation*, SDNY Case 1:10-mc-00002-LAK, D.E. 182 Response to Motion for Leave to Withdraw as Counsel, 11 February 2011.

²⁹⁴² See para. 1565 above.

²⁹⁴³ Counter-Memorial, para. 697; **C-3027**, Donziger 1782 Docket.

1782,²⁹⁴⁴ or in any other Section 1782 Proceedings in which the filing of sanctions was also explored at different points in time.²⁹⁴⁵

1824. As such, while the Tribunal has concluded that the Claimants' attempts to obtain evidence of fraud and corruption in the Lago Agrio Litigation in the Donziger 1782 amounted to a reasonable mitigation measure,²⁹⁴⁶ the Tribunal has not been presented with elements to determine how exactly pursuing sanctions against the LAPs' law firms after 14 February 2011 served to further the Claimants' efforts to minimize the injury arising from the recognition and enforcement of the Lago Agrio Judgment.

1825. For these reasons, the Tribunal finds that the Claimants have failed to establish that the legal fees and expenses they incurred in connection with pursuing sanctions against the LAPs' law firms were reasonably incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. Accordingly, the Claimants are not entitled to claim compensation for those fees.

23. (CLA) Fees and costs billed by Rivero Mestre and Covington & Burling in connection with their representation of Perez and Veiga (Rivero Mestre and Covington & Burling) / (RES) Fees and costs billed by Perez and Veiga's law firms (Rivero Mestre and Covington & Burling)

1826. The Respondent asserts that the Claimants should not recover any fees related to work carried out by the law firms Rivero Mestre and Covington & Burling, amounting, respectively, to USD 3,203,710.58 and USD 2,426,311.00.²⁹⁴⁷ These firms represented

²⁹⁴⁴ See, e.g., Rejoinder, Annex K-2, entries for 21 February 2011 ("Modify brief in support of motion for sanctions against Patton Boggs based on collected comments. (7.8) [1782s: Donziger]; Analyze research regarding same. (4.2) [1782s: Donziger]"; 23 February 2011 ("Revise and edit the Rule 11 motion against Patton Boggs in the RICO case. (3.3) [1782s: Donziger]"; 28 February 2011 ("Conference with J. Partridge regarding document from Donziger hard drive production for potential use in sanctions motion."); 17 March 2011 ("Draft executive summary of Emery Celli's involvement in the Lago Agrio Litigation and with S. Donziger. (3.4) [1782s: Donziger]"; 20 April 2011 ("Look for research on motions for sanctions and contempt for potential contempt motion. (.5) [1782s: Donziger]").

²⁹⁴⁵ See, e.g., Rejoinder, Annex K-2, entry for 31 January 2011 ("Analyze documents produced for potential use in requests for sanctions against plaintiffs' attorneys relating to 1782 petition in Colorado. (2.2) [1782s: Stratus]; Draft chronology of key facts and events relating to same. (5.7) [1782s: Stratus]"; 19 January 2011 ("[1782s: Gnl 1782]; Review representation briefs filed by law firms and outline arguments for reply brief regarding same. (4.1) [1782s: Gnl 1782]; Telephone call with team regarding arguments in plaintiffs' briefs. (.5) [1782s: Gnl 1782]").

²⁹⁴⁶ See para. 1690 above.

²⁹⁴⁷ Rejoinder, paras. 1175-1177.

Mr Veiga and Dr Pérez in the Criminal Proceedings and several of the 1782 Proceedings.²⁹⁴⁸ The Respondent considers that it cannot be held liable “for any costs Claimants voluntarily assumed on behalf of non-parties”.²⁹⁴⁹

1827. As noted by the Tribunal in paragraph 1998 below, by defending Mr Veiga and Dr Pérez in the Criminal Proceedings between September 2008 and June 2011, the Claimants sought ultimately to defend themselves from attempts to undermine their case in the Lago Agrio Litigation, aiming to achieve a positive outcome before the Lago Agrio Court at the trial stage. These efforts could not have conceivably sought to mitigate the injury flowing from the recognition and enforcement of the unremedied Lago Agrio Judgment, as required to warrant compensation, because said Judgment was yet to come into existence – indeed, the Lago Agrio Judgment represented the final outcome of the trial court proceedings. Whatever harm Chevron sought to address by defending Mr Veiga and Dr Pérez in the Criminal Proceedings is outside the scope of the injury caused by the Respondent’s internationally wrongful acts. Accordingly, the legal fees and expenses incurred by the Claimants in connection with the Criminal Proceedings do not qualify as incidental damages and are therefore not recoverable in this Arbitration.

1828. In the Tribunal’s view, the same conclusion extends necessarily to any legal fees and expenses incurred by the Claimants on Mr Veiga and Dr Pérez’s behalf in connection with the Affirmative 1782s. To the extent the legal fees and expenses incurred by the Claimants in connection with the Criminal Proceedings do not warrant compensation, any funds spent by the Claimants to obtain evidence for use in those proceedings must also be excluded from compensation.

1829. For these reasons, the Tribunal denies compensation for the legal fees and expenses claimed by the Claimants under the present heading.

²⁹⁴⁸ Fourth Veiga Witness Statement, para. 116; **RE-51**, Trunko Expert Report, **SM J-8**.

²⁹⁴⁹ Rejoinder, para. 1176.

24. Other issues

1830. In this section, the Tribunal will address other outstanding issues raised by the Parties in connection with the Section 1782 Proceedings that have not been specifically identified by the Parties as a component.

1831. These include, in particular, the Respondent's argument that the Claimants overstaffed the Section 1782 Proceedings, making "excess and repetition unavoidable."²⁹⁵⁰ The Respondent stresses that while Section 1782 actions "are essentially motions to compel discovery, and are thus far less complex than a substantive lawsuit, Claimants used dozens of timekeepers in each 1782 action", ranging from 11 timekeepers in the Netflix 1782 to 255 in the Donziger 1782.²⁹⁵¹

1832. The Respondent's argument concerns matters that the Parties have identified as cross-cutting elements impacting multiple categories (in particular, "Multiple Attendance at Events" and "(CLA) Alleged Excessively Long Billing Days and Excessive Time; (RES) Excessively Long Billing Days and Excessive Time").²⁹⁵² As such, the Tribunal will address this argument as part of its analysis of cross-cutting elements in Section VIII.N below.

4. Conclusion on Section 1782 Proceedings

1833. For the foregoing reasons, the Tribunal:

- (i) Declines to exclude from compensation the Section 1782 Proceedings category of damages as a whole;
- (ii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Section 1782 Proceedings corresponding to services rendered before 14 February 2011;
- (iii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Affirmative 1782s, except for those they incurred

²⁹⁵⁰ Rejoinder, para. 1204.

²⁹⁵¹ Rejoinder, para. 1205.

²⁹⁵² See para. 571 above.

in connection with (1) the Banco Pichincha 1782 between 14 February 2011 and 31 July 2013; (2) the Berlinger 1782 after 14 February 2011; (3) the Bonifaz 1782 between 14 February 2011 and 31 May 2011; (4) the Donziger 1782 between 14 February 2011 and 31 July 2013; (5) the E-Tech/Powers 1782 between 14 February 2011 and 30 April 2012; (6) the Page 1782 between 14 February 2011 and 28 February 2016; (7) the Rourke 1782 between 14 February 2011 and 31 December 2011; (8) the Stratus 1782 between 14 February 2011 and 31 January 2013; (9) the UBR 1782 after 14 February 2011; (10) the Weinberg 1782 between 14 February 2011 and 31 October 2012; and (11) the Wray 1782 between 14 February 2011 and 31 August 2013;

- (iv) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Defensive 1782s;
- (v) Excludes from compensation 90% of all legal fees and expenses incurred by the Claimants in connection with General 1782 Work after 14 February 2011;
- (vi) Excludes from compensation 100% of the legal fees and expenses corresponding to the component “(CLA) Work related solely to pursuing sanctions against the LAPs’ law firms / (RES) Pursuing sanctions against the LAPs’ law firms”;
- (vii) Excludes from compensation 100% of the legal fees and expenses corresponding to the component “(CLA) Fees and costs billed by Rivero Mestre and Covington & Burling in connection with their representation of Perez and Veiga (Rivero Mestre and Covington & Burling) / (RES) Fees and costs billed by Perez and Veiga’s law firms (Rivero Mestre and Covington & Burling)”;
- (viii) Defers its determination regarding the compensation of the legal fees and expenses identified at para. 1831 above to its analysis of cross-cutting elements set out in Section VIII.N below;
- (ix) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Section 1782 Proceedings, to the extent not

already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below;²⁹⁵³ and

- (x) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Section 1782 Proceedings. The Tribunal will determine the exact amount of compensation corresponding to the Section 1782 Proceedings in Section VIII.O below.

* * *

²⁹⁵³ See paras. 564-566 above.

I. GIBRALTAR PROCEEDINGS

1834. The Claimants seek USD 38,421,547.26 as direct damages for the legal fees and expenses they incurred between April 2008 and July 2018 for the six Gibraltar actions they initiated against the third-party funders, funding vehicles and related parties upon which the LAPs and Ecuador allegedly relied to fund both the Lago Agrio Litigation and the subsequent enforcement proceedings.²⁹⁵⁴ In the alternative, the Claimants submit that they are entitled to recover these legal fees and expenses as incidental damages.²⁹⁵⁵

1835. The Respondent argues the Claimants have failed to prove that the legal fees and expenses they claim were caused by the Treaty breaches and were reasonable and necessary for Chevron to defend against the enforcement of the Lago Agrio Judgment.²⁹⁵⁶ Consequently, the Respondent considers that this entire category of claimed damages is non-compensable.²⁹⁵⁷

1. The Claimants' Position

1836. According to the Claimants, Chevron's legal actions against third-party funders seeking to prevent them from funding the enforcement of the Lago Agrio Judgment – and, thus, to undermine the LAPs' efforts to enforce the Judgment – were a natural and foreseeable result of the Respondent's Treaty breaches, as well as the Respondent's refusal to comply with the Tribunal's Interim Orders and Awards.²⁹⁵⁸ In this respect, the Claimants underscore that the risk of the LAPs pursuing enforcement outside of Ecuador and the need for them to secure funding was a "certainty" in view of the inherent costs of running a global enforcement campaign.²⁹⁵⁹

²⁹⁵⁴ Reply, paras. 952, 1212(2)(i), Updated Appendix 2, pp. 1152-1203; C-3462, Indexes of Claimed Invoices by Damage Category ("Gibraltar & General Offensive" tab).

²⁹⁵⁵ Reply, para. 952.

²⁹⁵⁶ Counter-Memorial, para. 905; Rejoinder, para. 1567.

²⁹⁵⁷ Counter-Memorial, para. 905; Rejoinder, para. 1520.

²⁹⁵⁸ Memorial, para. 410.

²⁹⁵⁹ Reply, paras. 958-959, 961.

1837. In support of their position, the Claimants explain that the purpose of the Gibraltar Proceedings was to prevent further funding of the Lago Agrio conspiracy by known funders, such as (i) Mr James Russell DeLeon; (ii) Mr DeLeon’s funding vehicle, Torvia Limited (“**Torvia**”); (iii) Amazonia Recovery Limited (defined earlier as “Amazonia”), a special purpose vehicle used by the LAPs and their affiliates to receive funding for the “Global Pressure Campaign” against Chevron; (iv) Woodsford Litigation Funding Limited (“**Woodsford**”); and (v) other related parties.²⁹⁶⁰ As observed by Mr Steven Kobre – a partner at Kobre & Kim LLP and witness on behalf of the Claimants – the successful outcomes of each of the Gibraltar Proceedings “effectively ended the use of large-scale commercial third-party funding of the conspiracy against Chevron and eliminated Gibraltar as the LAPs’ chosen forum.”²⁹⁶¹ In particular, the Claimants note that they successfully obtained judgments against certain defendants, including Amazonia,²⁹⁶² and reached settlements with other funders, whereby they agreed *inter alia* to cease the funding of the Lago Agrio Litigation and the “Global Pressure Campaign”.²⁹⁶³

1838. The Claimants emphasize that Chevron’s strategic decision to deprive the LAPs of access to funding for their enforcement activities was the direct consequence of the Respondent’s continued refusal to prevent enforcement of the Lago Agrio Judgment in defiance of the Tribunal’s Interim Orders and Awards.²⁹⁶⁴ Therefore, for the purposes of recovering the expenses incurred in the Gibraltar Proceedings, the Claimants consider irrelevant whether

²⁹⁶⁰ Memorial, paras. 398-407; **C-2916**, *Chevron Corp. v. James Russell DeLeon & Torvia Ltd.*, Supreme Court of Gibraltar, Claim No. 2012-C-232, Claimants’ Sealed Claim Form, Particulars of Claim and Notice of Issue, 17 December 2012; **C-2972**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Particulars of Claim, 18 June 2014; **C-2983**, *Chevron Corp. v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Order Approving Joinder, 1 December 2014; **C-2998**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-2014-C-110, Supreme Court of Gibraltar, Eleventh Witness Statement of Stephen Victor Catania for the Claimant, 28 March 2017.

²⁹⁶¹ Reply, paras. 955-956, 963; Kobre Witness Statement, para. 17.

²⁹⁶² Memorial, paras. 406, 408; **C-2995**, *Chevron Corp. v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Judgment, 9 December 2015, paras. 1, 14; **C-3001**, Chevron Press Release, “Gibraltar Supreme Court Awards Chevron \$38 Million Against Ecuadorian Conspirators”, 25 May 2018; **C-3002**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Order, 14 May 2018.

²⁹⁶³ Memorial, paras. 401, 405; **C-2967**, Settlement Agreement Between Chevron and DeLeon Parties, 13 February 2015; **C-2988**, Woodsford’s Executed Settlement Agreement with Chevron, 1 May 2015.

²⁹⁶⁴ Memorial, para. 397; Reply, paras. 962, 964.

the litigation funders knew that their actions were improper when they began funding the LAPs' enforcement efforts.²⁹⁶⁵

1839. Further, according to the Claimants, the fact that Chevron has received partial payment from the funders or that they paid expenses for non-party disclosure in the Gibraltar Proceedings does not preclude them from recovering those costs from the Respondent in this Arbitration.²⁹⁶⁶ In the Claimants' view, nothing in the underlying court orders or settlement agreements with the defendants in the Gibraltar Proceedings bars Chevron from seeking its costs as damages against a non-party to those proceedings – the Respondent.²⁹⁶⁷

1840. In view of the foregoing, the Claimants submit that Chevron's actions in commencing the Gibraltar Proceedings constitute a reasonable mitigation of the potential losses to which they were exposed by the LAPs' global efforts to enforce the Lago Agrio Judgment.²⁹⁶⁸ Accordingly, the Claimants state that Chevron's expenditures in the Gibraltar Proceedings, carried out in mitigation of massive potential liability, are duly recoverable under international law.²⁹⁶⁹

1841. The Claimants submit that – at the very least – they are entitled to recover USD 36,516,000 in direct damages incurred after 1 March 2012.²⁹⁷⁰

1842. According to the Claimants, the fact that they agreed to pay their legal costs without a guarantee that such costs would ever be recoverable demonstrates that the costs were reasonable.²⁹⁷¹ Moreover, the Claimants take the view that a single instance whereby a court denied a specific document production request does not render the legal expenses incurred in those proceedings unreasonable or unnecessary.²⁹⁷² In the alternative, the

²⁹⁶⁵ Reply, para. 954.

²⁹⁶⁶ Reply, paras. 968-969.

²⁹⁶⁷ Reply, para. 970.

²⁹⁶⁸ Memorial, para. 411; Reply, para. 960.

²⁹⁶⁹ Memorial, para. 411; **CLA-670**, *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Award, ICJ Reports 1997, 27 September 1997, para. 80.

²⁹⁷⁰ Reply, para. 971.

²⁹⁷¹ Reply, para. 972.

²⁹⁷² Reply, para. 974.

Claimants argue that they are entitled to recover the legal fees and expenses incurred in the Gibraltar Proceedings as incidental damages on the grounds that these expenses were reasonable for the reasons set out above.²⁹⁷³

2. The Respondent's Position

1843. For the Respondent, there is no causal connection between the Treaty breaches and the Gibraltar Proceedings because the conduct alleged by Chevron in the Gibraltar actions, *i.e.*, that the Gibraltar defendants chose to fund the LAPs' claims despite their knowledge that the LAPs and their counsel were acting dishonestly, predates the issuance of the Lago Agrio Judgment and the declaration of the Treaty breaches by this Tribunal.²⁹⁷⁴ In particular, the Respondent notes that Chevron allegedly began incurring legal expenses in Gibraltar as early as 2008, while (i) the first Gibraltar proceeding was actually filed in December 2012; and (ii) the Treaty breaches did not crystallise until the Constitutional Court issued its decision in June 2018.²⁹⁷⁵ In the Respondent's view, the Claimants have also failed to establish that "attacking" third-party funders in a "faraway jurisdiction", where no enforcement action was even filed, was necessary for Chevron's successful defence against the enforcement of the Lago Agrio Judgment in other jurisdictions.²⁹⁷⁶

1844. Consequently, the Respondent rejects the Claimants' assertion that the Gibraltar Proceedings were a natural and foreseeable result of the Respondent's Treaty breaches.²⁹⁷⁷ Instead, for the Respondent, it was "a result of Chevron's vendetta against the LAPs and anyone related to them" and was about "inflicting as much pain on the LAPs as possible."²⁹⁷⁸

1845. In the same vein, the Respondent argues that "Chevron could simply have defended itself in any recognition or enforcement action in a particular forum" as Chevron had already amassed substantial evidence of the "ghostwriting" of the Lago Agrio Judgment.²⁹⁷⁹

²⁹⁷³ Reply, para. 972-975.

²⁹⁷⁴ Counter-Memorial, para. 891.

²⁹⁷⁵ Rejoinder, paras. 1524, 1527-1528.

²⁹⁷⁶ Counter-Memorial, para. 892; Rejoinder, paras. 1525, 1530, 1533.

²⁹⁷⁷ Counter-Memorial, para. 890.

²⁹⁷⁸ Rejoinder, paras. 1528, 1535.

²⁹⁷⁹ Rejoinder, paras. 1529, 1531.

Therefore, the Respondent rejects the Claimants’ assertion that the fees incurred in the Gibraltar Proceedings were necessary to mitigate against the distant possibility of recognition and enforcement of the Lago Agrio Judgment and execution against Chevron’s assets.²⁹⁸⁰

1846. For the Respondent, Chevron’s settlement in three of the six Gibraltar actions, as well as the Gibraltar court orders in the remaining three actions, on the issue of attorneys’ fees and costs, are dispositive as to that specific issue relative to those actions.²⁹⁸¹ Insofar as Chevron agreed to bear the costs of those actions and those agreements were adopted as court orders, or courts otherwise entered orders that disposed of costs issues with finality, the Respondent contends that it is improper for the Claimants to seek double recovery for the same costs in this Arbitration.²⁹⁸²

1847. In addition to the failure to prove that the Gibraltar fees and expenses claimed by the Claimants were caused by the Respondent’s Treaty breaches, the Respondent maintains that the Claimants have failed to prove that incurring those fees and expenses was reasonable and necessary for them to defend against the enforcement of the Lago Agrio Judgment.²⁹⁸³ Specifically, the Respondent posits that under Gibraltar law the Claimants are required to prove that the fees they allegedly incurred in the Gibraltar Proceedings were the “lowest amount which [Chevron] could reasonably have been expected to spend in order to have its cases conducted and presented proficiently” to establish that those fees and expenses were reasonable.²⁹⁸⁴

1848. According to the Respondent, the Gibraltar actions were “straightforward cases” because the underlying issues that formed the basis of Chevron’s claims – whether the defendants had committed the torts of conspiracy and unlawful interference with Chevron’s rights – “were not novel or new under English or Gibraltar law”, as observed by Mr Lewis

²⁹⁸⁰ Rejoinder, para. 1529.

²⁹⁸¹ Counter-Memorial, paras. 897-900; Rejoinder, paras. 1536-1537; **RE-52**, Baglietto Expert Report, para. 168.

²⁹⁸² Counter-Memorial, para. 901; Rejoinder, para. 1538.

²⁹⁸³ Counter-Memorial, para. 902; Rejoinder, para. 1543.

²⁹⁸⁴ Rejoinder, paras. 1539-1542; **RE-52**, Baglietto Expert Report, paras. 53-54, **LB-18**, *Kazakhstan Kagacy Plc v. Zhunus*, [2015] EWHC 404, 14 ConLR 253, p. 13.

Baglietto, an experienced commercial litigator in Gibraltar²⁹⁸⁵ acting as an expert for the Respondent.²⁹⁸⁶ As such, in the Respondent’s view, the characterisation by non-Gibraltar practitioners of the Gibraltar Proceedings as overly complex amounts to a “self-congratulatory attempt to justify extravagant expenditures” and should be disregarded.²⁹⁸⁷

1849. In view of the above, the Respondent posits that the “excessive” fees claimed for the Gibraltar Proceedings are the result of (i) overstaffing (and thus performing duplicative work) and paying attorneys to educate a vast team about all aspects of “Chevron’s global crusade against” the LAPs;²⁹⁸⁸ (ii) creating, reviewing, and revising work product that was unnecessary to further Chevron’s cases;²⁹⁸⁹ and (iii) attorneys billing on projects that were wholly unrelated to the Gibraltar Proceedings, including drafting complaints and papers for actions in other jurisdictions that were not even identified by the Claimants.²⁹⁹⁰

1850. In this respect, the Respondent highlights that when awarding Chevron its reasonable fees and costs (to the extent there were any) the Gibraltar courts determined that Chevron’s litigation tactics were “absurd” and led to unnecessary costs and expenses under the guiding principle that “litigation should be conducted in proportionate manner, and, where possible, at a proportionate cost.”²⁹⁹¹

1851. Even assuming *arguendo* that the Gibraltar Proceedings were a proximate consequence of the Treaty breaches, the Respondent submits that the Claimants are only entitled to a maximum of USD 71,815 (later updated to USD 40,502) in fees and costs for the proceedings, subject to showing that the amount was reasonable and necessary.²⁹⁹² Yet,

²⁹⁸⁵ Baglietto Expert Report, paras. 9-16.

²⁹⁸⁶ Rejoinder, paras. 1545-1546, 1556; **RE-52**, Baglietto Expert Report, paras. 125-128.

²⁹⁸⁷ Rejoinder, paras. 1537-1548.

²⁹⁸⁸ Rejoinder, paras. 1544, 1552-1558; **RE-52**, Baglietto Expert Report, paras. 132-134, 138-140.

²⁹⁸⁹ Rejoinder, paras. 1544, 1551, 1559; Annex J-3, entries, 396, 423, 424, 605, 681, 752; **RE-52**, Baglietto Expert Report, para. 160.

²⁹⁹⁰ Rejoinder, paras. 1544, 1551, 1560-1562; Annex J-4, entries, 2, 53, 54, 189.

²⁹⁹¹ Counter-Memorial, paras. 902-904; **C-3009**, *Chevron v. GT Nominees Limited & Others*, Claim No. 2014-C-111, Supreme Court of Gibraltar, Judgment, 10 November 2014, para. 34; **RLA-730**, *Lownds v. Home Office*, [2002] C.P. Rrep. 43, 21 March 2002, para. 1.

²⁹⁹² Counter-Memorial, para. 895; Rejoinder, para. 134; **RE-35**, First Leigh Expert Report, para. 129; **RE-61**, Second Leigh Expert Report, para. 80.

for the above-mentioned reasons, the Respondent argues that the Claimants have failed to make such a showing.²⁹⁹³

3. The Tribunal's Analysis

(a) Introduction

1852. On 17 December 2012, Chevron initiated the Gibraltar Proceedings by filing an action against Mr DeLeon – who was alleged to be one of the Lago Agrio Litigation funders – and Torvia – his purported funding vehicle – claiming “damages for losses sustained . . . as a consequence of the Defendants’ funding and support of fraudulent litigation brought against the Claimant in the Republic of Ecuador (the ‘Lago Agrio Litigation’).”²⁹⁹⁴ These proceedings were followed by five other actions, including three discovery proceedings, brought against other Gibraltar-based funders, corporate vehicles, and related individuals.²⁹⁹⁵ Each of the six Gibraltar Proceedings is described in further detail in paragraphs 1861-1893 below.

1853. The Claimants assert that they initiated the Gibraltar Proceedings “in order to prevent further funding of the conspiracy and to mitigate against potential damages Chevron could face should the [Lago Agrio Judgment] be enforced in light of Ecuador’s continued refusal (in defiance of this Tribunal’s Interim Orders and Awards) to prevent enforcement of the Judgment.”²⁹⁹⁶ In particular, the Claimants state that they sought to (i) cut off the sources of funding of the LAPs’ representatives; (ii) halt the “potentially irreversible dissipation of funds” through Gibraltar entities; and (iii) dissuade new funders from providing additional resources to the LAPs in their global campaign against Chevron.²⁹⁹⁷

1854. The Respondent opposes the Claimants’ damages claim in respect of the Gibraltar Proceedings on several grounds, including the following: (i) the basis of the Gibraltar Proceedings (*i.e.*, the Gibraltar defendants’ alleged knowledge that the LAPs and their

²⁹⁹³ Counter-Memorial, para. 895.

²⁹⁹⁴ **C-2916**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012-C-232, Supreme Court of Gibraltar, Claimant’s Sealed Claim Form, Particulars of Claim and Notice of Issue, 17 December 2012, para. 1.

²⁹⁹⁵ Memorial, para. 397; Appendix 7.

²⁹⁹⁶ Memorial, para. 397.

²⁹⁹⁷ Reply, para. 955; Fourth Veiga Witness Statement, para. 90.

counsel were acting dishonestly and nevertheless chose to fund their activities) predated the Lago Agrio Judgment and the Treaty breaches and could not have been caused by them; (ii) instead of “attack[ing] third-party funders . . . in a faraway jurisdiction” the Claimants could have availed themselves of other remedies in other fora, including directly defending against the Lago Agrio Judgment and any attempts to enforce it; and (iii) if “starting a new cluster of lawsuits on another continent was Chevron’s mitigation strategy, it was faulty at best, as there is no evidence to suggest that . . . the LAPs could not have found other funding sources.”²⁹⁹⁸

1855. Before beginning its analysis of the Claimants’ damages claim in respect of the Gibraltar Proceedings, the Tribunal recalls the Claimants’ position that all of their claimed legal fees and expenses incurred in connection with these proceedings constitute direct damages and are recoverable in the alternative as incidental damages.²⁹⁹⁹ As explained in paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages. The expenses incurred by the Claimants to mitigate any other form of harm or geared towards any other goal are *not* compensable in these proceedings.³⁰⁰⁰

1856. Following the methodology laid out in Section VII.G.5 for the assessment of incidental damages, the Tribunal finds that the Claimants’ claim for compensation in respect of legal fees and expenses incurred in connection with the Gibraltar Proceedings must be granted for the reasons and to the extent set out below.

(b) First Step: Analysis of Incidental Damages “Category”

1857. As a first step of its analysis, the Tribunal must determine whether the Gibraltar Proceedings category of damages meets the requirements of causation and reasonableness for the compensation of incidental damages under international law.

²⁹⁹⁸ Counter-Memorial, paras. 891-893; Rejoinder, paras. 44, 1524-1535.

²⁹⁹⁹ Reply, para. 860.

³⁰⁰⁰ See para. 317 above.

1858. First, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555, the Claimants' efforts must have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.

1859. Second, as noted in paragraph 556 above, incidental damages are subject to an additional requirement of reasonableness: to warrant compensation, legal fees and expenses must have been *reasonably* incurred to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. At this level of analysis, the Tribunal's determination concerns the reasonableness of the mitigation *measures* undertaken by the Claimants, not of the *amounts* they spent, which will be examined in a subsequent step of the analysis.³⁰⁰¹

1860. As already noted, the Gibraltar Proceedings comprised six parallel yet distinct actions requiring a differentiated analysis for present purposes. They are addressed consecutively in the paragraphs that follow.

1. Chevron v. James Russell DeLeon and Torvia Limited

1861. On 17 December 2012, Chevron lodged an action against Mr DeLeon and Torvia, a Gibraltar company alleged to be "ultimately owned and/or controlled by" Mr DeLeon, before the Supreme Court of Gibraltar (the "**DeLeon Action**").³⁰⁰² Chevron claimed damages and other remedies for "losses caused by unlawful means conspiracy and/or conspiracy to injure the Claimants' interests by arranging from Gibraltar the funding of a

³⁰⁰¹ See para. 556 above.

³⁰⁰² **C-2916**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012-C-232, Supreme Court of Gibraltar, Claimant's Sealed Claim Form, Particulars of Claim and Notice of Issue, 17 December 2012, para. 8.

fraudulent claim [*i.e.*, the Lago Agrio Litigation].”³⁰⁰³ Chevron alleged that Mr DeLeon and Torvia “funded such litigation knowing or being recklessly indifferent as to the commission of the said frauds, which included the making of fraudulent misrepresentations as to the identity and independence of the authors of the expert reports on which the Lago Agrio Judgment was to a large extent based, and also the intimidation and corruption of the Ecuadorian judiciary.”³⁰⁰⁴ Chevron further stated that Mr DeLeon had contributed an initial amount of USD 1 million to fund the Lago Agrio Litigation, for which Mr DeLeon and Torvia were to receive 7% of the net recoveries from the enforcement of the Lago Agrio Judgment.³⁰⁰⁵

1862. On 13 February 2015, Chevron entered into a settlement agreement with Mr DeLeon, Torvia and Mr Julian Jarvis (a defendant in the *Amazonia* and *Jarvis* Actions described below)³⁰⁰⁶ whereby, among other things, they agreed to cease funding the LAPs in connection with the Lago Agrio Litigation and Judgment, the “Global Pressure Campaign”, and any related proceedings in any jurisdiction.³⁰⁰⁷ They also agreed to comply “with any request from Chevron in relation to their legal, beneficial or financial interest in the Lago Agrio Litigation, the Lago Agrio Judgment, any Related Actions, and any proceeds they receive as a consequence of their interest in the Lago Agrio Judgment or in Amazonia”.³⁰⁰⁸

1863. On 18 February 2015, the Supreme Court of Gibraltar issued a consent order acknowledging that the parties in the *DeLeon* Action had agreed to a discontinuance of

³⁰⁰³ **C-2916**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012-C-232, Supreme Court of Gibraltar, Claimant’s Sealed Claim Form, Particulars of Claim and Notice of Issue, 17 December 2012, p. 1, Brief Details of Claim.

³⁰⁰⁴ **C-2916**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012-C-232, Supreme Court of Gibraltar, Claimant’s Sealed Claim Form, Particulars of Claim and Notice of Issue, 17 December 2012, p. 1, Brief Details of Claim.

³⁰⁰⁵ **C-2916**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012-C-232, Supreme Court of Gibraltar, Claimant’s Sealed Claim Form, Particulars of Claim and Notice of Issue, 17 December 2012, paras. 43, 51; **C-2917**, *Chevron Corp. v. James Russell DeLeon & Torvia Limited*, Supreme Court of Gibraltar, Claim No. 2012-C-232, Defence and Counterclaim of the First and Second Defendants, 30 July 30 2014, para. 4.

³⁰⁰⁶ See paras. 1870-1889 below.

³⁰⁰⁷ **C-2967**, Settlement Agreement Between Chevron and DeLeon Parties, 13 February 2015, para. 2.

³⁰⁰⁸ **C-2967**, Settlement Agreement Between Chevron and DeLeon Parties, 13 February 2015, para. 4.

the proceedings and ordering, with consent of the parties, that all existing costs shall stand as fully satisfied between the parties.³⁰⁰⁹

1864. Based on the above, the Tribunal determines that by bringing the *DeLeon* Action after the Lago Agrio Judgment was rendered enforceable on 1 March 2012,³⁰¹⁰ Chevron sought primarily to deprive the LAPs from access to funding for the Lago Agrio Litigation and their worldwide enforcement campaign. Since the Claimants have established sufficiently that the LAPs could not have pursued the Lago Agrio Litigation or any enforcement proceedings without significant funding,³⁰¹¹ the Tribunal determines that the Claimants' efforts geared towards cutting off funding for the LAPs had the direct goal of undermining existing attempts, as well as preventing future attempts, to render enforceable and/or enforce the Lago Agrio Judgment in multiple jurisdictions worldwide (as described in items (i) and (iii) in paragraph 1858 above). The requirement of causation for the compensation of incidental damages is therefore established as regards the *DeLeon* Action.

1865. In reaching this conclusion, the Tribunal remains mindful that, by bringing the *DeLeon* Action, the Claimants also sought to cut off funding for the LAPs' so-called "Global Pressure Campaign" (*i.e.*, "a dishonest adverse publicity campaign intended to compel [Chevron] to settle the [Lago Agrio Judgment]").³⁰¹² In this respect, the Tribunal recalls that any harm suffered by the Claimants as a result of such campaign – including any

³⁰⁰⁹ **C-2970**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012-C-232, Supreme Court of Gibraltar, Consent Order, 18 February 2015.

³⁰¹⁰ Track II Award, para. 4.462.

³⁰¹¹ Track II Award, paras. 4.34, 4.410, 4.412; **C-1217**, Burford Funding Agreement, 31 October 2010; **C-1218**, Intercreditor Agreement, 31 October 2010. *See in particular* Track II Award, para. 4.34: "The Lago Agrio Plaintiffs' representatives and legal advisers, at different times, included Mr Norman Alberto Wray (a senior Ecuadorian lawyer and former judge of the Ecuadorian Supreme Court), Mr Cristóbal Bonifaz (of Amherst, MA, USA), Mr Pablo Fajardo Mendoza (from 2005), Mr Juan Pablo Sáenz, Mr Julio Prieto Méndez, Mr Alejandro Ponce Villacis, Mr Luís Yanza (a director of the "Frente de Defensa La Amazonia" or "Frente" and, in English, the "Amazon Defence Front" or "ADF"), Mr Icocha Manuel Tegautal, Mr Joseph Kohn (of Kohn, Swift & Graf, Philadelphia, PA, USA); Patton Boggs (a law firm in Washington DC, USA from about August 2010) and, as already indicated, Mr Donziger. The funding for such legal representation came principally from Mr Kohn (until 2010), Mr Russell DeLeon, Patton Boggs and (from 2010) Burford Capital, in return for success fees calculated on recoveries from Chevron upon the eventual enforcement of the Lago Agrio Judgment. Other non-party funders appear to have become involved in the Lago Agrio Judgment's enforcement proceedings outside Ecuador."

³⁰¹² **C-2916**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012-C-232, Supreme Court of Gibraltar, Claimant's Sealed Claim Form, Particulars of Claim and Notice of Issue, 17 December 2012, p.1, Brief Details of Claim.

legal fees and expenses incurred to oppose the campaign – falls outside the scope of the compensable injury in this case (*i.e.*, the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment).³⁰¹³

1866. However, the Tribunal considers that the two goals pursued by the *DeLeon* Action – mitigating both the injury arising from the recognition and enforcement of the Lago Agrio Judgment and the harm caused by the “Global Pressure Campaign” – were inextricable, as Mr DeLeon and Torvia allegedly funded the LAPs’ enforcement efforts and the “Global Pressure Campaign” jointly as part of a coordinated strategy.³⁰¹⁴ In the Tribunal’s view, the fact that the *DeLeon* Action may have had other goals beyond its basic objective of mitigating the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment does not alter the conclusion that the Claimants have established the required causal link between the legal fees and expenses claimed under the present heading and the Respondent’s wrongs.

1867. The question whether pursuing the *DeLeon* Action fulfils the requirement of reasonableness for the compensation of incidental damages merits a separate assessment. Critically, the *DeLeon* Action was not brought against the injuring party (Ecuador) or the LAPs, but rather against litigation funders who supported the LAPs’ efforts to derive proceeds from the Lago Agrio Judgment. In normal circumstances, the Tribunal would be cautious to grant compensation for costs incurred by an injured party in proceedings against third-party litigation funders, as doing so could raise issues of access to justice. However, in the Tribunal’s view, no access-to-justice considerations apply where, as here, the injured party has substantial reasons to believe that the funders in question have actual or constructive knowledge that they are funding fraudulent activities.

1868. In this connection, the Tribunal has examined Chevron’s Particulars of Claim in the *DeLeon* Action and taken note, in particular, of the materials alleged to have come to Mr DeLeon’s attention regarding the ‘ghostwriting’ of the Lago Agrio Judgment between

³⁰¹³ See para. 317 above.

³⁰¹⁴ **C-2916**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012-C-232, Supreme Court of Gibraltar, Claimant’s Sealed Claim Form, Particulars of Claim and Notice of Issue, 17 December 2012, p. 1, Brief Details of Claim. See also Track II Award, para. 7.27: “Here, the injury to Chevron was always intended to take place, at least in part, in one or more foreign jurisdictions elsewhere than Ecuador, whether by the enforcement of the Lago Agrio Judgment or by an enforced ‘amicable’ settlement.”

2007 and 2010.³⁰¹⁵ In view of the significant overlap between these allegations and the Tribunal’s factual findings regarding the ‘ghostwriting’ of the Judgment in Parts IV and V of its Track II Award, the Tribunal concludes that the Claimants had substantial reasons to believe that Mr DeLeon and Torvia knew or should have known that the Lago Agrio Judgment had been procured fraudulently and decided to fund its enforcement nonetheless. It was therefore reasonable for the Claimants to bring legal proceedings against Mr DeLeon and Torvia as a way to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment.

1869. For these reasons, the Tribunal determines that the Claimants’ pursuit of the *DeLeon* Action fulfils the requirements of causation and reasonableness for the reimbursement of incidental damages.

2. Chevron v. Amazonia & Woodsford

1870. On 18 June 2014, Chevron filed a claim for damages before the Supreme Court of Gibraltar against (i) Amazonia, which was alleged to be owned and controlled by several of the LAPs’ representatives and “the clearinghouse for both incoming funding and support and outgoing proceeds of the Conspirators’ unlawful scheme”,³⁰¹⁶ and (ii) Woodsford, which, in Chevron’s submission, “has funded and supported the continued prosecution of the Lago Agrio Litigation (through continued multi-jurisdictional enforcement efforts and in various other legal proceedings) and the continued perpetration of the Global Pressure Campaign in the expectation of itself obtaining a substantial financial benefit as a result”³⁰¹⁷ (the “*Amazonia Action*”).

1871. Later in the proceedings, the Supreme Court of Gibraltar granted Chevron’s application to join additional defendants to the action, including three Ecuadorian directors of Amazonia (Mr Pablo Fajardo, Mr Luis Yanza, and Mr Ermel Chavez) and Mr Jarvis, a

³⁰¹⁵ **C-2916**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012-C-232, Supreme Court of Gibraltar, Claimant’s Sealed Claim Form, Particulars of Claim and Notice of Issue, 17 December 2012, paras. 89-102.

³⁰¹⁶ **C-2972**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Particulars of Claim, 18 June 2014, para. 4.7.

³⁰¹⁷ **C-2972**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Particulars of Claim, 18 June 2014, para. 4.8.

Gibraltar-domiciled director of Amazonia.³⁰¹⁸ As noted above, Mr Jarvis entered into a settlement agreement with Chevron on 13 February 2015.³⁰¹⁹

1872. On 1 May 2015, Chevron entered into a settlement agreement with Woodsford and Temeraire Limited.³⁰²⁰ These two companies agreed, *inter alia*, to cease funding the LAPs in connection with the Lago Agrio Litigation and Judgment, the “Global Pressure Campaign”, and any related proceedings in any jurisdiction.³⁰²¹ They also agreed to comply “with any reasonable request from Chevron in relation to their legal, beneficial or financial interest in the Lago Agrio Litigation, the Lago Agrio Judgment . . . any Related Actions, and any proceeds they receive or are entitled to receive as a consequence of their interest in the Lago Agrio Judgment or in Amazonia”.³⁰²² Thereafter, a consent order was agreed upon by Chevron and Woodsford whereby “all existing costs orders between the parties were acknowledged as fully satisfied”.³⁰²³

1873. On 9 December 2015, Chevron obtained a default judgment against Amazonia for USD 28,035,219.37 in damages, reflecting attorneys’ fees incurred in the RICO Litigation, as Chevron had “voluntarily limited their claim against Amazonia to the costs incurred by it in bringing proceedings in the United States.”³⁰²⁴ The Supreme Court of Gibraltar awarded additional relief, including a permanent injunction restraining Amazonia from performing any act in or from Gibraltar for purposes of supporting the conspiracy, enforcing the Lago Agrio Judgment, or distributing proceeds related to enforcement of the same judgment.³⁰²⁵

³⁰¹⁸ **C-2983**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Order Approving Joinder, 1 December 2014.

³⁰¹⁹ See para. 1862 above.

³⁰²⁰ **C-2988**, Woodsford’s Executed Settlement Agreement with Chevron, 1 May 2015. The Claimants describe Temeraire Limited as “a Gibraltar-registered company not named as a party, but used by Woodsford as a special purpose vehicle to acquire an option to purchase shares in Amazonia” (Memorial, Appendix 7, p. 12).

³⁰²¹ **C-2988**, Woodsford’s Executed Settlement Agreement with Chevron, 1 May 2015, para. 2.

³⁰²² **C-2988**, Woodsford’s Executed Settlement Agreement with Chevron, 1 May 2015, para. 4.

³⁰²³ Memorial, Appendix 7, p. 12; **C-2989**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Consent Order, 4 May 2015.

³⁰²⁴ **C-2995**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Judgment, 9 December 2015, paras. 9, 13.

³⁰²⁵ **C-2995**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Judgment, 9 December 2015, para. 14.

1874. On 25 May 2018, Chevron also obtained a default judgment for (i) USD 38,093,729.85 in damages and interest against Pablo Fajardo, Luis Francisco Yanza and Ermel Chavez; and (ii) USD 37,638,758.16 in damages and interest against two defendants that had been joined to the *Amazonia* Action on 3 May 2017 and which were also shareholders of Amazonia.³⁰²⁶ the Amazonian Defence Front or “ADF” (an organization acting as representative of the LAPs in the Lago Agrio Litigation and a named beneficiary of the Lago Agrio Judgment)³⁰²⁷ and Servicios Fromboliere Compania Limitada (which is described by the Claimants as an Ecuadorian law firm operated by Pablo Fajardo).³⁰²⁸ These sums also reflected fees and costs incurred by Chevron in the RICO Litigation.³⁰²⁹ The Supreme Court of Gibraltar granted additional relief including (i) an injunction restraining the defendants from assisting or supporting in any way the LAPs, the enforcement of the Lago Agrio Judgment or the distribution of any related proceeds;³⁰³⁰ and (ii) an indemnity order “for any loss or expense incurred in any jurisdiction by the Claimant arising out of any and all attempts to enforce the Lago Agrio Judgment”, as well as liberty for Chevron to apply for an order to pay specific sums under such indemnity.³⁰³¹

1875. According to the Claimants, Amazonia did not pay any part of the damages awarded against it.³⁰³² Chevron subsequently applied for and received a court order appointing liquidators over Amazonia, as described in paragraphs 1890-1893 below.

³⁰²⁶ **C-2999**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Order, 3 May 2017.

³⁰²⁷ See paras. 87-88 above; Track II Award, paras. 4.442, 5.6.

³⁰²⁸ Memorial, Appendix 7, p. 14; **C-2998**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Eleventh Witness Statement of Stephen Victor Catania for the Claimant, 28 March 2017; **C-3001**, Press Release, “Gibraltar Supreme Court Awards Chevron \$38 Million Against Ecuadorian Conspirators,” Chevron, 25 May 2018; **C-3002**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Order, 14 May 2018.

³⁰²⁹ Memorial, Appendix 7, p. 15, fn 84. See also **C-3002**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Order, 14 May 2018, para. 1: “the Claimant may not recover more than US \$33,148,186.71 in damages and US \$4,945,543.14 in interest thereon pursuant to this Order”.

³⁰³⁰ **C-3002**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Order, 14 May 2018, paras. 4-5.

³⁰³¹ **C-3002**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Order, 14 May 2018, paras. 6-7.

³⁰³² Memorial, Appendix 7, p. 15.

1876. In sum, echoing the *DeLeon* Action, Chevron brought the *Amazonia* Action seeking primarily to deprive the LAPs of access to funding for the Lago Agrio Litigation and their worldwide enforcement campaign.³⁰³³ In addition, the *Amazonia* Action sought to prevent Amazonia from being used as a “clearinghouse for . . . outgoing proceedings of the Conspirators’ unlawful scheme”.³⁰³⁴

1877. In the Tribunal’s view, the Claimants have established that they had substantial reasons to believe that the defendants in the *Amazonia* Action knew or should have known that they were funding fraudulent activities.³⁰³⁵ Accordingly, for the same reasons stated in paragraphs 1864-1869 above in connection with the *DeLeon* Action, the Tribunal concludes that the Claimants’ pursuit of the *Amazonia* Action fulfils the requirements of causation and reasonableness for the reimbursement of incidental damages.

3. Chevron v. GT Nominees Limited

1878. On 18 June 2014, Chevron initiated a discovery action against GT Nominees Limited (“**GT Nominees**”), the purported sole legal owner of Amazonia and Torvia (the “**GT Action**”).³⁰³⁶ According to Chevron, GT Nominees was “providing nominee shareholder services to the ultimate beneficial owners of Amazonia and Torvia for the purpose of concealing their identities.”³⁰³⁷ On this basis, Chevron sought “disclosure in respect of (a) the ultimate beneficial owners of Amazonia and Torvia and the activities they have carried out in pursuit of the conspiracy and (b) the Defendant’s own role in the conspiracy.”³⁰³⁸

³⁰³³ See para. 1864 above.

³⁰³⁴ **C-2972**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Particulars of Claim, 18 June 2014, para. 4.7. See also paras. 1890-1893 below.

³⁰³⁵ **C-2972**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Particulars of Claim, 18 June 2014, paras. 69-72, 82-112.

³⁰³⁶ **C-3003**, *Chevron v. GT Nominees Limited & Others*, Claim No. 2014-C-111, Supreme Court of Gibraltar, Claim Form, 18 June 2014.

³⁰³⁷ **C-3003**, *Chevron v. GT Nominees Limited & Others*, Claim No. 2014-C-111, Supreme Court of Gibraltar, Claim Form, 18 June 2014, p. 1.

³⁰³⁸ **C-3003**, *Chevron v. GT Nominees Limited & Others*, Claim No. 2014-C-111, Supreme Court of Gibraltar, Claim Form, 18 June 2014, pp. 1-2.

1879. At its request, Torvia was allowed to intervene in the *GT* Action.³⁰³⁹ At a hearing held on 22 September 2014, the Supreme Court of Gibraltar required GT Nominees and other related entities that were joined to the action (GT Management Limited, GT Fiduciary Services Limited and Grant Thornton Fund Administration Limited) (the “**GT Entities**”) to disclose information regarding the beneficial owners of Amazonia and Torvia.³⁰⁴⁰ On 24 October 2014, Woodsford filed an application to be added as an interested party in the action for the purpose of being heard on Chevron’s outstanding requests for non-party and pre-action disclosure, which was granted on 10 November of the same year.³⁰⁴¹

1880. On 1 December 2014, the Supreme Court of Gibraltar ordered Chevron to pay Woodsford’s costs of intervening (GBP 44,941.81) along with an interim payment of GBP 22,500.³⁰⁴² This interim payment was fully offset by a costs award in favour of Chevron in the *Amazonia* Action. As a result of this offset, Chevron instead received GBP 17,500 from Woodsford.³⁰⁴³ Subsequently, Chevron agreed to (i) a consent order recognizing it would pay GBP 117,050.65, corresponding to Torvia’s costs for its application, along with an interim payment of GBP 25,000;³⁰⁴⁴ and (ii) a second consent order pursuant to which both Chevron’s and Torvia’s costs were deemed as fully satisfied.³⁰⁴⁵

³⁰³⁹ Memorial, Appendix 7, p. 16.

³⁰⁴⁰ **C-3007**, *Chevron v. GT Nominees Limited & Others*, Claim No. 2014-C-111, Supreme Court of Gibraltar, Order, 22 September 2014.

³⁰⁴¹ **C-3008**, *Chevron v. GT Nominees Limited & Others*, Claim No. 2014-C-111, Supreme Court of Gibraltar, Witness Statement of James Ian Montado for Woodsford Litigation Funding Limited, Oct. 24, 2014, paras. 2, 32-39; **C-3009**, *Chevron v. GT Nominees Limited & Others*, Claim No. 2014-C-111, Supreme Court of Gibraltar, Judgment, 10 November 2014, paras. 1, 12.

³⁰⁴² Memorial, Appendix 7, p. 17; **C-3011**, *Chevron v. GT Nominees Limited & Others*, Claim No. 2014-C-111, Supreme Court of Gibraltar, Order, 1 December 2014. Against the background that Chevron had sought an order “for a very wide disclosure of documents”, the Supreme Court of Gibraltar determined “it was appropriate for Woodsford to appear and their arguments were useful and indeed succeeded” and ruled that, in those circumstances, “the usual order ought to follow that Chevron should pay Woodsford’s costs of the intervention”. See **C-3012**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Judgement (Woodsford Costs), 1 December 2014, paras. 1-2.

³⁰⁴³ Memorial, Appendix 7, p. 17; **C-3012**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Judgement (Woodsford Costs), 1 December 2014.

³⁰⁴⁴ Memorial, Appendix 7, p. 17; **C-3013**, *Chevron v. GT Nominees Limited & Others*, Claim No. 2014-C-111, Supreme Court of Gibraltar, Order, 2 December 2014.

³⁰⁴⁵ Memorial, Appendix 7, p. 17; **C-2970**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012-C-232, Supreme Court of Gibraltar, Consent Order, 18 February 2015.

1881. On 24 February 2015, after Chevron had already received documents through the above court order, Chevron and the GT Entities agreed to a consent order discontinuing the *GT* Action to the extent it was still outstanding, and agreed that Chevron would pay GBP 130,000 to satisfy the GT Entities' disclosure costs.³⁰⁴⁶

1882. Unlike the *DeLeon* and *Amazonia* Actions, the *GT* Action, being a discovery action, did not *per se* seek to deprive the LAPs of access to funding for the Lago Agrio Litigation and their worldwide enforcement campaign. In the Tribunal's view, however, the *GT* Action did form part of Chevron's coordinated efforts to achieve that very goal, as the documents sought in the *GT* Action were directly relevant to the parallel *DeLeon* and *Amazonia* Actions.³⁰⁴⁷

1883. Accordingly, having already determined that the requirements of causation and reasonableness for the compensation of incidental damages are met as regards the legal fees and expenses incurred by the Claimants in connection with the *DeLeon* and *Amazonia* Actions,³⁰⁴⁸ the Tribunal extends the same conclusion to the legal fees and expenses arising from the *GT* Action.

4. Chevron v. TC Payment Services (International) Limited

1884. On 20 June 2014, Chevron initiated discovery against TC Payment Services (International) Limited ("TCPS") before the Supreme Court of Gibraltar (the "**TCPS Action**"). According to Chevron, TCPS was used to make payments on behalf of

³⁰⁴⁶ Memorial, Appendix 7, p. 17; **C-3014**, *Chevron v. GT Nominees Limited & Others*, Claim No. 2014-C-111, Supreme Court of Gibraltar, Order, 24 February 2015.

³⁰⁴⁷ See **C-3020**, *Chevron v. James Russell DeLeon & Others*, Claim No. 2012-C-232, Supreme Court of Gibraltar, *Chevron v. TC Payment Services (International) Limited*, Claim No. 2014-C-113, Supreme Court of Gibraltar, *Chevron v. GT Nominees*, Claim No. 2014-C-111, Supreme Court of Gibraltar, *Chevron v. Julian Jarvis*, Claim No. 2014-C-112, Supreme Court of Gibraltar, Judgment, 10 November 2014.

³⁰⁴⁸ See paras. 1869, 1877 above.

Mr DeLeon and his then-wife³⁰⁴⁹ to fund the Lago Agrio Litigation.³⁰⁵⁰ Chevron's application was granted on 10 November 2014.³⁰⁵¹

1885. TCPS applied for standard costs for disclosure proceedings under the law of Gibraltar and the Court awarded an interim payment of GBP 35,000, which was paid by Chevron.³⁰⁵² Thereafter, a consent order was issued on 3 March 2015, recognizing that (i) Chevron had withdrawn its pre-action and non-party disclosure applications (which had been granted); (ii) TCPS had also withdrawn its application seeking direction with respect to certain disclosure objections; and (iii) all existing costs orders were fully satisfied.³⁰⁵³

1886. Similar to the *GT* Action, while the *TCPS* Action did not have the immediate goal of depriving the LAPs of access to funding for the Lago Agrio Litigation and their worldwide enforcement campaign, it was a discovery proceeding forming part of Chevron's coordinated efforts to achieve that very goal. As such, the Tribunal determines that the requirements of causation and reasonableness for the compensation of incidental damages are met as regards the legal fees and expenses incurred by the Claimants in connection with the *TCPS* Action for the same reasons as the *GT* Action.³⁰⁵⁴

³⁰⁴⁹ **C-3020**, *Chevron v. James Russell DeLeon & Others*, Claim No. 2012-C-232, Supreme Court of Gibraltar, *Chevron v. TC Payment Services (International) Limited*, Claim No. 2014-C-113, Supreme Court of Gibraltar, *Chevron v. GT Nominees*, Claim No. 2014-C-111, Supreme Court of Gibraltar, *Chevron v. Julian Jarvis*, Claim No. 2014-C-112, Supreme Court of Gibraltar, Judgment, 10 November 2014, para. 52.

³⁰⁵⁰ **C-3020**, *Chevron v. James Russell DeLeon & Others*, Claim No. 2012-C-232, Supreme Court of Gibraltar, *Chevron v. TC Payment Services (International) Limited*, Claim No. 2014-C-113, Supreme Court of Gibraltar, *Chevron v. GT Nominees*, Claim No. 2014-C-111, Supreme Court of Gibraltar, *Chevron v. Julian Jarvis*, Claim No. 2014-C-112, Supreme Court of Gibraltar, Judgment, 10 November 2014, para. 54.

³⁰⁵¹ Memorial, Appendix 7, p. 18, **C-3019**, *Chevron v. TC Payment Services (International) Limited*, Claim No. 2014-C-113, Supreme Court of Gibraltar, Order, 10 November 2014; **C-3020**, *Chevron v. James Russell DeLeon & Others*, Claim No. 2012-C-232, Supreme Court of Gibraltar, *Chevron v. TC Payment Services (International) Limited*, Claim No. 2014-C-113, Supreme Court of Gibraltar, *Chevron v. GT Nominees*, Claim No. 2014-C-111, Supreme Court of Gibraltar, *Chevron v. Julian Jarvis*, Claim No. 2014-C-112, Supreme Court of Gibraltar, Judgment, 10 November 2014, para. 66.

³⁰⁵² Memorial, Appendix 7, p. 18; **C-3019**, *Chevron v. TC Payment Services (International) Limited*, Claim No. 2014-C-113, Supreme Court of Gibraltar, Order, 10 November 2014, para. 10.

³⁰⁵³ Memorial, Appendix 7, p. 19; **C-3021**, *Chevron v. TC Payment Services (International) Limited*, Claim No. 2014-C-113, Supreme Court of Gibraltar, Consent Order, 3 March 2015.

³⁰⁵⁴ See para. 1883 above.

5. Chevron v. Julian Jarvis

1887. On 20 June 2014, Chevron brought a discovery action against Mr Jarvis, who according to the Claimants was involved in the funding scheme as Director of both Amazonia and Torvia (the “*Jarvis Action*”).³⁰⁵⁵ This action was withdrawn on 20 October 2014, as Chevron later applied to join Mr Jarvis to the *Amazonia* Action and was granted that application on 1 December 2014.³⁰⁵⁶ Following the dismissal of the *Jarvis Action*, Mr Jarvis sought standard costs and was awarded GBP 23,000, which were paid by Chevron on 12 November 2014.³⁰⁵⁷

1888. As already noted, the settlement agreement reached in the *DeLeon* and *Amazonia* Actions also involved Mr Jarvis. In accordance with that agreement, Mr Jarvis agreed to cease funding to the Lago Agrio Litigation and Judgment and cease support to the “Global Pressure Campaign”.³⁰⁵⁸

1889. Similar to the *GT* and *TCPS* Actions, while the *Jarvis Action* did not have the immediate goal of depriving the LAPs of access to funding for the Lago Agrio Litigation and their worldwide enforcement campaign, it was a discovery proceeding forming part of Chevron’s coordinated efforts to achieve that very goal. As such, the Tribunal determines that the requirements of causation and reasonableness for the compensation of incidental damages are met as regards the legal fees and expenses incurred by the Claimants in connection with the *Jarvis Action* for the same reasons as the *GT* and *TCPS* Actions.³⁰⁵⁹

6. Amazonia Recovery Limited Liquidation

1890. On 2 June 2016, Chevron submitted an application before the Supreme Court of Gibraltar requesting that it appoint joint liquidators for Amazonia on the grounds that Amazonia was insolvent and had failed to pay damages as ordered by the Court in its judgment of 9

³⁰⁵⁵ Memorial, Appendix 7, p. 20.

³⁰⁵⁶ **C-3022**, *Chevron v. Julian Jarvis*, Claim No. 2014-C-112, Supreme Court of Gibraltar, Order, 30 October 2014. See para. 1871 above.

³⁰⁵⁷ Memorial, Appendix 7, p. 20; **C-2967**, Settlement Agreement between Chevron and DeLeon Parties, 13 February 2015; **C-2983**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Order Approving Joinder, 1 December 2014, p. 2; **C-3022**, *Chevron v. Julian Jarvis*, Claim No. 2014-C-112, Supreme Court of Gibraltar, Order, 30 October 2014.

³⁰⁵⁸ See para. 1862 above.

³⁰⁵⁹ See paras. 1883, 1886 above.

December 2015 in the *Amazonia* Action (the “***Amazonia Liquidation Proceedings***”).³⁰⁶⁰
On 11 July 2016, the Supreme Court appointed two liquidators.³⁰⁶¹

1891. By displaying efforts to bring Amazonia under receivership, the Claimants sought to prevent Amazonia from being used as a “vehicle to solicit and distribute funding all over the world to support the ongoing Conspiracy and as a conduit through which the proceeds of the Lago Agrio Judgment would flow to Conspirators”.³⁰⁶² More precisely, because Chevron was awarded substantial damages against Amazonia by the Supreme Court of Gibraltar (USD 28,035,219.37), the *Amazonia* Liquidation Proceedings can ensure that any proceeds from the Lago Agrio Judgment that might flow to Amazonia will revert to Chevron in its capacity as a creditor in the liquidation – thereby minimizing the loss arising directly from the enforcement of the Judgment as described in item (iii) in paragraph 1858 above.

1892. Considering the significant amount awarded in the *Amazonia* Action judgment in favour of Chevron and the immediate effect that its enforcement could have had in minimizing the loss arising from the enforcement of the Lago Agrio Judgment, the Tribunal is also convinced that it was reasonable for Chevron to pursue the *Amazonia* Liquidation Proceedings as a mitigation measure.

1893. For these reasons, the Tribunal determines that the requirements of causation and reasonableness for the compensation of incidental damages are met as regards the legal fees and expenses incurred by the Claimants in connection with the *Amazonia* Liquidation Proceedings.

7. Conclusion on Gibraltar Proceedings category

1894. Having determined that each of the six Gibraltar Proceedings meets the requirements of causation and reasonableness for the compensation of incidental damages under

³⁰⁶⁰ **C-3024**, *Amazonia Recovery Limited Liquidation*, No. 2016-Comp-015, Supreme Court of Gibraltar, 1st Affidavit of Stephen Catania for the Applicant, 2 June 2016.

³⁰⁶¹ **C-3026**, *Amazonia Recovery Limited Liquidation*, No. 2016-Comp-015, Supreme Court of Gibraltar, Notice of Appointment of Liquidator Under Section 146 or 160, 14 July 2016.

³⁰⁶² **C-3024**, *Amazonia Recovery Limited Liquidation*, No. 2016-Comp-015, Supreme Court of Gibraltar, 1st Affidavit of Stephen Catania for the Applicant, 2 June 2016, para. 28.

international law, the Tribunal concludes that these requirements are also met as regards the Gibraltar Proceedings category of damages as a whole.

(c) *Second Step: Analysis of Incidental Damages “Components”*

1895. As a second step of its analysis, the Tribunal must determine, within the Gibraltar Proceedings category, whether the Claimants have met the requirements for each individual costs’ “component” identified by the Parties to qualify as incidental damages. The Tribunal must also examine other issues raised by the Parties in connection with this particular category to determine whether any other portion of the legal fees and expenses claimed under the present heading should be excluded from the final amount of compensation.³⁰⁶³

1896. The Parties have identified four components involving the legal fees and expenses incurred by the Claimants in Gibraltar, which are addressed *seriatim* below. Other issues raised by the Parties in connection with this damages category but not expressly identified by them as components are addressed immediately thereafter.

1. Fees and expenses allegedly incurred before the Gibraltar strategy was launched³⁰⁶⁴

1897. The Parties disagree on whether the Claimants may recover the costs associated with their early preparation works advanced in Gibraltar before the Gibraltar strategy was launched. The Claimants claim legal fees and expenses incurred starting in April 2008,³⁰⁶⁵ while the Respondent maintains that the Claimants are not entitled to recover damages incurred before 27 June 2018.³⁰⁶⁶

1898. The Tribunal has already determined that incidental damages are only compensable in principle in this Arbitration if they were incurred starting as of 14 February 2011, the date of issuance of the Lago Agrio Judgment. This was the date upon which the risks connected to the enforcement of the Judgment became foreseeable and was thus also the date as of which the Claimants’ mitigation efforts could be said to respond to the injury

³⁰⁶³ See paras. 559-565 above.

³⁰⁶⁴ For an explanation of the names assigned to components *see* para. 568 above.

³⁰⁶⁵ Reply, Updated Appendix 2, pp. 1129-1179.

³⁰⁶⁶ Rejoinder, para. 1527.

arising from the recognition and enforcement of that Judgment – *i.e.*, the injury flowing from the Respondent’s internationally wrongful acts. Whatever harm the Claimants may have suffered by undertaking work before 14 February 2011 in preparation for proceedings in Gibraltar was not caused by the Respondent’s Treaty breaches and therefore falls outside the scope of the compensable injury in these proceedings.³⁰⁶⁷

1899. Accordingly, the Tribunal finds that the Claimants are not entitled to claim compensation for any expenses associated with work performed in connection with the Gibraltar Proceedings before 14 February 2011. Legal fees and expenses corresponding to services provided from that date onwards are compensable in principle, subject to the Tribunal’s determinations that follow.

2. Fees and expenses from firms other than Kobre & Kim and Attias & Levy

1900. The Claimants retained several law firms in connection with the Gibraltar Proceedings. According to Mr Steven Kobre – a partner at Kobre & Kim and witness for the Claimants – Kobre & Kim acted as the lead law firm for Chevron and their lawyers appeared as counsel at each of the hearings with the support of their local counsel, Attias & Levy:

Kobre & Kim was the lead law firm acting for Chevron in the Gibraltar Proceedings. Our lawyers appeared as counsel at each of the hearings with the support of Attias & Levy. Kobre & Kim was well suited for this matter due to our extensive experience with complex cross-border litigation, our ability to develop a novel legal theory to address a situation that had never been confronted in the courts of Gibraltar, and because our team included skilled advocates who could obtain *pro hac vice* rights of audience in the Gibraltar courts given the close connections between the legal systems of Gibraltar and England & Wales.³⁰⁶⁸

1901. Aside from these two law firms, the Claimants seek compensation for USD 2,849,746.41 in legal fees and expenses incurred in the Gibraltar Proceedings by Stern Kilcullen & Rufolo LLC, Gibson Dunn & Crutcher LLP, Jones Day, Three Crowns LLP, Covington & Burling LLP, and Holland & Knight.³⁰⁶⁹

³⁰⁶⁷ See paras. 362, 373, 397 above.

³⁰⁶⁸ Kobre Witness Statement, para. 12.

³⁰⁶⁹ Reply, Updated Appendix 2, pp. 1129-1179.

1902. In the Respondent’s view, the Gibraltar Proceedings were not novel under English or Gibraltar laws and in no way demonstrate “why Kobre & Kim’s 102 and Attias & Levy’s 14 timekeepers needed an additional 150 timekeepers” from these firms (Stern Kilcullen & Rufolo LLC, Gibson Dunn & Crutcher LLP, Jones Day, Three Crowns LLP, Covington & Burling LLP, and Holland & Knight) to pursue the Gibraltar Proceedings.³⁰⁷⁰

1903. As already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants’ decisions as to which specific mitigation measures to undertake in real time.³⁰⁷¹ However, the Tribunal has difficulty understanding how the participation of all of the above international law firms – in addition to Kobre & Kim and Attias & Levy – could have reasonably assisted the Claimants in pursuing the Gibraltar Proceedings. The task of arguing before Gibraltar courts would normally be reserved to local lawyers or international lawyers with *pro hac vice* rights (right to appear) qualified to appear before these courts with full understanding of the corresponding legal order – a role that was fully covered by Kobre & Kim and Attias & Levy.

1904. As explained above, unless the Claimants sought to minimize the loss arising directly from the recognition and enforcement of the Lago Agrio Judgment by retaining these additional foreign law firms, they cannot claim compensation in these proceedings for the legal fees and expenses charged by those firms. To the extent that the goal of depriving the LAPs of access to funding for the Lago Agrio Litigation and their worldwide enforcement campaign might have required international law firms to act as a liaison between the Claimants’ headquarters in the United States and the firms acting before the Gibraltar courts, or in a coordinating capacity with teams operating in other jurisdictions, the Tribunal is prepared to grant compensation for the legal fees and expenses charged by Gibson Dunn & Crutcher LLP and Jones Day. As explained by Mr Kobre and accepted by the Tribunal, Kobre & Kim “worked with and received valuable support from teams at Gibson Dunn on matters relating to RICO and factual development, and Jones Day

³⁰⁷⁰ Rejoinder, para. 1557; Rejoinder, Annex J-3.

³⁰⁷¹ See para. 341 above.

regarding the Lago Agrio Litigation and with respect to assistance with service of process in Ecuador.”³⁰⁷²

1905. Otherwise, the Tribunal denies compensation under this heading for the legal fees and expenses charged by all other foreign law firms involved in the Gibraltar Proceedings (Stern Kilcullen & Rufolo LLC, Three Crowns LLP, Covington & Burling LLP, and Holland & Knight).

3. Fees and expenses related to work in non-Gibraltar jurisdictions or to Complaints that were never filed

1906. The Respondent is critical of the legal fees and expenses incurred by the Claimants related to work in other jurisdictions and complaints that were never filed, which it asserts amount to USD 1,904,211.44.³⁰⁷³ Examples of activities purportedly unrelated to the Gibraltar Proceedings identified by the Respondent include (i) fees for researching, considering and drafting complaints and other papers for jurisdictions such as Panama, Nigeria, Australia, California, and the Cayman Islands;³⁰⁷⁴ (ii) fees incurred in connection with research, drafting complaints that were never filed, and reviewing documents related to “H5”,³⁰⁷⁵ and (iii) entries related to reviewing or summarizing non-Gibraltar proceedings.³⁰⁷⁶

1907. The Tribunal has reviewed the time entries identified by the Respondent corresponding to the activities falling under the present heading.³⁰⁷⁷ In respect of item (i) in the preceding paragraph, the Tribunal considers that there is a disconnect between the activities described in the entries in Annex J-4 to the Rejoinder (describing “Time Billed on Non-Gibraltar Work”) and the Gibraltar Proceedings.

³⁰⁷² Kobre Witness Statement, para. 25.

³⁰⁷³ Respondent’s Damages Model, “Category Reductions” tab.

³⁰⁷⁴ Rejoinder, paras. 1561-1562; Annex J-4.

³⁰⁷⁵ Rejoinder, paras. 1563-1564, Annex J-1.

³⁰⁷⁶ Rejoinder, para. 1565; **RE-52**, Baglietto Expert Report, paras. 118-121, **LB-46**, “Summarizing Non-Gibraltar Proceedings”.

³⁰⁷⁷ Rejoinder, Annex J-1, Annex J-4; **RE-52**, Baglietto Expert Report, paras. 118-121, **LB-46**, “Summarizing Non-Gibraltar Proceedings”.

1908. Indeed, it appears to the Tribunal that a significant number of these activities may have concerned potential proceedings against litigation funders and other entities connected with the LAPs – which is why counsel in the Gibraltar Proceedings were assigned such tasks – but, as noted by the Respondent, concerned work in other jurisdictions. For example, Annex J-4 includes entries for research on tort law and civil extortion claims in California,³⁰⁷⁸ which could have formed the basis of a potential action against Woodsford in that jurisdiction – as described in other entries in the same document³⁰⁷⁹ – but was otherwise unrelated to the *Amazonia* Action that Chevron actually brought against Woodsford in Gibraltar.³⁰⁸⁰

1909. Faced with this disconnect between these litigation costs and the Gibraltar Proceedings, the Tribunal considers that the Claimants cannot claim the legal fees and expenses charged in connection with “Time Billed on Non-Gibraltar Work” as part of the present damages category. While the Claimants have established that the requirements of causation and reasonableness for the compensation of incidental damages apply to the efforts they displayed before Gibraltar courts to deprive the LAPs of access to funding for the Lago Agrio Litigation and their worldwide enforcement campaign,³⁰⁸¹ they have failed to make the same showing in respect of these activities against other alleged co-conspirators.

1910. The same conclusion applies to item (ii) in paragraph 1906 above. From the evidence on record, the Tribunal infers that the entries referring to “H5” concern a California corporation of the same name that was a party to the 31 October 2010 Intercreditor Agreement on the distribution of proceeds from the Lago Agrio Litigation – which the Tribunal recalls was also executed by Torvia.³⁰⁸² This connection between Torvia – a

³⁰⁷⁸ Rejoinder, Annex J-4, entries 1, 164, 167-176.

³⁰⁷⁹ Rejoinder, Annex J-4, entries 142, 171-176.

³⁰⁸⁰ See paras. 1870-1872 above.

³⁰⁸¹ See para. 1894 above.

³⁰⁸² **C-1218**, Intercreditor Agreement, 31 October 2010, p. 1. Track II Award, para. 4.410: “The Intercreditor Agreement is executed, in counterparts, by Mr Donziger, Mr Fajardo, Patton Boggs, Mr Yanza, the ADF and others on the distribution of proceeds from the Lago Agrio Litigation. The Lago Agrio Plaintiffs rank ninth and last in the ‘distribution waterfall’ (Clause 3.2.9). This Agreement accompanied the ‘Burford Funding Agreement’, also of 31 October 2010.”

defendant in the *DeLeon* Action³⁰⁸³ – and H5 could explain why counsel for Chevron in the Gibraltar Proceedings were tasked with exploring actions against H5. Indeed, counsel for Chevron themselves described H5 as “a coconspirator in the LAPs’ fraud” in their time entries in the Gibraltar Proceedings.³⁰⁸⁴ However, the fact remains that H5 is a California corporation that was not a party to, or otherwise involved in, the Gibraltar Proceedings. As such, the Tribunal considers that the legal fees and expenses incurred in connection with H5 cannot be properly claimed by the Claimants as part of the present damages category.

1911. Lastly, the Tribunal turns to item (iii) in paragraph 1906 above, *i.e.*, entries related to reviewing or summarizing non-Gibraltar proceedings.³⁰⁸⁵ It is true that these entries, totalling USD 172,449.62 in fees, generally describe analyses of developments in other proceedings arising in connection with the Lago Agrio Litigation – such as the Section 1782 Proceedings, the RICO Litigation, or this Arbitration. However, as also gleaned from these entries, the underlying work product was meant for use in connection with the Gibraltar Proceedings.³⁰⁸⁶ This is unsurprising in view of the transnational character of the Lago Agrio Litigation and the need to coordinate actions in multiple jurisdictions.³⁰⁸⁷ The Tribunal therefore accepts that these fees and expenses may be claimed by the Claimants as part of the present damages category.

1912. Taking into account all of the above circumstances, and having considered the particular circumstances of this case, the Tribunal assesses that 90% of the legal fees and expenses claimed under the present heading must be disallowed.

³⁰⁸³ See para. 1861 above.

³⁰⁸⁴ Rejoinder, Annex J-6, entry 53.

³⁰⁸⁵ Rejoinder, para. 1565, Annex J-1, Annex J-4; **RE-52**, Baglietto Expert Report, paras. 118-121, **LB-46**, “Summarizing Non-Gibraltar Proceedings”.

³⁰⁸⁶ See, *e.g.*, **RE-52**, Baglietto Expert Report, **LB-46**, “Summarizing Non-Gibraltar Proceedings”, entries for 30 March 2013: “Draft and revise memorandum summarizing key briefings in RICO Action in preparation for DeLeon’s application to strike out, under attorney supervision of Eli Kay-Oliphant and Josef Klazen.”; 30 March 2013: “Draft and revise memorandum summarizing key briefings in RICO Action in preparation for DeLeon’s application to strike out, under attorney supervision of Eli Kay-Oliphant and Josef Klazen.”; 1 April 2013: “Review/analyze Kohn Section 1782 materials for Gibraltar strategy.”

³⁰⁸⁷ See para. 341 above.

4. (CLA) Fees and expenses from Kobre & Kim allegedly related to global oversight / (RES) Fees and expenses from Kobre & Kim related to global oversight.

1913. The Respondent requests that the Tribunal deny compensation for legal fees incurred by Kobre & Kim related to “global oversight” or a “Global Oversight Project”. In this respect, the Respondent notes that the Claimants have not explained why Kobre & Kim was in any position to provide “global oversight” or how such work was relevant to the Gibraltar Proceedings.³⁰⁸⁸

1914. The Tribunal has reviewed the time entries identified by the Respondent corresponding to “global oversight”.³⁰⁸⁹ Most of these entries contain the same narrative description of the underlying tasks: “Review/analyze key filings and media monitoring for global oversight project. (.4) [Gibraltar];” or, in a different formulation, “Review/analyze key filings and media monitoring for global oversight project for purpose of Gibraltar case preparation.”³⁰⁹⁰ Other recurring entries describe work for “Draft/revise global update for team regarding global oversight issues in preparation for global co-counsel call”³⁰⁹¹ and “Review/analyze key RICO documents, 1782 docket documents, and BIT Arbitration documents, and review/analyze Gibraltar and H5 materials for purpose of global oversight project. (1)[Gibraltar];”.³⁰⁹²

1915. The Tribunal will not speculate on the precise nature of this “Global Oversight Project”. It is sufficient to note that a review of the underlying billing information reveals that these “global oversight” activities concerned broadly the gathering of information in real time for use in the Gibraltar Proceedings. They also encompassed coordination efforts with teams operating in other jurisdictions in defence of the Claimants. For the reasons set out above in paragraph 1911, such activities are generally compensable in this Arbitration.

³⁰⁸⁸ Rejoinder, para. 1566.

³⁰⁸⁹ Rejoinder, Annex J-5.

³⁰⁹⁰ See, e.g., Rejoinder, Annex J-5, entries nos. 4, 6, 9-12, 18-20, 23-24, 29-30, 36, 38, 44, 47-50, 56-60, 68, 71-73, 76, 80-87, 89-92, 98-100, 104-107, 109, 113-114, 116, 126-139, 146-148, 150-161, 163-167, 177-178, 181-193, 195, 216-234, 240-257, 270-276, 288-291.

³⁰⁹¹ See e.g. Rejoinder, Annex J-5, entries nos. 149, 179.

³⁰⁹² See e.g. Rejoinder, Annex J-5, entries nos. 96-97.

1916. At the same time, however, these “global oversight” activities would also seem to encompass tasks which have at best a tenuous relationship with the goal of depriving the LAPs of access to funding for the Lago Agrio Litigation and their worldwide enforcement campaign by bringing legal proceedings in Gibraltar, such as media monitoring. As explained in paragraph 1865 above, the legal fees and expenses incurred by the Claimants to mitigate harm caused by the LAPs’ “Global Pressure Campaign” are in principle not recoverable in these proceedings.

1917. Having considered all of the above circumstances, and in view of the uncertainty surrounding the connection between the Claimants’ “global oversight” activities as a whole and the goal of depriving the LAPs of access to funding for the Lago Agrio Litigation and their worldwide enforcement campaign, the Tribunal assesses that 75% of the legal fees and expenses claimed under the present heading must be excluded from compensation.

5. Other issues

1918. In this Section, the Tribunal will address other issues raised by the Parties in connection with the Gibraltar Proceedings that have not been specifically identified by the Parties as a component. These include (i) the Claimants’ purported attempts at double recovery; (ii) the Respondent’s argument that the Claimants’ claimed legal fees and expenses are not reasonable under Gibraltar law; (iii) the Respondent’s argument that the Gibraltar Proceedings were “straightforward cases” and thus cannot justify the “excessive fees” claimed by the Claimants; (iv) the Claimants’ alleged overstaffing of their legal teams; and (v) entries from user “delete-delete”.

1919. *The Claimants’ purported attempts at double recovery.* The Respondent recalls that Chevron settled three of the six Gibraltar Proceedings, including the issue of attorneys’ fees and costs, and the Gibraltar courts entered costs orders in the remaining three actions, also including as to attorneys’ fees and costs. The Respondent asserts that such settlements and orders are dispositive as to the issue of fees and costs. In its view, “[b]y

attempting to recover beyond what Chevron has already been awarded, or agreed to bear on its own, Claimants seek a windfall.”³⁰⁹³

1920. In Section VII.E.4 above, the Tribunal has already addressed the issue of the recoverability of legal fees and expenses in this Arbitration in circumstances where costs were settled in local proceedings, either by way of a settlement agreement or a court order. In paragraph 499 above, the Tribunal noted that it found no basis to conclude that the Claimants were violating any agreements settling costs with parties other than Ecuador, or any ensuing court orders, by requesting the reimbursement of the costs that were settled in those proceedings as damages in this Arbitration. Costs settlements, by their nature, will normally operate *inter partes*, such that each party waives the right to request the reimbursement of costs *from the other party*. It would be highly unusual for an agreement of this nature to display effects *erga omnes* or to include a forfeiture of claims against third parties such as Ecuador.

1921. As also noted in paragraph 501 above, none of the settlement instruments or court orders in the Gibraltar Proceedings includes a waiver by the Claimants of their claims for incidental damages arising from the Respondent’s Treaty breaches, nor an acknowledgement that the Claimants have been made whole for those international wrongs or an agreement that the Claimants will be reimbursed any portion of their costs in those proceedings by the opposing parties³⁰⁹⁴ – meaning that as of yet the Claimants

³⁰⁹³ Rejoinder, para. 1536.

³⁰⁹⁴ See **C-2970**, *Chevron Corp. v. James Russell DeLeon and Torvia Limited*, Claim No. 2012- C-232, Supreme Court of Gibraltar, Consent Order, 18 February 2015 (“It is ordered by consent that: 1 There shall be no order as to costs on discontinuance. 2 All existing costs orders made in these proceedings . . . shall stand as fully satisfied and there shall be no further proceedings for the assessment of costs or for the enforcement of any costs order.”); **C-2985**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Consent Order, 18 February 2015 (“It is ordered by consent that: 1 There shall be no order as to costs on the discontinuance of the claim against the Sixth Defendant. 2 All existing costs orders made in these proceedings between the Claimant and the Sixth Defendant shall stand as fully satisfied and there shall be no further proceedings for the assessment of costs or for the enforcement of any costs order.”); **C-2989**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Consent Order, 4 May 2015 (“It is ordered by consent that: 1 There shall be no order as to costs on discontinuance. 2 All existing orders made in these proceedings between the Claimant and the Second Defendant shall stand as fully satisfied and there shall be no further proceedings for the assessment of costs or for the enforcement of any costs order between the Claimant and the Second Defendant.”); **C-3021**, *Chevron v. TC Payment Services (International) Limited*, Claim No. 2014-C-113, Supreme Court of Gibraltar, Consent Order, 3 March 2015 (“It is ordered by consent that: . . . 5 There shall be no order as to costs. 6 All existing costs orders made in this Claim shall stand as fully satisfied and there shall be no further proceedings for the assessment of costs or for the enforcement of any costs order.”). See also **C-2967**, Settlement Agreement Between Chevron and DeLeon Parties, 13 February 2015, paras. 14-15, 17; **C-2988**, Woodsford’s Executed Settlement Agreement with Chevron, 1 May 2015, paras. 10-11, 13, 18.5.

have not recovered any of those costs. The Claimants' claim for damages in the present proceedings is thus entirely outside the scope of these settlement agreements and court orders.

1922. Accordingly, the Tribunal reiterates its ruling in paragraph 505(iv): the Claimants may recover their reasonable legal costs in this Arbitration, even if they were settled in the Gibraltar Proceedings, insofar as they qualify as incidental damages under the Treaty and international law and such settlements do not breach their duty to mitigate under international law. The burden to prove such a breach of the duty to mitigate falls upon the Respondent.

1923. In this respect, the Tribunal has already concluded that the legal fees and expenses reasonably incurred by the Claimants in connection with the Gibraltar Proceedings, when considered as a whole, qualify as incidental damages in this Arbitration.³⁰⁹⁵ The Tribunal further observes that the Respondent has not put forward substantial reasons why the Claimants might have breached their duty to mitigate by settling costs in the Gibraltar Proceedings.³⁰⁹⁶

1924. For these reasons, the Tribunal determines that the fact that the Claimants settled costs in the Gibraltar Proceedings does not warrant a reduction in the amount of compensation owed to the Claimants under the present heading.

1925. However, the Tribunal recalls that the Claimants collected a net GBP 17,500 in costs from Woodsford in the *DeLeon* and *Amazonia* Actions.³⁰⁹⁷ As noted by the Tribunal in paragraph 488 above, any fees collected by the Claimants or their subsidiaries in local proceedings must be deducted from the final amount of compensation to prevent any double recovery. Accordingly, the Tribunal deducts USD 27,395 (*i.e.*, GBP 17,500 at the

³⁰⁹⁵ See para. 653 above.

³⁰⁹⁶ See paras. 503, 505(iv) above.

³⁰⁹⁷ Memorial, Appendix 7, p. 17; **C-3011**, *Chevron v. GT Nominees Limited & Others*, Claim No. 2014-C-111, Supreme Court of Gibraltar, Order, 1 December 2014; **C-3012**, *Chevron v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Judgement (Woodsford Costs), 1 December 2014.

applicable exchange rate on 1 December 2014)³⁰⁹⁸ from the amount of compensation granted to the Claimants under the present heading.

1926. The Tribunal also recalls that the Claimants were awarded USD 28,035,219.37 in the *Amazonia* Action, reflecting attorneys’ fees incurred in the RICO Litigation, as Chevron had “voluntarily limited their claim against Amazonia to the costs incurred by it in bringing proceedings in the United States.”³⁰⁹⁹ To the extent that an issue of double recovery arises in connection with this award on damages, as implied by the Respondent,³¹⁰⁰ it is addressed under the heading of the RICO Litigation in Section VIII.G above.

1927. For the avoidance of doubt, the Tribunal recalls that its determination of the legal fees and expenses the Claimants may recover as incidental damages under international law goes beyond an analysis of the fees they collected or were awarded in other proceedings. As set out in paragraph 496 above, under the standard of full reparation, if the Claimants incurred what the Tribunal considers to have been established as a matter of international law to be reasonable legal costs in domestic proceedings, in excess of the costs that they were awarded or were able to collect through the domestic court procedures, they are entitled to the resulting shortfall in this Arbitration to the extent required to make them whole for the Respondent’s international wrongs. Full reparation requires in this context only that the Tribunal exclude from its award on incidental damages any amounts collected by the Claimants in local proceedings so as to avoid any double recovery, as set out in the preceding paragraphs.

1928. *The Respondent’s argument that the Claimants’ claimed legal fees and expenses are not reasonable under Gibraltar law.* The Respondent argues that the Claimants have failed to establish that the fees they incurred in the Gibraltar Proceedings were reasonable, in accordance with Gibraltar law, *i.e.*, the “lowest amount which [Chevron] could

³⁰⁹⁸ The exchange rate applied by the Tribunal is 1 GBP=USD 1.565398 (see <https://www.ofx.com/en-ie/forex-news/historical-exchange-rates/usd/gbp/>).

³⁰⁹⁹ **C-2995**, *Chevron Corp. v. Amazonia & Others*, Claim No. 2014-C-110, Supreme Court of Gibraltar, Judgment, 9 December 2015, paras. 9, 13.

³¹⁰⁰ Counter-Memorial, para. 351.

reasonably have been expected to spend in order to have its cases conducted and presented proficiently”.³¹⁰¹

1929. The Tribunal rejects this argument. As explained in paragraph 483 above, even when domestic cost-shifting standards incorporate an assessment of reasonableness, the determinations made by local courts in application of those standards will be of limited relevance for the Tribunal’s present analysis, which will examine the question applying the prescribed standard under international law, *i.e.*, not the reasonableness of the legal fees and expenses according to the approaches applied by courts in individual local proceedings, but whether the legal fees and expenses incurred by the Claimants in the various legal proceedings served reasonably to mitigate the injury flowing from the Respondent’s Treaty breaches. In other words, these assessments are distinct, and fixating on any overlap in these evaluations is more likely to be misleading than helpful.

1930. *The Respondent’s argument that the Gibraltar Proceedings were “straightforward cases” and thus cannot justify the “excessive fees” claimed by the Claimants.* Relying on the expert opinion of Mr Baglietto, the Respondent argues that the Gibraltar Proceedings were “straightforward cases” and thus cannot justify the “excessive fees” claimed by the Claimants. In essence, Mr Baglietto explains that the Gibraltar Proceedings were not “ground-breaking from a legal point of view. Rather, the issue in the case was whether, on the facts, and on the basis of settled English caselaw, the Defendant litigation funders had committed the torts of conspiracy and unlawful interference with Chevron’s rights”, these being claims that “were not novel or new under English or Gibraltar law.”³¹⁰² This is contested by the Claimants’ witnesses Mr Veiga and Mr Kobre, who state that the Gibraltar Proceedings required “novel legal theory to address a situation that had never been confronted in the courts of Gibraltar”.³¹⁰³

1931. Having already ascertained that the requirements of causation and reasonableness for the reimbursement of incidental damages are met as regards the Gibraltar Proceedings category of damages, the Tribunal does not consider it necessary to opine on the substance

³¹⁰¹ Rejoinder, paras. 1539-1542; **RE-52**, Baglietto Expert Report, paras. 53-54, **LB-18**, *Kazakhstan Kagacy Plc v. Zhunus*, [2015] EWHC 404, 14 ConLR 253, p. 13.

³¹⁰² Rejoinder, paras. 1545-1549; **RE-52**, Baglietto Expert Report, paras. 125, 128.

³¹⁰³ Kobre Witness Statement, para. 12; Fourth Reis Veiga Witness Statement, para. 88.

of the Claimants’ submissions in those proceedings or the magnitude of the efforts put into preparing those submissions. As already noted, it is not appropriate for the Tribunal to apply hindsight to the legal strategies employed in the course of the Gibraltar Proceedings.³¹⁰⁴ Consequently, the Tribunal does not consider it necessary to adjust the amounts claimed under this head based on an assessment of the alleged complexity or simplicity of the case.

1932. *The Claimants’ alleged overstaffing of their legal teams.* The Respondent argues that the Claimants overstaffed the Gibraltar Proceedings – with at least 266 timekeepers from at least eight law firms – and also “fueled a culture of excessive and unnecessary billing.”³¹⁰⁵

1933. The Tribunal observes that it has already addressed the participation of international law firms other than Kobre & Kim and Attias & Levy in the Gibraltar Proceedings in Section VIII.I.3(c)2 above. All other matters raised by the Parties in connection with the allegation set out in the preceding paragraph will be addressed by the Tribunal as part of its analysis of cross-cutting “elements” impacting multiple categories (in particular, “Multiple Attendance at Events” and “(CLA) Alleged Excessively Long Billing Days and Excessive Time; (RES) Excessively Long Billing Days and Excessive Time”)³¹⁰⁶ in Section VIII.N below.

1934. *Entries from user “delete-delete”.* The Respondent is critical of the Claimants’ attempt to recover fees and expenses for the work of a Kobre & Kim attorney who was identified in the relevant time entries as “delete delete”.³¹⁰⁷

1935. The relevant entries for timekeeper “delete delete” describe work performed in connection with the Gibraltar Proceedings³¹⁰⁸ and otherwise include the information required to assess causation and reasonableness (date, firm, amount claimed, hourly rate, timekeeper rate and title, etc.). While there appears to be a malfunction in the relevant

³¹⁰⁴ See para. 341 above.

³¹⁰⁵ Rejoinder, paras. 1550-1559.

³¹⁰⁶ See para. 571 above.

³¹⁰⁷ Rejoinder, para. 1318, Annex J-6.

³¹⁰⁸ Rejoinder, para. 1318, Annex J-6.

database in terms of the timekeeper's name, the Tribunal has no reason to doubt that the stated work was undertaken in connection with the Gibraltar Proceedings. In the circumstances, the Tribunal declines to exclude the legal fees and expenses generated by this individual for what is better explained as an inconsequential malfunction in the relevant database.

4. Conclusion on Gibraltar Proceedings

1936. For the foregoing reasons, the Tribunal:

- (i)** Declines to exclude from compensation the Gibraltar Proceedings category of damages as a whole;
- (ii)** Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Gibraltar Proceedings corresponding to services rendered before 14 February 2011;
- (iii)** Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Gibraltar Proceedings corresponding to services provided by the firms Stern Kilcullen & Rufolo LLC, Three Crowns LLP, Covington & Burling LLP, and Holland & Knight;
- (iv)** Excludes from compensation 90% of the legal fees and expenses corresponding to the component "Fees and expenses related to work in non-Gibraltar jurisdictions or to Complaints that were never filed";
- (v)** Excludes from compensation 75% of the legal fees and expenses corresponding to the component "(CLA) Fees and expenses from Kobre & Kim allegedly related to global oversight / (RES) Fees and expenses from Kobre & Kim related to global oversight";
- (vi)** Excludes from compensation the costs effectively collected by Chevron in connection with the *DeLeon* and *Amazonia* Actions (*i.e.*, USD 27,395);
- (vii)** Defers its determination regarding the compensation of the legal fees and expenses identified in paragraphs 1932-1933 above to its analysis of cross-cutting elements set out in Section VIII.N below;

- (viii)** Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Gibraltar Proceedings, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below;³¹⁰⁹ and
- (ix)** Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Gibraltar Proceedings. The Tribunal will determine the exact amount of compensation corresponding to the Gibraltar Proceedings in Section VIII.O below.

* * *

³¹⁰⁹ See paras. 564-566 above.

J. GENERAL DEFENCE

1937. The Claimants seek USD 47,213,917.33³¹¹⁰ as direct damages for the legal fees and expenses incurred between January 2004 and November 2018 in general defence against the Lago Agrio fraud and the resulting Lago Agrio Judgment.³¹¹¹ According to the Claimants, the legal fees and expenses incurred in connection with this category are attributable to furthering and coordinating Chevron's overall defence against the Lago Agrio Judgment and the Respondent's wrongful support to the multiple efforts to enforce it.³¹¹² In the alternative, the Claimants submit that they are entitled to recover these expenses as incidental damages.³¹¹³

1938. The Respondent argues that the Claimants are not entitled to the expenses as direct or indirect damages because they are not the direct result of the Respondent's Treaty breaches but are expenses that the Claimants undertook of their own volition for which the Claimants alone are responsible.³¹¹⁴ Nor have the Claimants established that the fees and costs that Chevron generated for the "general defence" activities were reasonable or necessary.³¹¹⁵

1. The Claimants' Position

1939. According to the Claimants, the fees and costs claimed in this "general" category stem from more generalized work that was not performed within the context of any specific litigation, action, or arbitration, but had applications in multiple areas and in multiple jurisdictions.³¹¹⁶

1940. First, the Claimants seek for fees and costs incurred by five law firms – especially Gibson, Dunn & Crutcher LLP – in coordinating work on the many related cases and performing

³¹¹⁰ Reply, para. 1007; Updated Appendix 2, p. 1.

³¹¹¹ Memorial, para. 422; Reply, para. 1007.

³¹¹² Reply, para. 1008; Updated Appendix 2; **C-3462**, Indices of Claimed Invoices by Damage Category ("General Defense" tab).

³¹¹³ Reply, para. 1012.

³¹¹⁴ Counter-Memorial, para. 929; Rejoinder, para. 1636.

³¹¹⁵ Counter-Memorial, para. 929; Rejoinder, para. 1636.

³¹¹⁶ Memorial, para. 423.

general defence work that supported Chevron’s overall defence strategy.³¹¹⁷ According to the Claimants, given the volume of work required and the multiple jurisdictions in question, it was reasonable for the Claimants to rely on external counsel to manage these proceedings, rather than Chevron’s in-house legal team alone to handle the work.³¹¹⁸

1941. By way of example, the Claimants highlight that Gibson, Dunn & Crutcher LLP coordinated work across multiple parallel proceedings involving counsel from different jurisdictions at various points in time, including: (i) the Lago Agrio Litigation in Ecuador; (ii) the RICO action in New York; (iii) the related third-party subpoena enforcement actions across the United States; (iv) this Arbitration; (v) approximately 35 separate Section 1782 actions throughout the United States; (vi) the recognition and enforcement actions in Brazil, Canada, and Argentina; (vii) the litigation in Gibraltar against James Russell DeLeon and Amazonia Recovery Limited; and (viii) the Respondent’s “frivolous challenges” to the Tribunal’s Interim and Track II Awards in the Netherlands.³¹¹⁹

1942. Legal research, the Claimants posit, also represents a significant cost in Chevron’s general defence category.³¹²⁰ These costs, the Claimants explain, were incurred in anticipation of actions the LAPs might take to monetize the Lago Agrio Judgment.³¹²¹

1943. Similarly, the Claimants assert that a substantial portion of the fees and costs under this category were incurred for “independent factual development”.³¹²² These fees notably covered the Claimants’ requests under various Freedom of Information Acts and requests to interview potential witnesses to uncover evidence of fraud, without relying solely on court-overseen discovery.³¹²³ As shown in the invoices, the Claimants further submit that

³¹¹⁷ Reply, paras. 1008, 1015.

³¹¹⁸ Reply, para. 1016.

³¹¹⁹ Memorial, para. 423; Reply, para. 1015.

³¹²⁰ Reply, para. 1017.

³¹²¹ Memorial, para. 424; Reply, para. 1017.

³¹²² Memorial, para. 425; Reply, para. 1018.

³¹²³ Memorial, para. 425; Reply, para. 1018.

none of the fees and costs claimed in the “general defence” category are duplicative of those claimed in any other damage category.³¹²⁴

1944. In addition to the outside law firms, the Claimants seek fees and costs for the work done by three litigation support vendors whose work supported Chevron’s defence across multiple legal proceedings, including this Arbitration, and its defence against the Respondent’s global pressure campaign.³¹²⁵ A variety of services rendered by the litigation support vendors include *inter alia*:

- (i) *Investigative Research Inc.* (from 2009): researching and reporting regarding the LAPs and ROE experts, witnesses, and significant events arising in the case; researching and creating linked/interactive demonstrative timelines of key issues to be filed in various legal proceedings; creating graphics, demonstrative exhibits, and presentations to be used in various legal proceedings; maintaining a repository of collected case and reference materials to be used by different members of the legal team; and monitoring online social media;³¹²⁶
- (ii) *FTI Consulting, Inc.* (from 2005): preparing graphics for client and court presentations;³¹²⁷ and
- (iii) *High Impact* (between 2010 and 2015): producing and editing videos that documented the Ecuador fraud; summarizing certain themes and factual aspects of the case for various courts, this Tribunal, other stakeholders, and the public; and adding subtitles to the videos for submissions to courts.³¹²⁸

1945. None of the fees and costs from these litigation support vendors, the Claimants maintain, was included in any other single category of the Claimants’ damages claim.³¹²⁹

³¹²⁴ Reply, para. 1021; C-3260, Boies Schiller & Flexner LLP Invoices; C-3268, Covington & Burling LLP Invoices; C-3287, Gibson, Dunn & Crutcher LLP Invoices; C-3303, Jones Day Invoices; C-3335, Rivero Mestre LLP Invoices.

³¹²⁵ Reply, para. 1022.

³¹²⁶ Reply, para. 1023.

³¹²⁷ Reply, para. 1024.

³¹²⁸ Reply, para. 1025.

³¹²⁹ Reply, para. 1022.

1946. Finally, the Claimants seek to recover costs incurred by seven public relations firms that the Claimants retained to defend against the Respondent's long-running global propaganda campaign against Chevron in the court of public opinion.³¹³⁰ In this respect, the Claimants contend that it is foreseeable that Chevron would utilize public relations resources to resist the smear campaign to which it was subjected and to mitigate further harm.³¹³¹

1947. According to the Claimants, the work of the public relations vendors included, *inter alia*, monitoring and countering Ecuador's and the LAPs' falsehoods, issuing press releases in response, setting up a website to convey a "balanced and truthful" portrayal of the Lago Agrio case against Ecuador-funded or Ecuador-enabled media hits, and filing ethics complaints against governmental officials to resist the LAPs' efforts of inducing governmental officials to join the pressure campaign against Chevron.³¹³²

1948. As Chevron was forced to undertake public relations work in many countries, the Claimants insist that it was necessary for Chevron to hire multiple firms with different sets of expertise to address the culture and country-specific aspects of the harm.³¹³³ In this respect, the Claimants point out that the "[Respondent] itself retained *at least* five outside vendors and spent *at least* US\$ 11.7 million to carry out its own malicious and false propaganda campaigns."³¹³⁴

1949. Further, in the Claimants' view, they are entitled to recover the fees and costs incurred by the public relations firms because the expenses "only need to be caused by Ecuador's wrongful acts – which they were – even if they are not constitutive elements of those wrongful acts."³¹³⁵

1950. The Claimants, in the alternative, submit that they are entitled to recover the legal fees and expenses incurred in the general defence against the Lago Agrio Judgment as

³¹³⁰ Memorial, para. 426; Reply, para. 1027.

³¹³¹ Memorial, para. 429.

³¹³² Memorial, paras. 427-428; Reply, paras. 1029-1033.

³¹³³ Reply, para. 1037.

³¹³⁴ Reply, para. 1037 (emphasis in the original).

³¹³⁵ Reply, para. 1035.

incidental damages.³¹³⁶ As set out above, the Claimants argue that the expenses were reasonable, considering the number and the time period of the proceedings, their complexity, and the multitude of propaganda attacks against which the Claimants had to defend.³¹³⁷

2. The Respondent's Position

1951. In the Respondent's view, the "general defence" category is a catch-all "junk drawer" for fees and costs that the Claimants "cannot figure out how to classify but want to claim anyway."³¹³⁸ Even the three categories of activities outlined by the Claimants, the Respondent asserts, "do not cover all of the odds and ends that, as the invoices reveal, Claimants threw into this category."³¹³⁹

1952. Addressing the Claimants' request for compensation for the work of five law firms allegedly spent to "coordinate" counsel across multiple actions, the Respondent argues that the Claimants have not substantiated why high-priced outside counsel, instead of Chevron's large in-house counsel team, was better suited to undertake the work.³¹⁴⁰

1953. Additionally, noting that the task of coordinating counsel is in fact administrative work, the Respondent contends that it should not be responsible for Chevron's "extravagant decision" to allow its outside counsel to bill for non-billable work.³¹⁴¹ In fact, the Respondent points out that billing times for such administrative tasks is prohibited under Chevron's Guidelines.³¹⁴² Therefore, the Respondent emphasizes that, in addition to the coordination work, any time billed for other administrative tasks carried out by counsel

³¹³⁶ Reply, para. 1012.

³¹³⁷ Reply, para. 1013.

³¹³⁸ Rejoinder, para. 1631.

³¹³⁹ Rejoinder, para. 1637.

³¹⁴⁰ Counter-Memorial, para. 930; Rejoinder, paras. 1638-1640.

³¹⁴¹ Counter-Memorial, para. 930; Rejoinder, para. 1642.

³¹⁴² Rejoinder, paras. 1674-1676; **C-3240**, Chevron Corporation and Affiliates Guidelines for Outside Counsel (CVX-Track III- 00017738—CVX-Track III-00017800), 2017, Sections 2.1, 2.2; Kent Witness Statement, para. 25.

such as organizing documents and translating news articles should have been conducted by non-billing personnel.³¹⁴³

1954. According to the Respondent, the time entries submitted by Chevron's outside counsel also (i) contain vague descriptions in violation of Chevron's Guidelines; (ii) include counsel work on Chevron's internal corporate governance activities, as well as activities unrelated to the Ecuador dispute; and (iii) misallocated expenses that should have been claimed in other damages categories.³¹⁴⁴ Consequently, the Claimants have failed to carry their burden of proving that the alleged fees and costs were reasonable and necessary.³¹⁴⁵

1955. Further, the Respondent argues that public relations and media fees and costs billed by Chevron's outside counsel, regardless of whether lawyers billed for them, cannot be recovered as damages in this Arbitration.³¹⁴⁶ This is because, according to the Respondent, the Tribunal did not find liability connected to the court of opinion and Chevron's desire to battle there is irrelevant to this stage of the Arbitration.³¹⁴⁷

1956. As to the legal research fees incurred in anticipation of the LAPs' actions, the Respondent also considers that such research activity is duplicative of the category "Costs of Planning against Potential Enforcement in Other Jurisdictions," for which the Claimants also seek compensation.³¹⁴⁸ The Respondent also maintains that fees billed in planning for hypothetical scenarios were not reasonable and necessary and could not be attributable to the Treaty breaches.³¹⁴⁹

1957. The Respondent likewise contends that the Claimants are not entitled to recover "independent factual development" expenses, which include the fees and costs for Freedom of Information Act requests.³¹⁵⁰ In particular, the Respondent takes issue with

³¹⁴³ Rejoinder, para. 1677.

³¹⁴⁴ Rejoinder, paras. 1678-1687.

³¹⁴⁵ Rejoinder, paras. 1641, 1688.

³¹⁴⁶ Rejoinder, paras. 1669-1672.

³¹⁴⁷ Rejoinder, para. 1672.

³¹⁴⁸ Counter-Memorial, para. 931.

³¹⁴⁹ Rejoinder, para. 1643.

³¹⁵⁰ Rejoinder, para. 1644.

the requests relating to U.S. government relations activities which, according to the Respondent, are unrelated to the Treaty breaches.³¹⁵¹ Moreover, contrary to the Claimants' assertion, the invoices concerning the "FOIA Request(s)", which do not specify what the requests concerned, do not prove that these activities gave rise to compensable damages.³¹⁵²

1958. In the same vein, the Respondent points out that the Claimants have not explained why it was necessary to incur costs to interview certain witnesses, nor have they provided the underlying billing data that would permit the Respondent and the Tribunal to examine the specific costs claimed and determine whether the Claimants seek a double recovery.³¹⁵³

1959. Taking issue with the number of public relations vendors the Claimants hired to defend against public criticism, the Respondent further argues that the underlying invoices of the vendors do not provide enough detail to determine how each vendor's work differed from others, what they were working on, where they were doing it, or what their scope was.³¹⁵⁴ Where the invoices do provide certain details, the Respondent asserts that the work was neither reasonable nor necessary and did not relate to the Treaty breaches.³¹⁵⁵

1960. In regard to the work performed by litigation support vendors, the Respondent posits that the Claimants have failed to demonstrate that the resulting fees and costs were reasonable and necessary:

- (i) *Investigative Research Inc.*: It is unclear why the company was researching and reporting regarding the LAPs and ROE experts and witnesses and how it could have cost so much. Monitoring social media and browsing websites cannot amount to damages arising from a Treaty breach.³¹⁵⁶

³¹⁵¹ Rejoinder, para. 1645.

³¹⁵² Rejoinder, para. 1646; **RE-51**, Trunko Expert Report, **SM Q-3**, p. 138.

³¹⁵³ Counter-Memorial, para. 933.

³¹⁵⁴ Rejoinder, paras. 1655-1663.

³¹⁵⁵ Rejoinder, para. 1663.

³¹⁵⁶ Rejoinder, para. 1665.

(ii) *High Impact*: The Respondent is not responsible for the Claimants' communications with the public which are not related to the Treaty breaches; similarly, the underlying invoices lack specificity.³¹⁵⁷

(iii) *FTI Consulting, Inc.*: The Respondent is not responsible for the Claimants' internal client presentations or other internal discussions.³¹⁵⁸

1961. As to the third sub-category of alleged damages, the Respondent rejects that the public relations expenses the Claimants seek were caused by the Treaty breaches for which the Respondent is responsible.³¹⁵⁹ In this regard, the Respondent underscores the Tribunal's finding in the Track II Award that Ecuador's so-called "propaganda campaign" did not breach the Treaty and "that specific statements from Ecuadorian officials, including President Correa, were not the cause of the injury to Claimants."³¹⁶⁰ This finding, in the Respondent's view, renders the Claimants' spending on public relations irrelevant in Track III of this Arbitration.³¹⁶¹

1962. In the same vein, the Respondent maintains that it is not responsible for the fees and costs the Claimants allegedly incurred when responding to the LAPs' lobbying or pursuing their own lobbying initiatives.³¹⁶² If the Respondent did not violate the Treaty through its own statements, it takes the view that it could not have done so through the statements of others, including the LAPs.³¹⁶³ In support of its contention, the Respondent recalls the Tribunal's finding that the Respondent had no obligation to prevent the Lago Agrio claims from being litigated.³¹⁶⁴ As such, the Respondent posits that none of the Claimants' marketing or political activities spring from any Treaty violation found by the

³¹⁵⁷ Rejoinder, para. 1667.

³¹⁵⁸ Rejoinder, para. 1666.

³¹⁵⁹ Counter-Memorial, para. 934; Rejoinder, para. 1651.

³¹⁶⁰ Counter-Memorial, para. 934; Rejoinder, para. 1652; Track II Award, paras. 8.68-8.69.

³¹⁶¹ Rejoinder, para. 1652.

³¹⁶² Rejoinder, para. 1649.

³¹⁶³ Counter-Memorial, para. 935; Rejoinder, para. 1654.

³¹⁶⁴ Rejoinder, para. 1654; Decision on Track IB, paras. 181, 186.

Tribunal and that it should not be responsible for Chevron’s decision to engage in a public relations war.³¹⁶⁵

3. The Tribunal’s Analysis

1963. The Claimants seek USD 47,213,917.33 for the legal fees and vendor costs incurred between January 2004 and November 2018 for “generalized work streams” with applications in multiple areas relating to Chevron’s “general defence” against the Lago Agrio fraud.³¹⁶⁶ These work streams include counsel coordination efforts in various proceedings across multiple jurisdictions,³¹⁶⁷ legal research work in anticipation of hypothetical actions,³¹⁶⁸ factual development outside of court-overseen discovery,³¹⁶⁹ media and public relations,³¹⁷⁰ and expenses relating to government and shareholder relations.³¹⁷¹ The claimed fees and costs fall generally into three sub-categories: (i) fees billed by five law firms; (ii) costs billed by three litigation support vendors; and (iii) costs billed by seven public relations vendors.³¹⁷²

1964. The Claimants argue that these fees and costs are a natural and foreseeable consequence of the Respondent’s Treaty breaches and as such are recoverable as direct damages, or in the alternative, as incidental damages.³¹⁷³ The Respondent, on the other hand, submits that the entire category should be excluded, as it is not the direct result of the Respondent’s Treaty breaches.³¹⁷⁴ Even assuming there is a causal link between these expenses and the Treaty breaches, the Respondent considers that the Claimants have

³¹⁶⁵ Counter-Memorial, para. 935; Rejoinder, para. 1648.

³¹⁶⁶ Reply, para. 1007; Memorial, para. 423.

³¹⁶⁷ Memorial, para. 423.

³¹⁶⁸ Memorial, para. 424.

³¹⁶⁹ Memorial, para. 425.

³¹⁷⁰ Memorial, para. 426.

³¹⁷¹ Memorial, para. 428.

³¹⁷² Reply, para. 1008; **RE-51**, Trunko Expert Report, **SM J-9**.

³¹⁷³ Reply, para. 1007.

³¹⁷⁴ Counter-Memorial, para. 929; Rejoinder, para. 1636.

failed to establish that the measures undertaken and the fees and costs claimed under this category were reasonable or necessary.³¹⁷⁵

1965. Following the methodology laid out in Section VII.G.5, the Tribunal finds that the legal fees and expenses and vendor costs claimed by the Claimants under this General Defence category must be excluded in full from the final amount of compensation for want of a causal link with the Respondent's Treaty breaches.

1966. First, the Tribunal recalls the Claimants' position that all of their claimed legal fees and expenses claimed under the General Defence category constitute direct damages and are recoverable in the alternative as incidental damages.³¹⁷⁶ As explained in paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages. The expenses incurred by the Claimants on account of any other form of harm are *not* compensable in these proceedings.³¹⁷⁷

1967. Second, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555, the Claimants' efforts must have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.

³¹⁷⁵ Counter-Memorial, para. 929; Rejoinder, para. 1636.

³¹⁷⁶ See para. 1952 above.

³¹⁷⁷ See para. 317 above.

1968. As particularised by the Claimants, the General Defence category comprises three distinct sub-categories:

- (i) “[w]ork by five law firms—especially work by Gibson Dunn—in coordinating work on the many related cases and/or performing general defense work that supported Chevron’s overall defense strategy, and which does not neatly fit within one of the other more specific cost-allocation categories that comprise Chevron’s damage claim (approximately US\$ 20.54 million)”;
- (ii) “three litigation support vendors whose work supported Chevron’s defense across a number of actions (approximately US\$ 8.56 million[])”; and
- (iii) “seven public relations vendors (approximately US\$ 18.1 million).”³¹⁷⁸

1969. Each of these sub-categories requires a differentiated analysis for present purposes.

1970. First, the Tribunal notes that it is the Claimants who have chosen to group all fees and expenses related to “coordination/general defence” work in a separate, self-standing category. Such costs do not relate to Chevron’s efforts in a particular jurisdiction but rather to Chevron’s “overall defence strategy”. In the Claimants’ words, the creation of a separate sub-category for these costs is due to their inability to “neatly fit” these fees and expenses “within one of the other more specific cost-allocation categories”.³¹⁷⁹

1971. This sets this “coordination/general defence” sub-category apart from other damages categories in Track III, which generally involve the costs of a particular litigation proceeding.³¹⁸⁰ In fact, most damages categories for which the Tribunal has granted compensation concern the efforts undertaken by the Claimants in pursuit of a clearly defined goal in a specific proceeding, such as attempting to render the Lago Agrio Judgment unenforceable in the jurisdiction where it came into existence (Lago Agrio Litigation)³¹⁸¹ or defending against the enforcement of the Judgment in several jurisdictions where the Claimants or their subsidiaries held assets (Argentina, Brazil,

³¹⁷⁸ Reply, para. 1008.

³¹⁷⁹ Reply, para. 1008.

³¹⁸⁰ Memorial, para. 209.

³¹⁸¹ See Section VIII.A above.

Canada and Ecuador Enforcement Proceedings).³¹⁸² For those categories, the Tribunal was able to make precise assessments as to how the Claimants’ efforts in the context of specific legal proceedings contributed to minimizing the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment.

1972. By contrast, the Tribunal is unable to determine with any significant degree of precision how these sweeping “coordination/general defence” works contributed to achieving the goal of (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.³¹⁸³ As a practical matter, these three goals could only be accomplished by participating in legal proceedings. These “coordination/general defence” works might have supported defence efforts undertaken in those proceedings, but otherwise had no intrinsic objective aligned with these three mitigation goals.

1973. Critically, as a result of the Claimants’ own inability to “neatly fit” these fees and expenses “within one of the other more specific cost-allocation categories”,³¹⁸⁴ the Tribunal is unable to determine to what extent these “coordination/general defence” works served to support the Claimants’ efforts in connection with compensable activities (such as their involvement in the Lago Agrio Litigation) or, conversely, the extent to which they supported non-compensable efforts (such as the Claimants’ involvement in the Dutch Set-Aside Proceedings).³¹⁸⁵ In other words, the Tribunal has no basis to determine with sufficient certainty the connection, if any, between these “coordination/general defence” works and the individual litigation categories covering compensable activities. The Claimants have therefore failed to meet their burden to establish the required causal link clearly and in an itemized fashion for these

³¹⁸² See Sections VIII.B-E above.

³¹⁸³ See para. 1967 above.

³¹⁸⁴ Reply, para. 1008.

³¹⁸⁵ See Section VIII.L below.

“coordination/general defence” works to warrant compensation as incidental damages.³¹⁸⁶

1974. While this conclusion is dispositive, the Tribunal must recall that it has already granted compensation for the coordination efforts undertaken by international law firms under several other damage categories.³¹⁸⁷ The Tribunal finds no reason to grant separate compensation under the present heading for *additional* coordination work, much less in circumstances where it is unable to determine the actual impact, if any, that those efforts might have had in mitigating the injury arising from the Respondent’s Treaty breaches.

1975. Second, the Claimants claim legal fees and expenses for “three litigation support vendors whose work supported Chevron’s defense across a number of actions (approximately US\$ 8.56 million[)]”.³¹⁸⁸ According to the Claimants:

The fees and costs for these vendors are claimed under General Defense because their work . . . supported the overall defense effort, and their work product was used in multiple legal cases, this Arbitration proceeding, and in Chevron’s defense against the worldwide propaganda and pressure campaign waged by Ecuador and the LAPs for purposes of leveraging the fraudulent Judgment. None of the fees or costs from these litigation support vendors was included in any other single category of the damage claim, so that all of their fees and costs for which Chevron seeks damages are included in this General Defense category.³¹⁸⁹

1976. The Tribunal’s conclusions in respect of “coordination/general defence” work apply with equal force vis-à-vis these litigation support vendors, which also “supported the overall defense effort” and whose “work product was used in multiple legal cases”.³¹⁹⁰ The Tribunal is unable to differentiate vendor work performed for compensable activities from vendor work used for non-compensable activities (such as the legal fees and expenses spent in this Arbitration, the costs of which are compensable not as damages but as costs of arbitration under the UNCITRAL Arbitration Rules).³¹⁹¹ The Claimants have therefore failed to meet their burden to establish the required causal link clearly and in an

³¹⁸⁶ See para. 327 above.

³¹⁸⁷ See paras. 773, 859, 953, 1026, and 1904 above.

³¹⁸⁸ Reply, para. 1008.

³¹⁸⁹ Reply, para. 1022.

³¹⁹⁰ Reply, para. 1022.

³¹⁹¹ See Section VIII.M below.

itemized fashion for the legal fees and expenses of these litigation vendors to warrant compensation as incidental damages.³¹⁹²

1977. Third, and last, the Claimants retained seven public relations firms “to defend against Ecuador’s long-running and far-ranging propaganda campaign against Chevron, which complemented and amplified the false narrative perpetuated by the LAPs.”³¹⁹³ In the Claimants’ words:

The LAPs used public relations firms, and the publicity they generated helped pressure the Ecuadorean courts to grant them a judgment. Moreover, the Ecuadorian government used PR efforts worldwide to support enforcement of the fraudulent Judgment. Both used their PR campaigns to pressure Chevron to settle. These campaigns influenced public and political opinion and could not go unanswered.

Given the breadth of the smear campaign, Claimants had to hire outside public relations consultants *inter alia* to monitor and counter Ecuador’s and the LAPs’ falsehoods, issue press releases in response, set up a website to convey a truthful portrayal of the Lago Agrio case, and otherwise mitigate the damage caused by these falsehoods. . . .³¹⁹⁴

1978. In the Tribunal’s view, whatever harm the Claimants sought to address through these public relations efforts bears no relation with the injury arising specifically from the recognition and enforcement of the unremedied Lago Agrio Judgment. Indeed, no public relations efforts could have possibly (i) prevented the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) contributed to rendering the Judgment unenforceable; or (iii) minimized the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.³¹⁹⁵ As already explained, the Claimants could only accomplish these three mitigation goals by participating in legal proceedings³¹⁹⁶ – not in the court of public opinion. Accordingly, the Claimants have also failed to establish the requirement of causality as regards this sub-category of damages.

1979. As a final note, the Tribunal observes that this damages category includes items that overlap with cross-cutting elements that impact multiple categories as identified by the

³¹⁹² See para. 327 above.

³¹⁹³ Reply, para. 1027.

³¹⁹⁴ Reply, paras. 1028-1029.

³¹⁹⁵ See para. 1967 above.

³¹⁹⁶ See para. 1972 above.

Parties,³¹⁹⁷ including, (i) activities allegedly relating to Media and Public Relations;³¹⁹⁸ (ii) activities allegedly relating to Government Relations (including but not limited to USTR);³¹⁹⁹ (iii) allegedly nondefense-related activities;³²⁰⁰ and (iv) alleged administrative and clerical activities.³²⁰¹ The Tribunal will address the impact that disallowing this category would have on the determination of these cross-cutting issues in Section VIII.N below.

1980. In sum, for the above reasons, the Tribunal rejects the Claimants' damages claim in respect of the General Defence category of damages.

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³¹⁹⁷ See para. 571 above.

³¹⁹⁸ See, e.g., **RE-51**, Trunko Expert Report, paras. 27, 55; Track III Hearing – Trunko Direct Presentation (31 August 2022), Slides 38-40.

³¹⁹⁹ See, e.g., **RE-51**, Trunko Expert Report, para. 29; Track III Hearing – Trunko Direct Presentation (31 August 2022), Slide 44.

³²⁰⁰ See, e.g., **RE-51**, Trunko Expert Report, para. 28; Track III Hearing – Trunko Direct Presentation (31 August 2022), Slides 41-43.

³²⁰¹ See, e.g., **RE-51**, Trunko Expert Report, para. 21; Track III Hearing – Trunko Direct Presentation (31 August 2022), Slides 25-31.

K. CRIMINAL PROCEEDINGS

1. The Claimants' Position

(a) *Description of the Proceedings*³²⁰²

1981. The Claimants state that, for more than seven years, Chevron attorneys Mr Ricardo Reis Veiga and Dr Rodrigo Pérez Pallares were subjected to “meritless and abusive” criminal proceedings in Ecuador stemming from their involvement in negotiating and executing the 1995-1998 Settlement and Release Agreements, as part of “the broader long-running collusion between the LAPs and Ecuador to pressure Chevron into a multi-billion-dollar settlement”.³²⁰³ Although the State prosecutors initially requested the dismissal of the preliminary investigations in 2006, the Prosecutor General reopened the proceedings in 2008 on the basis of “undisclosed new circumstances and evidence” and without any additional investigation, but with the apparent support of the LAPs’ lawyers and the Ecuadorian Executive.³²⁰⁴

1982. The Ecuadorian courts, the Claimants say, also played a central role in furthering the Criminal Proceedings, including by failing properly to apply the statute of limitations and allowing the investigation to “lay dormant” for several months.³²⁰⁵ On 29 April 2010, the Prosecutor General eventually filed charges against Mr Veiga and Dr Pérez, among others, for falsification of public documents, but the Criminal Proceedings were terminated in 2011 before the hearing could be held, supposedly due to “noncompliance with certain procedural requirements”.³²⁰⁶

³²⁰² For a detailed description of the procedural history of these proceedings, *see generally* Memorial, Appendix 13.

³²⁰³ Memorial, paras. 227-228, 236; Reply, para. 749; Track II Award, paras. 4.122-4.130. Based on a criminal complaint of the Comptroller General filed a few months after the Lago Agrio Complaint, they note, Ecuadorian prosecutors opened preliminary investigations into alleged falsification of public documents and environmental crimes, which were presumably pushed forward with the collusion of the LAPs’ representatives. *See* Memorial, paras. 229-230.

³²⁰⁴ Memorial, paras. 231-233.

³²⁰⁵ Memorial, paras. 234-235.

³²⁰⁶ Memorial, paras. 237-238.

1983. The Claimants underscore that the Criminal Proceedings were not only pursued by the government of Ecuador without regard for Ecuadorian law and procedure, but also had a significant impact on personal and professional lives of Mr Veiga and Dr Pérez.³²⁰⁷

(b) Costs Incurred

1984. The Claimants explain that the costs incurred by Chevron are commensurate with the reality that it had to present “a vigorous defense” in light of the very serious consequences facing its employees.³²⁰⁸ They state that Chevron incurred and paid USD 6,933,905.69 in legal fees (USD 5,988,424.18) and costs (USD 945,481.51) arising from the Criminal Proceedings between September 2008 and August 2011, as evidenced by the underlying invoices for the six law firms involved, the witness statements of Ms Kent, Mr Rankin and Mr Turner, the expert report of Mr Stanton, and Appendix 2 to the Memorial, which provides a monthly breakdown of law firm fees by type of timekeeper, as well as the costs of law firms, experts and vendors.³²⁰⁹

(c) Request for Full Reparation

1985. The Claimants submit that they are entitled to recover as direct damages the expenses incurred in the Criminal Proceedings, since they were a natural, foreseeable and proximate consequence of the Respondent’s breach of the Umbrella Clause and its denial of justice.³²¹⁰ They state that the Respondent must make full reparation for these costs, which they describe as “a direct outgrowth of the Lago Agrio Litigation” as a result of the Respondent’s abuse of its prosecutorial powers in an effort to liberate itself from its obligations under the 1995-1998 Settlement and Release Agreements.³²¹¹ Insisting on the collusion between the LAPs’ representatives and Ecuadorian government officials, the Claimants argue that the fact that the charges were dropped only when Ecuador was

³²⁰⁷ Memorial, para. 239.

³²⁰⁸ Memorial, para. 241.

³²⁰⁹ See Memorial, Section IX.B.iv, p. 113; Reply, paras. 748, 754-756; Appendix 2, Updated Summary of Chevron’s Fees and Costs Claimed as Damages in Track III, 4 August 2021. See generally **C-3462**, Indices of Claimed Invoices by Damage Category. The Claimants confirm that the costs claimed under this head of damages are distinct from those claimed under other heads of damages.

³²¹⁰ Reply, para. 748.

³²¹¹ Memorial, para. 242.

facing potential liability in this Arbitration further confirms that the Criminal Proceedings “were bogus from the start”.³²¹²

1986. According to the Claimants, Ecuador used Mr Veiga and Dr Pérez as proxies to attack the 1995-1998 Settlement and Release Agreements and pressure Chevron to settle, such that the Criminal Proceedings intentionally caused harm to the Claimants by directly impacting their defence and attempts to pre-empt the Respondent’s internationally wrongful acts.³²¹³ Recalling that the Tribunal has recognised the direct connection between the Criminal Proceedings and the Lago Agrio Litigation, the Claimants contend that, because those proceedings were designed to nullify or void the agreements at the core of Chevron’s defence to the Lago Agrio Litigation, the costs incurred in the Criminal Proceedings were caused by the Respondent’s Treaty breaches.³²¹⁴

1987. In the alternative, the Claimants submit that they are entitled to recover the expenses incurred in defending their employees as incidental damages.³²¹⁵ While the Claimants insist that no “necessity” requirement should be introduced, they note that the foreign law firms involved in the Criminal Proceedings were actively participating in the defence strategy and coordinating it with the relevant simultaneous proceedings in the United States.³²¹⁶ The Claimants add that damages should not be assessed through the filter of hindsight, and that the fact that the Criminal Proceedings were ultimately dismissed should have no bearing on the compensation to be paid by the Respondent.³²¹⁷

2. The Respondent’s Position

1988. The Respondent submits that the Claimants’ claim pertaining to the Criminal Proceedings should be denied in its entirety because the Tribunal explicitly found in Track II, with *res judicata* effect, that such proceedings were not a breach of the Treaty and had “no causative link” with the Lago Agrio Judgment.³²¹⁸ Accusing the Claimants of attempting

³²¹² Memorial, para. 243; Track II Award, paras 4.124, 5.240.

³²¹³ Reply, paras. 750-751; Fourth Veiga Witness Statement, paras. 94-95, 98.

³²¹⁴ Reply, paras. 752-753; Track II Award, para. 5.239.

³²¹⁵ Reply, para. 757.

³²¹⁶ Reply, paras. 758-759.

³²¹⁷ Reply, para. 760.

³²¹⁸ Counter-Memorial, paras. 674, 676; Rejoinder, paras. 1150-1151; Track II Award, paras. 5.241, 8.17(iv).

to “resurrect” their failed liability theory as a damages claim, the Respondent asserts that these legal fees and expenses are unnecessary, unreasonable and excessive, and have no causal link to the alleged breaches or the Treaty breaches.³²¹⁹

1989. The Respondent underscores that the Tribunal cannot award damages that are unrelated to Ecuador’s breaches, such that the Claimants should not be permitted to use the denial of justice and the breach of the Umbrella Clause found by the Tribunal “as a cloak for reintroducing under another guise the precluded [criminal proceedings] claim”.³²²⁰ Indeed, the Respondent argues that the Claimants have failed to explain how the Ecuadorian judiciary’s breaches could possibly have “caused” the executive branch to investigate Chevron’s employees, recalling that the Tribunal (i) held that there was no improper collusion between the Ecuadorian Executive and the LAPs; and (ii) did not conclude that the Criminal Proceedings themselves amounted to a breach of the Treaty or had any link to the Treaty breaches.³²²¹

1990. In addition, the Respondent questions the necessity and reasonableness of retaining six firms, including U.S. law firms, to defend two individuals in an investigation, noting that “monitoring the progress” of the investigations and “joining Chevron in multiple 1782 applications” is not necessary criminal defence work, and that these firms’ costs duplicated those incurred by Chevron’s own legal team.³²²² In particular, the Respondent requests the Tribunal to deny all claimed fees and costs allegedly paid to four firms (namely, Rivero Mestre LLP, Covington & Burling LLP, Williams & Connolly LLP, and Donoso & Donoso Asociados) in relation to the Criminal Proceedings, which the Claimants claim across several categories despite none of these firms having any role in other proceedings or representing Chevron.³²²³ The claimed sums for these firms, the Respondent adds, are excessive, and in any event they have not been proven to be related to or caused by the criminal investigations, as the Claimants’ “Representative Sample”

³²¹⁹ Counter-Memorial, paras. 677, 685; Rejoinder, paras. 1152, 1161.

³²²⁰ Counter-Memorial, paras. 675, 677-679; **RLA-355**, *Marvin Roy Feldman Karpa v. Mexico*, ICSID Case No. ARB(AF)/99/1, Award, 16 December 2002, para. 194; **CLA-692**, *Victor Pey Casado and Foundation “Presidente Allende” v. Chile*, ICSID Case No. ARB/98/2, Award, 13 September 2016, paras. 218, 232, 240.

³²²¹ Rejoinder, paras. 1153-1155; Track II Award, paras. 5.238-5.241, 8.69, 9.75.

³²²² Counter-Memorial, paras. 681-683.

³²²³ Rejoinder, para. 1157.

contains various expenses that have no relationship to the matter or are otherwise unreasonable and unnecessary.³²²⁴ In fact, the Respondent opines that the said sample is not representative, since it contains very few entries and invoices for law firms which represent a large portion of the claim.³²²⁵

1991. Lastly, the Respondent posits that the Claimants have not demonstrated the specifics of the alleged losses arising from, or the necessity to file, parallel 28 U.S.C. § 1782 applications to gather evidence in aid of the defence of Mr Veiga and Dr Pérez, and that they have likewise failed to address the “duplicative and unnecessary work” performed in the Section 1782 proceedings.³²²⁶

3. The Tribunal’s Analysis

1992. The Criminal Proceedings were intermittent criminal investigations, later to become prosecutions, from October 2003 to June 2011 against Mr Veiga and Dr Pérez, TexPet’s Vice President and legal representative, respectively, who negotiated and executed the 1995 Settlement Agreement between TexPet and Ecuador, for alleged “falsity in a notarial document” (later “ideological falsehood”) concerning said Settlement Agreement.³²²⁷ Certain of the Lago Agrio Plaintiffs’ representatives cooperated with members of President Correa’s administration to bring these prosecutions in an attempt to nullify the effect of Chevron’s reliance upon the 1995 Settlement Agreement as a defence in the Lago Agrio Litigation.³²²⁸ The criminal prosecutions were subsequently dismissed by the Respondent’s National Court of Justice (First Criminal Chamber) in June 2011.³²²⁹

³²²⁴ Rejoinder, paras. 1158-1159; **RE-51**, Trunko Expert Report, SM J-8. These expenses include, *inter alia*, public relations work, work on an “extradition brief”, “[u]nauthorized practice” of Ecuadorian law by U.S. lawyers and various travel costs. *See, e.g.*, **C-3243**, Rivero Mestre LLP (Member), Invoice Number 5360, 9 May 2011, CVX-Track III-10000106; **C-3243**, Rivero Mestre LLP (Member), Invoice Number 5588, 12 August 2011, CVX-Track III-10000106; **C-3243**, Covington & Burling LLP (Member), Invoice Number 60538205, 15 April 2011, CVX-Track III-10000106.

³²²⁵ Rejoinder, para. 1160; **RE-65**, Lee Expert Report, para. 27; **RE-51**, Trunko Expert Report, SM J-12.

³²²⁶ Counter-Memorial, paras. 639, 680, 684; Rejoinder, para. 1156.

³²²⁷ Track II Award, paras. 4.122-4.123.

³²²⁸ Track II Award, paras. 4.124-4.126.

³²²⁹ Track II Award, paras. 4.130, 4.448.

Evidence relevant to the timeline of the Criminal Proceedings is documented in the Tribunal's Track II Award.³²³⁰

1993. In brief, the Claimants argue that the amount of USD 6,933,905.69,³²³¹ representing legal fees and expenses incurred by Chevron in defence of Mr Veiga and Dr Pérez in the Criminal Proceedings, constitute recoverable damages for both Denial of Justice and Umbrella Clause breaches, as the proceedings were a “direct outgrowth” of the Lago Agrio Litigation committed in abuse of the Respondent's prosecutorial powers.³²³² The Respondent, on the other hand, maintains that this damages category should not survive scrutiny as it is unrelated to and has no causal link with Ecuador's Treaty breaches – as already concluded by the Tribunal in its Track II Award with *res judicata* effect.³²³³

1994. Following the methodology laid out in Section VII.G.5, the Tribunal finds that the legal fees and expenses incurred by the Claimants in connection with the Criminal Proceedings must be excluded in full from the final amount of compensation for want of a causal link with the Respondent's Treaty breaches.

1995. First, the Tribunal recalls the Claimants' position that all of their claimed legal fees and expenses incurred in connection with the Criminal Proceedings constitute direct damages and are recoverable in the alternative as incidental damages.³²³⁴ As explained in paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages. The expenses incurred by the Claimants on account of any other form of harm are *not* compensable in these proceedings.³²³⁵

³²³⁰ Track II Award, paras. 4.122-4.131, 4.220-4.223, 4.290, 4.323, 4.330, 4.448.

³²³¹ This consists of USD 5,988,424.18 as total legal fees and USD 945,481.51 as total costs claimed by the six law firms representing Mr Veiga and Dr Pérez. *See* Reply, Updated Appendix 2, p. 1272.

³²³² Memorial, para. 242.

³²³³ Counter-Memorial, paras. 675-676.

³²³⁴ *See* para. 319 above.

³²³⁵ *See* para. 317 above.

1996. Second, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555, the Claimants' efforts must have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.

1997. The efforts undertaken by the Claimants in connection with the Criminal Proceedings between September 2008 and June 2011 did not pursue any of these objectives. Rather, by defending Mr Veiga and Dr Pérez in the Criminal Proceedings, the Claimants' declared goal was to thwart the attempts of the Respondent's prosecutorial authorities, in cooperation with certain of the LAPs' representatives, "to nullify or void the Settlement and Release Agreements, which also were at the core of Chevron's defense to the Lago Agrio Litigation".³²³⁶

1998. In other words, by defending Mr Veiga and Dr Pérez in the Criminal Proceedings, the Claimants sought ultimately to defend from attempts to undermine their case in the Lago Agrio Litigation, aiming to achieve a positive outcome before the Lago Agrio Court at the trial stage. These efforts could not have conceivably sought to mitigate the injury flowing from the recognition and enforcement of the unremedied Lago Agrio Judgment, as required to warrant compensation, because said Judgment was yet to come into existence – indeed, the Lago Agrio Judgment represented the final outcome of the trial court proceedings. Whatever harm that Chevron sought to address by defending Mr Veiga and Dr Pérez in the Criminal Proceedings is outside the scope of the injury caused by the Respondent's internationally wrongful acts. Accordingly, the legal fees and expenses

³²³⁶ Reply, para. 753.

incurred by the Claimants in connection with the Criminal Proceedings do not qualify as incidental damages and are therefore not recoverable in this Arbitration.

1999. The Tribunal's conclusion is supported by the Track II finding that there was no causative link between the Criminal Proceedings and the Lago Agrio Judgment:

on 1 June 2011, these prosecutions were eventually discontinued by the Respondent's National Court, ostensibly without interference by the Respondent's Government. By that date, the Lago Agrio Judgment had been issued in favour of the Lago Agrio Plaintiffs notwithstanding the 1995 Settlement Agreement.

The Tribunal does not consider proven that these criminal investigations or prosecutions had any causative link with the conduct of the Lago Agrio Litigation or the 'ghostwriting' of the Lago Agrio Judgment by certain of the Lago Agrio Plaintiffs' representatives. Indeed, after bribing Judge Zambrano, these representatives no longer needed to impugn the 1995 Settlement Agreement (with its related agreements) by means of these collusive criminal prosecutions.³²³⁷

2000. Indeed, the Criminal Proceedings were discontinued in June 2011, shortly after the issuance of the Lago Agrio Judgment on 14 February 2011. As from then, the LAPs' representatives no longer needed to call into question the 1995 Settlement Agreement, nor did Chevron need to defend Mr Veiga and Dr Pérez from the actions of the LAPs' representatives any longer. This evidences a disconnect between the Claimants' spending in the Criminal Proceedings and their efforts to mitigate the injury flowing from the recognition and enforcement of the unremedied Lago Agrio Judgment.

2001. In sum, for the above reasons, the Tribunal rejects the Claimants' damages claim in respect of the Criminal Proceedings.

* * *

³²³⁷ Track II Award, paras. 5.240-5.241.

L. DUTCH SET-ASIDE PROCEEDINGS

2002. The Claimants seek USD 3,676,711.53 in fees and costs incurred in connection with the Dutch Set-Aside Proceedings between August 2010 and September 2018.³²³⁸ These fees were incurred in two separate proceedings before the Dutch courts initiated by two separate actions: (i) the Respondent's 7 January 2014 petition to set aside the First, Second, Third, and Fourth Interim Awards,³²³⁹ and (ii) the Respondent's 10 December 2018 petition to set aside the Track II Award.³²⁴⁰

1. The Claimants' Position

2003. The Claimants argue that they are entitled to recover as direct damages the legal fees and expenses incurred in the two Dutch Set-Aside Proceedings, in which they say they were "forced" to defend against the Respondent's attempts to set aside the Tribunal's First, Second, Third and Fourth Interim Awards, the First Partial Award, and the Track II Award.³²⁴¹ In view of the Respondent's "pattern of conduct", the Claimants allegedly anticipated that the Respondent would seek to set aside interim measures issued by the Tribunal and thus started preparing their defence in August 2010, after the Tribunal issued its first Order on Interim Measures.³²⁴²

2004. According to the Claimants, despite having been repeatedly rejected by the Dutch courts, the Respondent continued to advance the same arguments in the Dutch Set-Aside Proceedings in a "frivolous and vexatious" serial litigation, wherein the Claimants have prevailed.³²⁴³ The Respondent's "dilatory use of the Dutch set-aside proceedings and of the limited grounds to set-aside an award under Dutch law"³²⁴⁴ forced the Claimants to

³²³⁸ This consists of USD 2,935,540.22 as total legal fees and USD 683,518.79 as total costs claimed by the five law firms with billings under this damages category, and USD 57,652.52 as expert's costs. *See* Reply, para. 986; Updated Appendix 2, pp. 1298-1328.

³²³⁹ **C-2740**, *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, Writ of Summons, 7 January 2014.

³²⁴⁰ **C-2752**, *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, District Court of the Hague, Case No. C/ 09/570029, Writ of Summons, 10 December 2018.

³²⁴¹ Reply, para. 988; Memorial; Appendix 10.

³²⁴² Reply, para. 983.

³²⁴³ Memorial, para. 418; Reply, para. 998; Letter from the Claimants to the Tribunal dated 22 November 2023.

³²⁴⁴ Reply, para. 999.

engage Dutch counsel to represent them and incur additional costs to defend the Tribunal's decisions and awards in these "lengthy and burdensome" proceedings before the Dutch courts.³²⁴⁵

2005. The Claimants further clarify that, as evidenced by the invoices they produced, the costs incurred in the Dutch Set-Aside Proceedings arise solely out of the two set-aside proceedings against this Tribunal's awards and do not involve any costs incurred in the separate *Chevron v. Ecuador I* set-aside proceedings relating to an earlier arbitration between the Parties.³²⁴⁶

2006. As to the work performed by the U.S. law firms in the Dutch Set-Aside Proceedings, the Claimants submit that:

international courts and tribunals generally refrain from second-guessing the business decisions undertaken by a claimant when mitigating its losses so long as they were incurred to achieve a legitimate purpose or objective. *A fortiori*, this Tribunal should refrain from second-guessing Chevron's reliance on Gibson Dunn and Jones day's support and input in this arbitration.³²⁴⁷

2007. The Claimants deny that their damages claim with respect to the Dutch Set-Aside Proceedings is already *res judicata*.³²⁴⁸ While the Dutch courts granted reimbursement of the legal fees and expenses in the amount of EUR 13,484.34, the Claimants contend that legal fees in national litigation based on domestic law should be distinguished from damages based on international law.³²⁴⁹ Citing *Helnan v. Egypt*, the Claimants assert that the doctrine of *res judicata* applies only between courts and tribunals belonging to the same legal order.³²⁵⁰ The Claimants state that they have not waived their damages claim by being granted reimbursement for costs by the Dutch courts.³²⁵¹ In the Claimants' view,

³²⁴⁵ Memorial, para. 419; Reply, para. 1000.

³²⁴⁶ Reply, para. 990; **C-3262**, Bureau Brandeis BV, Invoices 2014-2018; **C-3287**, Gibson, Dunn & Crutcher LLP (Member), Invoices 2012, 2014, 2016; **C-3303.009**, Jones Day (Member) – 2016; **C-3305**, King & Spalding (Member), Invoices 2014-2018; **C-3341**, Spigt Litigators, Invoices 2010-2014.

³²⁴⁷ Reply, para. 1003.

³²⁴⁸ Reply, para. 994.

³²⁴⁹ Reply, para. 991.

³²⁵⁰ Reply, para. 994; **CLA-568**, *Helnan International Hotel A/S v. Egypt*, ICSID Case No. 05/19, Award, 3 July 2008, para. 124.

³²⁵¹ Reply, para. 993.

this Tribunal can still assess and award damages to the Claimants under international law for the costs they incurred in defending against the Respondent's set-aside actions.³²⁵² However, to avoid double recovery, the Claimants propose to deduct the amount of EUR 13,484.34, which the Respondent paid to the Claimants, from the sum claimed by the Claimants as damages in this Arbitration.³²⁵³

2008. Assuming that they cannot recover costs from August 2010, the Claimants submit that, at the very least, they are entitled to recover USD 3,298,000 in direct damages incurred after 1 March 2012.³²⁵⁴ In the alternative, they consider they are entitled to recover the costs incurred by the Claimants as incidental damages because the invoices produced in support of the claimed costs demonstrate that the time spent by Gibson Dunn, Jones Day, and other law firms "was reasonable for the tasks to which it corresponds."³²⁵⁵ Emphasizing that the costs would not have been incurred without the Respondent's internationally wrongful conduct, the Claimants posit that said costs were reasonable in light of their legitimate purpose and objective: enforcing the Claimants' rights in this Arbitration and preserving any award rendered by this Tribunal.³²⁵⁶

2009. While, in their view, only reasonableness of the legal fees and expenses needs to be shown, the Claimants argue that the expenses were, in any event, necessary, even indispensable, for the Claimants to repair, through this Arbitration, the damage caused by the Respondent's Treaty breaches.³²⁵⁷

2. The Respondent's Position

2010. The Respondent argues that this category of damages should be denied in its entirety. First, the Respondent asserts that its exercise of the right to seek the setting aside of the Tribunal's awards at the seat of arbitration, regardless of the ultimate outcome, does not amount either to internationally wrongful conduct or to a Treaty breach giving rise to

³²⁵² Reply, para. 994.

³²⁵³ Reply, para. 995.

³²⁵⁴ Reply, para. 1001.

³²⁵⁵ Reply, paras. 1002, 1004.

³²⁵⁶ Reply, para. 1005.

³²⁵⁷ Reply, para. 1006.

liability.³²⁵⁸ For the Respondent, the fact that the Claimants did not assert before the Dutch courts that the Dutch Set-Aside Proceedings were frivolous and did not seek legal fees in excess of what those courts awarded them confirms that the Claimants' allegations of improper motives are without merit.³²⁵⁹

2011. Additionally, the Respondent notes that the Claimants already recovered their legal expenses in the Dutch Set-Aside Proceedings in the amount of EUR 13,484.34, in line with the fixed remuneration system applied by the Dutch courts.³²⁶⁰ In the Respondent's view, the Dutch courts are the only appropriate forum to seek fees and costs for the Dutch Set-Aside Proceedings, given that The Hague is the seat of this Arbitration.³²⁶¹ Therefore, contrary to the Claimants' suggestion, the Respondent considers that the principle of *res judicata* is irrelevant in this context, where the Dutch courts have been specifically designated to review the proceedings under the agreement of the Parties in compliance with the Treaty and the UNCITRAL Arbitration Rules.³²⁶²

2012. In any event, the Respondent maintains that the invoices submitted for the Dutch Set-Aside Proceedings do not show, on their face, that the fees allegedly incurred by the Claimants were reasonable, necessary, and caused by the Treaty breaches.³²⁶³

2013. First, according to the Respondent, the costs sought under this category likely do not arise solely out of the two set-aside proceedings relating to this Arbitration, which did not begin until 7 January 2014.³²⁶⁴ The invoices, however, were dated as early as August 2010 and must therefore reflect fees and costs incurred in the separate *Chevron v. Ecuador I* set-aside proceedings that commenced on 7 July 2010.³²⁶⁵

³²⁵⁸ Counter-Memorial, para. 913; Rejoinder, paras. 1606, 1608.

³²⁵⁹ Counter-Memorial, paras. 914, 918; Rejoinder, para. 1614.

³²⁶⁰ Counter-Memorial, para. 925; Rejoinder, para. 1613.

³²⁶¹ Rejoinder, paras. 1611, 1616.

³²⁶² Rejoinder, para. 1616.

³²⁶³ Rejoinder, para. 1617.

³²⁶⁴ Counter-Memorial, paras. 919-920.

³²⁶⁵ Counter-Memorial, para. 920; Rejoinder, para. 1628; Reply, Updated Appendix 2, p. 1298.

2014. In addition, the Respondent asserts that the contents of the invoices, including those that refer to the “BIT final award annulment proceedings [] with respect to commercial claims” show that they relate to *Chevron v. Ecuador I*.³²⁶⁶ A careful review of the invoices for the time periods during which both the Dutch Set-Aside Proceedings and the *Chevron v. Ecuador I* proceedings were pending also suggests that all fees and costs sought by the Claimants at the District Court level before 7 January 2014, at the Court of Appeals level before 13 April 2016, and at the Supreme Court level before 18 October 2017 “were not necessary” and “may well relate” to the *Chevron v. Ecuador I* set-aside proceedings only.³²⁶⁷

2015. Second, the Respondent asserts that the Claimants failed to explain why U.S. counsel were needed in the Dutch Set-Aside Proceedings and why they billed more hours than Dutch counsel in the same phase of the proceedings.³²⁶⁸ Considering that the five limited grounds for set-aside in the Netherlands are necessarily governed by Dutch law, and that the Claimants were already represented by eminently qualified Dutch counsel, U.S. counsel could not have been needed to any significant extent to support the Claimants’ position in the Dutch Set-Aside Proceedings.³²⁶⁹ The Respondent also notes that the fees billed by U.S. counsel show duplication of work of the Dutch attorneys, expenses for attorneys to travel to hearings, and time attending hearings.³²⁷⁰

2016. Third, the Respondent contends that the fees and costs billed by Dutch counsel were similarly duplicative.³²⁷¹ Under Dutch law, the designation of an attorney as counsel of record means that no other attorney could act for the Claimants in that capacity.³²⁷² Thus, it is unclear what the scope of services of the two remaining law firms was to bill

³²⁶⁶ Rejoinder, para. 1629.

³²⁶⁷ Rejoinder, para. 1630; **RE-63**, Second Luycks Expert Report, para. 5.41.

³²⁶⁸ Rejoinder, para. 1619.

³²⁶⁹ Rejoinder, paras. 1619, 1621; **RE-63**, Second Luycks Expert Report, para. 5.17.

³²⁷⁰ Rejoinder, paras. 1620, 1622.

³²⁷¹ Rejoinder, para. 1624.

³²⁷² Rejoinder, para. 1624; **RE-63**, Second Luycks Expert Report, para. 5.15.

extensive hours of work that are not duplicative of those already billed by counsel of record.³²⁷³

2017. Lastly, recalling that the Claimants seek to recover fees and costs from August 2010, the Respondent submits that there is no justification for running costs to defend against a proceeding that had yet to be initiated to set aside awards that did not even exist at that time.³²⁷⁴

3. The Tribunal's Analysis

2018. On 7 January 2014, the Respondent filed a petition in the District Court of The Hague – the legal seat of this Arbitration³²⁷⁵ – seeking to set aside the First, Second, Third and Fourth Interim Awards.³²⁷⁶ These awards were upheld by the District Court on 20 January 2016,³²⁷⁷ by the Court of Appeals of The Hague on 18 July 2017,³²⁷⁸ and by the Dutch Supreme Court on 12 April 2019.³²⁷⁹

2019. On 10 December 2018, the Respondent sought to set aside the Track II Award before the District Court of The Hague.³²⁸⁰ The Track II Award was upheld by the District Court on

³²⁷³ Rejoinder, paras. 1624-1625.

³²⁷⁴ Counter-Memorial, para. 923; Rejoinder, para. 1626.

³²⁷⁵ See para. 11 above.

³²⁷⁶ **C-2740**, *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, Writ of Summons, 7 January 2014.

³²⁷⁷ **C-2742**, *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, District Court of the Hague, Case No. C/09/477457 / HA ZA 14-1291, Judgment, 20 January 2016.

³²⁷⁸ **C-2545**, *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, The Hague Court of Appeals, Case No. 200.193.418/01, Decision, 18 July 2017.

³²⁷⁹ **C-2751**, *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, Supreme Court of the Netherlands, Case No. 17/04926, Decision, 12 April 2019.

³²⁸⁰ **C-2752**, *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, District Court of the Hague, Case No. C/09/570029, Writ of Summons, 10 December 2018.

16 September 2020,³²⁸¹ by the Court of Appeals of The Hague on 28 June 2022,³²⁸² and by the Dutch Supreme Court on 17 November 2023.³²⁸³

2020. The Claimants assert that they would not have incurred legal fees and expenses in connection with the Dutch Set-Aside Proceedings but for the Respondent's Treaty breaches, which led to the present Arbitration and the awards issued in it. According to the Claimants, "[i]t was natural and foreseeable that Ecuador's internationally wrongful acts would give rise to Claimants' costs in enforcing their legal rights, including in defending the awards rendered by this Tribunal against Ecuador's attempts to set them aside."³²⁸⁴ In particular, the Claimants assert that the First, Second and Fourth Interim Awards on interim measures "were critical to maintaining the integrity of the arbitral process, and their setting aside would potentially have caused serious prejudice to Claimants' procedural and substantive rights."³²⁸⁵

2021. In response, the Respondent argues primarily that it has a well-established right to pursue set-aside proceedings before the Dutch courts.³²⁸⁶ In the Respondent's view, its good faith pursuit of such remedies, regardless of the outcome, cannot be characterized as internationally wrongful conduct or a failure to arbitrate in good faith.³²⁸⁷

2022. A separate, but narratively relevant, set-aside proceeding was pursued by the Respondent in relation to a previous Treaty arbitration between the Parties concerning delays in relation to seven commercial cases brought by TexPet before the Ecuadorian courts (the *Chevron v. Ecuador I* arbitration).³²⁸⁸ The *Chevron v. Ecuador I* set-aside proceedings ran from 1 January 2010 to 26 September 2014, when the Dutch Supreme Court

³²⁸¹ **C-3147**, *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, District Court of The Hague, Case No. C/09/570029 / HA ZA 19-268, Judgment, 16 September 2020.

³²⁸² **C-3477**, *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, The Hague Court of Appeals, Case No. 200.288.128/01, Judgment, 28 June 2022.

³²⁸³ **C-3640**, *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, Supreme Court of the Netherlands, Case No. 22/03577, Judgment, 17 November 2023.

³²⁸⁴ Reply, para. 987.

³²⁸⁵ Memorial, para. 419.

³²⁸⁶ Counter-Memorial, para. 911.

³²⁸⁷ Counter-Memorial, paras. 913, 918; Rejoinder, para. 539.

³²⁸⁸ Memorial, Appendix 10.

ultimately dismissed the *Chevron v. Ecuador I* set-aside action.³²⁸⁹ The Claimants assert that, while it is represented by the same counsel in the *Chevron v. Ecuador I* set-aside and the Dutch Set-Aside Proceedings concerning this Arbitration, they are solely claiming damages arising out of the latter proceedings.³²⁹⁰ The Respondent contests this based on the period to which the Claimants' invoices underlying their claim under this category pertain.³²⁹¹

2023. Following the methodology laid out in Section VII.G.5, the Tribunal finds that the legal fees and expenses incurred by the Claimants in connection with the Dutch Set-Aside Proceedings must be excluded in full from the final amount of compensation for want of a causal link with the Respondent's Treaty breaches.

2024. First, the Tribunal recalls the Claimants' position that all of their claimed legal fees and expenses claimed in connection with the Dutch Set-Aside Proceedings constitute direct damages and are recoverable in the alternative as incidental damages.³²⁹² As explained in paragraph 327 above, the legal fees and expenses reasonably incurred by the Claimants in attempting to repair damage and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment are compensable only as *incidental* damages. The expenses incurred by the Claimants on account of any other form of harm are *not* compensable in these proceedings.³²⁹³

2025. Second, as noted in paragraph 555 above, the notion of causation applied to the reimbursement of legal fees and expenses as incidental damages requires the Tribunal to determine whether the legal fees and expenses claimed under the present heading, when considered as a whole, were incurred to minimize loss and otherwise mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment. To warrant compensation, as also stated in paragraph 555, the Claimants' efforts must

³²⁸⁹ Memorial, Appendix 10, paras. 1-3; Counter-Memorial, para. 920; **C-2420B**, *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*, Supreme Court of the Netherlands, Case No. 13/04679, EV/LZ, Judgment, 26 September 2014.

³²⁹⁰ Memorial, Appendix 10, para. 8; Reply, para. 997.

³²⁹¹ Counter-Memorial, para. 919; Rejoinder, para. 546. *See* paras. 2013-2014 above.

³²⁹² *See* para. 2008 above.

³²⁹³ *See* para. 317 above.

have been geared towards one of three mitigation goals: (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise.

2026. By participating in the Dutch Set-Aside Proceedings, the Claimants sought to defend the First through Fourth Interim Awards and the Track II Award against the Respondent's attempts to have them set aside at the legal place of this Arbitration. In other words, the Claimants' legal spending in the Dutch Set-Aside Proceedings was incurred in reaction to the Respondent's set-aside actions against those awards and *not* in reaction to concrete efforts to render the Lago Agrio Judgment enforceable, defend its enforceability or actually seek to enforce it. This is indicative of remoteness between the injury flowing from the Respondent's Treaty breaches and the legal fees and expenses claimed under this heading.

2027. Furthermore, regardless of the ultimate outcome of the Dutch Set-Aside Proceedings, there was nothing improper in the Respondent's decision to seek to set aside the Tribunal's awards. This right is guaranteed under Dutch law³²⁹⁴ and also flows from Article VI(5) of the Treaty, pursuant to which any arbitration under paragraph 3(a)(iii) of that Article – that is, under the UNCITRAL Arbitration Rules – shall be held in a State that is a party to the New York Convention. While the New York Convention does not govern *per se* the annulment of arbitral awards, Article V(1)(e) of the Convention recognizes the situation when the award “has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made” as a ground to deny the recognition and enforcement of an award.³²⁹⁵

2028. For these reasons, the Tribunal determines that the Respondent's legitimate exercise of its right to seek the set-aside of awards issued in this Arbitration did not give rise to injuries for which the Claimants can claim damages in these proceedings. A different

³²⁹⁴ **RLA-732**, Dutch Civil Code of Procedure, Art. 1065(1). *See also* Counter-Memorial, para. 912, fn 1820.

³²⁹⁵ **RLA-64**, Convention on the Recognition and Enforcement of Foreign Arbitral Awards, UNCITRAL (New York, 1958), Art. V(1)(e).

conclusion would create a significant hurdle for set-aside actions, thus impairing the Respondent's right of access to justice under the law of the seat of this Arbitration.

2029. For the avoidance of doubt, the Tribunal confirms that there was also nothing improper in the Claimants' decision to oppose the Respondent's set-aside actions. However, this does not mean that the Claimants are entitled to recover the legal fees and expenses incurred in connection with the Dutch Set-Aside Proceedings as damages in this Arbitration simply because those proceedings would not have taken place if the Respondent had not breached the Treaty. The same proposition applies to *all* set-aside proceedings concerning an award in which a treaty breach is declared. The test for incidental damages under international law, as described in the preceding paragraphs, is narrower than an unrestricted analysis of factual causation.

2030. Accordingly, for the foregoing reasons, the Tribunal rejects the Claimants' damages claim in respect of the Dutch Set-Aside Proceedings.

* * *

M. TREATY ARBITRATION COSTS INCURRED BY NON-COUNSEL OF RECORD

2031. The Claimants seek USD 34,653,249.61 in legal fees and expenses incurred between May 2008 and October 2018 by non-counsel of record as costs of this Arbitration under Article 38 of the UNCITRAL Arbitration Rules.³²⁹⁶ To the extent that they are not awarded as costs, the Claimants seek reimbursement of these legal fees and expenses as direct damages.³²⁹⁷ In the further alternative, the Claimants submit that they are entitled to compensation for these legal fees and expenses as incidental damages.³²⁹⁸

2032. According to the Respondent, the Claimants have “muddled” the relationship between the costs claimed under the present heading and the “legal assistance” costs they sought in their 2018 Submissions on Costs, such that it is impossible to understand the overlap or duplication between this category of damages and the “legal assistance” component of the Claimants’ costs of arbitration claim.³²⁹⁹ To the extent the amounts claimed in this category are characterized either as direct or incidental damages, the Respondent considers that the Claimants have failed to make the requisite showing of the reasonableness of the alleged fees and costs they seek.³³⁰⁰ Consequently, the Respondent argues that none of the alleged expenses falling under the present heading are recoverable in this Arbitration.³³⁰¹

1. The Claimants’ Position

2033. According to the Claimants, their damages in this category comprise the legal fees and expenses of several law firms that assisted the Claimants in developing their strategy and evidence for their Treaty claims – including, notably, Gibson, Dunn & Crutcher LLP and

³²⁹⁶ Memorial, para. 414. In their Reply, the Claimants adjusted the amount of legal fees and expenses claimed under this category to USD 34,653,249.61 (*see* Reply, para. 976).

³²⁹⁷ Memorial, para. 414; Reply, paras. 976, 981.

³²⁹⁸ Reply, paras. 976, 1002.

³²⁹⁹ Counter-Memorial, para. 908; Rejoinder, para. 1570.

³³⁰⁰ Rejoinder, para. 1572.

³³⁰¹ Counter-Memorial, para. 909.

Jones Day’s work in developing evidence arising out of the Section 1782 Proceedings and the RICO Litigation for use in this Arbitration.³³⁰²

2034. The Claimants assert that they relied on the expertise of Gibson Dunn and Jones Day in connection with this Arbitration, including reviewing and revising written submissions, assisting with overlapping expert witnesses, and attending hearings.³³⁰³ As to the legal fees and expenses they claim for those efforts, the Claimants clarify that that they are “separate, and not included in the US\$ 164 million otherwise claimed under the Section 1782 and RICO proceedings”;³³⁰⁴ rather, those legal fees and expenses were incurred for the “sole purpose” of supporting and presenting the Claimants’ case in this Arbitration.³³⁰⁵ The Claimants also indicate that this category is a sub-set of the “legal assistance” fees they have previously included in their Track II Submission on Costs, made pursuant to paragraph 10.16 of the Tribunal’s Track II Award and Procedural Order No. 52.³³⁰⁶

2035. The Claimants also seek to recover fees for the work done by ten other law firms under the present heading: Stern Kilcullen & Rufolo LLC; Gardere Wynne Sewell LLP; Boies Schiller & Flexner LLP; Perez, Bustamante & Ponce; Covington & Burling LLP; Three Crowns LLP; Rivero Mestre LLP; Asesorias Bofill Escobar; Holland & Knight; and NautaDutilh N.V.³³⁰⁷ As evidenced by their invoices, the Claimants assert that the legal fees and expenses of these firms were incurred for the sole purpose of supporting and presenting the Claimants’ case in this Arbitration.³³⁰⁸

2. The Respondent’s Position

2036. According to the Respondent, despite its requests for clarification, the Claimants have “muddled the relationship” between this Treaty Arbitration Costs category and the “legal assistance” they seek in their Track II Submission on Costs, such that “it is impossible to

³³⁰² Reply, para. 977.

³³⁰³ Memorial, para. 414.

³³⁰⁴ Reply, para. 985.

³³⁰⁵ Reply, para. 979.

³³⁰⁶ Memorial, para. 414.

³³⁰⁷ Reply, paras. 977-978.

³³⁰⁸ Reply, para. 979.

understand the overlap or duplication between this category of damages and the ‘legal assistance’ component of Claimants’ costs of arbitration claim.”³³⁰⁹

2037. In particular, the Respondent refers to alleged inconsistencies in the Claimants’ submissions, contending that in the Memorial, the Claimants state that the amount under this head of damages represents “a subset of the US\$ 164 million” claimed as costs of arbitration, admitting that the amounts sought as damages and as costs overlap, whereas in their Reply they indicate the precise opposite, namely, that the USD 35 million is not included in the USD 164 million and that the USD 164 million amount includes the amounts incurred in Section 1782 Proceedings and RICO Litigation.³³¹⁰

2038. Noting that the Claimants have not produced the invoices underlying their costs submission, and more specifically the USD 164 million component of that submission attributable to the “non-counsel of record”, including Gibson Dunn and Jones Day, the Respondent argues that the Claimants have failed to demonstrate that this claim is in fact not duplicative.³³¹¹

2039. The Respondent does not consider the invoices produced by the Claimants in support of this claim component to be reliable evidence because, in its view, the Claimants have made multiple misrepresentations as to what services were actually included in this category.³³¹² The Respondent disputes the Claimants’ assertion that the costs were incurred “for the sole purpose” of supporting their case in this Arbitration, contending that the invoices include (i) fees that Gibson Dunn and Jones Day performed in a distinct, domestic lawsuit in the SDNY; (ii) those of NautaDutilh N.V., a Dutch firm that acted as Chevron’s counsel of record in the Dutch Set-Aside Proceedings, instead of including them in the Dutch Set-Aside Proceedings category; and (iii) fees for “expert testimonies” prepared in 2008 that predate the commencement of this Arbitration.³³¹³

³³⁰⁹ Rejoinder, para. 1570.

³³¹⁰ Rejoinder, paras. 1577-1581; Memorial, para. 414, Reply, para. 985.

³³¹¹ Counter-Memorial, para. 908; Rejoinder, para. 1582.

³³¹² Rejoinder, para. 1588.

³³¹³ Rejoinder, paras. 1584-1587.

2040. Relying on the approach taken in in *PSEG v. Turkey*, the Respondent takes the view that the Claimants’ misrepresentations provide sufficient grounds to dismiss this category in its entirety, or severely reduce the amounts claimed.³³¹⁴

2041. Insofar as the time entries for the costs claimed in this sub-category can be assessed, the Respondent argues that the Claimants over-lawyered this Arbitration by hiring twelve law firms with over 400 timekeepers, but failed to offer any explanation as to how the contributions from each law firm were unique or required in addition to those from the Claimants’ counsel of record.³³¹⁵ The Respondent further highlights that the Claimants’ lawyers spent considerable time on paralegal or administrative tasks that would ordinarily not be compensable under Chevron’s Guidelines.³³¹⁶

2042. Moreover, to the extent that Chevron pursued discovery in the RICO Litigation to obtain information for use in this Arbitration, the Respondent relies on Professor Strong’s expert opinion that the Claimants are not entitled to recover the related costs because “a party cannot use a U.S. litigation as a stalking horse to pursue discovery for another case.”³³¹⁷

2043. According to the Respondent, the time entries underlying the Claimants’ claimed legal fees and expenses also reflect the Claimants’ intention to seek unrelated and unreasonable charges, including expenses for attending international conferences, fees incurred for legal strategies that were deemed “inappropriate, distracting, and irrelevant”, as well as those for legal strategies that were ultimately abandoned in domestic actions that had no connection with this Arbitration.³³¹⁸

3. The Tribunal’s Analysis

2044. The Claimants describe the legal fees and expenses under this category as follows:

As the Tribunal is aware, this BIT case, the § 1782 proceedings, and the RICO case took place in parallel. Chevron exhibited in this case substantial evidence that was initially developed in the § 1782 proceedings and/or the RICO case, and the Tribunal relied

³³¹⁴ Rejoinder, para. 1588; **CLA-226**, *PSEG Global Inc., and Konya Ingin Elektrik Üretim ve Ticaret Limited Sirketi v. Turkey*, ICSID Case No. ARB/02/5, Award, 19 January 2007, para. 328.

³³¹⁵ Rejoinder, paras. 1594-1595, 1597.

³³¹⁶ Rejoinder, para. 1598.

³³¹⁷ Rejoinder, para. 1591; **RE-44**, First Strong Expert Report, paras. 72-80.

³³¹⁸ Rejoinder, paras. 1607-1610.

extensively on that evidence in its Track II Award. Gibson Dunn and Jones Day were the primary law firms handling the § 1782 proceedings and the RICO case. In light of this, Chevron relied on the expertise of Gibson Dunn and Jones Day in connection with proceedings before this Tribunal, including reviewing and revising written submissions, assisting with overlapping expert witnesses, and attending hearings. Claimants have previously included Gibson Dunn and Jones Day's costs for assisting with the BIT, as well as developing evidence used in the BIT through the § 1782 and RICO proceedings, in their Track II submission on costs on the grounds that UNCITRAL Article 38's definition of "legal assistance" costs makes them recoverable. Those costs totaled some US\$ 164 million. The US\$ 35,813,735 in fees and costs claimed in this category is a subset of the US\$ 164 million that excludes fees and costs for developing BIT-related evidence already captured in the § 1782 and RICO categories discussed above. While Claimants believe they are properly claimable as "costs for legal assistance" in this proceeding, to the extent they are not awarded as costs, they should be awarded as damages to Chevron.³³¹⁹

2045. At the outset, the Tribunal recalls that the Claimants' primary position is that the legal fees and expenses under the present category should be reimbursed as "costs for legal assistance" under Article 38 of the UNCITRAL Arbitration Rules.³³²⁰ In the alternative, the Claimants seek the legal fees and expenses under this heading as direct damages,³³²¹ and in the further alternative as incidental damages.³³²² The Respondent objects to the Claimants' claim under all three heads.

2046. The legal fees and expenses claimed as damages under the present heading, as characterized by the Claimants, were incurred "for the sole purpose of supporting and presenting Claimants' case in this BIT arbitration."³³²³ This sets the present category apart from every other category in Track III involving legal fees and expenses as damages, which generally concern costs incurred in domestic proceedings *outside* of this Arbitration.³³²⁴

2047. By contrast, these proceedings are an international arbitration subject to the Treaty, the UNCITRAL Arbitration Rules and international law. Within this legal framework, the question of the reimbursement of legal fees and expenses incurred by the Parties in

³³¹⁹ Memorial, para. 414.

³³²⁰ Memorial, para. 414; Reply, para. 980.

³³²¹ Reply, para. 981.

³³²² Reply, para. 1002.

³³²³ Reply, para. 979.

³³²⁴ For a complete list of all categories *see* para. 558 above.

relation to this Arbitration is not addressed as such as a question of damages: it is governed specifically by Articles 38 and 40 of the UNCITRAL Arbitration Rules.

2048. Pursuant to Article 38 of the UNCITRAL Arbitration Rules, the term “costs” includes, inter alia, “[t]he costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable”. With respect to these costs, Article 40(2) of the UNCITRAL Arbitration Rules provides that “the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.”

2049. The Tribunal recalls that, by its Procedural Order No. 84, the Tribunal assigned all issues relating to the allocation and assessment of costs and expenses (within the meaning of Articles 38-40 of the UNCITRAL Arbitration Rules), as claimed by the Claimants and the Respondent, for further submissions by the Parties to Track IV, following the issuance of this Award.³³²⁵

2050. Accordingly, the Tribunal defers to Track IV its determination as to whether the legal fees and expenses claimed by the Claimants as Treaty Arbitration Costs Incurred by Non-Counsel of Record amount to costs of arbitration under Article 38 of the UNCITRAL Arbitration Rules, and, if so, how they should be allocated under Article 40 of those Rules.

2051. However, for the avoidance of doubt, the Tribunal confirms that the legal fees and expenses claimed under the present heading are in any event *not* compensable either as direct or incidental damages. While legal fees and expenses incurred in mitigation by the Claimants may be compensable generally as incidental damages,³³²⁶ the assessment and allocation of any costs for legal representation and assistance incurred by the Claimants in relation to *this Arbitration*, including those falling under the present category, is independent of the determination of full compensation under *Chorzów Factory* and is

³³²⁵ Procedural Order No. 84, para. 13(i).

³³²⁶ See para. 327 above.

instead subject to a distinct standard and procedure under the UNCITRAL Arbitration Rules,³³²⁷ as explained above.

2052. In sum, the Tribunal (i) rejects the Claimants' damages claim in respect of the category "Treaty Arbitration Costs Incurred by Non-Counsel of Record"; and (ii) defers to Track IV its determination of the Claimants' costs claim under Articles 38 and 40 of the UNCITRAL Arbitration Rules in respect of the legal fees and expenses falling under this same category.

* * *

³³²⁷ See e.g. Procedural Order No. 65, para. 72: "Pursuant to Article 38(e) of the UNCITRAL Rules, a party may recover its legal costs 'only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable'. Under Article 40(2) of the UNCITRAL Rules, the Tribunal has the discretion to 'determine which party shall bear such costs or [to] apportion such costs between the parties if it determines that apportionment is reasonable.' Arbitral tribunals do not exercise the same level of discretion in relation to parties' claims for damages."

N. CROSS-CUTTING ELEMENTS

1. Introduction

2053. In the preceding sections, the Tribunal has determined the extent to which each of the 13 categories of damages claimed by the Claimants comprising legal fees and expenses, as well as each particular component falling under each category, fulfils the requirements of causation and reasonableness for the compensation of incidental damages under international law. Such determinations, however, do not exhaust the inquiry in respect of those damages categories. As explained by the Tribunal in paragraphs 571-574 above, the Parties have identified a series of “elements” potentially impacting multiple categories. Because of their cross-cutting nature, these elements cannot be addressed in a self-standing manner as components of the Claimants’ claims; rather, they affect to varying extents the global assessment of the amount of compensation. The Tribunal addresses these elements in this section.

2054. To recall, in its Procedural Order No. 83 the Tribunal defined the term “elements” as:

any other cost subsets that may be present in several categories, and the recoverability of which is disputed on the basis of the nature of the expenditure, the observation of pathological or allegedly inadequate billing practices or other reasons (e.g., blocked billing, public relations, etc.)³³²⁸

2055. Based on this understanding, the Parties identified the following elements in their submissions in response to Procedural Order No. 83:

- (i)** (CLA) Fees That Allegedly Would Have Been Incurred But-For The Treaty Breaches / (RES) Fees That Would Have Been Incurred But-For The Treaty Breaches;
- (ii)** Claimants’ Alleged Failure to Mitigate (Zambrano Recusal, Collusion Prosecution Act, Appeal Bond);
- (iii)** (CLA) Subsidiaries – PDF invoices addressed to Non-Claimant Chevron Corp. subsidiaries / (RES) Subsidiaries – PDF invoices addressed to Non-Claimants;

³³²⁸ Procedural Order No. 83, 14 October 2022, para. 8(3). *See also* para. 552(iii) above.

- (iv)** (CLA) Activities allegedly relating to Media and Public Relations / (RES) Activities relating to Media and Public Relations;
- (v)** (CLA) Activities allegedly relating to Government Relations (including but not limited to USTR) / (RES) Activities relating to Government Relations (including but not limited to USTR);
- (vi)** (CLA) Allegedly Nondefense-Related Activities / (RES) Nondefense-Related Activities;
- (vii)** (CLA) Alleged Block Billing / (RES) Block Billing;
- (viii)** (CLA) Allegedly Vague Billing Entries / (RES) Vague Billing Entries;
- (ix)** (CLA) Alleged Administrative and Clerical Activities; (RES) Administrative and Clerical Activities;
- (x)** (CLA) Alleged Getting Up to Speed and Training / (RES) Getting Up to Speed and Training;
- (xi)** Multiple Attendance at Events;
- (xii)** (CLA) Alleged Excessively Long Billing Days and Excessive Time; (RES) Excessively Long Billing Days and Excessive Time;
- (xiii)** (CLA) Alleged Double Billing Entries; (RES) Double Billing Entries;
- (xiv)** Veiga / Perez Criminal Proceedings;
- (xv)** Cash Calls; and
- (xvi)** King & Spalding/Three Crowns Amounts Claimed as Damages.³³²⁹

³³²⁹ Letter from the Respondent to the Tribunal, 21 October 2022; Letter from the Claimants to the Tribunal, 22 October 2022, Annex A.

2056. The Tribunal notes that it has already made certain determinations in respect of elements (i)-(iii) and (xiv) in the preceding list, such that it is unnecessary to address those elements any further:

- (i) In respect of the element “(CLA) Fees That Allegedly Would Have Been Incurred But-For The Treaty Breaches / (RES) Fees That Would Have Been Incurred But-For The Treaty Breaches”, the Tribunal has determined in paragraph 395 above that the Claimants’ damages claim must be reduced by a portion of the amount of legal fees and expenses generated by local Ecuadorian counsel and international counsel in the real-world Lago Agrio Litigation to re-establish the situation which would, in all probability, have existed if the Respondent’s Treaty breaches had not been committed. The precise percentage reduction was determined in paragraph 738 above.
- (ii) In respect of the element “Claimants’ Alleged Failure to Mitigate (Zambrano Recusal, Collusion Prosecution Act, Appeal Bond)”, the Tribunal has dismissed in paragraph 477 above the Respondent’s defences based on the Claimants’ failure to mitigate (i) by failing to recuse Judge Zambrano; (ii) by failing to post a bond to suspend the enforceability of the Lago Agrio Judgment; (iii) by failing to file an action under the CPA; and (iv) by initiating the RICO Litigation.
- (iii) In respect of the element “(CLA) Subsidiaries – PDF invoices addressed to Non-Claimant Chevron Corp. subsidiaries / (RES) Subsidiaries – PDF invoices addressed to Non-Claimants”, the Tribunal has determined in paragraph 444 above that Chevron, as a matter of principle, is entitled to claim compensation in this Arbitration in its own right for the injuries to those of its subsidiaries listed in the 15 October 2012 Order of the Lago Agrio Court caused by the recognition and enforcement of the Lago Agrio Judgment.
- (iv) In respect of the element “Veiga / Perez Criminal Proceedings”, the Tribunal has rejected the Claimants’ damages claim in respect of the Criminal Proceedings category of damages in paragraph 2001 above.

2057. Furthermore, the Parties’ joint list of elements set out in paragraph 2055 above is not exhaustive. In their submissions, the Parties have addressed other issues affecting

multiple categories which shall also be addressed in this section, notably (i) the question whether the Claimants have proved that they paid the legal fees and expenses for which they claim compensation in this Arbitration; and (ii) the question whether date range limitations for the compensation of incidental damages should be based on the date on which the underlying services were performed, the date of issuance of the corresponding invoice, or the date of payment.³³³⁰

2058. In light of the foregoing, for purposes of the present analysis the Tribunal shall divide all elements pending determination into two separate groups. First, the Tribunal shall address those elements requiring an individualized analysis, which include:

- (i) Whether the Claimants have proved that they paid the legal fees and expenses for which they claim compensation in this Arbitration;
- (ii) Whether date range limitations for the compensation of incidental damages should be based on the date on which the underlying services were performed, the date of issuance of the corresponding invoice, or the date of payment;
- (iii) King & Spalding/Three Crowns Amounts Claimed as Damages; and
- (iv) Cash Calls.

2059. Second, the Tribunal shall address all remaining elements as an ensemble. As further explained below, this second group of elements is drawn from the report of the Respondent's expert on legal fee auditing, Mr John L. Trunko, where he refers to them as "problematic issues reflecting unreasonable fees and costs".³³³¹ In Mr Trunko's view, these purported deficiencies warrant "significant reductions" to the Claimants' claimed legal fees and expenses.³³³²

2060. For ease of reference, this second group of elements comprises the following:

³³³⁰ See para. 571 above.

³³³¹ RE-51, Trunko Expert Report, para. 8.

³³³² RE-51, Trunko Expert Report, para. 56.

- (i) (CLA) Activities allegedly relating to Media and Public Relations / (RES) Activities relating to Media and Public Relations (item (iv) in paragraph 2055 above);
- (ii) (CLA) Activities allegedly relating to Government Relations (including but not limited to USTR) / (RES) Activities relating to Government Relations (including but not limited to USTR) (item (v) in paragraph 2055 above);
- (iii) (CLA) Allegedly Nondefense-Related Activities / (RES) Nondefense-Related Activities (item (vi) in paragraph 2055 above);
- (iv) (CLA) Alleged Block Billing / (RES) Block Billing (item (vii) in paragraph 2055 above);
- (v) (CLA) Allegedly Vague Billing Entries / (RES) Vague Billing Entries (item (viii) in paragraph 2055 above);
- (vi) (CLA) Alleged Administrative and Clerical Activities / (RES) Administrative and Clerical Activities (item (ix) in paragraph 2055 above);
- (vii) (CLA) Alleged Getting Up to Speed and Training / (RES) Getting Up to Speed and Training (item (x) in paragraph 2055 above);
- (viii) Multiple Attendance at Events (item (xi) in paragraph 2055 above);
- (ix) (CLA) Alleged Excessively Long Billing Days and Excessive Time / (RES) Excessively Long Billing Days and Excessive Time (item (xii) in paragraph 2055 above); and
- (x) (CLA) Alleged Double Billing Entries / (RES) Double Billing Entries (item (xiii) in paragraph 2055 above).

2061. For ease of reference, the Tribunal shall hereinafter refer jointly to the 10 elements identified in the preceding paragraph as the “**Trunko Elements**”.

2. Elements requiring an individualized analysis

- (a) *Whether the Claimants have proved that they paid the legal fees and expenses for which they claim compensation in this Arbitration*

2062. The Claimants allege that Chevron, the First Claimant, paid all legal fees and expenses for which the Claimants claim compensation in this Arbitration.³³³³ As support for this assertion, the Claimants rely on the testimony of four witnesses and the evidence of an expert:

- (i) Ms Colleen Kent, a Senior Business Analyst at Chevron, describes Chevron's billing procedures and systems as regards the legal fees and expenses related to the so-called "Ecuador Dispute". She explains:

Most invoices are submitted electronically from outside law firms and other vendors through the "Collaborati" e-billing software which transfers the invoice to the "TeamConnect" software used internally at Chevron for invoice review.

...

Collaborati will reject an invoice outright (and not even migrate it to TeamConnect) if the invoice contains incorrect information, such as unapproved timekeepers, unapproved billing rates, etc.

...

TeamConnect is an electronic platform designed for electronic review, processing, and approval of invoices.

...

Chevron's legal analysts will review the invoices and may reject outright, or reduce appropriately, invoices for non-conforming items such as unapproved expenses, excessive hours by individual timekeepers, etc. The legal analyst will also review to ensure that tasks are performed at the appropriate level of seniority and may reject or adjust amounts accordingly. Chevron also typically will not pay for items such as administrative tasks. In addition, Chevron requires that all expenses be justified, and may reject payment of expenses if either element is missing.

...

Invoices may nonetheless undergo up to three additional levels of internal Chevron review

...

³³³³ Track III Hearing Transcript, Day 3 (22 August 2022), p. 437 (Silbert).

Chevron implemented cost-saving and cost-control measures for the Ecuador Dispute, including the negotiation of discounts.

Once an invoice is approved for payment through TeamConnect, the invoice moves from TeamConnect to the SAP system (Chevron's electronic payment system) and is placed in line for payment.

...

All the amounts claimed by Chevron in this arbitration were actually paid by Chevron (or its subsidiaries).³³³⁴

- (ii) Mr E.J. Rankin, an eDiscovery Specialist at Chevron, was instructed to collect the billing data for each outside vendor that billed Chevron for Ecuador-related work for export to FTI.³³³⁵ This involved the collection of three types of data:

Structured Data, which is maintained in Chevron's TeamConnect billing system. Mr. Rankin obtained access to this Structured Data from Chevron's Information Technology group then transferred it to an electronic file transfer ("EFT") site maintained by FTI

...

Invoices. These include invoices that were not in Chevron's possession (for example, where a vendor sent the invoice to an outside law firm, the law firm paid the invoice, and then the law firm sought reimbursement from Chevron through the law firm's own bill). As with the Structured Data, Mr. Rankin transferred it to FTI's EFT site

...

Backup Data. Mr. Rankin also obtained all of the attachments to the invoices and transferred them to FTI's EFT site.³³³⁶

- (iii) Mr David Turner, the leader of FTI's Data and Analytics Group for the Americas, describes the process of receiving the data described in Mr Rankin's witness statement, obtaining additional data directly from vendors, and compiling all that data into a report titled "Summary of Fees and Costs Report",³³³⁷ which he updated before the Claimants submitted their Reply.³³³⁸ He explains how FTI then loaded the data into a database accessible to the Claimants' outside counsel for their

³³³⁴ Memorial, para. 193; Kent Witness Statement, paras. 10-11, 12, 14, 19, 23-26, 28, 33, 34, 36.

³³³⁵ Memorial, para. 195; Rankin Witness Statement, para. 7. *See also* First Turner Witness Statement.

³³³⁶ Memorial, para. 196; Rankin Witness Statement, paras. 9-14.

³³³⁷ Memorial, para. 197; First Turner Witness Statement, paras. 2-18; Memorial, Appendix 2.

³³³⁸ Second Turner Witness Statement, paras. 4-8; Reply, Updated Appendix 2.

review, following which FTI provided the information about the legal fees and expenses underlying the Claimants' claims to Deloitte.³³³⁹

- (iv) Mr Steven Stanton of Deloitte describes how Deloitte validated and confirmed that Chevron, using the SAP electronic payment system (the “**SAP System**”), paid each outside law firm and vendor an amount that equals or exceeds the amount claimed by Chevron as damages in FTI’s “Summary of Fees and Costs Report”.³³⁴⁰ Mr Stanton explains that approximately 93% of the invoices could be validated via electronic matching, while he manually matched the remaining 7%.³³⁴¹ In his Second Expert Report, Mr Stanton confirmed that all invoices were validated as regards the updated “Summary of Fees and Costs Report” enclosed with the Claimants’ Reply.³³⁴²
- (v) Mr Ricardo Reis Veiga, an in-house Chevron lawyer, explained at the Track III Hearing that the decision to have Chevron pay “all of the legal bills and costs for the Ecuador Disputes” stemmed from the fact that Chevron faced “an attack on the entire corporation. The subsidiaries were being used to target Chevron Corporation. Chevron Corporation was the sole judgment-debtor. Then, we treated that as a corporate matter, and it was just proper for Chevron Corp to pay and absorb all legal costs.”³³⁴³

2063. The Claimants consider Ms Kent and Mr Stanton’s evidence to remain unrebutted.³³⁴⁴ They also note that whoever an invoice was originally sent to – a Chevron subsidiary or Chevron itself – does not reflect what entity ultimately covered the costs, which was always Chevron.³³⁴⁵

³³³⁹ Memorial, para. 198; First Turner Witness Statement, 14, 15, 18.

³³⁴⁰ Memorial, para. 199; First Stanton Expert Report, paras. 16-47.

³³⁴¹ Memorial, para. 200; First Stanton Expert Report, paras. 38, 40.

³³⁴² Second Stanton Expert Report, para. 12.

³³⁴³ Track III Hearing Transcript, Day 3 (22 August 2022), pp. 461-462 (Kehoe/Veiga)

³³⁴⁴ Track III Hearing Transcript, Day 3 (22 August 2022), pp. 437-438 (Silbert).

³³⁴⁵ Track III Hearing Transcript, Day 3 (22 August 2022), pp. 440-441 (Silbert).

2064. In turn, the Respondent submits that the Claimants have failed to prove that they incurred and paid the legal fees and expenses for which they claim compensation in this Arbitration.³³⁴⁶ Among other purported evidentiary deficiencies, the Respondent asserts that (i) multiple Chevron subsidiaries paid invoices for which compensation is claimed by the Claimants; (ii) there is no way to ascertain from such invoices that Chevron, and not one of its subsidiaries, was meant to be invoiced; (iii) many electronic invoices submitted by the Claimants contain no information on who incurred the payment or who paid them; and (iv) the Claimants also submitted PDF invoices, from which it is apparent that at least 19 different entities other than Chevron were invoiced.³³⁴⁷ According to the Respondent, the Claimants were put on notice of these proof problems since at least the filing of the Respondent's Counter-Memorial and were also warned by the Tribunal in Procedural Orders Nos. 65 and 72.³³⁴⁸

2065. The Respondent notes that, instead of providing appropriate evidence of payment, the Claimants have only provided an "*ipse dixit*" witness statement from Ms Kent, who states that all fees claimed in this Arbitration were paid by Chevron. In the Respondent's view, Ms Kent's testimony is not credible, as she does not work in Chevron's finance or accounting departments and only started acting as a first-level approver of invoices related to the "Ecuador Dispute" in 2016.³³⁴⁹ The Respondent is also critical of the expert evidence of Mr Stanton, who (i) claims to have gained an understanding of Chevron's controls and procedures for processing invoices by conducting interviews with Chevron personnel, but does not disclose who those individuals are; and (ii) provides no first-hand evidence that the claimed invoices were paid by Chevron.³³⁵⁰

2066. At the outset, the Tribunal recalls that the burden to prove every element of their damages claim falls on the Claimants.³³⁵¹ This would include proving their assertion that Chevron paid all legal fees and expenses for which they claim compensation in this Arbitration –

³³⁴⁶ Rejoinder, paras. 650-651, 653; Track III Hearing Transcript, Day 3 (22 August 2022), p. 442 (Maidman).

³³⁴⁷ Track III Hearing Transcript, Day 3 (22 August 2022), pp. 442-444 (Maidman).

³³⁴⁸ Track III Hearing Transcript, Day 3 (22 August 2022), pp. 445-447 (Maidman).

³³⁴⁹ Track III Hearing Transcript, Day 3 (22 August 2022), p. 448 (Maidman).

³³⁵⁰ Track III Hearing Transcript, Day 3 (22 August 2022), pp. 449-450 (Maidman).

³³⁵¹ See para. 548 above.

that is, proving that they effectively suffered the damages they claim. Fundamentally, then, the question before the Tribunal is whether the evidence submitted by the Claimants is sufficient to establish this point of fact.

2067. The Tribunal understands that most invoices underlying the Claimants' claim for legal fees and expenses were uploaded at different points in time to TeamConnect, "an electronic platform designed for, among other things, electronic review, processing, and approval of invoices", after which they were subject to an internal review process.³³⁵² According to Ms Kent, "[c]ertain other invoices received via email in PDF format are sent directly to a second-level reviewer, rather than being uploaded to TeamConnect, for review and approval."³³⁵³ Thereafter, "when an invoice is submitted outside of TeamConnect directly to a second-level reviewer and is ultimately approved, the invoice is moved to the SAP System and placed in line for payment."³³⁵⁴ The SAP System, as described by Ms Kent, is "a software platform designed for managing the payment of invoices. It allows users to keep track of an invoice's payment status."³³⁵⁵ As such, according to Ms Kent, all invoices underlying the Claimants' claims, regardless of their original format, were moved at some point to Chevron's internal SAP System for payment.

2068. The primary documentary evidence on which the Claimants rely thus includes three distinct elements: (i) electronic data on all invoices uploaded to the TeamConnect system;

³³⁵² Kent Witness Statement, para. 14.

³³⁵³ Kent Witness Statement, para. 9. *See also* Kent Witness Statement, para. 13: "In some of instances, Chevron receives invoices in PDF files attached to emails directed to the relevant Chevron employee. In the Ecuador Dispute, Chevron has received the vast majority of invoices for outside counsel fees and expenses and vendor expenses through Collaborati, and a small minority of these fees and expenses via email in PDF format. For most invoices in PDF, the Law Finance Group at Chevron manually uploads key information contained in the invoice, along with a PDF copy of the invoice, directly into TeamConnect. Thus, with limited exceptions, all invoices are processed through and/or stored in TeamConnect."

³³⁵⁴ Kent Witness Statement, para. 34.

³³⁵⁵ Kent Witness Statement, para. 35.

(ii) PDF invoices that could not be uploaded to TeamConnect;³³⁵⁶ and (iii) a certification of the payment status of this entire universe of invoices from Chevron’s SAP System.³³⁵⁷

2069. Mr Rankin then gathered all of this billing information and provided it to FTI.³³⁵⁸ After gathering certain additional missing invoices from Chevron and certain outside vendors,³³⁵⁹ “FTI loaded it into a database so that outside counsel for Chevron could coordinate a task-by-task, line item review of every entry billed to Chevron for the relevant matters”.³³⁶⁰ Thereafter, FTI “reconciled the invoices with the amounts paid as reflected in TeamConnect so that Chevron would not claim any amount in excess of the amounts it had paid, as reflected in TeamConnect and/or SAP”³³⁶¹ and confirmed “that only amounts actually paid by Chevron, as reflected in TeamConnect and/or SAP, are included in its claims.”³³⁶² FTI then “tabulated the amounts claimed and these amounts are set forth in the Summary of Chevron’s Fees and Costs Claimed as Damages in Track III.”³³⁶³

2070. Lastly, FTI provided Mr Stanton of Deloitte with the Summary of Chevron’s Fees and Costs. Mr Stanton then reconciled a list of payments downloaded from the SAP System (the “**SAP Payments List**”) with this summary.³³⁶⁴ He notes that while the “vast majority of this matching exercise was conducted through electronic matching”,³³⁶⁵ this process only “resulted in payment matching for 93.1%” of the claimed amounts; accordingly, the

³³⁵⁶ According to Mr Stanton, such “record keeping” invoices include: “1) invoices in a foreign currency, 2) invoices with US sales tax, 3) credit notes, 4) invoices submitted one year past the service date, 5) certain invoices relating to payments of recurring legal fees and expenses, and 6) invoices paid in country by the indirect Chevron subsidiary (which may or may not be in foreign currency) . . . After record keeping invoices are processed and paid to service providers, an employee in the corporate legal department generally manually enters the invoice into TeamConnect.” *See* First Stanton Expert Report, para. 25. *See also* Second Stanton Expert Report, **SS-01**.

³³⁵⁷ Second Stanton Expert Report, **SS-02**.

³³⁵⁸ Rankin Witness Statement, paras. 7-14.

³³⁵⁹ First Turner Witness Statement, paras. 12-13.

³³⁶⁰ First Turner Witness Statement, para. 14.

³³⁶¹ First Turner Witness Statement, para. 15.

³³⁶² First Turner Witness Statement, para. 15; Second Turner Witness Statement, para. 4.

³³⁶³ First Turner Witness Statement, para. 17; Second Turner Witness Statement, para. 4; Memorial, Appendix 2; Reply, Updated Appendix 2.

³³⁶⁴ First Stanton Expert Report, para. 26.

³³⁶⁵ First Stanton Expert Report, para. 32.

remaining invoices were matched manually.³³⁶⁶ Having completed this process,³³⁶⁷ Mr Stanton confirmed that “the total dollar amount of Claimed Invoices matched to payments in SAP within 99.55%. The immaterial variance of 0.45% (i.e., less than one-half of one percent) is attributable to various unique circumstances. A primary factor is how credits and charges were allocated across invoices in the Claimed Invoices List, which differs from how they were processed in SAP.”³³⁶⁸ Having performed this exercise, Mr Stanton considers that FTI’s Summary of Chevron’s Fees and Costs “is an accurate basis for claiming damages.”³³⁶⁹

2071. Having carefully assessed this evidence, the Tribunal is satisfied on a balance of probabilities³³⁷⁰ that, regardless of which specific entity may have been invoiced, Chevron ultimately paid all legal fees and expenses for which the Claimants claim compensation in this Arbitration. All relevant primary documentary evidence, whether in the form of TeamConnect or SAP data or in PDF format, was provided by Chevron to FTI. FTI then reconciled all invoices with the information on payments contained in Chevron’s SAP System. Mr Stanton, an expert in forensic accounting, conducted an additional electronic and manual matching analysis. In view of the large volume of billing information, comprising 6,800 invoices and 495,000 fee and expense entries,³³⁷¹ the Tribunal considers that partial electronic matching with Chevron’s SAP System, supplemented with manual matching where necessary, and reviewed by a forensic accountant, is an appropriate verification method. While the Respondent has objected to discrete aspects of this exercise, it has not suggested that the Claimants should have followed an alternative method to confirm that Chevron was the ultimate payee of all invoices underlying the Claimants’ claims.

³³⁶⁶ First Stanton Expert Report, para. 37.

³³⁶⁷ The Tribunal notes that Mr Stanton also performed certain “supplemental testing procedures”, in particular manually tracing a sample of invoices to the SAP System. First Stanton Expert Report, para. 43; Second Stanton Expert Report, para. 24, **SS-03**.

³³⁶⁸ First Stanton Expert Report, para. 40.

³³⁶⁹ First Stanton Expert Report, para. 40.

³³⁷⁰ See para. 548 above.

³³⁷¹ See para. 530 above.

2072. For these reasons, the Tribunal determines that the Claimants have established that the First Claimant, Chevron, paid all legal fees and expenses underlying their damages claims in this Arbitration.

2073. By contrast, there is no evidence that the Second Claimant, Texaco Petroleum Company, although having suffered an injury, paid any of the legal fees and expenses for which the Claimants seek compensation in this case. Accordingly, the Second Claimant is not entitled to any compensation.

(b) Whether date range limitations for the compensation of incidental damages should be based on the date on which the underlying services were performed, the date of issuance of the corresponding invoice, or the date of payment

2074. Many of the Tribunal's earlier determinations in this Award set cut-off dates for the compensation of multiple categories and components of the Claimants' damages claim. For instance, the Tribunal has determined that whatever harm the Claimants may have suffered by incurring legal fees and expenses prior to the date of issuance of the Lago Agrio Judgment (14 February 2011) was not caused by the Respondent's Treaty breaches and therefore falls outside the scope of the compensable injury in Track III.³³⁷² The Tribunal has also applied specific date ranges for the compensation of the legal fees and expenses incurred in connection with several of the Section 1782 Proceedings.³³⁷³

2075. Applying these date range limitations to the Parties' Damages Models requires the Tribunal to reach an additional determination as to whether such limitations should be based on the date on which the underlying services were performed, the date of issuance of the corresponding invoice, or the date of payment – a question on which the Parties were unable to agree.

2076. By way of Procedural Order No. 83, the Tribunal requested the Parties to add to their joint damages model "the option to use the dates work was performed, payment dates or invoice dates for purposes of implementing starting dates or date ranges".³³⁷⁴ In view of

³³⁷² See paras. 362, 371, 397 above.

³³⁷³ See para. 1833(iii) above.

³³⁷⁴ Procedural Order No. 83, 14 October 2022, para. 4(iv). The inclusion of an option to use the dates work was performed was in reaction to a proposal made by the Respondent after the Track III Hearing. See Letter from

their inability to agree on a joint damages model, the Parties submitted separate Damages Models.³³⁷⁵ Each Party's Damages Model addresses the question under the present heading in a different manner.

2077. The Claimants' Damages Model includes two options to implement date range limitations: "Invoice Date" and "Payment Date".³³⁷⁶ The Claimants' expert, Mr Sequeira, would favour applying a date of payment.³³⁷⁷ He did not consider it technically feasible to insert a switch into the Claimants' Damages Model based on the date work was performed,³³⁷⁸ as this would require including each of the more than 600,000 relevant billing entries in the model, rendering it unstable.³³⁷⁹ In addition, the Claimants consider unreliable the use of proxies for the dates the work was performed, as proposed by the Respondent, since they are based on unsupported assumptions about the length of billing cycles.³³⁸⁰ The Claimants also note that the Respondent offered no data or analysis to support its date-of-services approach at the Track III Hearing; in their view, the Respondent "is asking the Tribunal to arbitrarily adjust Claimants' damage claim belatedly and without any evidentiary basis."³³⁸¹

the Tribunal to the Parties dated 14 October 2022, p. 2: "First, the Tribunal refers to the Respondent's proposal that the Joint Model should also enable using the dates on which legal work was performed for purposes of implementing the starting dates or date ranges. The Tribunal understands that neither the data nor the features corresponding to this function were included in the models of Mr. Sequeira and Dr. Flores, but it has tentatively adopted the Respondent's proposed revision to paragraph 4(iv) of the Draft PO. In order to clarify the background of this proposal, the Respondent is invited to indicate how it relates to its prior arguments together with the submission of the final list of components and elements pursuant to paragraph 9 of Procedural Order No. 83. The Claimants are likewise invited to provide, at the same time, any comments that they may have on the adoption of this switch."

³³⁷⁵ See para. 544 above.

³³⁷⁶ Letter from the Claimants to the Tribunal dated 2 November 2022, Claimants' Damages Model, Matter Switches, cell F12.

³³⁷⁷ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1667 (Sequeira).

³³⁷⁸ Letter from the Claimants to the Tribunal dated 22 October 2022, p. 3.

³³⁷⁹ Letter from the Claimants to the Tribunal dated 22 October 2022, p. 3; Second Quadrant Report, paras. 26-32, 36; Track III Hearing - Direct Presentation of Kiran Sequeira (26 August 2022), Slide 15.

³³⁸⁰ Letter from the Claimants to the Tribunal dated 22 October 2022, p. 3.

³³⁸¹ Letter from the Claimants to the Tribunal dated 18 November 2022, p. 6. *See also* Letter from the Claimants to the Tribunal dated 22 October 2022, p. 3.

2078. The Respondent's Damages Model includes three options to implement date range limitations: "Date allegedly paid", "Invoice date", and "Date services performed".³³⁸² From among these options, the Respondent submits that the applicable cut-off date should be that on which legal services were performed, since "[t]here are typically time lags between when law firms, experts, and other vendors (a) perform services, (b) issue an invoice for the services performed, and (c) are paid for the invoiced services."³³⁸³ In order to account for this lag, the Respondent's Damages Model factors billing cycles by applying a lag of 30, 45, 60, or 90 days, at the Tribunal's choice.³³⁸⁴ In the Respondent's view, the Claimants' failure to include a date-of-services option in their Damages Model contravenes Procedural Order No. 83, in which the Tribunal ordered that the joint model contain this feature.³³⁸⁵ Lastly, the Respondent's expert, Dr Flores, stated at the Track III Hearing that factoring date ranges on the basis of the date of payment is inappropriate, as payments made after a cut-off date could correspond to work done before the cut-off date.³³⁸⁶

2079. The Tribunal considers that legal fees and expenses should in principle be factored into the Parties' Damages Models based on the date on which the underlying services were performed, and not on the date of issuance of the corresponding invoice or the subsequent date of payment, which, in the Tribunal's view, are fortuitous. These later dates do not reflect the moment when the relevant mitigation measures were effectively taken, that being the critical date as of which causation and reasonableness are to be assessed under international law,³³⁸⁷ and also when the legal obligation to pay these services arises, even if there is a delay in their invoicing or payment. By contrast, selecting an invoice or payment date would result in overcompensation, as it would include amounts charged for legal services provided before the relevant cut-off date.

³³⁸² Letter from the Respondent to the Tribunal dated 2 November 2022, Respondent's Damages Model, Category Reductions, cell F14.

³³⁸³ Letter from the Respondent to the Tribunal dated 21 October 2022, p. 4; Track III Hearing - Direct Presentation of Daniel Flores (5 September 2022), Slide 7.

³³⁸⁴ Letter from the Respondent to the Tribunal dated 21 October 2022, p. 5.

³³⁸⁵ Respondent's Disclaimers to the Parties' Damages Models, 18 November 2022, para. 42.

³³⁸⁶ Track III Hearing Transcript, Day 13 (5 September 2022), p. 3053 (Flores).

³³⁸⁷ See para. 354 above.

2080. However, as already explained, the Parties' Damages Models are not equipped to calculate compensation for legal fees and expenses based on the date on which the underlying services were effectively performed. In the Claimants' Damages Model, any date restriction must be based on the date of issuance of the corresponding invoice or the subsequent date of payment. The Respondent's Damages Model contains an option to implement a date range for compensation based on the date on which services were performed, but applies a proxy of 30, 45, 60, or 90 days from the date of issuance of the corresponding invoice.

2081. The Tribunal is therefore left with no option but to devise an alternative approach that is consistent with its determination that in principle international law requires compensation to be calculated based on the date of rendering of legal services and which, to the extent possible, is also compatible with both Parties' Damages Models.

2082. The fact remains that there is a necessary delay between the rendering of a legal service and the date on which the corresponding invoice is prepared. The absence of evidence on the record regarding the length of billing cycles must not prevent the Tribunal from taking account of this delay in some form. As already noted, any other solution envisioned by the Parties would result in overcompensating the Claimants.

2083. Accordingly, the Tribunal assesses in its discretion that a reasonable approximation for this delay, bearing in mind the terms on which legal services are commonly provided, is an average of 30 days between the date on which a legal service was rendered and the date on which the corresponding invoice was issued. Among other factors that have guided the Tribunal's discretion, the Tribunal notes that this is the shortest possible delay from among the options proposed by the Respondent, none of which is otherwise supported by evidence on the record.

2084. The question remains as to how to implement this approach in both Parties' Damages Models, particularly in circumstances where the Claimants' Damages Model does not include a switch that would calculate damages based on the actual date work was performed, or a proxy for that date. The Tribunal would favour a uniform approach so as to minimize any discrepancies between the output of the models.

2085. Having regard to these considerations, the Tribunal shall apply the following approach.

First, it will set the Parties' Damages Models to apply date range limitations based on the date of the underlying invoices. Second, when inserting a cut-off date in the Parties' Damages Models for the compensation of a particular category or component of damages, the Tribunal shall instead set a date 30 days subsequent to the actual cut-off date to account for the delay between the rendering of a service and the date on which the corresponding invoice was issued. This will have the effect of excluding from compensation any services that were rendered before the critical date but were only invoiced thereafter. For example, where the Tribunal has granted compensation for legal fees and expenses incurred under a particular category after 14 February 2011, the Tribunal shall instead insert 16 March 2011 as a cut-off date in the Parties' Damages Models.

(c) King & Spalding/Three Crowns Amounts Claimed as Damages

2086. The Tribunal has difficulty understanding the nature of the element "King & Spalding/Three Crowns Amounts Claimed as Damages". The Respondent first included this element in its 21 October 2022 submission in response to Procedural Order No. 83, where it identified all elements requiring a determination from the Tribunal. When identifying portions of the record of this Arbitration where this element "was 'disputed or identified in Respondent's submissions' and/or 'mentioned at the Track III hearing'",³³⁸⁸ the Respondent referenced materials that address only the legal fees and expenses charged to the Claimants by Gibson Dunn and Jones Day, not by King & Spalding or Three Crowns LLP. In particular, in these materials the Respondent points to the risk of double recovery that arises as a result of the Claimants' decision to claim legal fees and expenses charged by Gibson Dunn and Jones Day both as damages and as costs of arbitration.³³⁸⁹ No similar reference is made to the legal fees and expenses charged by

³³⁸⁸ Letter from the Respondent to the Tribunal dated 21 October 2022, p. 6.

³³⁸⁹ Letter from the Respondent to the Tribunal dated 21 October 2022, p. 8; Rejoinder, paras. 1926-1927: "Respondent previously explained why Claimants' extraordinary request for US\$ 258,804,126 as costs of legal representation and legal assistance in this arbitration must fail. This is because, among other reasons, Claimants' confused attempt to recover significant portions of their claimed fees and expenses either as costs of arbitration *or* damages creates an inherent risk of double recovery which Respondent cannot fully address without reviewing the invoices underlying the alleged costs of arbitration, which have not been made available (except incidentally to the indeterminate extent to which the alleged costs of this arbitration overlap the alleged damages). As explained

King & Spalding and Three Crowns, which act as Claimants’ counsel of record in this Arbitration.

2087. The Claimants object to the inclusion of the element “King & Spalding/Three Crowns Amounts Claimed as Damages” in the list of disputed elements which require the Tribunal’s assessment on the basis, among others, that “there are no references to these law firms in the citations provided by Ecuador” in its submission in response to Procedural Order No. 83.³³⁹⁰ In any event, the Claimants also represent that “there is no overlap between the King & Spalding, Three Crowns, and James Crawford invoices included in the damage claim and those that will be included in the Cost Submission.”³³⁹¹

2088. Against this background, the Tribunal considers that the Respondent has failed sufficiently to particularize its objection in respect of King & Spalding/Three Crowns amounts claimed as damages and that this objection should be rejected on that basis alone.

2089. In any event, to the extent the Respondent raises concerns as to a possible double recovery of King & Spalding/Three Crowns as damages and costs of arbitration, such concerns would be moot in view of the Tribunal’s rulings in this Award. The Tribunal recalls in this respect that the Claimants have claimed King & Spalding/Three Crowns fees and expenses under the following categories: (i) RICO Litigation;³³⁹² (ii) Costs of Planning

above with respect to Claimants’ perplexing ‘BIT Costs Incurred By Non-Counsel Of Record’ claim category, Claimants’ Reply only heightens these concerns by creating more confusion resulting in part from internally inconsistent statements. Claimants now admit that there is ‘some’ undefined ‘overlap’ between the alleged costs of ‘legal assistance’ in this arbitration in the amount of US\$ 164 million claimed as part of US\$ 258,804,126 – which US\$ 164 million is comprised of Jones Day’s and Gibson Dunn’s legal fees – and the hundreds of millions claimed as damages across three other categories comprising (1) the BIT costs incurred by non-counsel of record, (2) multiple unspecified Section 1782 proceedings, and (3) the RICO action. Those three other categories collectively include some US\$ 420 million. Claimants then assert that *Respondent* has the burden of affirmatively proving any double-counting and ‘has all the documents at its disposal to attempt to do so’ and attempt to brush aside Respondents’ undeniably legitimate concerns by saying they ‘can be further addressed’ after the Track III Award” (emphasis in the original); Track III Hearing Transcript, Day 15 (7 September 2022), p. 3651: “And we, Ecuador, also requests that Chevron submit with its costs submission detailed invoices for the firms whose fees are also sought as damages, and here in particular I’m referring to Gibson Dunn and Jones Day. These two firms, their costs submissions include 164 million in legal fees for these firms for the work that was related to RICO and 1782s. And the same firms, obviously, their invoices are sought for reimbursement in the damages categories for RICO and 1782s.” The Tribunal recalls that the Claimants announced their decision not to seek as costs the fees and expenses incurred by Gibson Dunn and Jones Day after the Track III Hearing (Letter from the Claimants to the Tribunal, 14 October 2022).

³³⁹⁰ Letter from the Claimants to the Tribunal dated 22 October 2022, Annex A, p. 6.

³³⁹¹ Letter from the Claimants to the Tribunal dated 14 October 2022, p. 2.

³³⁹² Reply, Updated Appendix 2, p. 3.

Against Potential Enforcement;³³⁹³ (iii) Argentina Enforcement Proceedings;³³⁹⁴ (iv) Brazil Recognition Proceedings;³³⁹⁵ (v) Dutch Set-Aside Proceedings;³³⁹⁶ (vi) Gibraltar Proceedings;³³⁹⁷ and (vii) Treaty Arbitration Costs Incurred by Non-Counsel of Record.³³⁹⁸ The Tribunal has either declined to award compensation for several of these categories entirely³³⁹⁹ or, where compensation was awarded, the Tribunal excluded specifically the legal fees and expenses charged by these two firms.³⁴⁰⁰ In other words, no legal fees and expenses charged by King & Spalding and Three Crowns have been awarded as damages in Track III, thus precluding any form of double recovery of the same amounts as costs of arbitration.

2090. For these reasons, the Tribunal rejects the Respondent’s objection in respect of “King & Spalding/Three Crowns Amounts Claimed as Damages”.

(d) Cash Calls

2091. The Tribunal turns now to the so-called “cash calls”. This term refers to 168 documents related to payments that the Claimants submit that Chevron made to the so-called “Ecuador Legal Team”, which represented Chevron in the Lago Agrio Litigation and the Ecuador Enforcement Proceedings³⁴⁰¹ and was led by Mr Adolfo Callejas, Chevron’s lead counsel in Ecuador.³⁴⁰² The Tribunal recalls that the ‘Ecuador Legal Team’ actually consisted of three different firms: Perez Rodrigo, Jaime Eduardo Borja Morejon, and Callejas, Adolfo).³⁴⁰³ The Claimants state that the “cash calls” are invoices,³⁴⁰⁴ while the

³³⁹³ Reply, Updated Appendix 2, p. 322.

³³⁹⁴ Reply, Updated Appendix 2, p. 534.

³³⁹⁵ Reply, Updated Appendix 2, p. 627.

³³⁹⁶ Reply, Updated Appendix 2, p. 1298.

³³⁹⁷ Reply, Updated Appendix 2, p. 1129.

³³⁹⁸ Reply, Updated Appendix 2, p. 1181.

³³⁹⁹ See paras. 2030, 2052.

³⁴⁰⁰ See paras. 1523(ix); 974(vi); 1125(iii); 1523(ix); 1936(iii) above.

³⁴⁰¹ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3259 (Coriell). See paras. 700-701, 770 above.

³⁴⁰² **R-982**, *Chevron Corporation v. Steven Donziger*, Chevron Corporation’s Notice of Filing of Witness Statement of Adolfo Callejas Ribadeneira, 21 October 2013, attaching Direct Testimony, 9 October 2013, para. 1.

³⁴⁰³ **RE-51**, Trunko Expert Report, para. 39.

³⁴⁰⁴ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 6.

Respondent asserts that they “appear to be monthly requests for advance payment to subsidize . . . the Ecuador Legal Team”.³⁴⁰⁵ For ease of reference, and without attributing any particular significance to the term at this stage, the Tribunal shall hereinafter refer to these documents collectively as the “**Cash Calls**”.

2092. The Claimants have submitted 167 Cash Calls related to payments made to the Ecuador Legal Team between February 2004 and February 2019, with an additional payment dated 18 October 2010 withheld as privileged.³⁴⁰⁶ In total, the Claimants claim damages of USD 49,309,562.75 for the legal fees and expenses charged by the Ecuador Legal Team.³⁴⁰⁷

2093. The Respondent asks the Tribunal to strike the Claimants’ Cash Calls claim in its entirety because the underlying “documents upon which Claimants rely are woefully deficient proof of damages”.³⁴⁰⁸ In the Respondent’s view, the Cash Calls on record have insufficient information to prove “that the expenses reflected therein were (1) actually incurred; (2) caused by the Treaty breaches; or (3) reasonable and necessary”.³⁴⁰⁹

2094. In the alternative, the Respondent states that because the Claimants failed to preserve and produce either a retainer agreement or certain supporting copies of invoices referenced in the Cash Calls despite the Respondent’s request and the Tribunal’s document production order, in accordance with Article 9 of the IBA Rules, the Tribunal should draw the adverse inference that the documents would not support the damages claimed in connection with the Cash Calls.³⁴¹⁰

³⁴⁰⁵ Letter from the Respondent to the Tribunal dated 2 September 2022, pp. 2-3.

³⁴⁰⁶ Claimants’ Index of Claimed Invoices for Ecuador Legal Team, 2 September 2022.

³⁴⁰⁷ Letter from the Claimants to the Tribunal dated 2 November 2022, Claimants’ Damages Model, Vendor Switches, cell F12; Claimants’ Index of Claimed Invoices for Ecuador Legal Team, 2 September 2022.

³⁴⁰⁸ Letter from the Respondent to the Tribunal dated 2 September 2022, pp. 1-2.

³⁴⁰⁹ Letter from the Respondent to the Tribunal dated 2 September 2022, p. 2.

³⁴¹⁰ Letter from the Respondent to the Tribunal dated 2 September 2022, p. 2.

2095. In response, the Claimants submit that they only need to provide evidence that is sufficient for the Tribunal to estimate damages with “reasonable confidence”, and that, as they have met this burden, the Tribunal should award the amounts supported by the Cash Calls.³⁴¹¹

2096. The Tribunal will divide its analysis of the Cash Calls claim into three parts. It will first provide a description of the Cash Calls and related documents based on the Parties’ submissions. Second, it will assess whether the Claimants have satisfied their document production obligations in relation to the Cash Calls. Lastly, the Tribunal will determine whether the Claimants have substantiated their claim for damages arising from the Cash Calls.

1. Background

2097. According to the Claimants, the Cash Calls are invoices from the Ecuador Legal Team.³⁴¹² They reflect payments made in accordance with a monthly retainer fee agreement³⁴¹³ that does not form part of the record of this Arbitration (the “**Cash Call Retainer**”). The Claimants assert that they conducted “a reasonable and diligent search” for the Cash Call Retainer but were unable to locate it. In the Claimants’ view, this is “unsurprising as the arrangement with the law firm was made approximately twenty years ago”.³⁴¹⁴

2098. The Claimants explain that the Ecuador Legal Team maintained a working fund in an Ecuadorian bank account: the Claimants put in the deposits, and the Ecuador Legal Team withdrew funds to pay fees and expenses.³⁴¹⁵ According to the Claimants, “[e]ach month, the Ecuadorian Legal Team sent an invoice [*i.e.*, a Cash Call] to Claimants. The invoice set forth the current account balance, the actual expenses it incurred the prior month, its forecasted expenses for the following month, the requested cash advance it needed to cover the next month’s projected expenses, and its anticipated account balance at the end of the next month.”³⁴¹⁶ The Claimants state that all Cash Calls on record (even the one-

³⁴¹¹ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 2.

³⁴¹² Letter from the Claimants to the Tribunal dated 4 September 2022, p. 1.

³⁴¹³ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 1.

³⁴¹⁴ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 16.

³⁴¹⁵ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 7.

³⁴¹⁶ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 7.

page versions) contain this information, while the two-page versions “simply contained additional detail on forecasts and actual expenses for the prior month”³⁴¹⁷ in the form of “a table tracking itemized forecasts and actual expenses”,³⁴¹⁸ which “merely provide corroborating, line-item detail”.³⁴¹⁹

2099. Moreover, the Claimants assert that when sending its monthly invoices to Chevron, the Ecuador Legal Team also mailed by DHL the paper copies of receipts showing its prior-month actual expenses. Every Cash Call thus contains a version of the following statement: “Today we sent to San Ramon [*i.e.*, Chevron’s headquarters in California], by DHL, an [envelope] containing *copies of invoices*, corresponding to [month, year] for [amount in USD].”³⁴²⁰ According to the Claimants, while using the word “invoices”, this statement refers to receipts proving actual expenses incurred by the team the prior month, not separate “invoices” for additional payment by Chevron.³⁴²¹ the Cash Calls themselves were written by native Spanish-speakers, and that the Spanish word “*factura*” can indicate both “invoice” and “receipt”.³⁴²² None of these “copies of invoices”, to which the Tribunal shall refer henceforth as the “**Cash Call Enclosures**”, have been placed into the record of this Arbitration.³⁴²³

2100. As already noted, the Respondent states that the Cash Calls “appear to be monthly requests for advance payment to subsidize . . . the Ecuador Legal Team”.³⁴²⁴ The Respondent also identifies the following purported evidentiary deficiencies in the Cash Calls:

- (i) The majority of the Cash Calls include a first cover page followed by a second page which breaks down actual and forecasted expenses by categories with

³⁴¹⁷ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 7.

³⁴¹⁸ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 9.

³⁴¹⁹ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 13.

³⁴²⁰ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 13 (emphasis by the Tribunal).

³⁴²¹ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 13.

³⁴²² Track III Hearing Transcript, Day 8 (29 August 2022), pp. 1758, 1788 (Bishop).

³⁴²³ Rejoinder, para. 915; Letter from the Claimants to the Tribunal dated 4 September 2022, p. 14.

³⁴²⁴ Letter from the Respondent to the Tribunal dated 2 September 2022, pp. 2-3.

corresponding annex numbers.³⁴²⁵ The second page is missing in 38 of the 167 Cash Calls on the record, and no annexes have been provided.³⁴²⁶

- (ii) The Cash Calls do not disclose what persons did what work, which, in the Respondent's view, is required under Procedural Order No. 65.³⁴²⁷
- (iii) The cover pages of the Cash Calls indicate that "copies of invoices" (*i.e.*, the Cash Call Enclosures) were sent to Chevron's headquarters in California, totalling at least 16,000 pages, but the Claimants have not produced them.³⁴²⁸ The originals of these documents are in English and the language abilities of the drafters are unknown; accordingly, the Claimants' suggestion that native Spanish speakers mistranslated "*factura*" as "invoice" is "made up".³⁴²⁹
- (iv) There is an annex number for each row of the second-page breakdown, including persons.³⁴³⁰ The Respondent asserts that the missing documents listed in these annexes must be invoices for legal services, especially for the lawyers and legal assistants listed therein.³⁴³¹
- (v) The amounts paid to the lawyers vary. In the Respondent's view, this contradicts the Claimants' assertion that a fixed-fee retainer with the Ecuador Legal Team was in place.³⁴³²
- (vi) The Claimants have failed to show how the amounts reflected in the Cash Calls reconcile with the claimed USD 49.3 million.³⁴³³

³⁴²⁵ Rejoinder, para. 916.

³⁴²⁶ Rejoinder, para. 916; Track III Hearing Transcript, Day 14 (6 September 2022), p. 3222 (Schwartz); Letter from the Respondent to the Tribunal dated 2 September 2022, p. 4.

³⁴²⁷ Rejoinder, para. 921.

³⁴²⁸ Rejoinder, para. 917; Track III Hearing Transcript, Day 14 (6 September 2022), p. 3241 (Schwartz).

³⁴²⁹ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3230 (Schwartz).

³⁴³⁰ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3211 (Coriell); *see* Track III Hearing Transcript, Day 3 (22 August 2022), p. 511 (Schwartz, Veiga).

³⁴³¹ Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3236-3238 (Schwartz).

³⁴³² Track III Hearing Transcript, Day 14 (6 September 2022), p. 3240 (Schwartz).

³⁴³³ Letter from the Respondent to the Tribunal dated 2 September 2022, pp. 9-10.

2. Whether the Claimants' have complied with the Tribunal's document production orders related to the Cash Calls

2101. The Respondent asserts that the Claimants failed to comply with the Tribunal's document production orders in Procedural Order No. 66 by failing to produce (i) the Cash Call Enclosures; and (ii) the Cash Call Retainer. For this reason, the Respondent requests the Tribunal to draw an inference that such documents would be adverse to the Claimants, "in particular, that they would not support the US\$ 49.3 million Claimants are seeking as damages based solely on the Cash Calls".³⁴³⁴

2102. The Tribunal addresses the Parties' arguments in respect of each set of documents in turn.

i. Cash Call Enclosures

2103. Noting that the Cash Call Enclosures were generated from 2004 through 2019, the Respondent argues that these documents should have been retained at least since the Arbitration began in 2009.³⁴³⁵ In the Respondent's view, the Claimants' failure to provide the Cash Call Enclosures violates the Tribunal's document production orders in Procedural Order No. 66, as the documents are covered by both Requests 25 and 64.³⁴³⁶

2104. The Claimants, in turn, explain that the Cash Call Enclosures are essentially receipts,³⁴³⁷ and that it is standard to group them in a single invoice as was done in other instances in other related proceedings.³⁴³⁸ The Claimants consider that they were not required to produce such "backup documentation and receipts".³⁴³⁹

2105. The Tribunal recalls that, in Procedural Order No. 65, it determined that the Claimants were "required to produce the invoices underlying their damages claims for legal fees and costs to the extent they had been relied upon by the Claimants, their witnesses, or their experts".³⁴⁴⁰ As for the document production orders in Procedural Order No. 66,

³⁴³⁴ Letter from the Respondent to the Tribunal dated 2 September 2022, p. 2.

³⁴³⁵ Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3241-3242 (Schwartz).

³⁴³⁶ Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3243-3244 (Schwartz).

³⁴³⁷ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 13.

³⁴³⁸ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3259 (Coriell).

³⁴³⁹ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3278-3279 (Coriell).

³⁴⁴⁰ See para. 526 above.

Respondent's Request 25, which the Tribunal granted subject to the production of a privilege log, reads as follows:

To the extent not included in the scope of the preceding Document Requests[,] the invoices submitted for the payment of legal fees or costs related to any proceeding for which Claimants are claiming fees and costs.³⁴⁴¹

2106. The question of whether the Claimants have complied with Request 25 turns essentially on the precise scope of Request 25 and the nature of the Cash Call Enclosures.

2107. First, when read in its proper context, the Tribunal understands Request 25 to refer, not to any and all "invoices submitted for the payment of legal fees", but rather to invoices specifically reflecting fees and costs the Claimants seek to recover in Track III. It is self-evident in the context of Procedural Order No. 66 that Request 25 should be understood with reference to the relevance of any responsive documents, as reflected in Respondent's indication in its Reply to the Claimants' Response to Request 25:

The contemporaneous records that substantiate, or refute, *whether Claimants paid the fees and costs they seek to recover*, and whether it was reasonable and necessary to do so, are directly relevant to the issue of whether the fees and costs are compensable.³⁴⁴²

2108. Further, Request 25 referred only to "invoices": it did not refer to any underlying or associated documents. Thus, documents related to the invoices supporting the Claimants' damages claim would not necessarily fall within the scope of Request 25.

2109. Against this background, the Tribunal considers the Respondent's characterization of the Cash Call Enclosures as "invoices" warranting production under Request 25 to be unpersuasive. It is clear that the Cash Call Enclosures were documents supporting the Cash Calls themselves, describing expenses incurred before the issuance of each Cash Call. Since payments to Ecuadorian providers were made from the working fund in Ecuador established and replenished monthly by Chevron, it would make little sense for the Ecuador Legal Team to send the invoices of these providers to California by courier for payment.³⁴⁴³ The better explanation is that the Cash Call Enclosures amount to

³⁴⁴¹ Procedural Order No. 66, 16 July 2020, Annex 2 – Respondent Redfern Schedule, Request No. 25, p. 208.

³⁴⁴² Procedural Order No. 66, 16 July 2020, Annex 2 – Respondent Redfern Schedule, Request No. 25, p. 209 (emphasis by the Tribunal).

³⁴⁴³ See para. 2098 above.

“receipts” supporting expenses identified in the Cash Calls, as alleged by the Claimants. Therefore, the Tribunal does not consider that the Cash Call Enclosures should have been provided in response to Request 25.

2110. The Respondent also asserts that the Claimants’ failure to provide the Cash Call Enclosures is in breach of the Tribunal’s order in respect of Request 64,³⁴⁴⁴ which reads:

To the extent not produced in response to Respondent’s other requests, all Documents showing payments of legal fees or costs, including amount, date, payer, and payee, related to any proceeding for which Claimants are claiming fees and costs.³⁴⁴⁵

2111. The Tribunal granted Request 64 “to the extent of documents consisting of either emails, billing records, paid invoices or comparable materials showing payments of legal fees or costs, including amount, date, payer and payee, to be satisfied with emails, billing records, paid invoices or comparable materials.”³⁴⁴⁶

2112. The Respondent argues that the Cash Call Enclosures “are either ‘billing records’ or ‘comparable materials showing payments of legal fees or costs,’ which the Tribunal ordered Claimants to produce”.³⁴⁴⁷ The Claimants argue that “[r]eceipts for expenses do not fall into the ambit of Request 64” and have not been ordered to be produced.³⁴⁴⁸

2113. The Tribunal agrees with the Claimants: receipts for expenses are not billing documents and do not show payments of legal fees or costs by the Claimants. Therefore, they are not necessarily encompassed by Request 64.

2114. Accordingly, the Tribunal rejects the Respondent’s argument that the Claimants failed to comply with the Tribunal’s orders in respect of Requests 25 and 64 by failing to produce the Cash Call Enclosures.

³⁴⁴⁴ Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3243-3244 (Schwartz).

³⁴⁴⁵ Procedural Order No. 66, 16 July 2020, Annex 2 – Respondent Redfern Schedule, Request No. 25, pp. 359-360.

³⁴⁴⁶ Procedural Order No. 66, 16 July 2020, Annex 2 – Respondent Redfern Schedule, Request No. 25, pp. 359-360.

³⁴⁴⁷ Letter from the Respondent to the Tribunal dated 2 September 2022, pp. 7-8.

³⁴⁴⁸ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 16.

ii. Cash Call Retainer

2115. The Respondent notes that the Claimants failed to produce the Cash Call Retainer,³⁴⁴⁹ despite Procedural Order No. 66 requiring them to produce, per Respondent's Request 18,

[T]he written retainer agreements, service agreements, contracts, and/or engagement letters or memoranda, including all amendments, supplements, or modifications thereto, between Chevron and each of the outside law firms, vendors, and experts relating to the "Ecuador Dispute" as that term is defined in the Witness Statement of Colleen Kent.³⁴⁵⁰

2116. The Respondent submits that Chevron would have surely established an agreement with the Ecuador Legal Team, and considers it a "foundational problem" that the Claimants have not produced one.³⁴⁵¹

2117. The Claimants state that they have made "a reasonable and diligent search" but failed to locate the Cash Call Retainer.³⁴⁵² They consider this "unsurprising as the arrangement with the law firm was made approximately twenty years ago".³⁴⁵³ The Claimants acknowledge, however, Mr Veiga's testimony that a written agreement existed.³⁴⁵⁴

2118. The Tribunal notes that it is undisputed that a written retainer agreement or letter of engagement between Chevron and the Ecuador Legal Team existed and would fall within the ambit of Request 18. It is likewise undisputed that the Claimants have not produced such document. The Tribunal must therefore determine what consequences, if any, should result from the Claimants' failure to produce the Cash Call Retainer in light of all relevant circumstances.

2119. In the Tribunal's view, the Claimants' inability to locate any engagement agreement between Chevron and the Ecuador Legal Team raises questions about the scope of Chevron's document retention policies. To recall, four of Chevron's accounting

³⁴⁴⁹ Letter from the Respondent to the Tribunal dated 2 September 2022, pp. 5, 7-8.

³⁴⁵⁰ Letter from the Respondent to the Tribunal dated 2 September 2022, p. 5; Procedural Order No. 66, 16 July 2020, Annex 2 – Respondent Redfern Schedule, Request No. 18, p. 158.

³⁴⁵¹ Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3225-3226 (Schwartz).

³⁴⁵² Letter from the Claimants to the Tribunal dated 4 September 2022, p. 16.

³⁴⁵³ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 16.

³⁴⁵⁴ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3211 (Coriell).

document retention policies relating to “Accounts Payable – Invoices and Payments” are on the record in these proceedings, dating from 2002, 2004, 2009, and 2010.³⁴⁵⁵ These policies require retaining documents for 6, 6, 8, and 10 years, respectively.³⁴⁵⁶ The 2002, 2004, and 2009 policies include “Fees and Retainers” as examples of documents that they cover.³⁴⁵⁷ Mr Veiga explains that following the Lago Agrio Complaint in October 2003, he “helped assemble the legal team”, including “recommend[ing] that Chevron hire” the Ecuador Legal Team.³⁴⁵⁸ While the record does not establish whether Chevron had or has any litigation hold policies,³⁴⁵⁹ the Tribunal notes that the Ecuador Legal Team was retained at earliest in October 2003, within 6 years of the filing of the Notice of Arbitration on 23 September 2009.³⁴⁶⁰

2120. It is further unclear to the Tribunal whether the document retention policies on record pertained to ongoing contracts. The Tribunal notes that the Ecuador Legal Team was retained in late 2003, and, as evidenced by the Cash Calls, worked for Chevron at least through February 2019.³⁴⁶¹ The Tribunal would not expect active contracts and agreements, no matter their date of initial execution, to be destroyed pursuant to the aforementioned document retention policies. The Tribunal also questions whether Chevron has any updated or additional agreements with the Ecuador Legal Team. Mr Veiga notes that “[a]s the case progressed, *and with Chevron’s approval*, Dr Callejas expanded his team to meet the growing needs of the case”.³⁴⁶² In this connection, the Tribunal notes that both the categories and amounts in the first cash call to contain a second page, dated 1 October 2004, differ from those in the final cash call dated 27 February 2019.³⁴⁶³ These differences further raise the question of whether the purported

³⁴⁵⁵ Chevron’s 2010 policy is for “Accounts Payable – Accounts Payables Package”. Letter from the Respondent to the Tribunal dated 2 September 2022, Attachments F, G.

³⁴⁵⁶ Letter from the Respondent to the Tribunal dated 2 September 2022, Attachments F, G.

³⁴⁵⁷ Letter from the Respondent to the Tribunal dated 2 September 2022, Attachment F.

³⁴⁵⁸ Fourth Veiga Witness Statement, paras. 25, 103.

³⁴⁵⁹ Letter from the Respondent to the Tribunal dated 2 September 2022, p. 13.

³⁴⁶⁰ Letter from the Respondent to the Tribunal dated 2 September 2022, p. 13.

³⁴⁶¹ The Tribunal notes that the latest cash call’s expected cash balance at the end of the subsequent month, March 2019, implies that the law firm remained engaged by Chevron until then. **C-3395**, CVX-Track III-20008848; Fourth Veiga Witness Statement, 29 July 2021, para. 25.

³⁴⁶² Fourth Veiga Witness Statement, 29 July 2021, para. 104 (emphasis by the Tribunal).

³⁴⁶³ See **C-3418**, CVX-Track III-20014634; **C-3395** CVX-Track III-20008848.

2003 Cash Call Retainer has been updated in the interim. In addition, the Tribunal takes note that, while the Claimants consider it “unsurprising” that the agreement has been lost over time, the Claimants have succeeded in locating and producing invoices dating as far back as 2004.³⁴⁶⁴ In contrast, the Claimants were apparently unable to find many of their law firm engagement letters,³⁴⁶⁵ although they have produced over 75 retainer agreements, contracts, and engagement letters.³⁴⁶⁶

2121. While, in view of the above, the Tribunal finds the non-production of a retainer, letter of engagement, or other agreement between Chevron and the Ecuador Legal Team to be surprising, other surrounding circumstances may explain the retainer’s absence, particularly the passage of time since the document was presumably created. The Tribunal takes notes that in spite of producing upwards of 75 agreements of this nature, the Claimants were also unable to locate numerous other documents of this type.³⁴⁶⁷ In the circumstances, and in view of the Claimants’ representation that they could not locate the Cash Call Retainer, the Tribunal considers that the Retainer is not within the possession, custody or control of the Claimants and therefore declines to conclude that the Claimants have violated Procedural Order No. 66; accordingly the Tribunal draws no adverse inference as requested by the Respondent.

2122. That said, the Tribunal recalls that a distinction is to be drawn between the Claimants’ obligation to produce documents as ordered by the Tribunal and the Claimants’ burden to prove their claims. To this point, the Tribunal recalls its finding in Procedural Order No. 72 that

Documents that the Claimants are not legally obliged to produce for the Tribunal may nonetheless be essential to establish a claim for damages or for costs; and conversely the Claimants may produce documents in order to establish a claim for damages or for costs, that they have no obligation to produce in response to a request from the Respondent for document production at this stage.³⁴⁶⁸

³⁴⁶⁴ **C-3246**, Claimed Invoices List with Exhibit Numbers.

³⁴⁶⁵ Rejoinder, para. 631.

³⁴⁶⁶ **R-2129**, Claimant’s Letter to Ecuador, 4 November 2021.

³⁴⁶⁷ *See R-2129*, Claimant’s Letter to Ecuador, 4 November 2021.

³⁴⁶⁸ Procedural Order No. 72, 8 February 2021, para. 12.

2123. Accordingly, while the Tribunal has found that the Claimants did not breach Procedural Order No. 66, the absence of the Cash Call Enclosures of the Cash Call Retainer from the record may affect the Tribunal’s assessment of the substance of the Cash Calls claim, an issue to which the Tribunal now turns.

3. Have the Claimants substantiated their Cash Calls claim?

i. *The Parties’ Positions*

2124. The Respondent asserts that the Cash Calls do not contain the information required for the Tribunal to conclude that Chevron’s payments to the Ecuador Legal Team were reasonable, necessary, and related to the Treaty breaches.³⁴⁶⁹

2125. First, the Respondent notes that, when describing the Cash Call Retainer, Mr Veiga describes an agreement between Chevron and the Ecuador Legal Team in which Chevron would pay the Team on a monthly basis without requiring time entries.³⁴⁷⁰ In the Respondent’s view, the lack of time entries means that the Cash Calls are insufficient proof of damages, and Mr Veiga’s decision to approve payments “without requiring detailed backup is a sufficiently egregious lapse in oversight for which the Respondent cannot be made to pay”.³⁴⁷¹

2126. Second, the Respondent is critical of the Claimants’ failure to provide the Cash Call Enclosures.³⁴⁷² It recalls in this connection that Mr Lea, the Claimants’ expert, states that such an agreement to advance funds can be proper when it is backed by “properly itemized and supporting documentation”.³⁴⁷³ In contrast, the Respondent contends that the Claimants have failed to explain the amounts claimed in the Cash Calls, and states that the amounts requested do not equal the actual amounts of expenses.³⁴⁷⁴ Further, the Respondent notes that there is no evidence of what happened to the materials paid for by Chevron for the Ecuador Legal Team, including office supplies, a vehicle, and various

³⁴⁶⁹ Rejoinder, paras. 905-907.

³⁴⁷⁰ Rejoinder, para. 942.

³⁴⁷¹ Rejoinder, para. 943.

³⁴⁷² Rejoinder, para. 948.

³⁴⁷³ Rejoinder, para. 948.

³⁴⁷⁴ Rejoinder, para. 949.

insurances.³⁴⁷⁵ The Respondent also questions why the Claimants reduced the amounts claimed by the Ecuador Legal Team after being ordered to produce underlying invoices.³⁴⁷⁶ Additionally, the Respondent notes that the Claimants have not provided witnesses to explain what the Cash Calls “purport to represent financially from an accounting standpoint.”³⁴⁷⁷

2127. Third, the Respondent distinguishes Chevron’s decision to accept such “threadbare documentation” as a basis to make payments from the question of the Cash Calls’ evidentiary sufficiency for the purposes of proving damages.³⁴⁷⁸ In this connection, the Respondent rejects the Claimants assertion that the fees must be deemed to be reasonable because they were approved by Chevron’s internal controls: in its view, the Cash Calls fail to meet the standards established in Chevron’s guidelines for outside counsel.³⁴⁷⁹

2128. Fourth, the Respondent notes that several Cash Calls indicate that the Ecuador Legal Team did work on other matters than the Lago Agrio Litigation and the Ecuador Enforcement Proceedings.³⁴⁸⁰ It further notes that the second-page breakdowns in the Cash Calls differentiate, without explanation, between “Litigation” and “Texaco Petroleum Co.”³⁴⁸¹

2129. Fifth, the Respondent questions how the Claimants determined to allocate 90% of the payments (after removing the fees of Chevron’s legal representative in Ecuador) to the Lago Agrio Litigation and Ecuador Enforcement Proceedings damages categories.³⁴⁸² The Respondent likewise questions whether and how the 10% discount was applied,

³⁴⁷⁵ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3228 (Schwartz).

³⁴⁷⁶ Rejoinder, para. 950.

³⁴⁷⁷ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3221 (Schwartz).

³⁴⁷⁸ Rejoinder, para. 946.

³⁴⁷⁹ Rejoinder, para. 930.

³⁴⁸⁰ Rejoinder, para. 939.

³⁴⁸¹ Rejoinder, para. 940.

³⁴⁸² Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3244-3245 (Schwartz).

asserting that the amount reflected in certain Cash Calls equals the amount finally claimed as damages.³⁴⁸³

2130. Lastly, the Respondent argues that (i) the Cash Calls are not valid invoices under Ecuadorian law, which they argue governs the validity of the invoices,³⁴⁸⁴ and (ii) the Claimants cannot show that the monthly retainer would not have been incurred but-for the Treaty breaches.³⁴⁸⁵

2131. In response, the Claimants explain that the Ecuador Legal Team was “[f]unctionally the same as being in-house”, working for only Chevron.³⁴⁸⁶ They explain it was therefore logical to pay the Ecuador Legal Team on a fixed-fee retainer basis, which they state is a normal practice in Ecuador.³⁴⁸⁷ The Claimants explain that the Cash Calls are invoices deriving from the retainer:³⁴⁸⁸ each document includes the amounts spent the previous month and expected to be spent during the following month, and the documents in the record constitute “all of the invoices for the Ecuador Legal team”.³⁴⁸⁹ The Claimants further assert that the amounts relating to the attorneys’ salaries remained the same month-to-month, while expenses varied.³⁴⁹⁰

2132. According to the Claimants, each Cash Call was sent to Chevron’s Law Department and was paid, as evidenced by the stamps on the exhibits and confirmed by Mr Stanton’s expert confirmation.³⁴⁹¹ Moreover, the testimonies and witness statements of Ms Kent, Mr Veiga, and Mr Mittelstaedt, as well as the Lago Agrio Litigation record prove, in the Claimants’ view, that the Ecuador Legal Team’s services were reflected in the Cash

³⁴⁸³ Letter from the Respondent to the Tribunal dated 2 September 2022, pp. 9-10.

³⁴⁸⁴ Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3301, 3303 (Salgado Levy).

³⁴⁸⁵ Rejoinder, para. 929.

³⁴⁸⁶ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3273 (Coriell).

³⁴⁸⁷ Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3273-3274 (Coriell).

³⁴⁸⁸ Track III Hearing Transcript, Day 8 (29 August 2022), p. 1757 (Bishop); *see also* Day 14 (6 September 2022), p. 3267 (Coriell).

³⁴⁸⁹ Track III Hearing Transcript, Day 8 (29 August 2022), p. 1757 (Bishop).

³⁴⁹⁰ Track III Hearing Transcript, Day 8 (29 August 2022), p. 1758-1759 (Bishop).

³⁴⁹¹ Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3258-3260 (Coriell).

Calls³⁴⁹² and were paid in full.³⁴⁹³ In the Claimants’ view, the fact that Chevron paid these fees and costs demonstrates their reasonableness.³⁴⁹⁴

2133. The Claimants contend that the Cash Calls are sufficient to demonstrate payment under Ecuadorian law, as they include a general description of the services that were rendered.³⁴⁹⁵

2134. Lastly, the Claimants explain that they conservatively discounted their claims under the Cash Calls by 10%, an admittedly subjective number, to capture only the amount attributable to matters compensable as damages in this Arbitration, to ensure that they did not overstate their claim, and to reduce interest due.³⁴⁹⁶ They add that they took care to claim the legal fees and expenses, not when advanced by Chevron, but when “actually incurred”.³⁴⁹⁷

ii. The Tribunal’s Analysis

2135. The Tribunal recalls that the Cash Calls support the Claimants’ claim for the legal fees and expenses charged by the law firms that constituted the Ecuador Legal Team in the context of the Lago Agrio Litigation and the Ecuador Enforcement Proceedings.³⁴⁹⁸ The Tribunal has also determined that these two damages categories meet the requirements of causation and reasonableness for the compensation of incidental damages under international law.³⁴⁹⁹ In the circumstances, the Tribunal shall address the Cash Calls claim as a joint component of both of those damages categories following the methodology laid out in Section VII.G.5.

2136. At the outset, the Tribunal notes that 78 of the 168 Cash Calls were issued prior to the issuance of the Lago Agrio Judgment on 14 February 2011, including a 18 October 2010

³⁴⁹² Track III Hearing Transcript, Day 14 (6 September 2022), p. 3261 (Coriell).

³⁴⁹³ Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3261-3262 (Coriell).

³⁴⁹⁴ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3269 (Coriell).

³⁴⁹⁵ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3319 (Coriell).

³⁴⁹⁶ Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3286, 3317-3319 (Coriell).

³⁴⁹⁷ Track III Hearing Transcript, Day 14 (6 September 2022), p. 3286 (Coriell).

³⁴⁹⁸ See para. 769 above.

³⁴⁹⁹ See paras. 653, 762 above.

Cash Call the Claimants withheld as privileged.³⁵⁰⁰ In line with the Tribunal's previous findings, since the legal fees and expenses underlying those 78 Cash Calls could not have been incurred in response to the injury arising from the recognition and enforcement of the Lago Agrio Judgment, they fall outside the scope of the compensable injury in these proceedings.³⁵⁰¹ The Tribunal's subsequent analysis shall therefore focus on the remaining 90 Cash Calls sent to Chevron by the Ecuador Legal Team after 14 February 2011.

2137. As a threshold issue, the Respondent asserts that the Cash Calls do not comply with Ecuadorian law and that, accordingly, they cannot support the Claimants' damages claim.³⁵⁰² In the Tribunal's view, whether the Cash Calls comply with Ecuadorian law is not *per se* dispositive of the Claimants' claim for the reimbursement of the legal fees and expenses underlying those documents. The proper question before this Tribunal is whether the Claimants have satisfied their burden under international law, rather than domestic law, to prove their claims for the reimbursement of legal fees and expenses as incidental damages. From this viewpoint, the Tribunal is not tasked with assessing the compliance of the Cash Calls with Ecuadorian law, but must rather assess the sufficiency of the evidence on record to establish the requirements for this component to qualify as incidental damage (*i.e.*, causation and reasonableness).

2138. Similarly, whether the Cash Calls were paid by Chevron – and the Tribunal has already concluded that they were³⁵⁰³ – is not determinative of the requirements of causation and reasonableness. Indeed, the fact of payment does not *per se* establish that, by incurring legal fees and expenses, the Claimants sought to mitigate the injury arising from the recognition and enforcement of the unremedied Lago Agrio Judgment by (i) preventing the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) to the extent such efforts were unsuccessful, thereafter seeking to render the Judgment unenforceable; or (iii) minimizing the loss arising directly from the enforcement of the Judgment,

³⁵⁰⁰ Respondent's Index of Cash Calls for the Ecuador Legal Team, 2 September 2022, Items 1-78; Claimants' Index of Claimed Legal Invoices for Ecuador Legal Team, 2 September 2022, Items 1-78.

³⁵⁰¹ See paras. 362, 373, 397 above.

³⁵⁰² Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3301, 3303 (Salgado Levy).

³⁵⁰³ See para. 2072 above.

whether by attachment, arrest, interim injunction, execution or howsoever otherwise. The fact of payment is also not indicative of whether the legal fees and expenses underlying the Cash Calls were reasonably incurred in furtherance of these mitigation goals.³⁵⁰⁴

2139. The Tribunal turns now to assessing the requirements of causation and reasonableness in respect of the Cash Calls claim.

2140. As regards causation, the Tribunal recalls that the required causal link must be established clearly and in an itemized fashion for each mitigation measure to warrant reparation.³⁵⁰⁵ In this connection, the Tribunal is satisfied that the Ecuador Legal Team, which served as lead local counsel to Chevron in the Lago Agrio Litigation and Ecuador Enforcement Proceedings, played a central role in those proceedings and, thus, supported the Claimants' efforts to mitigate the injury arising from the recognition and enforcement of the Lago Agrio Judgment. Therefore, the Cash Calls claim meets the requirement of causation.

2141. Whether the requirement of reasonableness is met as regards the legal fees and expenses claimed in connection with the Cash Calls is a separate question. In particular, the Tribunal's ability fully to assess the reasonableness of the amounts charged for the Ecuador Legal Team's services is constrained by the limited information provided regarding the precise nature of the work performed by this team and the manner in which it was billed. This issue is especially significant in light of the considerable amount claimed in relation to the Cash Calls, totalling approximately USD 49 million.

2142. First, the absence of the Cash Call Retainer (or retainers, as the case may be) in the record raises questions about the precise scope of the assignment of the Ecuador Legal Team. In particular, this gap in the evidence hinders the Tribunal's assessment of whether, by engaging the Ecuador Legal Team, the Claimants pursued other goals beyond mitigating the injury arising from the recognition and enforcement of the Lago Agrio Judgment. The Claimants themselves acknowledge that they did, which is why they applied a 10% discount to the Cash Calls claim.³⁵⁰⁶ However, without access to the Cash Call Retainer,

³⁵⁰⁴ See paras. 555-556, 559 above.

³⁵⁰⁵ See para. 330 above.

³⁵⁰⁶ Letter from the Claimants to the Tribunal dated 4 September 2022, pp. 18-19, Annex A.

the Tribunal lacks sufficient information to determine the appropriateness of this discount. The Tribunal is also unable to assess whether the legal fees and expenses charged by the Ecuador Legal Team complied with the Cash Call Retainer, or whether there were any deviations.

2143. Second, the limited level of detail contained in the Cash Calls likewise hinders the Tribunal's ability to conduct a full assessment of the reasonableness of the amounts charged by the Ecuador Legal Team:

- (i) The Tribunal notes that 88 of the 90 Cash Calls generated after 14 February 2011 have two pages:³⁵⁰⁷ the first page indicates the existing cash balance in the Ecuador Legal Team's "working fund" and the amount requested to replenish the fund, while the second page contains a breakdown of the amounts incurred and expected to be incurred in connection with vaguely described items such as "attorney", "technical advisor", "accountant", "materials", "room and board", "insurance", "publications in newspapers", or "public relations".³⁵⁰⁸ The Cash Call Enclosures, which may have shed light on the precise nature of these expenses, are not on record.
- (ii) The two remaining Cash Calls generated after 14 February 2011 are (i) a Cash Call dated 4 September 2014, which includes a third page including a forecast for a 3-month period in addition to the forecast indicated in the second page;³⁵⁰⁹ and (ii) a Cash Call dated 8 July 2014, which includes only a first page as just described.³⁵¹⁰ As such, these two Cash Calls do not offer additional insight into the nature of the legal fees and expenses charged by the Ecuador Legal Team.
- (iii) Some of the Cash Calls note that the Ecuador Legal Team charged Chevron for "media related expenses", "publications in newspapers", and "public relations".³⁵¹¹

³⁵⁰⁷ See Respondent's Index of Cash Calls for the Ecuador Legal Team, 2 September 2022, pp. 5-10.

³⁵⁰⁸ See, e.g., **C-3395**, CVX-Track III- 20008764.

³⁵⁰⁹ **C-3395**, CVX-Track III- 20008739.

³⁵¹⁰ **C-3395**, CVX-Track III- 20001682.

³⁵¹¹ See, e.g., **C-3395**, CVX-Track III- 20008826, p. 2, **C-3395**, CVX-Track III- 20008754, p. 2.

– activities which, as further explained below, are in principle not compensable in this Arbitration.³⁵¹²

2144. The Tribunal thus lacks critical information required to assess the reasonableness of the amounts charged by the Ecuador Legal Team. Among other evidentiary deficiencies, there is no information in the Cash Calls regarding the identity or seniority of the attorneys and other persons for whom expenses were incurred, their precise activities or assignments, how the overhead costs for which reimbursement was claimed supported such activities, or how any of these legal fees and expenses were priced.

2145. Overall, while the evidence on record suffices for the Tribunal to infer that the work of the Ecuador Legal Team contributed to the Claimants' reasonable measures to mitigate the injury flowing from the recognition and enforcement of the Lago Agrio Judgment, it is insufficient to allow the Tribunal to conduct an assessment on the reasonableness of the *amounts* charged by the Ecuador Legal Team.

2146. In view of the uncertainty surrounding the reasonableness of the amounts spent by the Claimants on the Ecuador Legal Team as a way of mitigating the injury flowing from the recognition and enforcement of the Lago Agrio Judgment, and in the light of the methodological problem addressed in the following paragraphs, the Tribunal assesses that 50% of the legal fees and expenses claimed by the Claimants in connection with the Ecuador Legal Team by way of the Cash Calls after 14 February 2011 should be excluded from compensation. It makes this assessment in light of the fact that no evidence or submission in the record points to any significant body of work by the Claimants' lawyers in Ecuador that was not related to the Lago Agrio Litigation and Ecuador Enforcement Proceedings, and the consequent probability that the great majority of the legal fees and expenses charged were, in broad terms, related to those proceedings even if the record does not evidence the specific purpose for which individual sums were spent.

2147. In reaching this determination, the Tribunal has duly noted the Respondent's criticism of Chevron's methodology in calculating the claimed amounts for the Ecuador Legal Team – a method that accounts for the fact that the Cash Calls generally contain the amounts

³⁵¹² See para. 2169 below.

previously forecasted and actually spent for the invoices month, as well as the amount requested from Chevron to maintain the working fund. The Claimants explain that they calculated a “base claim” by (i) taking the amount of actual expenses; (ii) subtracting the amount paid to the legal representative, which is not claimed in this Arbitration; and (iii) discounting the remaining sum by 10% to account for work that potentially related to other matters.³⁵¹³ The Claimants then compared this “base claim” to the amount transferred to the Ecuador Legal Team the previous month as reflected in the SAP Payments List. If the base claim was more than the amount actually paid, the Claimants claimed the amount paid, and carried forward the amount remaining until a future month where the base claim was less than the amount actually paid. In the Respondent’s view, the Claimants’ calculations are both unsupported by a demonstrable analysis and unreconcilable with the actual claims.³⁵¹⁴

2148. The Tribunal agrees that the Claimants should be compensated for the costs actually incurred in the invoiced month, as opposed to the amount transferred by Chevron to cover future expenses. To the extent that any uncertainty may remain regarding the correction of the calculations performed by the Claimants, it is addressed by the Tribunal’s above assessment that 50% of the legal fees and expenses charged by the Ecuador Legal Team by way of the Cash Calls after 14 February 2011 should be excluded from compensation.³⁵¹⁵

3. Trunko Elements

2149. The Tribunal shall now address as an ensemble the elements identified in the Trunko Expert Report, which were described in paragraphs 2059-2060 above. For ease of reference, the Tribunal recalls that the Trunko Elements comprise:

- (i) (CLA) Activities allegedly relating to Media and Public Relations / (RES) Activities relating to Media and Public Relations;**

³⁵¹³ Letter from the Claimants to the Tribunal dated 4 September 2022, p. 19, Annex A.

³⁵¹⁴ Track III Hearing Transcript, Day 14 (6 September 2022), pp. 3248-3254 (Schwartz).

³⁵¹⁵ See para. 2146 above.

- (ii) (CLA) Activities allegedly relating to Government Relations (including but not limited to USTR) / (RES) Activities relating to Government Relations (including but not limited to USTR);
- (iii) (CLA) Allegedly Nondefense-Related Activities / (RES) Nondefense-Related Activities;
- (iv) (CLA) Alleged Block Billing / (RES) Block Billing;
- (v) (CLA) Allegedly Vague Billing Entries / (RES) Vague Billing Entries;
- (vi) (CLA) Alleged Administrative and Clerical Activities / (RES) Administrative and Clerical Activities;
- (vii) (CLA) Alleged Getting Up to Speed and Training / (RES) Getting Up to Speed and Training;
- (viii) Multiple Attendance at Events;
- (ix) (CLA) Alleged Excessively Long Billing Days and Excessive Time / (RES) Excessively Long Billing Days and Excessive Time; and
- (x) (CLA) Alleged Double Billing Entries / (RES) Double Billing Entries.

2150. The Tribunal shall first provide an overview of the evidence of Mr Trunko, expert for the Respondent, and Mr McGrath, expert for the Claimants, concerning the matters falling under the present heading. Thereafter, the Tribunal shall determine the approach it will apply to address the Trunko Elements.

(a) *Mr Trunko's Expert Evidence*

2151. Mr Trunko is a U.S. attorney specializing in legal fee auditing.³⁵¹⁶ At the Respondent's request, his firm, Stuart Mae, performed "an independent evaluation and review of the legal fees and costs claimed by Claimants in this Arbitration".³⁵¹⁷ Stuart Mae's methodology "is based on generally accepted principles regarding reasonable attorney fee

³⁵¹⁶ Track III Hearing Transcript, Day 10 (31 August 2022), p. 2316 (Trunko).

³⁵¹⁷ Track III Hearing Transcript, Day 10 (31 August 2022), pp. 2317-2318 (Trunko).

billing as reflected in case authorities, ethical rules, scholarly articles, and client billing guidelines”,³⁵¹⁸ including for the most part U.S. authorities.³⁵¹⁹

2152. Mr Trunko describes his analysis of the billing information provided by the Claimants as follows:

The Crosswalk billing data submitted by Claimants in excel format contains no less than 496,000 separate rows of fee and expense entries. To facilitate the review and analysis of the fees and expenses claimed by Claimants, we created a computer database of the law firm billing entries by loading the itemized law firm fee and expense entries from the billing data and invoices provided. In addition to the “Crosswalk” data, Claimants submitted law firm invoices in the form of hard copy pdf documents from which the itemized entries had to be manually loaded into the database using OCR software. The database was then reconciled with the amounts claimed by Claimants in Appendix 2 [to the Claimants’ Reply] to ensure accuracy. Our analysis is based on a review of all the fee and expense entries billed by the firms.³⁵²⁰

2153. When performing his analysis, Mr Trunko identified “numerous problematic issues reflecting unreasonable fees and costs” corresponding broadly with the elements addressed under the present heading (as well as the Cash Calls, which the Tribunal already addressed in the preceding section).³⁵²¹ He identified multiple time entries in the billing records provided by the Claimant, grouping them according to each distinct type of billing irregularity he identified and quantifying each group. For instance, Mr Trunko identified a total of USD 52,327,651.11 for alleged block billing³⁵²² and USD 2,409,906.40 for alleged vague billing.³⁵²³

³⁵¹⁸ Track III Hearing Transcript, Day 10 (31 August 2022), p. 2318 (Trunko).

³⁵¹⁹ **RE-51**, Trunko Expert Report, para. 10: “In reviewing and classifying the categories of fees and costs set forth herein, I employed the standard legal fee auditing methodology used by Stuart Maue in auditing billings for legal fees and costs, which is based on generally accepted principles regarding reasonable attorneys’ fee billing as reflected in case authorities, ethical rules and opinions, scholarly articles, and client billing guidelines (see, e.g., *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1933 (1983) . . . American Bar Association Standing Committee on Ethics and Professional Responsibility Formal Opinion 93-379 (1993) . . . *The Honest Hour*, *The Ethics of Time Based Billing by Attorneys*, William G. Ross, Carolina Academic Press (1996)). These generally accepted principles have been applied by many courts when awarding attorneys’ fees, and the categories of fees identified herein are consistent with these standards.”

³⁵²⁰ **RE-51**, Trunko Expert Report, para. 9.

³⁵²¹ **RE-51**, Trunko Expert Report, para. 8. The issues identified by Mr Trunko are blocked billing, vague billing, administrative and clerical activities, getting up to speed and training, media and public relations activities, nondefense related activities, multiple attendance, duplicative activities, long billing days and excessive time, double billings, and inadequately documented fees.

³⁵²² **RE-51**, Trunko Expert Report, **SM-C-1**, p. 3645.

³⁵²³ **RE-51**, Trunko Expert Report, **SM-C-2**, p. 402.

2154. Based on these purported billing irregularities, Mr Trunko opines that “significant reductions are warranted to Claimants’ claimed fees and costs.”³⁵²⁴ He does not quantify such reduction, but notes that similar reductions performed by U.S. courts are often “in the neighbourhood of 30 per cent”.³⁵²⁵ At the Track III Hearing, Mr Trunko clarified that he does not propose that the Tribunal exclude from compensation the full amounts corresponding to each group of entries allegedly exhibiting billing irregularities as described in the preceding paragraph: his view is that such irregularities support the conclusion that a percentage reduction to the amount of compensation due to the Claimants is warranted.³⁵²⁶

(b) Mr McGrath’s Expert Evidence

2155. Mr McGrath is a certified public accountant and is also certified in financial forensics and fraud examination.³⁵²⁷ He is a Senior Managing Director in the Risk, Forensics and Compliance practice of Ankura Consulting Group LLC.³⁵²⁸

2156. At the Claimants’ request, Mr McGrath applied data analytics to the same set of billing data reviewed by Mr Trunko³⁵²⁹ to “identify metrics, trends, and patterns” in the legal fees and expenses claimed by the Claimants in this Arbitration³⁵³⁰ so as “to gain insight into the nature of the expenses incurred and claimed by Claimants, invoices rejections, discounts and adjustments recorded by Chevron, certain evaluable parameters contained within the [Chevron Guidelines for Outside Counsel], specific attributes relating to individual timekeepers, and timing of the legal spend relative to activity in the underlying Damage Categories”.³⁵³¹

³⁵²⁴ **RE-51**, Trunko Expert Report, para. 56.

³⁵²⁵ Track III Hearing Transcript, Day 10 (31 August 2022), p. 2344 (Trunko).

³⁵²⁶ Track III Hearing Transcript, Day 10 (31 August 2022), pp. 2344-2345 (Trunko).

³⁵²⁷ McGrath Expert Report, para. 4.

³⁵²⁸ McGrath Expert Report, para. 2.

³⁵²⁹ Track III Hearing Transcript, Day 11 (1 September 2022), p. 2548 (McGrath).

³⁵³⁰ McGrath Expert Report, para. 13.

³⁵³¹ McGrath Expert Report, para. 21.

2157. According to Mr McGrath, his examination of the billing information provided by the Claimants yields, *inter alia*, the following conclusions:

- (i) “[The] analysis of the Invoice Data indicates that Chevron’s outside firms and vendors generally staffed matters and leveraged work in a valuable and cost-efficient manner.”³⁵³²
- (ii) “Chevron’s Outside Counsel Guidelines and the Invoice Data demonstrate that Chevron effectively designed and managed the process to control and negotiate timekeeper rate increases.”³⁵³³
- (iii) “Chevron utilized discount negotiations as one method of managing and controlling external legal costs in the Ecuador Dispute, which resulted in at least \$62.4M in discounts savings (or 8.4% of Claimed Fees).”³⁵³⁴
- (iv) “The Invoice Data, when analyzed in aggregate as well as for individual Damage Categories, exhibits a pattern of increased Claimed Amounts coinciding with increased activity in the underlying Damage Categories, often coinciding with key milestones and relevant dates referenced in the Track III Memorial Damage Category appendices.”³⁵³⁵
- (v) “When advising corporate legal departments and in-house counsel, I apply data analytics to legal invoice datasets to identify metrics, trends, patterns and/or anomalies, which I then present to in-house counsel to consider and evaluate for possible cost-savings action or other improvements, based on their knowledge and experience of the applicable firms and matters. I applied various data analytics aimed at identifying such metrics, trends, patterns, or anomalies in the Invoice Data related to the Ecuador Dispute and did not identify a pattern of significant outliers.”³⁵³⁶

³⁵³² McGrath Expert Report, para. 26(1).

³⁵³³ McGrath Expert Report, para. 26(2).

³⁵³⁴ McGrath Expert Report, para. 26(3).

³⁵³⁵ McGrath Expert Report, para. 26(4).

³⁵³⁶ McGrath Expert Report, para. 26(5).

- (vi) “The documents and data I reviewed provide evidence of diligent, coordinated review of outside law firms’ and other vendors’ invoices by Chevron that is consistent with best practice invoice review processes. Further, the Invoice Data indicates that invoice adjustments were processed for more than a dozen unique reasons (e.g., efficiency adjustment; insufficient time description) demonstrating that Chevron invoice reviewers were monitoring invoices for a wide range of possible guideline violations.”³⁵³⁷
- (vii) “Chevron’s outside law firms and vendors generally exercised care and diligence in their billing practices, as evidenced by high levels of adherence to key and evaluable Guidelines, which is an important consideration when evaluating a company’s commitment to legal spend management.”³⁵³⁸
- (viii) “The e-billing software and written Outside Counsel Guidelines that Chevron had in place during the period of the Ecuador Dispute are consistent with what I would consider widely recognized methods and best practices in litigation management and are evidence of tangible actions taken by Chevron to proactively manage and control external legal costs.”³⁵³⁹

2158. The Tribunal recalls that the Claimants filed the McGrath Expert Report together with their Reply – that is, before the Respondent submitted the Trunko Expert Report with the Rejoinder. Therefore, while both expert reports address similar issues (while applying different methodologies) the McGrath Expert Report does not respond to the issues raised in the Trunko Report. The Respondent also did not call Mr McGrath to testify at the Track III Hearing.³⁵⁴⁰ The Tribunal, however, called on him to address a series of discrete questions concerning the methodology he applied in his report.³⁵⁴¹

³⁵³⁷ McGrath Expert Report, para. 26(6).

³⁵³⁸ McGrath Expert Report, para. 26(7).

³⁵³⁹ McGrath Expert Report, para. 26(8).

³⁵⁴⁰ Track III Hearing Transcript, Day 10 (31 August 2022), p. 2479 (Finsterwald).

³⁵⁴¹ Track III Hearing Transcript, Day 11 (1 September 2022), pp. 2547-2563 (Van den Berg/McGrath).

(c) *The Tribunal's Approach*

2159. The Tribunal observes that all of the Trunko Elements concern, at their core, alleged deficiencies in the billing information supporting the legal fees and expenses for which the Claimants seek reimbursement in this Arbitration. Mr Trunko draws essentially on U.S. case law to illustrate how U.S. courts have approached similar billing deficiencies when addressing requests from litigants to recover the costs of litigation from the opposing party.³⁵⁴² Mr McGrath, in turn, applies an entirely different approach than Mr Trunko – data analytics, as opposed to fee auditing – to ascertain whether any deficiencies exist in the universe of billing information provided by the Claimants to support their damages claim for legal fees and expenses.

2160. While the Tribunal has found the evidence of Mr McGrath and Mr Trunko to be useful in gaining insight into how domestic courts approach billing deficiencies in the context of claims for the reimbursement of litigation costs, as well as in identifying patterns in the billing data underlying the Claimants' claims, the Tribunal is in no way constrained by the experts' conclusions. Rather, the Tribunal must perform an independent analysis of the Trunko Elements through the purview of (i) international law; and (ii) the methodology for the assessment of the Claimants' damages claims for the reimbursement of legal fees and expenses established earlier in this Award.³⁵⁴³ The Tribunal addresses each aspect of this analysis in turn.

1. The Trunko Elements through the purview of International Law

2161. The Tribunal recalls that it is not concerned with assessing the reasonableness of legal fees and expenses in the context of domestic proceedings, where a range of considerations of taxation, insurance and the provision of public services may be relevant.³⁵⁴⁴ Rather, the Tribunal is called upon to determine whether the Claimants' claim for the reimbursement of legal fees and expenses meets the requirements of causation and reasonableness for the compensation of incidental damages under international law.³⁵⁴⁵

³⁵⁴² Track III Hearing - Direct Presentation of John L. Trunko (31 August 2022), slides 7, 16, 20, 28, 37, 42, 46, 52, 53, 60.

³⁵⁴³ See paras. 545-551 above.

³⁵⁴⁴ See paras. 480-482 above.

³⁵⁴⁵ See paras. 327, 331, 362 above.

Accordingly, having found that nine of the incidental damages categories claimed by the Claimants are in principle compensable, the question the Tribunal must address in respect of the Trunko Elements is whether any deficiencies that may exist in the billing information underlying the Claimants' claims preclude a finding that the legal fees and expenses claimed by the Claimants were "reasonably incurred to repair damage and otherwise mitigate loss" arising from the recognition and enforcement of the Lago Agrio Judgment, and, if so, in what measure.³⁵⁴⁶

2162. The Parties, however, have not provided any materials to the Tribunal illustrating how billing deficiencies such as those falling under the Trunko Elements must be addressed in the context of a claim for legal fees and expenses as damages under international law. In the circumstances, while the Tribunal's determinations shall be made through the lens of international law, the Tribunal may draw guidance from domestic authorities provided by the Parties to the extent they align with the Tribunal's understanding of the requirements of causation and reasonableness.

2163. Against this background, the Tribunal shall now assess whether each of the billing deficiencies identified as Trunko Elements may, under international law, affect its previous determinations on whether each of the 13 damages categories comprising legal fees and expenses, as well as the components falling thereunder, meet the requirements of causation and reasonableness for the compensation of incidental damages.

2164. In the course of the assessment that follows, the Tribunal shall refrain from addressing the incidence or prevalence of these deficiencies in the billing information provided by the Claimants or the extent to which any such deficiencies should affect the final amount of compensation. Such matters will be addressed in Section VIII.N.3(c)2 below. The Tribunal's present analysis is confined to determining whether these billing deficiencies, as characterized by the Respondent and Mr Trunko, would – if established – in principle warrant a reduction in the final amount of compensation under international law.

³⁵⁴⁶ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 36, Commentary (34).

i. (CLA) Activities allegedly relating to Media and Public Relations / (RES) Activities relating to Media and Public Relations

2165. The Respondent takes issue with the non-legal work performed by the Claimants’ lawyers – in particular media and public relations work – and argues that any legal fees and expenses charged in connection with such activities should not be recoverable.³⁵⁴⁷ According to Mr Trunko, these activities include, *inter alia*, monitoring media coverage, reviewing press reports, and preparing press releases and interviews.³⁵⁴⁸ Mr Trunko identified USD 10,634,481.63 billed for public and media related tasks.³⁵⁴⁹ Examples of these entries include “prepare for speech at Pepperdine Global Forum Shopping Symposium”, “draft outline of Crude clips for New York Times interview”, and “participate in daily media review committee telephone conference”.³⁵⁵⁰

2166. In the Claimants’ view, measures taken in the “court of public opinion” were required to respond to Ecuador and the LAPs’ extraordinary efforts to tarnish Chevron’s reputation.³⁵⁵¹ They submit that “Chevron’s response was in support of its general defense against the fraudulent Lago Agrio Litigation and resulting Judgment.”³⁵⁵²

2167. Moreover, the Claimants assert that case law such as *Prison Legal News v. Schwarzenegger* has recognised that public relations work can be subject to compensation when the work is “directly and intimately related to the successful representation of a client”.³⁵⁵³ In addition, the Claimants criticise Mr Trunko’s approach in the identification of impacted entries, as he admitted at the Track III Hearing that he did not analyse whether these billing records were in fact related to litigation work.³⁵⁵⁴

³⁵⁴⁷ Rejoinder, paras. 1010-1021.

³⁵⁴⁸ **RE-51**, Trunko Expert Report, para. 27.

³⁵⁴⁹ **RE-51**, Trunko Expert Report, para. 27, **SM C-7**.

³⁵⁵⁰ Track III Hearing - Direct Presentation of John L. Trunko (31 August 2022), Slides 38-39.

³⁵⁵¹ Memorial, paras. 426-427.

³⁵⁵² Memorial, para. 427.

³⁵⁵³ Track III Hearing - Claimants’ Closing Presentation (7 September 2022), Slide 107; **C-3478**, *Prison Legal News v. Schwarzenegger*, 561 F. Supp. 2d 1095, 1101 (N.D. Cal. 2008).

³⁵⁵⁴ Track III Hearing - Claimants’ Closing Presentation (7 September 2022), Slide 108; Track III Hearing Transcript, Day 10 (31 August 2022), pp. 2371-2372 (Trunko); Track III Hearing Transcript, Day 15 (7 September 2022), p. 3461 (Silbert).

2168. In the Tribunal's view, the reasoning it applied in connection with public and media work carried out by public relations firms claimed under the General Defence category of damages applies with equal force in connection with any activities relating to media and public relations, regardless of their connection with an ongoing litigation. Whatever harm the Claimants sought to address through public relations efforts bears no relation with the injury arising specifically from the recognition and enforcement of the unremedied Lago Agrio Judgment. Indeed, no public relations efforts could have possibly (i) prevented the Lago Agrio Judgment from becoming enforceable after its issuance; (ii) contributed to rendering the Judgment unenforceable; or (iii) minimized the loss arising directly from the enforcement of the Judgment, whether by attachment, arrest, interim injunction, execution or howsoever otherwise. The Claimants could only accomplish these three mitigation goals by participating in legal proceedings, not in the court of public opinion.³⁵⁵⁵

2169. Accordingly, the Tribunal considers that any legal fees and expenses incurred in connection with "Activities relating to Media and Public Relations" must, as a matter of international law, be excluded from compensation in this case.

- ii. *(CLA) Activities allegedly relating to Government Relations (including but not limited to USTR) / (RES) Activities relating to Government Relations (including but not limited to USTR)*

2170. The Respondent also criticises the Claimants for seeking compensation for non-legal counsel work related to government relations activities, such as monitoring legislative and political activity, lobbying, preparing, and reviewing profiles of politicians and government representatives, among others.³⁵⁵⁶ According to Mr Trunko, the Claimants incurred USD 1,842,005.20 for work related to government relations.³⁵⁵⁷

2171. Furthermore, the Respondent singles out a series of time entries billed for work related to Chevron's petition to the U.S. Trade Representative to deny Ecuador trade

³⁵⁵⁵ See para. 1978 above.

³⁵⁵⁶ **RE-51**, Trunko Expert Report, para. 29, **SM C-10**; Track III Hearing - Direct Presentation John L. Trunko (31 August 2022), slide 44.

³⁵⁵⁷ **RE-51**, Trunko Expert Report, **SM C-10**, p. 239.

preferences.³⁵⁵⁸ In the Respondent’s view, these invoices are not compensable, as the Claimants “have not proven that petitioning the U.S. Trade Representative was a reasonable or necessary means of defending itself against the Lago Agrio Judgment.”³⁵⁵⁹

2172. The Respondent likewise contends that the Claimants are not entitled to recover expenses for work related to Freedom of Information Act (“FOIA”) requests in the United States.³⁵⁶⁰ In particular, the Respondent takes issue with entries referring to “FOIA Request(s)”, which, it says, do not provide any further information on what those requests concerned and, as such, they do not prove that these activities gave rise to compensable damages.³⁵⁶¹ This also applies to certain FOIA requests directed by the Claimants to the New York State Comptroller and Right to Know requests directed to the Pennsylvania Treasury.³⁵⁶²

2173. While the Claimants do not distinctly address the Respondent’s arguments in connection with this element, they note, among other things, that throughout the Lago Agrio Litigation Mr Donziger, the LAPs, and/or Ecuador all sought to conscript various government officials to join their “extortionate” pressure campaign against Chevron – including the President of Ecuador, who supported the LAPs’ efforts to enforce the Lago Agrio Judgment.³⁵⁶³ In response, the Claimants “repeatedly presented evidence of fraud and corruption to Ecuadorian officials and they repeatedly looked the other way”.³⁵⁶⁴ Similarly, the Claimants note that they submitted FOIA requests to various authorities “to uncover evidence of collusion between the LAPs/Donziger and public government officials, and other actions taken in order to penetrate the cover-up orchestrated by Ecuador and the LAPs to prevent Chevron from uncovering their fraudulent conduct.”³⁵⁶⁵

³⁵⁵⁸ Rejoinder, para. 1363, Annex I-27, entries 1-3.

³⁵⁵⁹ Rejoinder, para. 1363.

³⁵⁶⁰ Rejoinder, para. 1644.

³⁵⁶¹ Rejoinder, para. 1644; **RE-51**, Trunko Expert Report, **SM Q-3**, p. 138.

³⁵⁶² Rejoinder, para. 1645.

³⁵⁶³ Memorial, para. 428; Reply, para. 254.

³⁵⁶⁴ Reply, para. 332.

³⁵⁶⁵ Reply, para. 1018.

2174. As a matter of principle, the Tribunal considers that any efforts directed towards furnishing the Respondent's prosecutorial authorities with evidence of fraud and corruption in the Lago Agrio Litigation would constitute a valid measure of mitigation. However, none of the activities identified by the Respondent as falling under the element of Government Relations – petitioning the U.S. Trade Representative, submitting FOIA requests to U.S. authorities, monitoring legislative and political activity, lobbying, preparing, and reviewing profiles of politicians and government representatives, etc. – have been shown to involve submissions to the Respondent's prosecutorial authorities.

2175. As such, in the Tribunal's view, none of the activities falling under the present heading bear any relation with the injury arising specifically from the recognition and enforcement of the unremedied Lago Agrio Judgment. As already noted in respect of activities relating to media relations, the Claimants could only mitigate such injury by participating in legal proceedings.³⁵⁶⁶ Prompting governments, especially those other than Ecuador's, to take or abstain from particular actions cannot, in the circumstances of this case, be regarded as an appropriate form of mitigation.

2176. Accordingly, the Tribunal considers that any legal fees and expenses incurred in connection with "Activities relating to Government Relations (including but not limited to USTR)" must, as a matter of international law, be excluded from compensation in this case.

iii. (CLA) Allegedly Nondefense-Related Activities / (RES) Nondefense-Related Activities

2177. The Respondent also challenges invoices billed for "nondefense-related activities" totalling USD 227,791.39 in fees, as calculated by Mr Trunko.³⁵⁶⁷ In particular, Mr Trunko asserts that the invoices underlying the Claimants' claims "contain billing for other nondefense-related activities such as preparing audit letters, shareholder activities, securities issues, and other corporate matters" and further asserts that the fees and costs that were "incurred in non-defense activities such as corporate and tax advice, public relations, and any fees and costs arising from providing insurance coverage advice, are

³⁵⁶⁶ See para. 2168 above.

³⁵⁶⁷ **RE-51**, Trunko Expert Report, para. 28; **SM C-9**.

generally considered to be outside the scope of the defense.”³⁵⁶⁸ Editing a draft video script for a shareholders’ meeting, or working on responses to audit letters and audit inquiries are some other instances of nondefense-related tasks identified by Mr Trunko.³⁵⁶⁹

2178. The Tribunal understands that most if not all of the activities characterized by the Respondent as “non-defence-related activities”, though connected to the Lago Agrio Litigation and related proceedings, were conducted by Chevron as part of its general corporate activities. Being a publicly-traded company, Chevron may even have been required by law to conduct several of those activities, such as having external counsel respond to audit queries, or informing its shareholders periodically of the status of an ongoing litigation.³⁵⁷⁰

2179. However, none of these activities are directed at mitigating the injury arising specifically from the recognition and enforcement of the unremedied Lago Agrio Judgment. As already noted in respect of activities relating to media relations, the Claimants could only mitigate such injury by participating in legal proceedings.³⁵⁷¹ The mere fact that the company may have been required to conduct the activities falling under the present heading as an incidental consequence of ongoing litigation does not, in itself, render such activities acts of mitigation; they were not directed at mitigating the injury arising from the Respondent’s Treaty breaches, but at satisfying internal corporate requirements.

2180. Accordingly, the Tribunal considers that any legal fees and expenses incurred in connection with “Nondefense-Related Activities” must, as a matter of international law, be excluded from compensation in this case.

iv. (CLA) Alleged Block Billing / (RES) Block Billing

2181. Another billing deficiency identified by the Respondent in the evidence supporting the Claimants’ damages claim for legal fees and expenses is block billing. This practice, as

³⁵⁶⁸ **RE-51**, Trunko Expert Report, para. 28; Track III Hearing - Direct Presentation John L. Trunko (31 August 2022), slide 42. *See also* Rejoinder, para. 869, Annex D-1.

³⁵⁶⁹ Track III Hearing - Direct Presentation John L. Trunko (31 August 2022), slide 43.

³⁵⁷⁰ Track III Hearing Transcript, Day 10 (31 August 2022), pp. 2462-2467 (White/Trunko).

³⁵⁷¹ *See* para. 2168 above.

characterized by Mr Trunko, consists in “billing more than one task with a single time amount.”³⁵⁷² Mr McGrath, in turn, defines it as “the practice of listing a group of disparate tasks together (in a block) under a single time entry, without specifying how much time was spent on each individual task.”³⁵⁷³

2182. Mr Trunko has identified more than 91,000 legal hours purportedly impacted by block billing – amounting to a total of USD 52,327,651.11 in legal fees – and suggests that a significant percentage reduction should be applied,³⁵⁷⁴ as commonly done by U.S. courts in similar instances.³⁵⁷⁵ Examples of block billing identified by Mr Trunko include 7.20 hours for “[r]eview of e-mail re: evidence, revised version of the draft pleading”,³⁵⁷⁶ and 15 hours for “[m]eet with RICO team regarding various issues, and research and draft multiple memos on predicate acts, namely mail and wire fraud, deprivation of honest services, travel act and foreign corrupt practices act, and review factual materials as well as assist with preparation of detailed outline of RICO claims”.³⁵⁷⁷

2183. Mr Trunko opines that block billing generates uncertainty in the assessment of legal fees because: (i) it obstructs the proper evaluation of the amount of time spent on each separate task; (ii) renders billing descriptions less accurate; and (iii) its use tends to inflate fees artificially.³⁵⁷⁸ According to Mr Trunko, the approach taken by U.S. courts when assessing compensation for block billing entries has been to apply a significant percentage reduction, ranging from 10% to 30%.³⁵⁷⁹

³⁵⁷² **RE-51**, Trunko Expert Report, para. 12.

³⁵⁷³ McGrath Expert Report, Appendix 17, para. 239.

³⁵⁷⁴ **RE-51**, Trunko Expert Report, paras. 14, 16; **SM C-1**, p. 3645.

³⁵⁷⁵ **RE-61**, Second Leigh Expert Report, p. 24, fn 52.

³⁵⁷⁶ **RE-51**, Trunko Expert Report, para. 15-16; **SM C-1**, p. 759.

³⁵⁷⁷ **RE-51**, Trunko Expert Report, para. 15-16; **SM C-1**, p. 34.

³⁵⁷⁸ **RE-51**, Trunko Expert Report, para. 13. *See also* **RLA-976**, The Honest Hour, The Ethics of Time-Based Billing by Attorneys, William G. Ross, Carolina Academic Press (1996), p. 65.

³⁵⁷⁹ **RE-51**, Trunko Expert Report, para. 14; Track III Hearing - Direct Presentation John L. Trunko (31 August 2022), slide 16; Track III Hearing Transcript, Day 10 (31 August 2022), p. 2411 (Trunko).

2184. While the Claimants recognize that block billing is “generally disfavoured” and that reductions are often applied when block billing is identified,³⁵⁸⁰ Mr McGrath considers that time entries displaying block billing should not be assessed by themselves in a vacuum but rather in tandem with other factors, such as the nature of work performed, the state of the events within the matter, key deadlines, and workflow progress.³⁵⁸¹ As a result, some block billed entries might be deemed acceptable by the invoice reviewer when analysed together with particular knowledge of the project at hand.³⁵⁸²

2185. According to Mr McGrath, the invoice data supporting the Claimants’ damages claim shows that potentially block billed time represents a 10.3% of the measurable claimed fees, which in Mr McGrath’s opinion, demonstrates that Chevron’s law firms and vendors “generally exercised care and diligence in their billing practices”.³⁵⁸³

2186. The Tribunal notes that, for present purposes, the fact that Chevron’s internal review processes may have permitted block billing to a certain extent is not determinative. Rather, it is for the Tribunal to determine whether the presence of block billing in the billing data underlying the Claimants’ damages claims warrants a deduction in the amount of compensation.

2187. In this connection, the Tribunal agrees with the Respondent that the practice of block billing creates uncertainty when attempting to evaluate the reasonableness of legal fees. It is also persuaded that block billing can inflate legal fees, sometimes by a significant amount.³⁵⁸⁴ In the Tribunal’s view, to the extent any legal fees incurred by the Claimants

³⁵⁸⁰ Reply, para. 689: “In the U.S., block billing is understood to refer to ‘a time-keeping method where an attorney enters the total daily time spent working on a case, rather than itemizing the time spent on a specific task.’ While the practice of block billing is generally disfavored, it ‘is permissible where it involves the grouping of highly related tasks that rarely cover more than a few hours.’ Moreover, in the U.S., courts ‘need not reduce hours where entries are detailed enough for the Court to assess the reasonableness of the hours.’ When a court does identify block billing that lacks sufficient detail for the court to assess the reasonableness of the hours billed, then courts are authorized to reduce the value of the time by between 10% and 30%, though ‘courts generally impose only a 5% to 20% reduction.’ A reduction, if any, will only be applied to the block billed time entries, not the total fee application.”

³⁵⁸¹ McGrath Expert Report, Appendix 17, para. 240.

³⁵⁸² McGrath Expert Report, Appendix 17, para. 240.

³⁵⁸³ McGrath Expert Report, Appendix 17, para. 249.

³⁵⁸⁴ **RE-61**, Second Leigh Expert Report, **MHL-284**, Committee on Mandatory Fee Arbitration of The State Bar of California, Arbitration Advisory 2016-02, Analysis of Potential Bill Padding and other Billing Issues, 25

may have been inflated artificially as a result of block billing, they would not meet the requirement of reasonableness for the compensation of incidental damages under international law. It follows that any fees that surpass what would have been reasonably charged absent the use of block billing must be deducted from compensation.

2188. Accordingly, the Tribunal considers that, as a matter of international law, the use of block billing should result in a reduction of the final amount of compensation to the extent that its use is established and the reasonableness of the underlying fees cannot be reliably evaluated by any other means.

v. *(CLA) Allegedly Vague Billing Entries / (RES) Vague Billing Entries*

2189. Mr Trunko has also identified “vague billing entries” in the billing information underlying the Claimants’ damages claims.³⁵⁸⁵ In Mr Trunko’s opinion:

Time entries should be recorded contemporaneously in sufficient detail so that the work performed or the task accomplished is clearly described or precisely communicated in a meaningful way. Attorneys, by virtue of their education and training, should be capable of precise articulation. Billing guidelines promulgated by sophisticated consumers of legal services require such detail, and courts evaluating the reasonableness of fees require such precision in evaluating the reasonableness of fees billed by counsel. Sufficiently detailed time entries give the fee-paying party an opportunity to identify the specific task that has been performed and to determine from each entry the nature and scope of the activity, the benefit of the activity to the litigation, whether that time entry is appropriately billed to that file, and the reasonableness of the time spent by the timekeeper in performing that activity. Courts often question entire entries that include vague tasks that make it impossible to determine whether reimbursable work has been performed.³⁵⁸⁶

2190. According to Mr Trunko, these “vague billing entries” in the billing data underlying the Claimants’ damages claims total USD 2,409,906.40 in legal fees.³⁵⁸⁷ Some of these

March 2016, pp. 9-10: “Block billing may also inadvertently or intentionally inflate the actual time a lawyer takes to complete the listed tasks. For example, if a lawyer bills a client 8.0 hours on a given day to ‘prepare for trial’, that block of time would most likely include, among other things, time for coffee and restroom breaks, personal calls and non-compensable administrative/managerial tasks. Since block billing has the potential of, among others, camouflaging non-compensable tasks, many judges, fee arbitrators, and commentators regard its persistent and egregious use with suspicion . . . In our prior version of this arbitration advisory . . . the [Committee] opined that block billing ‘hides accountability and may increase time by 10% to 30%’. However, the arbitrator’s discretion is not limited to the 10% to 30% range. Rather, as noted above, an arbitrator may consider all evidence to determine the propriety of any block billed entry and may conclude, upon due consideration of all such evidence, that the entire time billed is appropriate or some portion is not.”

³⁵⁸⁵ RE-51, Trunko Expert Report, paras. 18-20.

³⁵⁸⁶ RE-51, Trunko Expert Report, para. 18.

³⁵⁸⁷ RE-51, Trunko Expert Report, para. 20, SM C-2, p. 402.

instances of vague billing include entries with the following descriptions: “review of e-mails”, “attention to case management”, “emails”, “telephone conferences”, “review papers”, among others.³⁵⁸⁸

2191. In turn, the Claimants consider that Mr Trunko’s categorisation of time entries as “vague” is flawed, as he failed to consider the surrounding context that would have clarified these entries.³⁵⁸⁹ Furthermore, the Claimants highlight that Mr Trunko does not advocate to exclude wholesale the affected fees, as they cannot be taken at face value, but rather a percentage reduction should be applied.³⁵⁹⁰

2192. In the Tribunal’s view, time entries lacking sufficient detail to enable a meaningful assessment of the hours claimed or the necessity and nature of the service rendered impede the Tribunal’s ability to determine whether they satisfy the requirement of reasonableness for the compensation of incidental damages under international law – and, in particular, whether the requested amounts are reasonable. Thus, where vague billing entries are shown to exist and create uncertainty as to the satisfaction of the requirement of reasonableness, a corresponding reduction in compensation is warranted.

2193. Accordingly, the Tribunal considers that, as a matter of international law, the existence of vague billing entries must result in a reduction of the final amount of compensation to the extent that their use is established and the reasonableness of the underlying fees cannot be reliably evaluated by any other means.

vi. *(CLA) Alleged Administrative and Clerical Activities / (RES) Administrative and Clerical Activities*

2194. Another alleged deficiency identified by Mr Trunko in the Claimants’ billing practices is billing legal fees for administrative and clerical activities. Clerical work is defined by Mr Trunko as tasks that “do not require legal acumen” and can be performed by non-professional staff, including word processing and data entry, organizing or filing

³⁵⁸⁸ RE-51, Trunko Expert Report, para. 20; SM C-2, pp. 25, 36, 68.

³⁵⁸⁹ Claimants’ Track III Closing Presentation (7 September 2022), Slide 160; Track III Hearing Transcript, Day 15 (7 September 2022), p. 3490-3491 (Kehoe).

³⁵⁹⁰ Claimants’ Track III Closing Presentation (7 September 2022), Slides 161-162.

documents, making photocopies, or making travel arrangements.³⁵⁹¹ Furthermore, activities said to be administrative in nature by Mr Trunko include tasks that are part of the day-to-day operation of a law firm, such as arranging staffing, preparing invoices, and assigning work.³⁵⁹² Examples of such time entries include “attend to staffing issues”, “prepared labels to ship binders . . .”, or “make hotel arrangements . . .”.³⁵⁹³

2195. According to Mr Trunko, the time entries on record comprising administrative and clerical work amount to USD 11,614,213.27 in fees and total around 41,892.69 hours.³⁵⁹⁴

2196. In Mr Trunko’s opinion, administrative and clerical activities should not be charged and billed as legal work. Instead, these sorts of activities are generally included as part of the law firm overhead and already contemplated in the firm’s hourly rates.³⁵⁹⁵ Mr Trunko notes that Chevron’s own Billing Guidelines consider billing for non-professional tasks related to law firm management to be “inappropriate” and instead, are deemed to be part of the firm’s “normal overhead costs”.³⁵⁹⁶

2197. In the Claimants’ view, the Tribunal should apply no reductions in respect of administrative and clerical activities, as “percentage efficiency reductions” have already been applied by Chevron’s billing analysts and reviewers as part of their invoice review process.³⁵⁹⁷ Moreover, the Claimants submit that clerical and administrative work can be compensable if it is customary for it to be billed separately.³⁵⁹⁸ The Claimants also note that Mr Trunko did not familiarize himself with the billing customs and practices of non-US legal markets involved in his analysis.³⁵⁹⁹

³⁵⁹¹ **RE-51**, Trunko Expert Report, para. 21.

³⁵⁹² **RE-51**, Trunko Expert Report, para. 21.

³⁵⁹³ **RE-51**, Trunko Expert Report, para. 21; Track III Hearing - Direct Presentation John L. Trunko (31 August 2022), Slides 29-31.

³⁵⁹⁴ **RE-51**, Trunko Expert Report, para. 22; **SM C-3**, p. 2852.

³⁵⁹⁵ **RE-51**, Trunko Expert Report, para. 21.

³⁵⁹⁶ **RE-51**, Trunko Expert Report, para. 21; **C-3236**, Chevron’s Guidelines for Outside Counsel, 21 December 2012, para. 2.2.

³⁵⁹⁷ Kent Witness Statement, para. 25; McGrath Expert Report, Appendix 14, para. 208.

³⁵⁹⁸ Track III Hearing Transcript, Day 10 (31 August 2022), p. 2388 (Trunko).

³⁵⁹⁹ Claimants’ Post-Hearing Index, p. 53; Track III Hearing Transcript, Day 10 (31 August 2022), 2388-2389 (Trunko).

2198. The Tribunal is not persuaded that administrative and clerical activities should be excluded from compensation without more. Whether such work – which clearly has value – is already covered by the fees invoiced by lawyers and deemed law firm overhead costs is a matter of local custom and may also be dictated by the circumstances. As rightly noted by the Claimants, it is customary in certain jurisdictions to bill separately for legal fees and administrative work carried out in support of legal work.

2199. Even more to the point, this is a matter regulated by Chevron’s letters of engagement with each law firm, rather than being apt for second-guessing in accordance with a purported global standard. To the extent that Chevron or its subsidiaries agreed to pay separately for administrative and clerical activities, and subjected these bills to the normal processes for scrutiny in accordance with its Billing Guidelines, the Tribunal does not feel that it is required to subject these to further scrutiny for causation and reasonableness.

2200. The Tribunal can conceive of circumstances where the foregoing would still be insufficient to justify an inference of causation and reasonableness. However, having reviewed the examples put forward by Mr Trunko, the Tribunal finds no need to parse out and exclude any particular expenses in connection with this Trunko Element.

2201. Accordingly, the Tribunal is not persuaded that any legal fees and expenses incurred in connection with “Administrative and Clerical Activities” must, as a matter of international law, be excluded from compensation in this case.

vii. (CLA) Alleged Getting Up to Speed and Training / (RES) Getting Up to Speed and Training

2202. Mr Trunko identified approximately USD 2,327,225.94 billed for activities related to orientation, getting up to speed and training of personnel.³⁶⁰⁰ According to Mr Trunko, “[s]uch activities are generally considered to be administrative overhead and non-billable”.³⁶⁰¹ Examples of such entries include “training of new associates joining team”, “training newcomers to doc review team”, “familiarize self with [CaseMap] system in the

³⁶⁰⁰ RE-51, Trunko Expert Report, paras. 24-25, SM C-5, p. 699.

³⁶⁰¹ RE-51, Trunko Expert Report, paras. 24-26.

process”, “reviewed and analyzed background materials in preparation for the review of documents in the Chevron matter” and “attending document review training”.³⁶⁰²

2203. On the other hand, Mr McGrath identified USD 1,089,963 worth of legal fees and expenses for background and/or training activities.³⁶⁰³ He notes, however, that a “significant” number of these legal fees and expenses relate to case-specific training required to use software such as Virtual Case Room, Introspect and VideoSense.³⁶⁰⁴ In Mr McGrath’s opinion, “training required to operate specialized software that is necessary to complete assigned tasks typically qualifies as billable time.”³⁶⁰⁵ The Claimants also consider that case-specific training includes sessions amongst the members of the team regarding new issues or to accommodate particular client requests.³⁶⁰⁶

2204. Both Mr McGrath and Mr Trunko note that, as per Chevron’s Billing Guidelines, time spent by new personnel acquiring background knowledge and training activities is generally deemed to be non-billable.³⁶⁰⁷

2205. In the Tribunal’s view, the element “Getting Up to Speed and Training” is imprecisely delineated and would appear to include a variety of disparate activities.³⁶⁰⁸

2206. First, “Getting Up to Speed and Training” would appear to include instances where a lawyer, already assigned to a matter, must acquaint themselves with a newly emerged aspect of the case. This form of preparation is necessary for the proper defence of a client and therefore amounts to a reasonable mitigation measure. The same rationale holds when the legal team is expanded and newly added lawyers require training to address aspects of a case that were not previously assigned to other lawyers.

³⁶⁰² **RE-51**, Trunko Expert Report, para. 24.

³⁶⁰³ McGrath Expert Report, Appendix 19, para. 268.

³⁶⁰⁴ McGrath Expert Report, Appendix 19, para. 268; Track III Hearing Transcript, Day 10 (31 August 2022), pp. 2457-2462 (Trunko).

³⁶⁰⁵ McGrath Expert Report, Appendix 19, para. 268.

³⁶⁰⁶ Track III Hearing Transcript, Day 10 (31 August 2022), pp 2457-2459 (Trunko).

³⁶⁰⁷ **RE-51**, Trunko Expert Report, para. 24; McGrath Expert Report, Appendix 19, para. 266.

³⁶⁰⁸ *See generally* Track III Hearing Transcript, Day 10 (31 August 2022), pp. 2457-2462 (White/Trunko).

2207. Second, “Getting Up to Speed and Training” would appear to involve the onboarding of a new lawyer brought in to replace a departing colleague who possessed critical institutional knowledge of the case. In the Tribunal’s view, the costs of such onboarding should not be compensated in this case, as they were not directed at mitigating the injury arising from the Respondent’s Treaty breaches; rather, they are an incidental consequence of the continuing operation of a law firm. The Tribunal notes that this is the type of training costs for which Chevron’s Guidelines foresee no compensation.³⁶⁰⁹

2208. Third, “Getting Up to Speed and Training” would also seem to involve training lawyers in the use of specialized software to perform case-related tasks. To the extent it is established that the use of such specialized software is required because of specific and unusual characteristics of an ongoing case, the Tribunal believes that the training in the use of the software would amount to a reasonable mitigation measure and would deserve compensation. By contrast, training in the use of software meant for general use within a law firm is an incidental consequence of the continuing operation of a law firm and should therefore not be compensated.

2209. For these reasons, the Tribunal considers that legal fees and expenses incurred in connection with “Getting Up to Speed and Training” should be excluded from compensation only insofar as they result from the routine, incidental functioning of a law firm, and not when such efforts are necessary to address a newly emerged issue requiring additional personnel, to engage with an unusual or characteristic aspect of the case, or to develop specialized expertise necessary for the effective defence of a client.

viii. Multiple Attendance at Events

2210. Another alleged deficiency identified by Mr Trunko in the billing practices of Claimants’ counsel concerns multiple timekeepers recording time for attending the same event (*e.g.*,

³⁶⁰⁹ See **C-3236**, Chevron Corporation and Affiliate Guidelines for Outside Counsel (CVX-Track III-00017226—CVX-Track III-00017288), 2013, Section 2.1: “. . . Once staffing is agreed upon, changes will not be permitted without advance written approval of the Chevron Managing Attorney. When staffing changes are approved, Chevron will not pay for time spent by the new personnel acquiring basic or background knowledge or training required to support the matter.”

hearings, meetings, conferences) or performing the same task (*e.g.*, reviewing the same document).³⁶¹⁰

2211. As already addressed in Section VIII.G above, concerning the RICO Litigation, the Respondent points to the RICO trial as one example of billing for multiple attendance at events, where 15 to 20 timekeepers were present for each day of the hearing.³⁶¹¹ According to Mr Trunko, several other damages categories were also affected by overstaffing and excessive attendance at events, such as the Donziger 1782, where the Claimants engaged 255 timekeepers, or the Gibraltar Proceedings, where 7 to 9 senior legal practitioners usually attended the hearings.³⁶¹²

2212. As to duplicative activities – where multiple timekeepers billed to review the same pleading or document – Mr Trunko singles out again examples from the RICO Litigation, where nearly 60 timekeepers from Gibson Dunn and Jones Day billed for their review of the Second Circuit’s Opinion of 26 January 2012.³⁶¹³ Mr Trunko also notes that 40 timekeepers from the same law firms reviewed Judge Kaplan’s 14 May 2012 rulings.³⁶¹⁴ However, Mr Trunko clarifies that while he has identified billing for multiple attendance in Exhibits SM D-12, and SM D-13, and duplicative billing in Exhibits SM E-1 and SM E-2, he could not quantify all of the impacted entries due to their large volume.³⁶¹⁵

2213. According to Mr Trunko, clients usually do not pay for more than one person to attend these events “unless there is a demonstrated need for multiple attendees.”³⁶¹⁶ He notes that Chevron’s Billing Guidelines state that the integration of trial teams should be approved in advance, including for any event that might require the attendance of more

³⁶¹⁰ **RE-51**, Trunko Expert Report, paras. 30, 35.

³⁶¹¹ **RE-51**, Trunko Expert Report, para. 31, **SM D-1**.

³⁶¹² See paras. 1831, 1932 above; Rejoinder, paras. 1554-1558; **RE-51**, Trunko Expert Report, paras. 31-34.

³⁶¹³ **RE-51**, Trunko Expert Report, para. 35, citing **SM E-1**; Track III Hearing - Direct Presentation John L. Trunko (31 August 2022), slide 52.

³⁶¹⁴ **RE-51**, Trunko Expert Report, para. 35, citing **SM E-2**; Track III Hearing - Direct Presentation John L. Trunko (31 August 2022), slide 52.

³⁶¹⁵ Trunko Expert Report, paras. 34-35.

³⁶¹⁶ **RE-51**, Trunko Expert Report, para. 30.

than one attorney.³⁶¹⁷ In sum, Mr Trunko considers that “hours that are excessive, redundant or otherwise unnecessary” should be excluded from compensation.³⁶¹⁸

2214. During his cross examination, Mr Trunko accepted that the attendance of multiple timekeepers at the same event could be justified under the circumstances of a particular case, when there is a reason for the participation of “extra lawyers”.³⁶¹⁹ The Claimants’ witness and partner at Gibson & Dunn, Mr Peter Seley, added that for Gibson Dunn’s work in Chevron matters, all timekeepers had to be approved, while if a partner wished to add a new timekeeper to a matter, they were required to explain “the rationale for a new timekeeper, their billing rate, and what their role would be.”³⁶²⁰

2215. As already noted, the Tribunal is prepared to grant a certain level of deference to the Claimants’ decisions as to which specific mitigation measures to undertake in real time, including legal strategy, task allocation and the staffing of their legal teams.³⁶²¹ The Tribunal also considers that the question of how many timekeepers may reasonably be assigned to a given task is inherently case-specific and cannot be addressed in the abstract, much less in the context of a long-running, high-stakes litigation such as the Lago Agrio Litigation and related proceedings.

2216. However, if overstaffing on a particular task is established, the legal fees and expenses charged in connection with such tasks will in principle fail to meet the requirement of reasonableness for the compensation with incidental damages – and, in particular, the requirement that the amounts for which compensation is sought must be reasonable. This is due to the fact that overstaffing signals redundancy and inefficiency in case management, leading to inflated costs.

2217. Accordingly, the Tribunal considers that any legal fees and expenses charged for “Multiple Attendance[s] at Events”, insofar as they were excessive in the circumstances,

³⁶¹⁷ **RE-51**, Trunko Expert Report, para. 30; **C-3236**, Chevron’s Guidelines for Outside Counsel, 21 December 2012, p. 12, para. 4.5.

³⁶¹⁸ Track III Hearing Transcript, Day 10 (31 August 2022), p. 2334 (Trunko).

³⁶¹⁹ Track III Hearing Transcript, Day 10 (31 August 2022), p. 2406 (Trunko).

³⁶²⁰ Seley Witness Statement, para. 21.

³⁶²¹ See para. 341 above.

were not reasonably incurred to mitigate the injury arising from the Respondent's Treaty breaches and thus warrant a reduction in the final amount of compensation.

ix. *(CLA) Alleged Excessively Long Billing Days and Excessive Time / (RES) Excessively Long Billing Days and Excessive Time*

2218. Mr Trunko also identified certain alleged inconsistencies concerning the number of hours billed per day by Claimants' counsel, such as instances where 16 to 24 hours were billed by one timekeeper per day, even on consecutive days.³⁶²² Mr Trunko questions the credibility of these entries with excessive time and concludes that "a series of consecutive long days with little time for sleep, commute, or personal life, suggests inflated time."³⁶²³ Among other examples, Mr Trunko identified: (i) USD 6,238,965.58 billed for days exceeding 16 hours;³⁶²⁴ (ii) USD 1,664,171.46 billed for days exceeding 18 hours;³⁶²⁵ (iii) USD 396,910.25 billed for days exceeding 20 hours;³⁶²⁶ (iv) USD 283,310.93 billed for "consecutive long days";³⁶²⁷ and (v) USD 20,335.12 for a day exceeding 24 hours.³⁶²⁸

2219. Mr McGrath, in turn, asserts that only 10.5 % of the measurable claimed fees, amounting to USD 57.5 million, were billed daily for 12 hours or more.³⁶²⁹ While Mr McGrath recognizes the existence of these entries, he also considers that billing for long days is "common and expected . . . especially in complex litigation proceedings."³⁶³⁰ This is also supported by Mr Ryan, who stated in his expert report that "given the magnitude of the effort undertaken to defend against a massive fraud, a reasonable General Counsel would find that there are surprisingly few instances of excessive hours billed in a given day . . .".³⁶³¹ Similarly, Mr McGrath asserts that the billing information underlying the

³⁶²² **RE-51**, Trunko Expert Report, para. 37; Track III Hearing - Direct Presentation of John L. Trunko, 31 August 2022, slides 54-58.

³⁶²³ **RE-51**, Trunko Expert Report, para. 37.

³⁶²⁴ **RE-51**, Trunko Expert Report, **SM F-1**, p. 199.

³⁶²⁵ **RE-51**, Trunko Expert Report, **SM F-2**, p. 54.

³⁶²⁶ **RE-51**, Trunko Expert Report, **SM F-3**, p. 18.

³⁶²⁷ **RE-51**, Trunko Expert Report, **SM F-4**, p. 11.

³⁶²⁸ **RE-51**, Trunko Expert Report, **SM F-5**, p. 3.

³⁶²⁹ McGrath Expert Report, Appendix 24, para. 322.

³⁶³⁰ McGrath Expert Report, Appendix 24, para. 330.

³⁶³¹ Expert Report of Joseph Ryan, para. 85(b).

Claimants’ damages claims “exhibits a pattern of increased Claimed Amounts coinciding with increased activity in the underlying Damage Categories, often coinciding with key milestones and relevant dates”.³⁶³²

2220. The Tribunal reiterates that it is prepared to grant a certain level of deference to the Claimants’ decisions as to which specific mitigation measures to undertake in real time, including the amount of time individual lawyers should work in a given day.³⁶³³ The Tribunal also considers that the question of how many hours may reasonably be billed in a single day is inherently case-specific and cannot be addressed in the abstract, much less in the context of a long-running, high-stakes litigation such as the Lago Agrio Litigation and other related proceedings.

2221. However, without reaching a definitive conclusion on the extent to which billing deficiencies have been established under the present heading, the Tribunal notes that some of the instances of “Excessively Long Billing Days and Excessive Time” described earlier in this Section – such as billing more than 16 hours per day for consecutive days, or billing more than 20 hours in one day – would suggest, on their face, inflated time. To the extent that similar instances exist in the pool of billing information supporting the Claimants’ claim, and no explanation has been provided for such exceptional billed hours, the Tribunal considers them to be excessive. These may not be regarded as having been reasonably incurred to mitigate the injury arising from the Respondent’s Treaty breaches, and thus warrant a reduction in the final amount of compensation.

x. (CLA) Alleged Double Billing Entries / (RES) Double Billing Entries

2222. In Exhibit SM G, Mr Trunko identifies several entries that appear to have been mistakenly billed twice by Claimants’ counsel on the same days.³⁶³⁴ Following an analysis identifying invoices containing identical data regarding timekeepers, dates, descriptions,

³⁶³² McGrath Expert Report, para. 26(4).

³⁶³³ See para. 341 above.

³⁶³⁴ **RE-51**, Trunko Expert Report, para. 38, **SM G**.

claimed amounts and vendors, Mr McGrath also acknowledges the existence of “potentially duplicate entries” totalling USD 167,600.³⁶³⁵

2223. Whether arising from error or intent, charging twice for the same substantive item constitutes an unjustifiable billing practice. Accordingly, any legal fees and expenses reflecting double billing would fail to meet the requirement of reasonableness for the compensation of incidental damages under international law and must be excluded from compensation. For the avoidance of doubt, the Tribunal confirms that the legitimate original charges, prior to the duplicate billing, remain eligible for compensation.

2. The Impact of the Trunko Elements on the Tribunal’s Assessment of Incidental Damages

2224. In the preceding section, the Tribunal has addressed the extent to which the billing deficiencies identified as Trunko Elements, if established, would affect the final amount of compensation. In this section, the Tribunal shall determine the extent to which such billing deficiencies have in fact been established and the impact, if any, of such determination on the final amount of compensation.

2225. Before turning to such analysis, the Tribunal must recall that when addressing each of the 13 damages categories and corresponding components comprising legal fees and expenses earlier in this Award, it deferred its determination of multiple questions to this Section.³⁶³⁶ The Tribunal’s determinations in the preceding Section have disposed of several of those questions. In particular, the Tribunal has determined that all legal fees and expenses relating to “Activities relating to Media and Public Relations”,³⁶³⁷ “Government Relations (including but not limited to USTR)”,³⁶³⁸ and “Nondefense-Related Activities”³⁶³⁹ must be excluded from compensation. Accordingly, all

³⁶³⁵ McGrath Expert Report, Appendix 5, para. 69.

³⁶³⁶ See paras. 660, 662, 686, 695, 701, 713, 716, 726, 730, 770, 830, 870, 871, 926, 928, 930, 947, 1039, 1124, 1484, 1486, 1492, 1495, 1498, 1500, 1504, 1832, 1933, 1979 above.

³⁶³⁷ See para. 2169 above.

³⁶³⁸ See para. 2176 above.

³⁶³⁹ See para. 2180 above.

components and other sets of legal fees and expenses corresponding to those activities still pending determination must also be excluded from compensation.³⁶⁴⁰

2226. In turn, the Tribunal notes that multiple other issues arising in connection with the Trunko Elements have already been addressed and decided earlier in this Award. For instance, in Section VIII.G above, concerning the RICO Litigation, the Tribunal decided to exclude all fees and costs incurred by the Claimants in relation to Chevron’s ethics complaint against New York State Comptroller Mr Thomas DiNapoli.³⁶⁴¹ Work performed in connection with such ethics complaint was also identified by Mr Trunko as falling under the element “Government Relations (including but not limited to USTR)”.³⁶⁴² Also by way of example, the Tribunal has declined to award any compensation for the damages category “General Defence”, which encompasses legal fees and expenses corresponding, among others, to public relations work.³⁶⁴³

2227. In light of the foregoing, the Tribunal’s ensuing analysis shall be confined to cross-cutting issues which remain unresolved.

2228. In order to evaluate the extent to which the multiple billing deficiencies categorised as Trunko Elements have been established by the Respondent, the Tribunal shall apply the methodology for the assessment of the Claimants’ claims for incidental damages set out in Section VII.G.5 above.

2229. As there noted by the Tribunal, the Claimants are not required to prove their damages with absolute precision: it is sufficient for the Claimants to show that it is more likely than not that they suffered the damages they claim and that such damages are not speculative or uncertain. By the same token, the Tribunal is only required to exercise reasonable precision in the assessment of damages, particularly if achieving absolute

³⁶⁴⁰ See paras. 660, 662, 713, 716, 726, 830, 870, 872(iv), 926, 928, 930, 947, 971, 974(iii), 974(iv), 974(v), 1039, 1040(v), 1124, 1125(iv) 1492, 1523(xi), 1979 above.

³⁶⁴¹ See para. 1348 above.

³⁶⁴² See para. 2172 above.

³⁶⁴³ See para. 1979 above.

precision would be disproportionately burdensome when compared with the margin of error.³⁶⁴⁴

2230. In this case, the Tribunal is also constrained to apply reasonable precision in assessing the extent to which the billing deficiencies identified as Trunko Elements are present in the billing information supporting the Claimants' damages claims. It notes in particular the following difficulties:

- (i) In view of the large volume of billing data, the Parties' experts themselves were unable to identify in a precise manner all time entries affected by billing deficiencies.³⁶⁴⁵
- (ii) As already explained, some of these billing deficiencies require a contextual analysis to determine whether the underlying legal fees and expenses should actually be excluded from compensation.³⁶⁴⁶
- (iii) Multiple entries are simultaneously impacted by different billing deficiencies, generating a risk of double deduction. This overlap was acknowledged by Mr Trunko at the Track III Hearing, where he noted that some time entries might appear in more than one category of the billing deficiencies identified as Trunko Elements.³⁶⁴⁷
- (iv) Earlier in this Award, the Tribunal has excluded from compensation multiple damages categories, components and other sets of legal fees and expenses. The Tribunal is not equipped to ascertain the precise extent to which the pool of billing information supporting the Claimants' surviving claims presents the billing deficiencies identified as Trunko Elements.

³⁶⁴⁴ See para. 548 above.

³⁶⁴⁵ See, e.g., McGrath Expert Report, Appendix 5, para. 70: "I was unable to determine whether these time entries were in fact duplicative." **RE-51**, Trunko Expert Report, para. 34: "The identification of multiple attendance at conferences and meetings is made difficult in this case by time constraints and the sheer volume of the entries and the number of firms involved. Billing for multiple attendance at conferences and meetings is so pervasive that we were not able to quantify all of it."

³⁶⁴⁶ See, e.g., paras. 2188, 2206-2208, 2215, 2220 above.

³⁶⁴⁷ Track III Hearing Transcript, Day 10 (31 August 2022), pp. 2410-2413 (Trunko). See also Track III Hearing – Claimants' Closing Presentation, Slide 162.

2231. In spite of these difficulties, the Tribunal is persuaded, upon a global review of the evidence in the record, that each of the billing deficiencies identified as Trunko Elements is present to varying extents in the billing data supporting the Claimants' damages claims relating to legal fees and expenses. It is also persuaded that the prevalence of such deficiencies is material. This circumstance introduces a degree of uncertainty as to the extent to which the Claimants' surviving claims for damages satisfy the requirements of causation and reasonableness for the compensation of incidental damages under international law. For the reasons stated in the preceding Section in respect of each of the Trunko Elements, the existence and pervasiveness of such deficiencies must result some form of reduction in the final amount of compensation.³⁶⁴⁸

2232. Mr Trunko proposes that the Tribunal apply a global percentage reduction to the final amount of compensation to account for these pervasive billing deficiencies.³⁶⁴⁹ He states that U.S. case law supports an across-the-board percentage approach.³⁶⁵⁰

2233. For instance, Mr Trunko cites to *Benihana v. Benihana of Tokyo*, a case in which the SDNY addressed a request to recover the fees and costs the plaintiff reasonably incurred in attempting to enforce a permanent injunction.³⁶⁵¹ To determine a reasonable attorneys' fee, the court used the "lodestar approach, in which the court determines a 'presumptively reasonable fee' by calculating the number of hours reasonably expended by counsel on the litigation and multiplies that number of hours by a reasonable hourly rate."³⁶⁵² In turn, as part of the process of determining whether the hours expended by counsel were reasonable, the SDNY noted that "[w]here it is difficult to make line-item reductions that adjust for excessive billing, 'the court has discretion simply to deduct a reasonable percentage of the number of hours claimed as a practical means of trimming fat from a fee application.'"³⁶⁵³ The SDNY also noted that "[f]ee reductions around 30% are . . .

³⁶⁴⁸ See paras. 2169, 2176, 2180, 2188, 2193, 2209, 2217, 2221 above.

³⁶⁴⁹ Track III Hearing Transcript, Day 10 (31 August 2022), p. 2413 (Trunko).

³⁶⁵⁰ Track III Hearing - Direct Presentation of John L. Trunko (31 August 2022), Slide 60.

³⁶⁵¹ **RE-61**, Second Leigh Expert Report, **MHL-263**, *Benihana, Inc. v. Benihana of Tokyo, LLC*, No. 15-cv-7428 (PAE), 2017 U.S. Dist. LEXIS 211047, p. 1.

³⁶⁵² **RE-61**, Second Leigh Expert Report, **MHL-263**, *Benihana, Inc. v. Benihana of Tokyo, LLC*, No. 15-cv-7428 (PAE), 2017 U.S. Dist. LEXIS 211047, p. 6.

³⁶⁵³ **RE-61**, Second Leigh Expert Report, **MHL-263**, *Benihana, Inc. v. Benihana of Tokyo, LLC*, No. 15-cv-7428 (PAE), 2017 U.S. Dist. LEXIS 211047, p. 8.

common in this District to reflect considerations of whether work performed was necessary, leanly staffed, or properly billed.”³⁶⁵⁴ Other U.S. precedent on record supports the same approach when applying the lodestar method.³⁶⁵⁵

2234. The Tribunal takes care to note that the lodestar approach – originally devised to determine reasonable attorney’s fees in U.S. litigation – is not applicable as such to the determination of the Claimants’ claims for the reimbursement of legal fees and expenses as incidental damages. However, the Tribunal observes that the application by U.S. courts of percentage reductions to claims for attorney’s fees is applied in a discretionary manner and is rooted, fundamentally, in considerations of practical necessity. In particular, percentage reductions appear to be applied when applying line-item reductions is difficult, or when the time entries under scrutiny are too numerous.

2235. As already explained, the Tribunal faces these same challenges in this case. In turn, given the impracticability of a line-by-line review of each claimed cost owing to the sheer volume of billing information, the Parties have agreed that the Tribunal may adopt a practical approach to the determination of damages.³⁶⁵⁶

2236. Accordingly, the Tribunal determines, in the exercise of its broad discretion on all evidentiary matters under Article 25(6) of the UNCITRAL Arbitration Rules, that it shall apply a 15% reduction to the global amount of compensation resulting from the application of the Tribunal’s rulings on each of the 13 damages categories comprising legal fees and expenses.³⁶⁵⁷

³⁶⁵⁴ **RE-61**, Second Leigh Expert Report, **MHL-263**, *Benihana, Inc. v. Benihana of Tokyo, LLC*, No. 15-cv-7428 (PAE), 2017 U.S. Dist. LEXIS 211047, p. 20.

³⁶⁵⁵ See, e.g., **R-2135**, *Charles v. Seinfeld*, S.D.N.Y. Case 1:18-cv-01196-AJN, D.E.162, Memorandum Opinion & Order (25 March 2022), p. 13: “The Court has broad authority to make across-the-board percentage cuts in hours, as opposed to an item-by-item approach, to arrive at the reasonable hours expended . . . Courts in this district have applied percentage reductions of up to fifty percent to address overbilling issues, driven by case and billing specifics”; **RE-61**, Second Leigh Expert Report, **MHL-265**, *Essex Builders Grp., Inc. v. Amerisure Ins. Co.*, No. 6:04-cv-1838-Orl-22jGG, 2007 U.S. Dist. LEXIS 104118, p. 6: “The Court finds that the use of multiple law firms resulted in duplication of effort and excessive billings. As the redundant time entries are so numerous so as to make an itemization impractical, the Court will deduct an additional 30% from the fees sought.”

³⁶⁵⁶ See paras. 533, 535, 546-547 above.

³⁶⁵⁷ See Section VIII.O.2 below.

2237. In ascertaining the appropriate percentage reduction to be applied, the Tribunal has taken into account, *inter alia*, the following factors:

- (i) Mr Trunko identified a total of USD 159,262,215.40 in fees potentially affected by billing deficiencies, comprising approximately 20% of the total amount of legal fees and expenses for which the Claimants seek reimbursement (approximately USD 793 million).³⁶⁵⁸ He did not suggest, however, that this entire amount should be excluded from compensation.³⁶⁵⁹
- (ii) A significant portion of the amount identified in the preceding sub-paragraph concerns legal fees and expenses that have been addressed earlier in this Award – including, for example, the Cash Calls or the legal fees and expenses charged by Arslanian & Asociados in the context of the Argentina Enforcement Proceedings.³⁶⁶⁰
- (iii) After identifying and addressing potential errors in Mr Trunko’s analysis, including the potential duplication of invoices across multiple categories of billing deficiencies, the Claimants suggested that the maximum amount of fee entries that could be questioned if Mr Trunko’s approach was applied properly amounts to approximately USD 56.2 million, *i.e.*, approximately 7% of the Claimants’ overall claim for legal fees and expenses as damages.³⁶⁶¹
- (iv) As already explained, the onus is on the Claimants to prove every element of their damages claim.³⁶⁶² By failing to remove the uncertainty surrounding the existence of billing deficiencies in the evidence supporting their surviving incidental damages claims, they have also failed – to a certain extent – to meet their evidentiary burden.
- (v) The 15% percentage reduction that shall be applied by the Tribunal does not only account for the existence of deficiencies in the billing records supporting the

³⁶⁵⁸ Track III Hearing – Respondent’s Closing Presentation (7 September 2022), Slide 191.

³⁶⁵⁹ Track III Hearing Transcript, Day 10 (31 August 2022), p. 2334 (White/Trunko).

³⁶⁶⁰ See paras. 828, 2146 above.

³⁶⁶¹ Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3489-3494 (Kehoe); Track III Hearing – Claimants’ Closing Presentation, Slide 162.

³⁶⁶² See para. 548 above.

Claimants' surviving damages claims. It also incorporates a margin of error intended to account for potential inaccuracies or inconsistencies in the Tribunal's global assessment of incidental damages. The Tribunal considers this margin necessary in light of the complexity of the evaluations undertaken earlier in this Award and the practical difficulties involved in calculating the final amount of compensation for incidental damages using the Parties' Damages Models, as further explained below.³⁶⁶³

4. Conclusion on Cross-Cutting Elements

2238. For the foregoing reasons, the Tribunal:

- (i)** Determines that Chevron, the First Claimant, paid all legal fees and expenses underlying the Claimants' damages claims in this Arbitration;
- (ii)** Determines that Texaco Petroleum Company, the Second Claimant, is not entitled to any compensation in respect of the Claimants' claims for damages relating to legal fees and expenses;
- (iii)** Determines that, when inserting a cut-off date in the Parties' Damages Models for the compensation of a particular category or component of damages, the Tribunal shall (1) set the Parties' Damages Models to apply date range limitations based on the date of the underlying invoices; and (2) set a date 30 days subsequent to the actual cut-off date to account for the delay between the rendering of a service and the date on which the corresponding invoice was issued;
- (iv)** Rejects the Respondent's objection in respect of the element "King & Spalding/Three Crowns Amounts Claimed as Damages";
- (v)** Excludes from compensation (1) 100% of the legal fees and expenses corresponding to services rendered by the Ecuador Legal Team before 14 February 2011; and (2) 50% the legal fees and expenses corresponding to services rendered by the Ecuador Legal Team after 14 February 2011;

³⁶⁶³ See Section VIII.O below.

- (vi) Excludes from compensation all legal fees and expenses corresponding to components and other matters identified in paragraph 2225 above; and
- (vii) Determines that it shall apply a 15% percentage reduction to the global amount of compensation resulting from the application of the Tribunal's rulings on each of the 13 damages categories comprising legal fees and expenses.

* * *

O. GLOBAL CONCLUSIONS ON THE CLAIMANTS’ DAMAGES CLAIMS CONCERNING LEGAL FEES AND EXPENSES

2239. Sections VIII.A-VIII.M above set out the Tribunal’s conclusions on the first and second steps of its methodology for the assessment of incidental damages in this case described in Section VII.G.5 above, namely, its determinations on whether each of the 13 damages categories comprising fees and expenses at issue in Track III, as well as the components and other issues falling thereunder, meet the requirements of causation and reasonableness for the compensation of incidental damages under international law. In turn, Section VIII.N above concerns the third step of the Tribunal’s methodology: its assessment and determinations on certain cross-cutting elements impacting multiple categories of incidental damages.

2240. This Section addresses the fourth and final step of the Tribunal’s methodology for the assessment of incidental damages in this case. Here, the Tribunal shall convert its earlier substantive determinations on the 13 damages categories concerning legal fees and expenses, as well as on cross-cutting elements impacting multiple categories, into a quantitative result, representing the principal amount of compensation due to Chevron in respect of those damages categories.

2241. In performing this assessment, the Tribunal shall draw guidance from the Damages Models provided by the Parties and their experts. As already explained, by its Procedural Order No. 83 the Tribunal directed the Parties to submit a joint damages model for the calculation of damages and interest. Among other things, the Parties were requested to include certain “switches” in the joint model to enable the Tribunal to set parameters for the calculation of the amount of compensation.³⁶⁶⁴

2242. Ultimately, however, the Parties were unable to agree upon a joint model. Each side submitted instead a model prepared on the basis of the Tribunal’s instructions set out in Procedural Order No. 83, with accompanying disclaimers and video tutorials (as previously defined, the “**Claimants’ Damages Model**” and the “**Respondent’s Damages Model**”).³⁶⁶⁵ As foreseen under paragraph 5 of Procedural Order No. 83, starting on

³⁶⁶⁴ See para. 543 above.

³⁶⁶⁵ See para. 544 above.

2 November 2022 the Parties filed monthly updates of their Damages Models. The last versions of the Damages Models were filed by the Claimants on 14 October 2025 and by the Respondent on 15 October 2025. In conducting its analysis, the Tribunal shall take into account the latest version of each side's Damages Model.

2243. The Tribunal will proceed with its calculation as follows: first, in Section 1 below, the Tribunal will, for ease of reference, restate its determinations for each of the 13 damages categories and cross-cutting elements addressed in Sections VIII.A-VIII.N above. In Section 2, the Tribunal will incorporate each of these determinations into the Damages Models in order to calculate Chevron's damages. In doing so, the Tribunal will consider the Parties' submissions on the Damages Models, as well as the requirements set forth in Procedural Order No. 83. Lastly, in Section VIII.O.3, the Tribunal will summarize its calculations, address the existing discrepancies between the methodology and output of the Damages Models, and determine the final amount of compensation due in connection with the Claimants' damages claims concerning legal fees and expenses.

2244. For the avoidance of doubt, the Tribunal recalls that its determinations in this Section do not concern the Claimants' claims in respect of the damages categories Embargo Losses in Argentina, Intellectual Property Losses in Ecuador, and Moral Damages. Such categories are addressed separately in Section IX below. In turn, the interest applicable to the principal amount of compensation due to Chevron is determined in Section X below.

1. The Tribunal's Earlier Determinations on the Claimants' Damages Claims concerning Legal Fees and Expenses

(a) Conclusions on Lago Agrio Litigation

2245. Paragraph 739 above provides:

For the foregoing reasons, the Tribunal:

- (i)* Declines to exclude from compensation the Lago Agrio Litigation category of damages as a whole;
- (ii)* Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Lago Agrio Litigation corresponding to services rendered before 14 February 2011;
- (iii)* Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Lago Agrio Litigation corresponding to

services provided by the firm Benjamin Ortiz Brennan, and otherwise defers its determination regarding the compensation of the legal fees and expenses corresponding to the component “PR Firms (Creative Response Concepts; Benjamin Ortiz Brennan)”, as well as the legal fees and expenses identified in paragraph 661 above, to its analysis of cross-cutting elements set out in Section VIII.N below;

- (iv) Excludes from compensation 50% of the legal fees and expenses charged by all relevant experts and vendors after 14 February 2011 (GSI Environmental Inc.; AMEC Geomatrix; CH2M Hill; Cardno Entrix; URS Corporation; Newfields Companies LLC; Ellis GeoSpatial; Exponent, Inc.; Gus R Lesnevich Inc; RICOH USA Inc/Formerly IKON; Autonomy – Introspect; Integrated Science & Technology, Inc.; Harris Corp Government Communication System; Di Paolo Consulting; Fernando Morales; Hargis + Associates, Inc.; Jan Paulsson (billed through Freshfields); Adrian Briggs; Audio Forensic Center; Aninat Schwencke y Cia, Ltda; Pedro J. Alvarez; and Guthrie T. Abbott);
- (v) Excludes from compensation 60% of the legal fees and expenses corresponding to the component “Lago Agrio WestLaw/Lexis charges”;
- (vi) Defers its determination regarding the compensation of the legal fees and expenses corresponding to the component “(CLA) Lago Agrio fees and costs allegedly relating to administrative and clerical activities / (RES) Lago Agrio fees and costs relating to administrative and clerical activities” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (vii) Defers its determination regarding the compensation of the legal fees and expenses charged by the “Ecuador Legal Team” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (viii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Lago Agrio Litigation corresponding to services provided by the firms Rivero Mestre LLP, Gardere Wynne Sewell LLP, Holland & Knight, Boies Schiller & Flexner, Covington & Burling, and Stern Kilcullen & Ruffolo;
- (ix) Defers its determination regarding the compensation of the legal fees and expenses identified in paragraphs 695, 712, 714, 725, and 727 above (except as provided in paragraphs 715 and 729 above) to its analysis of cross-cutting elements set out in Section VIII.N below;
- (x) Defers its determination regarding the compensation of the legal fees and expenses identified in paragraph 715 above to its analysis of the Criminal Proceedings category of damages in Section VIII.K below;
- (xi) Excludes from compensation USD 8,697.07 of the fees incurred by the Claimants in connection with the Lago Agrio Litigation corresponding to services provided by Dr Santiago Andrade Ubidia;
- (xii) On account of the Tribunal’s conclusions regarding the but-for scenario, set out in paragraphs 731-738 above, deducts from the global amount of compensation to be awarded to the Claimants for damages arising from the Respondent’s Treaty breaches an amount equal to (1) 60% of the total fees

and expenses charged by the “Ecuador Legal Team” after 14 February 2011; (2) 15% of the legal fees and expenses incurred by the Claimants after 14 February 2011 corresponding to services provided by Jones Day; and (3) 35% of the legal fees and expenses charged, after 14 February 2011, by GSI Environmental Inc.; AMEC Geomatrix; CH2M Hill; Cardno Entrix; URS Corporation; Newfields Companies LLC; Ellis GeoSpatial; Exponent, Inc.; Gus R Lesnevich Inc; RICOH USA Inc/Formerly IKON; Autonomy – Introspect; Integrated Science & Technology, Inc.; Harris Corp Government Communication System; Di Paolo Consulting; Fernando Morales; Hargis + Associates, Inc.; Jan Paulsson (billed through Freshfields); Adrian Briggs; Audio Forensic Center; Aninat Schwencke y Cia, Ltda; Pedro J. Alvarez; and Guthrie T. Abbott;

- (xiii) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Lago Agrio Litigation, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below; and
- (xiv) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Lago Agrio Litigation. The Tribunal will determine the exact amount of compensation corresponding to the Lago Agrio Litigation in Section VIII.O below.

(b) *Conclusions on Ecuador Enforcement Proceedings*

2246.Paragraph 778 above provides:

For the foregoing reasons, the Tribunal:

- (i) Declines to exclude from compensation the Ecuador Enforcement Proceedings category of damages as a whole;
- (ii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Ecuador Enforcement Proceedings corresponding to services rendered before 14 February 2011;
- (iii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Ecuador Enforcement Proceedings corresponding to services provided by the firms Holland & Knight, Gardere Wynne Sewell LLP, Gibson, Dunn & Crutcher LLP, Boies Schiller & Flexner LLP, Mateha Associates Corp., Stern Kilcullen & Rufolo LLC and Asesorias Bofill Escobar;
- (iv) Defers its determination regarding the compensation of the legal fees and expenses charged by the “Ecuador Legal Team” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (v) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Ecuador Enforcement Proceedings, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below; and

- (vi) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Ecuador Enforcement Proceedings. The Tribunal will determine the exact amount of compensation corresponding to the Ecuador Enforcement Proceedings in Section VIII.O below.

(c) *Conclusions on Argentina Enforcement Proceedings*

2247.Paragraph 872 above provides:

For the foregoing reasons, the Tribunal:

- (i) Declines to exclude from compensation the Argentina Enforcement Proceedings category of damages as a whole;
- (ii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Argentina Enforcement Proceedings corresponding to services rendered before 14 February 2011;
- (iii) Excludes from compensation 95% of the fees charged by Arslanian & Asociados;
- (iv) Defers its determination regarding the compensation of the legal fees and expenses corresponding to the component “(CLA) Fees solely related to media and public relations / (RES) Fees for media and public relations” to its analysis of cross-cutting elements set out in Section VIII.N below; and
- (v) Excludes from compensation 66% of the legal fees and expenses corresponding to the component “(CLA) Fees incurred solely for monitoring service, dockets, and service refusal activities / (RES) Fees for monitoring service, dockets, and service refusal activities”;
- (vi) Excludes from compensation 100% of the legal fees and expenses corresponding to the component “(CLA) Fees incurred solely in connection with the challenge to the LAPs’ *in forma pauperis* status / (RES) Fees incurred in connection with the challenge to the LAPs’ *in forma pauperis* status”;
- (vii) Excludes from compensation 100% of the legal fees and expenses corresponding to the component “Fees incurred in carrying out activities alleged to be prohibited under Argentine law”;
- (viii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Argentina Enforcement Proceedings corresponding to services provided by the firms King & Spalding, Boies Schiller & Flexner LLP, Asesorias Bofill Escobar, Stern Kilcullen & Rufolo LLC, Gardere Wynne Sewell LLP, Rivero Mestre LLP, Holland & Knight, and Covington & Burling LLP;
- (ix) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Argentina Enforcement Proceedings, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below; and

- (x) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Argentina Enforcement Proceedings. The Tribunal will determine the exact amount of compensation corresponding to the Argentina Enforcement Proceedings in Section VIII.O below

(d) *Conclusions on Brazil Recognition Proceedings*

2248.Paragraph 974 above provides:

For the foregoing reasons, the Tribunal:

- (i) Declines to exclude from compensation the Brazil Recognition Proceedings category of damages as a whole;
- (ii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Brazil Recognition Proceedings corresponding to services rendered before 14 February 2011;
- (iii) Defers its determination regarding the compensation of the legal fees and expenses corresponding to the component “Media and public relations” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (iv) Defers its determination regarding the compensation of the legal fees and expenses corresponding to the component “Government relations” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (v) Defers its determination regarding the compensation of the legal fees and expenses corresponding to the component “Amounts billed by the Mattos Firms under the matters ‘Ecuador Decision-PGPA [Policy, Government, and Public Affairs]’ and ‘Relações Governamentais [Governmental Relations]’” to its analysis of cross-cutting elements set out in Section VIII.N below;
- (vi) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Brazil Recognition Proceedings corresponding to services provided by the firms Boies Schiller & Flexner LLP; King & Spalding; Asesorias Bofill Escobar; Holland & Knight; Stern Kilcullen & Rufolo LLC; and Covington & Burling LLP;
- (vii) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Brazil Recognition Proceedings, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below; and
- (viii) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Brazil Recognition Proceedings. The Tribunal will determine the exact amount of compensation corresponding to the Brazil Recognition Proceedings in Section VIII.O below.

(e) Conclusions on Canada Enforcement Proceedings

2249.Paragraph 1040 above provides:

For the foregoing reasons, the Tribunal:

- (i)* Declines to exclude from compensation the Canada Enforcement Proceedings category of damages as a whole;
- (ii)* Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Canada Enforcement Proceedings corresponding to services rendered before 14 February 2011;
- (iii)* Excludes from compensation the amount awarded by Canadian courts, excluding any adjustments (*i.e.*, CAD 375,000 [or (*i.e.*, USD 209,734.30)]),³⁶⁶⁶
- (iv)* Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Canada Enforcement Proceedings corresponding to services provided by the firms Stern Kilcullen & Rufolo LLC; Jones Day; Boies Schiller & Flexner LLP; Gardere Wynne Sewell LLP; and Covington & Burling LLP;
- (v)* Defers its determination regarding the compensation of the legal fees and expenses identified in paragraph 1039 above to its analysis of cross-cutting elements set out in Section VIII.N below;
- (vi)* Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Canada Enforcement Proceedings, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below; and
- (vii)* Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Canada Enforcement Proceedings. The Tribunal will determine the exact amount of compensation corresponding to the Canada Enforcement Proceedings in Section VIII.O below.

(f) Conclusions on Costs of Planning Against Potential Enforcement in Other Jurisdictions

2250.Paragraph 1125 above provides:

For the foregoing reasons, the Tribunal:

- (i)* Declines to exclude from compensation the Costs of Planning Against Potential Enforcement in Other Jurisdictions category of damages as a whole;

³⁶⁶⁶ Conversion made using ofx.com. Currency conversions made as of date of relevant orders by the Canadian courts.

- (ii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants under this category corresponding to services rendered before 14 February 2011;
- (iii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants under this category corresponding to services provided by the firms Boies Schiller & Flexner LLP; Gardere Wynne Sewell LLP; Rivero Mestre LLP; King & Spalding; Covington & Burling LLP; Three Crowns LLP; Holland & Knight; Medellin Martinez & Duran Abogados SAS; De Castro & Robles; and Macleod Dixon SC;
- (iv) Defers its determination regarding the compensation of the legal fees and expenses identified in paragraphs 1122 to 1124 above to its analysis of cross-cutting elements set out in Section VIII.N below;
- (v) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Costs of Planning Against Potential Enforcement in Other Jurisdictions category of damages, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below; and
- (vi) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Costs of Planning Against Potential Enforcement in Other Jurisdictions category of damages. The Tribunal will determine the exact amount of compensation corresponding to the Costs of Planning Against Potential Enforcement in Other Jurisdictions category in Section VIII.O below.

(g) *Conclusions on RICO Litigation*

2251.Paragraph 1523 above provides:

For the foregoing reasons, the Tribunal, subject to co-arbitrator Horacio A. Grigera Naon's separate dissenting opinion:

- (i) Declines to exclude from compensation the RICO Litigation category of damages as a whole;
- (ii) Excludes from compensation 85% of the total amount claimed by the Claimants in connection with the RICO Litigation, without prejudice to the exclusion from compensation of additional legal fees and expenses as set out in this paragraph;
- (iii) Excludes from compensation any costs Chevron has collected or may in the future collect in the RICO Litigation, including USD 150,000 collected by Chevron pursuant to the SDNY's Order of 28 February 2018 (*see* paragraphs 1328-1329 above);
- (iv) Excludes from compensation all legal fees and expenses corresponding to the component "Work related to bringing a Complaint Against NY State Comptroller DiNapoli";

- (v) Excludes from compensation all legal fees and expenses corresponding to the component “Work related to opposing John Keker’s *pro hac vice* application”;
- (vi) Excludes from compensation all legal fees and expenses corresponding to the component “(CLA) Work related solely to the Second Amended Complaint / (RES) Work related to the Second Amended Complaint”;
- (vii) Excludes from compensation all legal fees and expenses corresponding to the component “(CLA) Work relating solely to Unjust Enrichment / (RES) Work relating to Unjust Enrichment” corresponding to services rendered after 14 May 2012;
- (viii) Excludes from compensation all fees and expenses incurred by the Claimants in connection with the RICO Litigation corresponding to services rendered before 14 February 2011;
- (ix) Excludes from compensation all fees and expenses incurred by the Claimants in connection with the RICO Litigation corresponding to services provided by the firms Boies Schiller & Flexner LLP, Rivero Mestre LLP, Kobre & Kim LLP, Covington & Burling LLP, Stern Kilcullen & Ruffolo LLC, Gardere Wynne Sewell LLP, Three Crowns LLP, Asesorias Bofill Escobar, and Kroll Associates;
- (x) Declares that any sums collected by Chevron in connection with the *Amazonia* Damages Judgments shall be deducted from compensation;
- (xi) Defers its determination of the amount of compensation corresponding to the activities identified in paragraphs 1484, 1486, 1492, 1495, 1498, 1500 and 1504 above to its analysis of cross-cutting elements set out in Section VIII.N below;
- (xii) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the RICO Litigation category of damages, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below; and
- (xiii) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the RICO Litigation category of damages. The Tribunal will determine the exact amount of compensation corresponding to the RICO Litigation category in Section VIII.O below.

(h) *Conclusions on Section 1782 Proceedings*

2252.Paragraph 1833 above provides:

For the foregoing reasons, the Tribunal:

- (i) Declines to exclude from compensation the Section 1782 Proceedings category of damages as a whole;
- (ii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Section 1782 Proceedings corresponding to services rendered before 14 February 2011;

- (iii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Affirmative 1782s, except for those they incurred in connection with (1) the Banco Pichincha 1782 between 14 February 2011 and 31 July 2013; (2) the Berlinger 1782 after 14 February 2011; (3) the Bonifaz 1782 between 14 February 2011 and 31 May 2011; (4) the Donziger 1782 between 14 February 2011 and 31 July 2013; (5) the E-Tech/Powers 1782 between 14 February 2011 and 30 April 2012; (6) the Page 1782 between 14 February 2011 and 28 February 2016; (7) the Rourke 1782 between 14 February 2011 and 31 December 2011; (8) the Stratus 1782 between 14 February 2011 and 31 January 2013; (9) the UBR 1782 after 14 February 2011; (10) the Weinberg 1782 between 14 February 2011 and 31 October 2012; and (11) the Wray 1782 between 14 February 2011 and 31 August 2013;
- (iv) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Defensive 1782s;
- (v) Excludes from compensation 90% of all legal fees and expenses incurred by the Claimants in connection with General 1782 Work after 14 February 2011;
- (vi) Excludes from compensation 100% of the legal fees and expenses corresponding to the component “(CLA) Work related solely to pursuing sanctions against the LAPs’ law firms / (RES) Pursuing sanctions against the LAPs’ law firms”;
- (vii) Excludes from compensation 100% of the legal fees and expenses corresponding to the component “(CLA) Fees and costs billed by Rivero Mestre and Covington & Burling in connection with their representation of Perez and Veiga (Rivero Mestre and Covington & Burling) / (RES) Fees and costs billed by Perez and Veiga’s law firms (Rivero Mestre and Covington & Burling)”;
- (viii) Defers its determination regarding the compensation of the legal fees and expenses identified at para. 1831 above to its analysis of cross-cutting elements set out in Section VIII.N below;
- (ix) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Section 1782 Proceedings, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below; and
- (x) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Section 1782 Proceedings. The Tribunal will determine the exact amount of compensation corresponding to the Section 1782 Proceedings in Section VIII.O below.

(i) *Conclusions on Gibraltar Proceedings*

2253.Paragraph 1936 above provides:

For the foregoing reasons, the Tribunal:

- (i) Declines to exclude from compensation the Gibraltar Proceedings category of damages as a whole;
- (ii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Gibraltar Proceedings corresponding to services rendered before 14 February 2011;
- (iii) Excludes from compensation 100% of the legal fees and expenses incurred by the Claimants in connection with the Gibraltar Proceedings corresponding to services provided by the firms Stern Kilcullen & Ruffolo LLC, Three Crowns LLP, Covington & Burling LLP, and Holland & Knight;
- (iv) Excludes from compensation 90% of the legal fees and expenses corresponding to the component “Fees and expenses related to work in non-Gibraltar jurisdictions or to Complaints that were never filed”;
- (v) Excludes from compensation 75% of the legal fees and expenses corresponding to the component “(CLA) Fees and expenses from Kobre & Kim allegedly related to global oversight / (RES) Fees and expenses from Kobre & Kim related to global oversight”;
- (vi) Excludes from compensation the costs effectively collected by Chevron in connection with the *DeLeon* and *Amazonia* Actions (*i.e.*, USD 27,395);
- (vii) Defers its determination regarding the compensation of the legal fees and expenses identified in paragraphs 1932-1933 above to its analysis of cross-cutting elements set out in Section VIII.N below;
- (viii) Defers its final determination on the reasonableness of the amounts claimed by the Claimants in connection with the Gibraltar Proceedings, to the extent not already addressed in this Section, to its analysis of cross-cutting elements set out in Section VIII.N below; and
- (ix) Grants compensation for incidental damages for all other fees and expenses claimed by the Claimants in connection with the Gibraltar Proceedings. The Tribunal will determine the exact amount of compensation corresponding to the Gibraltar Proceedings in Section VIII.O below.

(j) *Conclusions on General Defence*

2254.Paragraph 1980 above provides:

In sum, for the above reasons, the Tribunal rejects the Claimants’ damages claim in respect of the General Defence category of damages.

(k) *Conclusions on Criminal Proceedings*

2255.Paragraph 2001 above provides:

In sum, for the above reasons, the Tribunal rejects the Claimants’ damages claim in respect of the Criminal Proceedings.

(l) Conclusions on Dutch Set-Aside Proceedings

2256.Paragraph 2030 above provides:

Accordingly, for the foregoing reasons, the Tribunal rejects the Claimants' damages claim in respect of the Dutch Set-Aside Proceedings.

(m) Conclusions on Treaty Arbitration Costs Incurred by Non-Counsel of Record

2257.Paragraph 2052 above provides:

In sum, for the above reasons, the Tribunal (i) rejects the Claimants' damages claim in respect of the category "Treaty Arbitration Costs Incurred by Non-Counsel of Record"; and (ii) defers to Track IV its determination of the Claimants' costs claim under Articles 38 and 40 of the UNCITRAL Rules in respect of the legal fees and expenses falling under this same category.

(n) Conclusions on Cross-Cutting Elements

2258.Paragraph 2238 above provides:

For the foregoing reasons, the Tribunal:

- (i)* Determines that Chevron, the First Claimant, paid all legal fees and expenses underlying the Claimants' damages claims in this Arbitration;
- (ii)* Determines that Texaco Petroleum Company, the Second Claimant, is not entitled to any compensation in respect of the Claimants' claims for damages relating to legal fees and expenses;
- (iii)* Determines that, when inserting a cut-off date in the Parties' Damages Models for the compensation of a particular category or component of damages, the Tribunal shall (1) set the Parties' Damages Models to apply date range limitations based on the date of the underlying invoices; and (2) set a date 30 days subsequent to the actual cut-off date to account for the delay between the rendering of a service and the date on which the corresponding invoice was issued;
- (iv)* Rejects the Respondent's objection in respect of the element "King & Spalding/Three Crowns Amounts Claimed as Damages";
- (v)* Excludes from compensation (1) all legal fees and expenses corresponding to services rendered by the Ecuador Legal Team before 14 February 2011; and (2) 50% the legal fees and expenses corresponding to services rendered by the Ecuador Legal Team after 14 February 2011;
- (vi)* Excludes from compensation all legal fees and expenses correspondent to components and other matters identified in paragraph 2225 above; and

- (vii) Determines that it shall apply a 15% percentage reduction to the global amount of compensation resulting from the application of the Tribunal's rulings on each of the 13 damages categories comprising legal fees and expenses.

2. The Parties' Damages Models

2259. In the preceding Section, the Tribunal has laid out the conclusions it must incorporate into the Parties' respective Damages Models. In this Section, the Tribunal provides an account of how it has incorporated such conclusions into the Parties' Damages Models.

2260. At the outset, the Tribunal observes that both Parties' Damages Models, in large part, align with the Tribunal's directions in Procedural Order No. 83. However, neither Damages Model includes all the features necessary for an exact reflection of the Tribunal's determinations.³⁶⁶⁷ In addition, the Tribunal has taken due note of all of the Parties' respective criticisms and assertions regarding the extent to which the opposing Party's model is deficient.³⁶⁶⁸

2261. The Tribunal discusses below the limitations it has encountered in its application of its determinations to the Damages Models, taking note of the Parties' objections where appropriate. In doing so, the Tribunal does not address objections that are ultimately irrelevant to the Tribunal's ultimate calculations (*e.g.*, an objection to a switch that is not required to incorporate the Tribunal's conclusions into the Damages Models).

2262. As explained above in paragraph 2237(v), the existing shortcomings in the Damages Models, as well as the practical difficulties encountered by the Tribunal when incorporating its conclusions into the Damages Models, are some of the factors underlying the Tribunal's determination of a margin of error for its damages calculations. In the Tribunal's view, such shortcomings are inevitable in an exercise of this complexity and in no way render the Damages Models unfit for purpose. To this point, the Tribunal recalls, as stated in paragraph 570 above, that it is only required to exercise *reasonable* precision in the assessment of damages, particularly if achieving absolute precision would

³⁶⁶⁷ See, *e.g.*, Letter from the Respondent to the Tribunal dated 18 November 2022, para. 12.

³⁶⁶⁸ See Letter from the Claimants to the Tribunal dated 18 November 2022; Letter from the Respondent to the Tribunal dated 24 November 2022.

be disproportionately burdensome. In the Tribunal's view, the Damages Models are adequate to achieve such reasonable precision.

(a) *General Matters*

2263. The Tribunal has incorporated its determinations into the Damages Models in the order in which it has considered them in this Award. Accordingly, to the extent applicable, the Tribunal has begun by incorporating its conclusions on General Matters and Legal Standards, as set out in Section VII above.

2264. First, the Tribunal has determined in paragraph 397 above that all legal fees and expenses claimed by the Claimants as damages before 14 February 2011 must be excluded from compensation. The Tribunal has already explained how it shall input its determinations relating to the compensable date range in paragraph 2085. The Tribunal has set first the Damages Models to apply date range limitations based on the date of the invoices supporting the Claimants' claims. Thereafter, the Tribunal has fixed 16 March 2011 – 30 days after the critical date of 14 February 2011 – as the commencement date for the calculation of damages.

2265. The Tribunal has also set the Respondent's Damages Model to include all invoices addressed to Chevron's subsidiaries.³⁶⁶⁹ Lastly, the Tribunal has adjusted the Tax Switch to reflect its rejection of the Respondent's request that the Tribunal reduce its damages award to account for the impact of tax deductions.³⁶⁷⁰

(b) *Specific Categories*

2266. Second, the Tribunal has incorporated its category-level conclusions into the Damages Models – that is, its determinations regarding the extent to which individual damages categories, when considered as a whole, warrant limitation or exclusion from further analysis.³⁶⁷¹ In doing so, it has faced, among others, the following difficulties.

³⁶⁶⁹ See para. 444 above. The Claimants' Damages Model provides no switch to remove amounts corresponding to invoices addressed to Chevron's subsidiaries.

³⁶⁷⁰ See para. 519 above. This switch is termed "Nominal Losses Adjusted for Tax Rates" in the Claimants' Damages Model and "Impact of Tax Deductions" in the Respondent's Damages Model.

³⁶⁷¹ See para. 554 above.

2267. Paragraphs 4(i) and (ii) of Procedural Order No. 83 direct that the joint model include both:

- (i) a switch to apply a nominal amount discount to any given category of damages;
- (ii) a switch to apply a percentage discount to any given category of damages.³⁶⁷²

2268. The Claimants' Damages Model, however, includes a single switch that can apply either a nominal discount or a percentage discount to any given category of damages, but not both. In particular, the Claimants' Damages Model does not permit the Tribunal to apply an 85% reduction to the legal fees and expenses claimed in connection with the RICO Litigation and, in addition, exclude from compensation certain costs collected by Chevron in the same litigation.³⁶⁷³ The Claimants explain that they "do not understand that the Tribunal intends to make both a nominal adjustment and a percentage adjustment to the same Category".³⁶⁷⁴ The Claimants object to the simultaneous operation of nominal and percentage discount switches within one category, asserting that "such a function would create the potential for confusion and double-counting of adjustments and would contribute to the instability of any Joint Model".³⁶⁷⁵

2269. The Tribunal does not consider that there is a significant risk of confusion and/or double counting, or that any possible confusion and instability of a model could outweigh the need for separate nominal and percentage discount switches. Regarding double-counting, the Tribunal's view is that to the extent that this concern might exist it can be, and is, accounted for as part of the margin of error discussed in paragraph 2237(v) above. As for the potential instability of the model, the Tribunal notes that the Respondent's Damages Model is functional while including both switches.

2270. The Tribunal has thus been required to apply workarounds where it applies both nominal and percentage discounts at the category level. The Tribunal further notes that the Respondent's Damages Model operates its switches in the order presented by paragraphs 4(i) and (ii) of Procedural Order No. 83; namely, the Model applies a nominal discount

³⁶⁷² Procedural Order No. 83, 14 October 2022, paras. 4(i)-(ii).

³⁶⁷³ Letter from the Claimants to the Tribunal dated 2 November 2022, p. 6.

³⁶⁷⁴ Letter from the Claimants to the Tribunal dated 2 November 2022, p. 6.

³⁶⁷⁵ Letter from the Claimants to the Tribunal dated 2 November 2022, p. 6.

to categories before a percentage discount.³⁶⁷⁶ Accordingly, where the Tribunal has determined to apply a percentage discount first, followed by a nominal discount, it has employed alternative methods of achieving this result, as detailed below in paragraph 2291.

(c) *Components*

2271. Third, the Tribunal has incorporated its determinations regarding individual components into the Damages Models.

2272. The Parties' Damages Models differ in their inclusion of components. In the Claimants' view, the Respondent's Damages Model includes 14 unnecessarily duplicative component switches which could instead be implemented through nominal or percentage reductions at the category level. The Claimants contend that the inclusion of these component switches violates the Tribunal's instruction in Procedural Order No. 83 that the joint model not include duplicative switches. Accordingly, the Claimants' Damages Model does not include these 14 component switches.³⁶⁷⁷

2273. The Tribunal recalls its direction in paragraph 4(vii) of Procedural Order No. 83 that the joint model should include:

switches that would permit the Tribunal, insofar as possible, to itemize and apply percentage discounts corresponding to the principal amounts of each additional discrete component or element that is contested by the Respondent.³⁶⁷⁸

2274. The Tribunal further recalls its direction in its letter to the Parties dated 14 October 2022 that:

[s]pecifically, the Joint Model should not include multiple switches where one switch suffices to achieve the same result, and the Joint Model should not include, as the Respondent appears to suggest, a discrete labeled switch for each and every discrete

³⁶⁷⁶ Respondent's Proposed Model Instruction Manual, 2 November 2022, p. 8.

³⁶⁷⁷ Letter from Claimant dated 18 November 2022, pp. 11-12. For example, in respect of the component "Argentina Fees for Monitoring service, dockets, and service refusal activities" under the Argentina Enforcement Proceedings damages category, the Claimants assert that an "adjustment can be implemented using the existing functionality to make nominal or percentage reductions to the Argentina Category."

³⁶⁷⁸ Procedural Order No. 83, 14 October 2022, para. 4(vii). For example, the Tribunal has decided to apply a percentage discount in respect of the component "(C) Fees incurred solely for monitoring service, dockets, and service refusal activities / (R) Fees for monitoring service, dockets, and service refusal activities" under the Argentina Enforcement Proceedings damages category (*see* para. 2247(v) above).

component and element that is contested by the Respondent, unless indispensably required.³⁶⁷⁹

2275. While mindful of its instruction to avoid duplicative switches, the Tribunal disagrees that component-level changes can in every instance be effected by making additional “nominal or percentage” reductions at the category level, as suggested by the Claimants. The Tribunal notes that the components, as defined in Procedural Order No. 83, “refer to distinguishable subcategories of costs or actions . . . for which damages are claimed.”³⁶⁸⁰ In the Tribunal’s view, to adjust multiple “distinguishable subcategories”, as well as the category itself, through a single switch, would invite confusion, especially in the case of the Claimants’ Damages Model, which does not allow for both nominal and percentage reductions for a single category.³⁶⁸¹ In addition, the Tribunal notes that the Claimants have included in their Damages Model some, but not all, of the components identified by the Parties in their agreed lists of components.³⁶⁸² It is unclear to the Tribunal why the Claimants considered that certain components merit their own switches, but the other components excluded in the Claimants’ Model do not.

2276. Accordingly, where the Tribunal has determined to exclude from compensation or apply reductions to a component which is not found in either Damages Model, it has ascertained the value of such component for the relevant time frame from other materials in the record. Where this proved to be impracticable, the Tribunal incorporated into the Claimants’ Damages Model the nominal value assigned to the same component in the Respondent’s Damages Model.³⁶⁸³

³⁶⁷⁹ Letter from the Tribunal to the Parties dated 22 October 2022, p. 3. For example, when commenting on a draft of Procedural Order No. 83 circulated by the Tribunal on 23 September 2022, the Claimants stated: “For example, Respondent proffers at least 10 switches based on various RICO sub-topics like “Count IX,” “Second Amended Complaint,” and “Withdrawn Claims for Money Damages,” that can be addressed by a single, neutrally worded nominal or percentage reduction switch allowing the Tribunal to adjust the damages awarded for RICO. This capability is described in Paragraph Nos. 4(i-ii) of draft Procedural Order No. 83, which call for switches that would allow the Tribunal to award 100% of the damages claimed in a particular category, apply discounts in any given category, or eliminate a category altogether.” *See* Letter from the Claimants to the Tribunal dated 4 October 2022, p. 3.

³⁶⁸⁰ Procedural Order No. 83, para. 8(ii).

³⁶⁸¹ *See* para. 2268 above.

³⁶⁸² Letter from the Respondent to the Tribunal dated 21 October 2022; Letter from the Claimants to the Tribunal dated 22 October 2022, Attachment A.

³⁶⁸³ *See* para. 2291 below.

(d) Vendors

2277. Fourth, the Tribunal has incorporated into the Damages Models its determinations regarding exclusions or reductions pertaining to individual vendors. Both Parties' Damages Models include a worksheet listing vendors, for which nominal or percentage reductions may be made.

2278. The Tribunal observes that the Parties' Damages Models omit a number of vendors. In particular, the Claimants' Damages Model omits the following 10 vendors:

- (i)* Asesorias Bofill Escobar;
- (ii)* Mateha Associates Corp.;
- (iii)* Dr Santiago Andrade Ubidia;
- (iv)* Hargis + Associates;
- (v)* Adrian Briggs;
- (vi)* Audio Forensic Center;
- (vii)* Aninat Schwencke y Cia, Ltda;
- (viii)* Pedro J. Alvarez;
- (ix)* Guthrie T. Abbott; and
- (x)* Jan Paulsson (billed through Freshfields) (under Lago Agrio Litigation).³⁶⁸⁴

2279. In turn, the Respondent's vendor list omits eight vendors:

- (i)* Mateha Associates Corp.;
- (ii)* Hargis + Associates;

³⁶⁸⁴ The Claimants' Damages Model lists Jan Paulsson (billed through Freshfields) under the BIT category, but omits him from the Lago Agrio Litigation category.

- (iii) Audio Forensic Center;
- (iv) Aninat Schwencke y Cia, Ltda;
- (v) Pedro J. Alvarez;
- (vi) Guthrie T. Abbott;
- (vii) Dr Santiago Andrade Ubidia; and
- (viii) Asesorias Bofill Escobar (from the Argentina Enforcement Proceedings and Brazil Recognition Proceedings categories).³⁶⁸⁵

2280. The Tribunal recalls that paragraph 4(v) of Procedural Order No. 83 directed that the joint model include a switch to “include/exclude and/or apply nominal amount or percentage discounts to *any* particular law firm or vendor”.³⁶⁸⁶ The Tribunal notes that the Claimants have submitted costs claimed for the aforementioned vendors in their Updated Appendix 2 to their Reply,³⁶⁸⁷ and each vendor is listed in the exhibits accompanying the expert report of Mr Trunko, the Respondent’s fee auditing expert.³⁶⁸⁸ Accordingly, the Tribunal considers that all of these law firms and vendors should have been included in the Damages Models.

2281. As such, the Tribunal is left with only two sources from which to measure damages relating to the omitted vendors: the Claimants’ Updated Appendix 2 and Mr Trunko’s Expert Report. However, neither source is fully fit for purpose. The Claimants’ Updated Appendix 2 provides a list of fees by category and month.³⁶⁸⁹ Mr Trunko’s Expert Report includes exhibits providing the total fees and expenses for each vendor organized by category, but the data does not include a breakdown of vendor by date. In neither document does the data allow for adjustments, nor do the sums reference the underlying

³⁶⁸⁵ The Respondent’s Damages Model only lists Asesorias Bofill Escobar as a vendor under the RICO category.

³⁶⁸⁶ Emphasis by the Tribunal.

³⁶⁸⁷ See para. 2278 above.

³⁶⁸⁸ Reply, Updated Appendix 2; **RE-51**, Trunko Expert Report, **SM J-1 – SM J-13**.

³⁶⁸⁹ Reply, Updated Appendix 2.

invoices.³⁶⁹⁰ In the circumstances, these sources do not allow the Tribunal to calculate the legal fees and expenses of the vendors omitted from the Damages Models, nor to adjust the claimed amounts in accordance with the Tribunal's determinations in Sections VIII.A-VIII.M above – such as date range reductions – or to apply other adjustments at the category and element levels. Furthermore, as these vendors are not included in the Damages Models, even if the Tribunal could identify the legal fees and expenses each has charged, a further step would be required to adjust the Damages Models' calculations before calculating interest for damages related to these vendors.

2282. As a consequence of these omissions, the Tribunal has instead chosen to factor these reductions for omitted vendors as part of its determination on a 15% global reduction to the Claimants' damages claim for legal fees and expenses – in other words, these shortcomings are one of the multiple reasons justifying the application of a 15% global reduction.³⁶⁹¹

2283. In addition, the Claimants object to the Respondent's inclusion in their Damages Model of the following eight passthrough vendors:

- (i) Bullard, Falla & Ezcurra (under RICO Litigation);
- (ii) Anil Shivdasani (under RICO Litigation);
- (iii) Daniel Cooperman (under RICO Litigation);
- (iv) Jan Paulsson (under RICO Litigation);
- (v) Adrian Briggs (under Lago Agrio Litigation);
- (vi) Jan Paulsson [Jones Day] (under Lago Agrio Litigation);
- (vii) Asesorias Bofill Escobar (under RICO Litigation); and
- (viii) Jan Paulsson [Gibson Dunn] (under Lago Agrio Litigation).

³⁶⁹⁰ Reply, Updated Appendix 2; **RE-51**, Trunko Expert Report, **SM J-1 – SM J-13**.

³⁶⁹¹ See para. 2262 above.

2284. The Claimants assert that the Respondent “did not identify and quantify these invoices before or during the Track III Hearing”.³⁶⁹² Thus, they object that these switches rely on new analysis performed by the Respondent after the conclusion of the Track III Hearing and amount to introduction of new factual or expert evidence in violation of Procedural Order No. 83.³⁶⁹³

2285. The Tribunal disagrees with the Claimants. Mr Trunko quantified each of these vendor’s fees and expenses in his expert report and exhibits.³⁶⁹⁴ The total amounts identified by Mr Trunko for each vendor within each category match the amounts represented in the Respondent’s Damages Model, with the sole exception of one vendor.³⁶⁹⁵ The Tribunal considers that this discrepancy is also accounted for as part of the margin of error discussed in paragraph 2262 above. Otherwise, the Tribunal finds no reason to exclude from consideration the invoices of these pass-through vendors.

(e) *Elements*

2286. Lastly, the Tribunal has incorporated its determinations relating to cross-cutting elements, where applicable.³⁶⁹⁶ In particular, the Tribunal has applied a 15% global reduction at this stage.³⁶⁹⁷

2287. The Claimants object to the Respondent’s inclusion of a “global reduction” switch in its Damages Model, which they state applies an “across-the-board reduction to Claimants’ damages” on top of reductions at the category, component, and element levels.³⁶⁹⁸ They assert that this reduction “would not be tied to any specific argument or defense that

³⁶⁹² Letter from the Claimants to the Tribunal dated 18 November 2022, p. 7.

³⁶⁹³ Letter from the Claimants to the Tribunal dated 18 November 2022, p. 7.

³⁶⁹⁴ Jan Paulsson’s costs and fees were not divided by law firm. See **RE-51**, Trunko Expert Report, **SM J-1** (RICO), **SM J-2** (Lago Agrio Litigation).

³⁶⁹⁵ Mr Trunko’s breakdown represents that the Claimants claim USD 77,139.46 for Adrian Briggs work in the Lago Agrio Litigation. **RE-51**, Trunko Expert Report, **SM J-2**, p. 2. However, the Respondent’s Damages Model identifies USD 106,546.15 claimed for Adrian Briggs as a passthrough vendor for the Lago Agrio Litigation. Respondent’s Damages Model, Tab “Vendor Reductions”, cell H131 (when Commencement Date is set to 1 January 2004). Mr Trunko does not breakdown Mr Paulsson’s costs and fees by law firm. **RE-51**, Trunko Expert Report, **SM J-2**, p. 2.

³⁶⁹⁶ See para. 2238 above.

³⁶⁹⁷ See para. 2237 above.

³⁶⁹⁸ Letter from the Claimants to the Tribunal dated 2 November 2022, pp. 5-6.

Ecuador has raised”, is inconsistent with Procedural Order No. 83, contributes to instability in the Model, and was not identified in the Respondent’s 21 October 2022 list of components and elements.³⁶⁹⁹ Accordingly, the Claimants’ Damages Model does not provide for a “global reduction” switch.³⁷⁰⁰

2288. For its part, the Respondent states that “Mr. Trunko opined that pervasive billing issues may result in a global reduction on all claimed fees” and, accordingly, a global reduction switch is required.³⁷⁰¹

2289. The Tribunal has addressed Mr Trunko’s proposed global reduction in paragraphs 2232 to 2237 above. Consistent with such determinations, the Tribunal considers a global reduction switch necessary and responsive to the directions found in paragraphs 4(vi) and (vii) of Procedural Order No. 83, pursuant to which the joint model was meant to allow percentage reductions based the billing irregularities Mr Trunko identified as elements, as well as other elements identified by the Respondent. As already explained, at the Track III Hearing Mr Trunko opined that the elements he identified support the conclusion that a percentage reduction to the total amount of compensation due to the Claimants is warranted.³⁷⁰² A global reduction switch is thus required to implement the core conclusion of Mr Trunko’s analysis. The Tribunal has thus applied this 15% global reduction in the Respondent’s Damages Model.

3. Conclusion

2290. Having analysed the Parties’ Damages Models in the previous section, the Tribunal here summarises the principal ways in which the Damages Models deviate from the directions provided in Procedural Order No. 83:

- (i) The Claimants’ Model (i) does not permit for both nominal and percentage reductions at the category level; (ii) does not include 14 component switches;

³⁶⁹⁹ Letter from the Claimants to the Tribunal dated 2 November 2022, p. 6.

³⁷⁰⁰ Claimants’ Damages Model.

³⁷⁰¹ Letter from the Respondent to the Tribunal dated 19 November 2022, p. 23.

³⁷⁰² Track III Hearing Transcript, Day 10 (31 August 2022), p. 2344 (Trunko).

(iii) omits 10 vendors; and (iv) does not allow for the application of a global reduction.

(ii) The Respondent's Model omits eight vendors.

2291. The Tribunal has incorporated its determinations in both Damages Models to the extent allowed by each Damages Model. To do so in the Claimants' Damages Model requires, *inter alia*, the following workarounds:

- (i) The Claimants' Damages Model does not allow for both nominal and percentage reductions at the category level. Accordingly, the Tribunal has applied percentage reductions at the category level, and nominal reductions to the implicated vendor's fees and costs for that category. As already explained, this procedure was necessary to incorporate the determinations by the majority of the Tribunal as set out in subparagraph (iii) of the operative part of Section VIII.G (RICO Litigation), both of which were then nominally reduced from Gibson Dunn's legal fees and expenses claimed in connection with that category.³⁷⁰³
- (ii) The Claimants' Damages Model automatically applies reductions to the sums allocated to each vendor in a specific category when applying nominal reductions at the category level. This creates difficulties when applying the nominal reduction required in relation to the but-for scenario, as set out in subparagraph (xii) of Section VIII.A (Lago Agrio Litigation), which must be applied as a reduction to the global amount of compensation. The Tribunal has thus nominally reduced this amount after factoring in all other exclusions and reductions, and has distributed the but-for reduction across all granted categories, as done in the Respondent's Damages Model when applying a nominal reduction in the "Global Reduction – Damages Cap" tab.³⁷⁰⁴ To calculate the deduction, the Tribunal incorporated the necessary vendor reductions into a separate copy of the Claimants' Damages Model, after having incorporated its conclusions on General Matters as detailed in

³⁷⁰³ See para. 2251 above.

³⁷⁰⁴ See para. 2289 above.

paragraphs 2263-2265 above. The resulting reduction, *i.e.*, USD 22,661,660.53, was then deducted as the but-for amount.

- (iii) The Tribunal has determined that certain deductions corresponding to costs collected in local proceedings must be applied to the total amount of compensation granted in respect two categories: Canada Enforcement Proceedings and Gibraltar Proceedings. However, the Claimants' Damages Model automatically applies reductions to the sums allocated to each vendor in a specific category when applying nominal reductions at the category level. Thus, if the Tribunal were to apply nominal reductions corresponding to costs collected at the category level, and then exclude from compensation 100% of the legal fees and expenses corresponding to select vendors, the deduction corresponding to costs collected in local proceedings would not be applied in full. As a workaround, the Tribunal has applied these nominal reductions in the "Vendor Switches" tab of the Claimants' Damages Model to the legal fees and expenses incurred by law firms within that category that the Tribunal has not excluded from compensation. In particular, the Tribunal has applied the nominal reduction in subparagraph (iii) of the operative part of Section VIII.E from Norton Rose Fullbright Canada LLP's legal fees and expenses claimed in connection with that category, and the nominal reduction set out in subparagraph (vi) of Section VIII.I from Attias & Levy Barristers and Solicitors' legal fees and expenses claimed in connection with that category.
- (iv) The Claimants' Damages Model does not include switches for certain components. In order to incorporate the determination set out in subparagraph (vi) of the operative part of Section VIII.H (Section 1782 Proceedings), the amount excluded is taken from the Respondent's Damages Model, which reflects that a reduced amount of the total assigned to this component remained to be excluded after the Tribunal's adjustment to the date range, *i.e.*, USD 111,965.50.³⁷⁰⁵ The Tribunal excluded this amount from the "1782s – Donziger" component in the Claimants' Damages Model. For the amounts in subparagraph (vii) of the operative part of Section VIII.H (Section 1782 Proceedings), the Tribunal has excluded 100% of the

³⁷⁰⁵ See para. 2252 above. The Tribunal notes that the Respondent's Model separates this component across four separate 1782 actions. The Tribunal has added these four reductions to arrive at the above number.

fees and costs charged by Rivero Mestre and Covington & Burling in connection with the Section 1782 Proceedings, as these firms' work was entirely in connection with their representation of Mr Pérez and Dr Veiga.³⁷⁰⁶ For completeness, the Tribunal also notes that while the Claimants' Damages Model does not separate the Stratus Section 1782 Action into affirmative and defensive actions, the defensive 1782 work occurred solely after the cut-off date in the Tribunal's determination as set out in subparagraph (iii) of Section VIII.H (Section 1782 Proceedings). Accordingly, no workaround was necessary to exclude the defensive Stratus 1782 from compensation as per subparagraph (iv) of the operative part of the same Section.

- (v) Because the Claimants' Damages Model does not allow a percentage reduction to be applied to a component for only a certain date range, the Tribunal has calculated the necessary amount to be reduced in accordance with the determination by the majority of the Tribunal as set out in subparagraph (vii) of the operative part of Section VIII.G (RICO Litigation) based on the invoices in the "Trunko Calcs" tab of the Claimants' Damages Model.³⁷⁰⁷
- (vi) Because the Claimants' Damages Model does not include components for Argentina Enforcement Proceedings, the Tribunal has excluded at the category level the amounts indicated in the Respondent's Damages Model as remaining after applying the Tribunal's determined date range for subparagraphs (v), (vi), and (vii) of the operative part of Section VIII.C (Argentina Enforcement Proceedings), *i.e.*, USD 1,060,409.82.³⁷⁰⁸
- (vii) Because the Claimants' Damages Model does not include a global reduction switch, the Tribunal has applied the 15% global reduction after factoring in all other exclusions and reductions. First, the Tribunal determined in a separate document the amount of compensation granted per category by (i) implementing all applicable reductions in the "Matter Switches" and "Vendor Switches" of the Claimants'

³⁷⁰⁶ See para. 1827 above.

³⁷⁰⁷ See para. 2251 above.

³⁷⁰⁸ See para. 2247 above.

Damages Model; and (ii) adding up the amounts indicated in the column “Damages After Vendor Adjustments (USD)” in the “Vendor Switches” tab of the Claimants’ Damages Model for all vendors falling under that category (*see* column “Matter” in the same tab). Second, the Tribunal applied the but-for reduction in the manner described in paragraph 2291(ii) above. Third, the Tribunal applied the 15% global reduction to the resulting sums corresponding to each category.

2292. The Respondent’s Damages Model likewise requires certain workarounds:

- (i) Because the Respondent’s Damages Model applies nominal reductions before percentage reductions, in order to incorporate the determination by the majority of the Tribunal in subparagraph (ii) of the operative part of Section VIII.G (RICO Litigation) to apply an 85% percentage reduction at the category level first before applying the nominal reduction in subparagraph (iii), as a workaround the Tribunal has applied the nominal reduction in subparagraph (iii) to Gibson Dunn’s RICO Litigation fees and expenses, rather than at the category level.³⁷⁰⁹
- (ii) Because the Respondent’s Damages Model does not allow a percentage reduction to be applied to a component for only a certain date range, and the Respondent’s “Trunko” tab does not include dates for invoices, the Tribunal has calculated the necessary amount to be reduced in accordance with the determination by the majority of the Tribunal set out in subparagraph (vii) of the operative part of Section VIII.G (RICO Litigation) based on the invoices in the “Trunko Calcs” tab of the Claimants’ Damages Model, *i.e.*, USD 598,449.33.³⁷¹⁰
- (iii) As in the case of the Claimants’ Damages Model, the Respondent’s Damages Model automatically applies reductions to the sums allocated to each vendor in a specific category when applying nominal reductions at the category level. The Tribunal has determined the nominal reduction made in relation to the but-for scenario, as set out in subparagraph (xii) of Section VIII.A (Lago Agrio Litigation), must be applied as a reduction to the global amount of compensation. Accordingly,

³⁷⁰⁹ See para. 2251 above.

³⁷¹⁰ See para. 2251 above.

the Tribunal has nominally reduced this amount in the “Global Reduction – Damages Cap” tab. To calculate the deduction, the Tribunal incorporated the necessary vendor reductions into a separate copy of the Respondent’s Damages Model, after having input its conclusions on General Matters as detailed in paragraphs 2263-2265 above. The resulting reduction, *i.e.*, USD 22,791,546.48, was then deducted as the but-for amount.

- (iv) The Tribunal recalls, as indicated in paragraph 2291(iii) above, that certain deductions corresponding to costs collected in local proceedings must be applied to the global amount of compensation granted in respect two categories: Canada Enforcement Proceedings and Gibraltar Proceedings. The Respondent’s Damages Model, as the Claimants’ Damages Model, automatically applies reductions to the sums allocated to each vendor in a specific category when applying nominal reductions at the category level. Thus, if the Tribunal were to apply nominal reductions corresponding to costs collected at the category level, and then exclude from compensation 100% of the legal fees and expenses corresponding to select vendors, the deduction corresponding to costs collected in local proceedings would not be applied in full. As a workaround, the Tribunal has applied these nominal reductions in the “Vendor Reductions” tab of the Respondent’s Damages Model to the legal fees and expenses incurred by law firms within that category that the Tribunal has not excluded from compensation. In particular, the Tribunal has applied the nominal reduction in subparagraph (iii) of the operative part of Section VIII.E from Norton Rose Fullbright Canada LLP’s legal fees and expenses claimed in connection with that category, and the nominal reduction set out in subparagraph (vi) of Section VIII.I from Attias & Levy Barristers and Solicitors’ legal fees and expenses claimed in connection with that category.
- (v) For completeness, the Tribunal notes that while the Respondent’s Damages Model does not separate the Stratus Section 1782 Action into affirmative and defensive actions, the Defensive 1782 work occurred solely after the cut-off date in the Tribunal’s determination as set out in subparagraph (iii) of Section VIII.H (Section 1782 Proceedings). Accordingly, no workaround was necessary to exclude the defensive Stratus 1782 from the Claimants’ compensation as per subparagraph (iv) of the same Section.

2293. Having completed the dual exercise of incorporating its determinations into the Parties' respective Damages Models, the Tribunal has decided that it shall determine the final amount of compensation to be awarded to Chevron under the present heading on the basis of the Respondent's Damages Model – not the Claimants' Damages Model. The Tribunal does so for two interrelated reasons.

2294. First, as explained in paragraph 2290 above, the Respondent's Damages Model satisfies the instructions provided for in Procedural Order No. 83 to a greater extent than the Claimants' Damages Model. In particular, the Respondent's Damages Model omits fewer vendors than the Claimants' Damages Model, permits for both nominal and percentage reductions at the category level, includes a greater number of the requested component switches, and allows for the application of a global percentage reduction.

2295. Second, as noted in paragraphs 2291 and 2292 above, the Respondent's Damages Model allows a more straightforward incorporation of the Tribunal's determinations when compared to the Claimants' Damages Model. While the Tribunal is able to input the full extent of its determinations into the Claimants' Damages Model, the Claimants' Damages Model necessitates a larger number of workarounds to derive the final figures. Several of these workarounds are required due to the ways in which the Claimants' Damages Model departed from the Tribunal's instructions in Procedural Order No. 83.

2296. For these reasons, the Tribunal has greater confidence in the capacity of the Respondent's Damages Model to implement the Tribunal's decisions regarding damages and decides to rely only upon it to determine the principal amount of compensation due to Chevron. However, the Tribunal has also performed, and taken into account, all necessary calculations in the Claimants' Damages Model to offer a measure against which to check the accuracy of the output derived from the Respondent's Damages Model. As shown in the table below, while the results corresponding to certain individual categories differ to a non-negligible extent between the Damages Models, the global outputs derived from each of the Parties' Damages Models differ by USD 528,887.15, which is less than 0.5%.

§	Category	Amount Claimed (USD)	Claimants' Damages Model ³⁷¹¹ (USD)	Respondent's Damages Model ³⁷¹² (USD)
A.	Lago Agrio Litigation	161,525,161.89	41,721,175.36	41,587,664.54
B.	Ecuador Enforcement Proceedings	3,582,889.44	1,262,368.32	1,261,521.19
C.	Argentina Enforcement Proceedings	25,695,438.12	10,767,920.82	10,469,299.38
D.	Brazil Recognition Proceedings	20,668,398.44	14,145,756.33	14,136,263.73
E.	Canada Enforcement Proceedings	39,798,158.90	30,067,303.99	30,047,127.12
F.	Costs of Planning Against Potential Enforcement in Other Jurisdictions	26,166,897.09	14,292,500.89	14,282,909.81
G.	RICO Litigation	323,180,099.51	33,347,889.14	33,322,257.24
H.	Section 1782 Proceedings	62,363,592.93	8,741,893.08	8,728,717.69
I.	Gibraltar Proceedings	38,421,547.26	26,584,770.64	26,566,930.75
J.	General Defence	47,213,917.33	0.00	0.00
K.	Criminal Proceedings	6,933,905.69	0.00	0.00
L.	Dutch Set-Aside Proceedings	3,676,711.53	0.00	0.00
M.	Treaty Arbitration Costs Incurred by Non-Counsel of Record	34,653,249.61	0.00	0.00
Grand Total		793,879,967.74	180,931,578.58	180,402,691.43

2297. Consequently, the Tribunal determines that the global amount of compensation due to Chevron in connection with the 13 damages categories concerning legal fees and

³⁷¹¹ The Tribunal recalls that the Claimants' Damages Model does not provide a per-category damages amount following category, component, element, and global reductions. The Tribunal has determined the amounts per category by taking the sum of the "Damages After Vendor Adjustments (USD)" per category, and subsequently (i) distributed the but-for reduction across categories as done in the Respondent's Damages Model, and then (ii) applied a 15% reduction. *See* Claimants' Damages Model, "2) Vendor Switches" Tab, columns E, I.

³⁷¹² The Respondent's Damages Model provides damage amounts for each category following the application of category, component, vendor, and (nominal and percentage) global reductions in the "Global Reduction – Damages Cap" tab. with the exception of the Section 1782 Proceedings, which are listed individually. For the Section 1782 Proceedings amount, the Tribunal has added together the listed 1782 Actions on the same tab. *See* Respondent's Damages Model, "Global Reduction – Damages Cap" Tab.

expenses addressed in this Section VIII, as derived from the Respondent's Damages Model, amounts to **USD 180,402,691.43**.³⁷¹³ As further explained in Section X below, the interest due on this amount shall also be determined on the basis of the Respondent's Damages Model.

2298. For the avoidance of doubt, the Tribunal notes that, unless otherwise expressly indicated, the determinations in this Section VIII pertain only to the Claimants' claim for damages arising from the Respondent's Treaty breaches. They are without prejudice to any costs claim the Claimants might bring in Track IV of the Arbitration under Articles 38 and 40 of the UNCITRAL Arbitration Rules.³⁷¹⁴

* * *

³⁷¹³ The Tribunal's decision with respect to the compensation due to Chevron in connection with the RICO Litigation claim is rendered by majority.

³⁷¹⁴ Procedural Order No. 84, para. 13(i).

IX. OTHER DAMAGES CATEGORIES

2299. In this Section, the Tribunal shall address three categories of damages claimed by the Claimants which, unlike the 13 categories addressed in Section VIII above, do not concern legal fees and expenses. As further elaborated below, the losses claimed in connection with each of these categories must be examined under the framework of direct damages arising from the Respondent's Treaty breaches as understood in international law. They do not qualify as incidental damages "reasonably incurred to repair damage and otherwise mitigate loss" arising from the Respondent's Treaty breaches.³⁷¹⁵

2300. For ease of reference, the Tribunal indicates in the table below the order in which it will address these categories, as well as the amount requested by the Claimants in connection with each category, excluding interest.

§	Category	Amount Claimed
A.	Embargo Losses in Argentina	USD 13,000,000
B.	Intellectual Property Losses in Ecuador	USD 85,315,652
C.	Moral Damages	The amount that the Tribunal deems just and proper

[see Reply, para. 1212(3)]

* * *

³⁷¹⁵ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 36, Commentary (34). *See also* para. 327 above.

A. EMBARGO LOSSES IN ARGENTINA

2301. The Claimants seek USD 13,000,000 as direct damages, or alternatively as incidental damages, for the losses allegedly suffered by one of their Argentine subsidiaries – Chevron Argentina – in the Argentina Embargo Proceedings as a result of the 6 November 2012 *ex parte* embargo order obtained by the LAPs from the Argentine courts, whereby certain assets of owned by Chevron’s Argentine and Danish subsidiaries were attached (defined earlier as the “Argentina Embargo Order”).³⁷¹⁶ The Argentina Embargo Order was lifted on 28 June 2013.³⁷¹⁷ Relying on Mr Kiran Sequeira’s expert report, the Claimants argue that they have adequately proven such a loss.³⁷¹⁸

2302. In the Respondent’s view, the Claimants’ purported embargo losses in Argentina are not recoverable either as direct or incidental damages.³⁷¹⁹ The Respondent further argues that the expert evidence of loss proffered by the Claimants is speculative and unsupported by contemporaneous evidence; accordingly, the Tribunal should reject the Claimants’ claim under this heading.³⁷²⁰

1. The Claimants’ Position

2303. As stated above,³⁷²¹ the Claimants argue that there is no legal impediment for Chevron to claim the losses suffered by its international subsidiaries as the natural and foreseeable consequence of the Respondent’s Treaty breaches.³⁷²²

2304. Recalling the Tribunal’s determination that the Respondent violated the Tribunal’s Interim Orders on 1 March 2012 by making the Lago Agrio Judgment “final, enforceable and subject to execution”, the Claimants argue that the Respondent’s violation of international law “directly led” to the LAPs’ attempts to attach the assets of Chevron’s

³⁷¹⁶ **C-2349**, Order issued by the National Civil Trial Court No. 61 of Argentina in Aguinda Salazar Maria vs. Chevron Corporation on Preventive Measures, 6 November 2012.

³⁷¹⁷ **C-2665**, Court Order, 28 June 2013.

³⁷¹⁸ Memorial, para. 437; Reply, para. 1093.

³⁷¹⁹ Counter-Memorial, para. 1272; Rejoinder, para. 1786.

³⁷²⁰ Counter-Memorial, para. 1271; Reply, para. 1760.

³⁷²¹ See Section VII.C.1 above.

³⁷²² Reply, paras. 1090-1092.

subsidiaries in Argentina.³⁷²³ Consequently, in the Claimants’ view, the Respondent must compensate Chevron for the losses it suffered as a result of the embargo of its Argentine subsidiary’s funds.³⁷²⁴

2305. In circumstances where the 15 October 2012 Order of the Lago Agrio Court treats Chevron and its subsidiaries as one and the same, the Claimants submit that the Respondent should be estopped from claiming that Chevron cannot also claim damages for the losses suffered by the Argentine subsidiary targeted by the Argentina Embargo Order.³⁷²⁵ The Claimants further highlight the conduct of both Ecuador’s courts and the executive branch between August 2012 and April 2013, which they say either enabled or aided the LAPs in enforcing the 15 October 2012 Order of the Lago Agrio Court on the assets of Chevron’s international subsidiaries, in violation of the Tribunal’s Interim Awards.³⁷²⁶

2306. To prove their embargo losses, the Claimants rely on Mr Sequeira’s calculation of damages, which analyses the balance of the bank accounts that were frozen and the underlying bank statements.³⁷²⁷ Contrary to what the Respondent alleges, the Claimants assert that the underlying data and source documents Mr Sequeira relies upon have been produced in this Arbitration – the Respondent, they say, has also had access to those documents since 2013.³⁷²⁸

³⁷²³ Reply, paras. 1084-1085, 1087; Fourth Interim Award, para. 79.

³⁷²⁴ Reply, para. 1085.

³⁷²⁵ Reply, para. 1091.

³⁷²⁶ Reply, paras. 1088-1089; **C-1532**, *Maria Aguinda et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Execution Order, 15 October 2012 at 4:53 p.m.; **C-1589**, Power of Attorney Issued by the Canton of Lago Agrio, apostilled by the Minister of Exterior Relations, 9 August 2012; **C-1590**, Letters rogatory Certified by the Lago Agrio Court and requested by the National Judicial Council, 31 October 2012; **C-1598**, Correa says he will ask Cristina to “comply with the judgment” against Chevron, LA NACIÓN, 4 December 2012; **C-1599**, *Ecuador’s President Says Chevron Needs to Abide by Court Ruling*, DOW JONES NEWSWIRES, 4 December 2012; **C-1608**, Ecuador/Chevron dispute enters a new chapter: Correa calls for Latam support, MERCOPRESS, 26 February 2013; **C-1609**, Correa Defended Ecuadorian Sovereignty Against Chevron, PRENSA LATINA, 27 February 2013; **C-1610**, Interview with Minister of Foreign Affairs, Ricardo Patiño. RTU TV, 25 February 2013; **C-1623**, Public Defender’s Office of Ecuador appears before Argentinean Court in relation to the Chevron-Texaco case, ANDES, 26 April 2013.

³⁷²⁷ Reply, paras. 1093-1096.

³⁷²⁸ Reply, paras. 1095-1096; First Sequeira Expert Report, para. 109; **C-1626**, Expert Report of Anil Shivdasani submitted in RICO proceedings, 1 March 2013; **C-1928**, Mr Shivdasani’s underlying data and source documents; **C-3463**, Argentina Bank Statements (CVX-Track III-30000000 - CVX-Track III-30006454).

2307. Based on Mr Sequeira's expert opinion, the Claimants assert that the funds held in the bank accounts that were frozen would have either (i) accrued interest at the BADLAR rate (*i.e.*, the 30- to 35-day interest rate on deposits in excess of 1 million pesos that is published by the Central Bank of Argentina); or (ii) been converted to U.S. dollars immediately upon deposit at the prevailing exchange rate on the dates of deposit.³⁷²⁹

2308. First, Mr Sequeira considers that applying the BADLAR rate, which ranged from 14% to 17% during the relevant period, evinces a reasonable and conservative approach to quantifying the loss of use of funds because "time deposit rates are generally some of the lowest returns that are earned by companies".³⁷³⁰ By contrast, Mr Sequeira notes that the ARS-denominated WACC for a petroleum company would have exceeded 36% during the same period.³⁷³¹

2309. Second, in Mr Sequeira's view, the conversion of funds from Argentine pesos to U.S. dollars "is essentially an inflationary adjustment" and is "a reasonable proxy for calculating the loss suffered as a result of the funds having been frozen".³⁷³² Alternatively, applying ARS inflation during the same period "would yield losses that are very similar to the damages calculated based on converting the funds to USD at the prevailing exchange rates".³⁷³³

2310. In light of the above, Mr Sequeira states that the total losses suffered by Chevron Argentina before interest amount to USD 4.3 million using the BADLAR rate and USD 6 million based on the depreciation of the Argentine peso.³⁷³⁴ Using four potential pre-award interest rates, Mr Sequeira concludes that the total losses – including interest – up to 20 August 2021 range from USD 6.5 million to USD 13 million.³⁷³⁵

³⁷²⁹ Memorial, paras. 436-437; First Sequeira Expert Report, paras. 112-114.

³⁷³⁰ Reply, para. 1098; First Sequeira Expert Report, Figure 14; Second Sequeira Expert Report, para. 129.

³⁷³¹ Reply, para. 1098; Second Sequeira Expert Report, paras. 131-132.

³⁷³² Reply, para. 1100; Second Sequeira Expert Report, para. 134.

³⁷³³ Reply, para. 1100; Second Sequeira Expert Report, para. 134.

³⁷³⁴ Reply, para. 1102; Second Sequeira Expert Report, para. 137.

³⁷³⁵ Reply, para. 1102; Second Sequeira Expert Report, para. 138.

2311. In response to the Respondent's argument that they failed to mitigate damages, the Claimants posit that it is actually the Respondent who has failed to provide compelling evidence, consistent with international practice, that Chevron's subsidiaries could have reasonably avoided the loss.³⁷³⁶ In addition, the Claimants take the view that the Respondent's proposed mitigation scenarios "clearly rely on hindsight, and must be rejected" because none of them were detailed in the Respondent's letter of 22 January 2013 to the Tribunal, in which it described ways in which the Claimants could (allegedly) mitigate any damage arising from the embargo.³⁷³⁷ In any event, Chevron and its subsidiaries, the Claimants submit, complied with their duty to mitigate losses when they contested the Argentina Embargo Order, which was "the most direct means of challenging the attachment under Argentine law".³⁷³⁸

2. The Respondent's Position

2312. According to the Respondent, the Claimants cannot simply claim for themselves the damages allegedly suffered by Chevron's international subsidiaries, in violation of established international law, on the basis that the Lago Agrio Court made the Lago Agrio Judgment enforceable against Chevron and its subsidiaries.³⁷³⁹ Further, the Ecuadorian government, the Respondent contends, was not in a position to suspend or annul a judgment of Ecuador's independent judiciary.³⁷⁴⁰ The Respondent maintains that it is not responsible for the legal strategies undertaken by the LAPs in a foreign jurisdiction, such as Argentina, or for the mechanics of the Argentine judicial system, which allow for prejudgment freezes on assets in certain cases.³⁷⁴¹ As such, the Respondent denies that the Argentina Enforcement Proceedings were foreseeable.³⁷⁴²

³⁷³⁶ Reply, paras. 1104-1108.

³⁷³⁷ Reply, paras. 1109-1110; Respondent's Letter to the Tribunal, 22 January 2013, p. 4.

³⁷³⁸ Reply, paras. 1111-1112.

³⁷³⁹ Rejoinder, paras. 1775, 1778.

³⁷⁴⁰ Rejoinder, para. 1777.

³⁷⁴¹ Counter-Memorial, para. 1277; Rejoinder, para. 1776.

³⁷⁴² Rejoinder, para. 1776.

2313. Even assuming that the Claimants could bring a claim for third-party losses, the Respondent submits that the Claimants have presented no proof of loss.³⁷⁴³ Instead, the Claimants rely upon the expert opinion of Mr Sequeira, which, in the Respondent's view, is not credible.³⁷⁴⁴ In this respect, the Respondent contends that it was only after it pointed out the insufficiency of the direct evidence relied upon by Mr Sequeira that the Claimants produced the bank statements supporting the claim, and only then did Mr Sequeira revise his damages analysis downwards.³⁷⁴⁵ In the light of Mr Sequeira's admission that he overlooked certain evidence when performing his initial calculation due to "time and logistical constraints",³⁷⁴⁶ the Respondent asserts that the Tribunal should not credit Mr Sequeira's opinions or analysis.³⁷⁴⁷

2314. In support of the proposition that the Claimants have not substantiated their loss, the Respondent asserts that (i) only 40% of Chevron Argentina's funds in Argentine banks were subject to the freeze – which the Claimants failed to mention in their Memorial; and (ii) the Claimants have failed to produce any direct evidence showing which funds in the Standard Bank account were really frozen.³⁷⁴⁸

2315. As to Mr Sequeira's quantification of damages, based on the opinion of its own expert, Mr Daniel Flores, the Respondent considers that Mr Sequeira's alternative investment strategies are speculative and contradicted by actual events:³⁷⁴⁹

- (i) In the Respondent's view, the suggestion that Chevron Argentina would have invested the frozen funds in an account that paid the BADLAR rate³⁷⁵⁰ is pure speculation. There is no evidence from Chevron Argentina's actual investment habits or contemporaneous documents that any of the remaining funds were placed

³⁷⁴³ Counter-Memorial, para. 1273.

³⁷⁴⁴ Rejoinder, para. 1760.

³⁷⁴⁵ Rejoinder, para. 1761.

³⁷⁴⁶ Second Sequeira Expert Report, para. 127.

³⁷⁴⁷ Rejoinder, paras. 1761-1762.

³⁷⁴⁸ Rejoinder, para. 1764.

³⁷⁴⁹ Rejoinder, para. 1765.

³⁷⁵⁰ Second Sequeira Expert Report, para. 129.

in an interest-bearing account, let alone in an account that paid the BADLAR rate.³⁷⁵¹

- (ii) Mr Sequeira, says the Respondent, makes his BADLAR theory look reasonable by selectively choosing an arbitrarily high rate of return as a supposed comparator.³⁷⁵²
- (iii) According to the Respondent, there is no contemporaneous evidence that Chevron Argentina would have immediately converted the frozen amounts from Argentine pesos to U.S. dollars on the dates of deposit. Mr Sequeira also fails to take into account the time required to make requests to the Central Bank of Argentina in order to convert Argentine pesos to U.S. dollars.³⁷⁵³

2316. Should the Tribunal award any amount under this head of damages and determine that interest is warranted, the Respondent takes the view that simple interest at the 6-month or 1-year T-Bill rate is appropriate.³⁷⁵⁴

2317. Lastly, the Respondent denies that contesting the Argentina Embargo Order had any bearing on mitigating the alleged effects of the embargo, be it while it was in force or thereafter.³⁷⁵⁵ Rather, Chevron Argentina should have made the requisite petitions to the Argentine courts for the investment of the frozen amounts, substitution with other assets, or purchase of U.S. dollars or dollar-denominated bonds, or brought an action for redress in an Argentine court following the lifting of the embargo.³⁷⁵⁶ The Respondent points out that the Claimants do not dispute that all of these mitigation strategies were available to Chevron Argentina, who failed to resort to them.³⁷⁵⁷

³⁷⁵¹ Rejoinder, para. 1767-1768; **RE-56**, Second Flores Expert Report, paras. 182-184.

³⁷⁵² Rejoinder, paras. 1776-1777; **RE-42**, First Flores Expert Report, paras. 57-59; **RE-56**, Second Flores Expert Report, paras. 90, 184.

³⁷⁵³ Rejoinder, paras. 1771-1772; **RE-42**, First Flores Expert Report, paras. 84-85; **RE-56**, Second Flores Expert Report, para. 185.

³⁷⁵⁴ Rejoinder, para. 1786.

³⁷⁵⁵ Rejoinder, para. 1783.

³⁷⁵⁶ Counter-Memorial, paras. 1279-1281; Rejoinder, para. 1781.

³⁷⁵⁷ Rejoinder, para. 1785.

2318. For the Respondent, whether these mitigation methods were described in the Respondent's letter of 22 January 2013 to the Tribunal is irrelevant, as the letter also mentioned other mitigation options that were available to the Claimants, which were not undertaken.³⁷⁵⁸ Considering the Claimants' representation by "a cadre of lawyers" in the Argentina Enforcement Proceedings and the legal fees they incurred as a result, the Respondent believes that the Claimants cannot now claim ignorance of these modes of mitigation.³⁷⁵⁹

3. The Tribunal's Analysis

2319. The Claimants' damages claim in Track III includes two different categories concerning separate yet related chains of events taking place in parallel in Argentina. Under the present heading, the Tribunal will address only the Claimants' claim concerning the embargo pursuant to the Argentina Embargo Order of two bank accounts held by Chevron Argentina.³⁷⁶⁰ The Claimants' damages claim for the reimbursement of legal fees and expenses disbursed in connection with the Argentina Enforcement Proceedings is addressed separately in Section VIII.C above.

2320. In broad terms, the Claimants' claim under the present head of damages concerns the losses allegedly suffered by Chevron Argentina (and therefore Chevron indirectly, in the Claimants' submission) when the Argentine courts ordered the embargo of multiple assets owned by Chevron's Argentine and Danish subsidiaries in Argentina by way of the Argentina Embargo Order.³⁷⁶¹

2321. In relevant part, the Argentina Embargo Order reads as follows:

III.- In accordance with requirements stated in sections A), B), C), D), E) and F) of the letters rogatory, which are the foundational resolutions and subsequent petitions of the interested party, but also under article 204 of the Procedural Code with the limitation imposed therein, without foreclosing the use of the accounts of the affected company (Art. 3 of the Convention), and until the amount of \$19,021,552,000 is reached, or its equivalent in Argentine pesos according to the official rate exchange for sale at the time the measure

³⁷⁵⁸ Rejoinder, para. 1784.

³⁷⁵⁹ Rejoinder, para. 1781.

³⁷⁶⁰ **C-2349**, Order issued by the National Civil Trial Court No. 61 of Argentina in *Aguinda Salazar Maria vs. Chevron Corporation* on Preventive Measures, 6 November 2012.

³⁷⁶¹ Memorial, para. 436.

becomes effective, attachment shall be made upon the following assets, within the scope stated for each case:

1.-) on the entire amount of ownership shares CDC ApS and Ing. Norberto Priú S.R.L. own in their name in Chevron Argentina S.R.L.; and

2.-) on the entire amount of ownership shares CDC ApS and CDHC ApS own in their name in Ing. Norberto Priú S.R.L.

. . .

3.-) *regarding accounts of any kind that Chevron Argentina S.R.L. owns in financial entities within the Argentine Republic, but such attachment shall be limited to 40% of the current or future amounts in said accounts*, which shall be frozen in the related bank entities by the order of this Court, until the decision of their destination be made. To this end, an official letter is to be sent to Banco Central de la República Argentina in order to inform the measure to all entities covered by the system, which shall reply to this Court within five (5) days of receipt of communication by said authority if they were informed of the measure, as well as the assets and amounts it was entered on. This shall be served to the authorized agents for its effectuation.

4.-) regarding the forty per cent (40%) of all amounts Chevron Argentina S.R.L. expects to receive by their hydrocarbon sale operations, performed or to be performed, of the following companies: a) YPF S.A., b) Shell Cía. Arg. de Petróleo S.A., c) Esso Petrolera Argentina S.R.L. and d) Petrobas Argentina S.A. Said amount shall be withheld until further notice. . .

5.-) regarding the entire amount of funds Chevron Argentina S.R.L. expects to receive under the case “Chevron Argentina S.R.L v. Shell Argentina de Petróleo S.A. on ordinary proceedings” before the National Trial Court for Commercial matters No. 17, Clerk's Office No. 34. The amount shall be frozen until its destination is decided. . .

6.-) regarding the entire shareholder participation of Chevron Argentina S.R.L in Oleductos del Valle S.A. . .³⁷⁶²

2322. The Claimants' damages claim does not encompass all of the assets identified in the Argentina Embargo Order. Rather, the claim put before the Tribunal specifically concerns the damages arising from the embargo of 40% of the funds held by Chevron Argentina in two non-interest-bearing, ARS-denominated accounts at Citibank and Standard Bank.³⁷⁶³

³⁷⁶² **C-2349**, Order issued by the National Civil Trial Court No. 61 of Argentina in Aguinda Salazar Maria vs. Chevron Corporation on Preventive Measures, 6 November 2012, pp. 1-4 (Claimants' translation, emphasis by the Tribunal).

³⁷⁶³ Reply, para. 1102; Second Sequeira Expert Report, VP-66 through VP-120 (Citibank); VP-121, VP-122 (Standard Bank); **RE-56**, Second Flores Expert Report, para. 169.

2323. The Argentina Embargo Order was issued on 6 November 2012.³⁷⁶⁴ The Argentine courts lifted the Embargo Order on 28 June 2013.³⁷⁶⁵ ARS 163,894,031 that had been frozen in Chevron Argentina's Standard Bank account during this period were allegedly released on that date, *i.e.*, 28 June 2013.³⁷⁶⁶ However, the lifting of the embargo over the funds held in Chevron Argentina's Citibank account effectively occurred in two instalments, namely, on 9 May 2013 (release of ARS 59,835,903) and 6 June 2013 (release of ARS 146,340,420).³⁷⁶⁷

2324. In essence, the Claimants submit that the freeze imposed on these funds during that period "led to a loss because of the time value and opportunity cost of money".³⁷⁶⁸

2325. Before beginning its analysis of the Claimants' damages claim resulting from the embargo of Chevron Argentina's Citibank and Standard Bank accounts, the Tribunal recalls the Claimants' position that their embargo losses in Argentina constitute direct damages and are recoverable in the alternative as incidental damages.³⁷⁶⁹ As explained in paragraphs 321 and 396 above, any injury caused to the Claimants by the recognition or enforcement of any part of the Lago Agrio Judgment from 1 March 2012 onwards – whether through attachment, arrest, interim injunction, execution, or howsoever otherwise – constitutes a form of *direct* damage flowing naturally from the Respondent's Treaty breaches for which the Respondent is bound to make reparation under international law.

2326. Thus, the Claimants' claim under this heading, having been particularized as a claim for "losses suffered by Chevron's subsidiaries when their Argentine funds were embargoed for several months",³⁷⁷⁰ must be addressed under the paradigm of direct damages in international law. Conversely, such damages cannot qualify as incidental damages under

³⁷⁶⁴ **C-2349**, Order issued by the National Civil Trial Court No. 61 of Argentina in Aguinda Salazar Maria vs. Chevron Corporation on Preventive Measures, 6 November 2012.

³⁷⁶⁵ **C-2665**, Court Order, 28 June 2013.

³⁷⁶⁶ Second Sequeira Expert Report, Appendix H.3, note (1).

³⁷⁶⁷ Second Sequeira Expert Report, para. 137, fn 157, Appendixes H.1, note (2); H.3, note (1); H.4, tab 69-D, VP-114, p. 19, VP-120, p. 19; **RE-56**, Second Flores Expert Report, para. 173(i).

³⁷⁶⁸ Reply, para. 1098.

³⁷⁶⁹ Reply, para. 1112.

³⁷⁷⁰ Reply, para. 1084.

Article 36 of the ILC Articles because they do not concern the Claimants' efforts to repair damage and otherwise mitigate loss arising from the recognition and enforcement of the Lago Agrio Judgment.³⁷⁷¹

2327. The second threshold question before the Tribunal is whether Chevron may claim compensation for the injuries suffered by Chevron Argentina – the purported owner of the funds that were frozen – as a result of the Argentina Embargo Order. The Tribunal has already addressed this question affirmatively in paragraph 438 above: Chevron may in its own right claim compensation in this Arbitration for the injuries caused by the recognition and enforcement of the Lago Agrio Judgment to the assets of its subsidiaries listed in the 15 October 2012 Order of the Lago Agrio Court. Such order required expressly the execution of the Lago Agrio Judgment against “[a]ccounts that [Chevron Argentina] may have open at financial entities in the Republic of Argentina”.³⁷⁷² The Argentina Embargo Order mirrored the terms of the 15 October 2012 Order of the Lago Agrio Court in this particular respect.³⁷⁷³

2328. Having determined that the Claimants are entitled in their own right to claim compensation for the alleged losses falling under the present heading, the Tribunal shall now determine whether the Claimants have met their burden of proving the damages they claim.

2329. Relying on the expert opinion of Mr Kiran Sequeira, the Claimants assert that the partial freeze of the amounts held in Chevron Argentina's Citibank and Standard Bank accounts led to a loss as a result of “[t]he combination of not earning interest and not being able to hedge against the devaluation of the Argentine peso (which dropped dramatically in value relative to the U.S. dollar during this period).”³⁷⁷⁴

³⁷⁷¹ See paras. 327-328 above.

³⁷⁷² **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012, p. 7.

³⁷⁷³ **C-2349**, Order issued by the National Civil Trial Court No. 61 of Argentina in Aguinda Salazar Maria vs. Chevron Corporation on Preventive Measures, 6 November 2012, p. 3.

³⁷⁷⁴ Memorial, para. 436.

2330. To determine the extent of the loss that was actually suffered by Chevron Argentina, Mr Sequeira proposes two alternative calculations as a proxy,³⁷⁷⁵ each based on a different assumption. First, Mr Sequeira calculates the losses “assuming [the frozen] amounts would have remained in Argentine peso-denominated accounts but earned interest at the BADLAR rate (the interest rate on deposits in excess of 1 million pesos published by the Central Bank of Argentina).”³⁷⁷⁶

2331. Second, as an alternative approach, Mr Sequeira calculates the loss “assuming the peso-denominated deposits should be translated to US Dollars as of the date of deposit at the prevailing ARS/US\$ exchange rate, rather than be held in peso-denominated accounts.”³⁷⁷⁷

2332. Following these approaches, Mr Sequeira concludes in his Second Report that the Claimants’ losses before pre-award interest ranged from USD 4.25 million (assuming the amounts would have remained in interest-bearing ARS-denominated accounts) to USD 6.23 million (assuming the amounts would have been converted from Argentine pesos to U.S. dollars).³⁷⁷⁸

2333. The Respondent rejects Mr Sequeira’s expert opinion. Noting that “[t]here is no testimony from people with personal knowledge of the Argentine bank accounts”, the Respondent asserts that Mr Sequeira “cannot point to sufficient underlying evidence of any damage”.³⁷⁷⁹ Among other things, the Respondent asserts that (i) only 40% of the Citibank funds were frozen, and there is no evidence that any Standard Bank funds were frozen;³⁷⁸⁰ and, (ii) in any event, Mr Sequeira’s alternative investment strategies are speculative and contradicted by actual events.³⁷⁸¹

³⁷⁷⁵ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1709 (Sequeira).

³⁷⁷⁶ Second Sequeira Expert Report, para. 124.

³⁷⁷⁷ Second Sequeira Expert Report, para. 124.

³⁷⁷⁸ Second Sequeira Expert Report, para. 137, Table 4.

³⁷⁷⁹ Rejoinder, para. 1760.

³⁷⁸⁰ Rejoinder, paras. 1763-1764.

³⁷⁸¹ Rejoinder, paras. 1765-1773.

2334. At the outset, the Tribunal accepts that depriving Chevron Argentina of the opportunity to use funds it owned would amount, by itself, to a form of injury. This was, indisputably, the effect of the Argentina Embargo Order. Indeed, while the Parties disagree on the exact amounts in Chevron Argentina's Citibank and Standard Bank accounts that were actually frozen, there is no dispute regarding the fact that a portion of the funds held in those accounts was effectively unavailable to Chevron Argentina between November 2012 and June 2013.³⁷⁸² Thus, the Claimants have properly established that any damages arising from the embargo of Chevron Argentina's bank accounts pursuant to the Argentina Embargo Order amount to a form of direct damage caused by the recognition and enforcement of the Lago Agrio Judgment in Argentina.

2335. Having determined that a causal link exists between the Respondent's Treaty breaches and the injury for which damages are claimed under the present heading, the Tribunal shall now assess the extent of the damages suffered by Chevron Argentina as a result of the embargo of its accounts in Citibank and Standard Bank.

2336. For its assessment of the compensation owed to the Claimants, the Tribunal shall draw guidance once again from the applicable full reparation standard set forth in *Chorzów Factory*, pursuant to which full reparation for an international illegal act "must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."³⁷⁸³

2337. When envisaging "the situation which would, in all probability, have existed if [the Treaty breaches] had not been committed", the Tribunal notes that the embargo of a bank account does not amount by itself to a monetary loss, particularly where, as here, the bank accounts that were subject to the Argentina Embargo Order were non-interest bearing.³⁷⁸⁴ What might actually result in pecuniary damage is the inability to invest the frozen funds

³⁷⁸² Second Sequeira Expert Report, para. 123; Rejoinder, para. 1764; **RE-56**, Second Flores Expert Report, paras. 175-178.

³⁷⁸³ **CLA-406**, *Case Concerning the Factory at Chorzów (Germany v. Poland)*, 1928 PCIJ Series A, No. 17, Judgment, 13 September 1928, p. 47.

³⁷⁸⁴ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1714 (Sequeira); **RE-56**, Second Flores Expert Report, para. 183.

during a given period and generate returns as a result.³⁷⁸⁵ Indeed, the economic loss arising from the embargo, as conceived by the Claimants and Mr Sequeira, arises precisely from “[t]he combination of not earning interest and not being able to hedge against the devaluation of the Argentine peso (which dropped dramatically in value relative to the U.S. dollar during [the relevant] period)”.³⁷⁸⁶

2338. Accordingly, assessing the extent of Chevron Argentina’s losses under *Chorzów Factory* requires the Tribunal to determine, with a sufficient degree of certainty,³⁷⁸⁷ the returns that Chevron Argentina would have obtained by investing the frozen funds in a hypothetical Treaty-compliant world – that is, in a scenario where Chevron Argentina’s Citibank and Standard Bank accounts were not frozen as a result of the Argentina Embargo Order. Any such forgone returns would constitute the loss suffered by Chevron Argentina as a result of the recognition and enforcement of the Lago Agrio Judgment in Argentina, for which the Respondent must pay compensation.

2339. Notwithstanding the foregoing, the fact that Chevron Argentina might have had the possibility of placing funds in an interest-bearing account, or converting those same funds to U.S. dollars, does not mean *per se* that it would have actually done so in a Treaty-compliant but-for scenario. As a matter of hypothesis, the Tribunal can envisage a scenario where, even in the absence of Treaty breaches, Chevron Argentina would not have made *any* use of the funds that were frozen in the real world during the relevant period. For example, the funds could have been held as a liquidity reserve. In other words, a but-for scenario where Chevron Argentina did not invest any of the funds in the Citibank and Standard Bank accounts is within the realm of possibility.

2340. The burden thus falls on the Claimants to provide evidence showing that, but-for the Treaty breaches, the funds that were frozen in the real world would have been invested in a particular way and would have generated returns for Chevron Argentina as a result. An

³⁷⁸⁵ See Track III Hearing Transcript, Day 7 (26 August 2022), p. 1709 (Sequeira): “. . . It is just used as a way to capture the economic loss that you’re suffering because it is difficult to speculate exactly how the cash would have been used. It could have been used, deployed to invest in projects in Argentina as Working Capital, any different ways, but we use that as one way to capture the economic loss.”

³⁷⁸⁶ Memorial, para. 436.

³⁷⁸⁷ See paras. 323, 324, 548 above.

economic loss for Chevron Argentina is only conceivable if this latter but-for scenario is that “which would, in all probability, have existed if [the Treaty breaches] had not been committed.”³⁷⁸⁸

2341. Establishing the applicable but-for scenario requires the Tribunal to assess primarily the factual matrix surrounding the international delict that did in fact occur, as it provides the vantage point from which the Tribunal can discern that which would “in all probability have occurred”, absent the Treaty breaches, from other scenarios that arise only as a matter of possibility.³⁷⁸⁹

2342. Critically, the Claimants have provided no evidence whatsoever illustrating the way in which the funds deposited in Chevron Argentina’s Citibank and Standard Bank accounts were used *before* the start of the embargo period in June 2012. Among other things, there is no evidence on record showing that, prior to the embargo, the cash balances in these accounts (i) were ever transferred to any interest-bearing accounts, let alone accounts paying the BADLAR rate; or (ii) were ever converted to USD and sent to the United States. Nor, on the other hand, is there any evidence that these funds were used as working capital, *e.g.*, to fund Chevron Argentina’s day-to-day operations, such that Chevron would have been forced to deploy other funds in their place during the period of the embargo. The Claimants have also failed to provide any evidence that Chevron Argentina planned to adopt any of these three investment strategies at any point in time.³⁷⁹⁰

2343. The Tribunal is thus faced with an evidentiary gap. To the extent that Chevron Argentina is a running petroleum company, the Tribunal would have expected the Claimants to be in a position to gather, without any difficulty, evidence illustrating Chevron Argentina’s spending habits and the way in which it used the funds held in the Citibank and Standard Bank accounts in its day-to-day operations. In such circumstances, it is insufficient for the Claimants to theorize how Chevron Argentina might have rationally used the funds at

³⁷⁸⁸ **CLA-406**, *Case Concerning the Factory at Chorzów (Germany v. Poland)*, 1928 PCIJ Series A, No. 17, Judgment, 13 September 1928, p. 47.

³⁷⁸⁹ Partial Award on Track III, para. 173.

³⁷⁹⁰ *See, e.g.*, Track III Hearing Transcript, Day 7 (26 August 2022), p. 1714 (Sequeira); **RE-56**, Second Flores Expert Report, paras. 180, 183, 187.

issue, absent the embargo, as a “proxy” for the actual loss.³⁷⁹¹ Indeed, Mr Sequeira himself agrees that his proxy calculations do not seek to support a but-for exercise by themselves.³⁷⁹² For these reasons, the Tribunal must dismiss Mr Sequeira’s proposed investment strategies for the frozen funds³⁷⁹³ as speculation unconstrained by the actual historical record.

2344. The Tribunal remains mindful that the Claimants have provided evidence showing that Chevron Argentina placed funds from the Standard Bank account in time deposits paying the BADLAR rate three months *after* the embargo was lifted.³⁷⁹⁴ However, the Tribunal is not inclined to give much weight to this evidence arising after the embargo was lifted, as compared to the steps Chevron Argentina took in the real world both before and during the embargo. The latter are more reliable illustrations of the investment strategies Chevron’s subsidiary would have deployed in the absence of Treaty breaches and of the consequential embargo – the proper subject matter of analysis under *Chorzów Factory*.

2345. While the evidence concerning Chevron Argentina’s use of the funds held in the Citibank and Standard Bank accounts *before* and *after* the Argentina Embargo Order is deficient, the existing evidence on the use of those funds *during* the embargo period is particularly illuminating. Crucially, only a portion of the balance in these accounts was subject to the Argentina Embargo Order. It is undisputed that Chevron Argentina was free to invest the unfrozen amounts in whichever way it saw fit.³⁷⁹⁵ It is also undisputed that Chevron failed

³⁷⁹¹ See, e.g., Second Sequeira Expert Report, para. 130: “If Chevron’s Argentine subsidiaries had chosen not to place these funds in time deposits, this would only *rationaly* occur because they expected to earn a greater return (or a greater economic benefit) by using the funds for some other purpose. For example, the funds could have been used as a working capital account to fund the subsidiaries’ day-to-day operations or might have been invested in other instruments or projects with a greater expected return than would be earned on time deposits. *Logically*, such a decision would only be made if the value or benefit of using the funds in some alternative way was expected to be greater than the interest that would be earned by placing the funds in time deposits at the BADLAR rate” (emphasis by the Tribunal).

³⁷⁹² See Track III Hearing Transcript, Day 7 (26 August 2022), p. 1709 (Sequeira): “*I’m not saying that that is exactly what they would have done in a counterfactual world where there was no freeze*. It is just used as a way to capture the economic loss that you’re suffering because it is difficult to speculate exactly how the cash would have been used. It could have been used, deployed to invest in projects in Argentina as Working Capital, any different ways, but we use that as one way to capture the economic loss” (emphasis by the Tribunal).

³⁷⁹³ See paras. 2330-2331 above.

³⁷⁹⁴ Second Sequeira Expert Report, para. 132.

³⁷⁹⁵ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1715 (Sequeira); **RE-56**, Second Flores Expert Report, para. 182.

to withdraw any amounts for such purpose at any point in time during the embargo period,³⁷⁹⁶ despite the fact that both the Citibank and Standard Bank accounts were non-interest bearing.³⁷⁹⁷ In sum, Chevron Argentina was free to invest the amounts not impacted by the embargo, but decided not to do so.

2346. In view of the Claimants' failure to provide countervailing evidence, and for reasons already explained, the use given by Chevron Argentina to the unfrozen balance of its Citibank and Standard Bank accounts during the embargo period in the real world is the best indicator available of the way in which the frozen portion of those funds would have been used in a but-for scenario where the embargo was not in place.³⁷⁹⁸

2347. Accordingly, the Tribunal concurs with the Respondent's expert, Mr Flores, in that "[s]ince [Chevron Argentina] did not invest at BADLAR . . . the amounts that were not frozen during the embargo period, it is unreasonable to assume that, but for the embargo, it would have done so on . . . the amounts that were frozen."³⁷⁹⁹ For the same reason, the Tribunal considers it unreasonable to assume that, but-for the Argentina Embargo Order, Chevron Argentina would have converted the portion of the amounts that were not frozen to USD, as the Claimants claim it would have done.³⁸⁰⁰ Consequently, the Tribunal infers that Chevron Argentina would not have obtained any returns from the funds held in its Citibank and Standard Bank accounts in a hypothetical scenario in which those accounts were not frozen.

2348. In sum, on the basis of the factual record as it currently stands, the Tribunal determines that the Claimants have failed to establish that the Argentina Embargo Order had the effect of depriving Chevron Argentina of any returns it might have otherwise obtained. In other words, the Claimants have failed to prove that Chevron Argentina suffered any losses as a result of the partial embargo of its accounts in Citibank and Standard Bank.

³⁷⁹⁶ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1716 (Sequeira); **RE-56**, Second Flores Expert Report, para. 183.

³⁷⁹⁷ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1714 (Sequeira); **RE-56**, Second Flores Expert Report, para. 183.

³⁷⁹⁸ See para. 2341 above.

³⁷⁹⁹ **RE-56**, Second Flores Expert Report, para. 183.

³⁸⁰⁰ **RE-56**, Second Flores Expert Report, para. 187.

2349. Accordingly, the Tribunal rejects the Claimants' damages claim in respect of the Embargo Losses in Argentina.

* * *

B. INTELLECTUAL PROPERTY LOSSES IN ECUADOR

2350. The Claimants seek USD 85,315,652 as direct damages, or alternatively as incidental damages, for the intellectual property losses that the Claimants allege to have suffered in Ecuador as a result of the embargo by the Lago Agrio Court of Chevron's trademarks in 2012 for auction and sale for the benefit of the LAPs, which was in aid of enforcement of the Lago Agrio Judgment and therefore in violation of the Tribunal's Interim Orders and Awards.³⁸⁰¹ In support of their claim, the Claimants rely on the legal opinion of Dr José Luis Barzalto Sacoto, as well as the assessment of Mr Weston Anson on the value of Chevron's trademarks, along with the underlying technical know-how used to produce lubricants.³⁸⁰²

2351. The Respondent denies that the Claimants have proven that their alleged losses would not have occurred but-for the Respondent's Treaty breaches.³⁸⁰³ Nor have the Claimants proven, in the Respondent's view, that the embargo rendered their trademarks worthless or prevented Chevron Intellectual Property LLC ("**Chevron IP**"), Texaco Inc. and Texaco Company (the owners of the attached trademarks) from exercising rights associated with them, as opined by the Respondent's Ecuadorian intellectual property law expert, Professor María de los Ángeles Lombeida.³⁸⁰⁴ The Respondent argues that even if the Claimants were entitled to recover damages under this category and the Tribunal were to accept Mr Anson's proposed valuation approaches, the Claimants would be entitled to recover no more than USD 3.99 million, as quantified by Dr William Kerr and Mr Gregory Smith.³⁸⁰⁵

1. The Claimants' Position

2352. In the Claimants' submission, "[t]here can be no question that Ecuador's breaches of its obligations under international law . . . and this Tribunal's Interim Orders and Awards are the natural and foreseeable cause of the Claimants' intellectual property losses"

³⁸⁰¹ Memorial, para. 431; Reply, paras. 1038-1039, 1082.

³⁸⁰² Memorial, para. 432; Reply, paras. 29, 1039.

³⁸⁰³ Counter-Memorial, para. 1269; Rejoinder, para. 1697.

³⁸⁰⁴ Counter-Memorial, paras. 1235, 1269; Rejoinder, para. 1697; **RE-45**, First Lombeida Expert Report, para. 33.

³⁸⁰⁵ Counter-Memorial, para. 1219; Rejoinder, para. 1691.

resulting from the embargo orders of the Lago Agrio Court.³⁸⁰⁶ The Claimants contend that the Respondent “cannot point to the theoretical possibility that an Ecuadorian court *might* have issued a judgment against Chevron” to argue otherwise.³⁸⁰⁷ Moreover, the Claimants consider that the applicable “but-for” analysis should not be based on “an alternative universe in which the LAPs pursued an individual-rights lawsuit that, in fact, they never actually pursued in the real world.”³⁸⁰⁸

2353. Accordingly, the Claimants submit that they are entitled to recover intellectual property losses in Ecuador as direct damages, and also state that they have established the quantum of their intellectual property losses.³⁸⁰⁹

2354. First, while Chevron maintained its 23% market share in the Ecuadorian lubricant market prior to the embargo orders, the Claimants contend that the market share declined to a more significant extent than that of other international oil companies during the relevant period – a point on which both Parties’ experts agree.³⁸¹⁰ The Claimants reject the Respondent’s assertion that Chevron’s post-embargo market share of 7.8% was driven by market forces, arguing instead that the decline was attributable to the Respondent’s own acts, notably: (i) the Respondent’s coordinated *Mano Sucia* media campaign against Chevron’s products; (ii) the Respondent’s decision to uphold the Lago Agrio Judgment; and (iii) the refusal by the Ecuadorian Intellectual Property Agency (“**IEPI**”, later known as the National Service for Intellectual Rights (“**SENADI**”)) to renew Chevron’s trademarks after it became the legal custodian of the trademarks.³⁸¹¹ These Ecuador-caused actions, the Claimants underscore, led Chevron’s Ecuadorian distributor to diversify its business away from Chevron.³⁸¹²

³⁸⁰⁶ Memorial, para. 431.

³⁸⁰⁷ Reply, para. 1058.

³⁸⁰⁸ Reply, para. 1057.

³⁸⁰⁹ Reply, paras. 1039-1040.

³⁸¹⁰ Reply paras. 1045-1046; Third Anson Expert Report, para. 63-64, Figure 5; **RE-43**, Second Kerr Expert Report, Schedule 9.

³⁸¹¹ Reply, paras. 1046-1049, 1062; Fourth Anson Expert Report, paras. 109-116; Barzallo Expert Report, paras. 4, 13, 16-19.

³⁸¹² Reply, para. 1076; Fourth Anson Expert Report, paras. 109-116.

2355. In the same vein, as a result of the lack of an “official regulatory body in charge of taking action against counterfeiting or illegal practices in the lubricant market”, the Claimants assert that the sales of counterfeit products harmed Chevron’s trademarks in Ecuador.³⁸¹³ In the Claimants’ view, “the absence of confirmed cases of sales of counterfeit Chevron products only further illustrates the infirmity of the Ecuadorian regulatory and legal system”.³⁸¹⁴

2356. Second, the Claimants reject the Respondent’s contention that they have failed to show a loss in respect of the value of their intellectual property. To this effect, the Claimants offer Mr Anson’s valuation as proof of the value of the Claimants’ intellectual property as of the valuation date, which he determines by reference to historical data regarding the Ecuadorian lubricants market, as well as evidence of royalty rates for comparable intellectual property assets.³⁸¹⁵

2357. The Claimants disagree with the Respondent’s suggestion to limit the value of Chevron’s trademarks by reference to a single, non-exclusive Trademark Licence Agreement entered into between Chevron IP and Swissoil del Ecuador S.A. (“**Swissoil**”) in 2010 (the “**Trademark Licence**”).³⁸¹⁶ This is because, in Mr Anson’s view, the “value of the ownership rights to the Trademarks exceeds the royalty charges payable by Swissoil and for their limited and non-exclusive use of the Trademarks.”³⁸¹⁷ Furthermore, noting that the remittance control regime for royalties imposed by Ecuador at the time of the Trademark Licence ceased to exist in 2016, the Claimants submit that a higher royalty rate would now be applicable to Chevron’s intellectual property in Ecuador.³⁸¹⁸

2358. Third, noting that Chevron IP received no royalty payments for Chevron’s trademarks registered outside of Ecuador, the Claimants posit that the embargo orders deprived the

³⁸¹³ Reply, para. 1051; **RE-43**, Second Kerr Expert Report, **Kerr Doc. 2**, Opportunities in lubricants 2015: Latin America and Caribbean Market Analysis, Ecuador: Overview, p. 22.

³⁸¹⁴ Reply, para. 1052.

³⁸¹⁵ Reply, paras. 1042, 1044; Third Anson Expert Report, para. 56; Fourth Anson Expert Report, para. 41.

³⁸¹⁶ Reply, para. 1043.

³⁸¹⁷ Reply, para. 1043; Second Anson Expert Report, p. 7.

³⁸¹⁸ Reply, paras. 1044, 1074; Third Anson Expert Report, paras. 111, 113.

trademark owner of future economic benefits, thus diminishing the present value of those assets.³⁸¹⁹

2359. Fourth, due to the “symbiotic relationship” between the trademarks and the technical know-how, the Claimants argue that “any impairment of [their] ability to use and obtain value from the trademarks has a directly proportional impact on the value of the technical know-how.”³⁸²⁰ This is because “any use of the technical know-how for third-party products would cannibalize the brand quality associated with the products bearing the Chevron trademarks.”³⁸²¹ Thus, the Claimants reject the Respondent’s attempts to distinguish between trademarks and associated technical know-how as two different assets.³⁸²²

2360. For the Claimants, the two licensing agreements entered between Chevron IP and Swissoil – the Trademark Licence and a Technology Licence Agreement for the technical know-how (the “**Technology Licence**”) – do not discredit the symbiotic relationship in the manner the Respondent suggests, given that (i) the two licences entered into effect on the same date; and (ii) their provisions expressly cross-reference each other.³⁸²³ Instead, as opined by Mr Anson, the two licences were intended to, and did, operate as a unified whole “consistent with general licensing industry practices.”³⁸²⁴

2361. Fifth, the Claimants consider that Mr Anson’s analysis of the value of the Claimants’ intellectual property assets is reliable and conservative in its approach when compared to Dr Kerr’s valuation, which, in the Claimants’ view, is based on “flawed inputs and assumptions”.³⁸²⁵

(i) *Size of the market:* Mr Anson bases his analysis of growth in the size of the Ecuadorian lubricant market on historical data; he also projects compound annual

³⁸¹⁹ Reply, para. 1053.

³⁸²⁰ Reply, para. 1054; Third Anson Expert Report, para. 42; Fourth Anson Expert Report, paras. 28-33; Barzallo Expert Report, paras. 31-40.

³⁸²¹ Reply, para. 1054; Fourth Anson Expert Report, para. 28.

³⁸²² Reply, para. 1054.

³⁸²³ Reply, para. 1055.

³⁸²⁴ Reply, para. 1056; Fourth Anson Expert Report, paras. 29-34.

³⁸²⁵ Reply, paras. 1059, 1075-1076.

growth rates ranging from 1.5 to 1.6% during the period 2019-2029. In the Claimants' submission, Mr Anson's projected growth rates are consistent with market research forecasts published in 2018.³⁸²⁶ By contrast, Dr Kerr only relies on a 2011 growth forecast that did not materialize and ignores recent data that from 2015 to 2018 the compound annual growth rate in Ecuadorian lubricant consumption was 1.55%.³⁸²⁷

- (ii) *Pricing*: Mr Anson relies on historical Chevron price lists to identify pricing information for the majority of the licensed products and adjusts those prices to current prices by relying on the Producer Price Index for Petroleum Lubricating Oil and Grease manufacturing to identify a compound annual growth rate of 0.66%.³⁸²⁸ The average price for lubricants in Ecuador, Mr Anson asserts, was USD 31.14 per gallon in 2019.³⁸²⁹ The conservative nature of Mr Anson's approach is confirmed, in the Claimants' view, by a 2019 Shell global price list, which supports an annualized growth rate of 2.06% for lubricant products.³⁸³⁰ By contrast, the Claimants note that Dr Kerr relies on inapposite market consumption data and derives an artificially low average price of USD 15.36, which is contradicted by Chevron's actual prices, by data reflecting prices in the Ecuadorian market, and by those offered by Chevron's competitor, Shell.³⁸³¹
- (iii) *Profit Margin*: Mr Anson relies on data from companies specifically focused on the lubricants business, which showed an average profit margin of 14% between 2013 and 2018. These margins, according to the Claimants, are consistent with the 14.7% margin drawn from Chevron's public financial statement, as well as those earned by other lubricants businesses.³⁸³² By contrast, Dr Kerr attributes the profit margin

³⁸²⁶ Reply, para. 1061; Fourth Anson Expert Report, para. 99; **RE-43**, Second Kerr Expert Report, **Kerr Doc. 2**, Opportunities in Lubricants 2015: Latin America and Caribbean Market Analysis, Ecuador: Overview, p. 44.

³⁸²⁷ Reply, para. 1061; Fourth Anson Expert Report, para. 103.

³⁸²⁸ Reply, para. 1063; Fourth Anson Expert Report, para. 85.

³⁸²⁹ Fourth Anson Expert Report, paras. 54-55.

³⁸³⁰ Reply, para. 1064; Fourth Anson Expert Report, paras. 85, 92-96.

³⁸³¹ Reply, para. 1077; **RE-43**, Second Kerr Expert Report, Schedule 3; Fourth Anson Expert Report, paras. 78-83; Fourth Anson Expert Report, **Doc. 96**, E-mail from Sharbel Luzuriaga, Research Analyst at Kline, includes media articles and translations, 15 January 2020, p. 3.

³⁸³² Reply, paras. 1067-1068, 1078; Fourth Anson Expert Report, paras. 117, 119-122.

to Chevron's downstream international business segment, which does not necessarily reflect the profits associated with its Ecuadorian lubricants business.³⁸³³

- (iv) *Purchase power allocation*: Noting that Dr Kerr fails to allocate any value to the technical know-how, the Claimants assert that Mr Anson's 23.7% purchase price allocation factor is the only figure that takes into account the intellectual property assets for which the Claimants have suffered losses.³⁸³⁴
- (v) *Income approach*: Mr Anson's approach determines, *inter alia*, the portion of enterprise value for an Ecuadorian lubricant business that would be attributable to the Claimants' intellectual property assets with the inclusion of the know-how. In doing so, he relies on publicly available transaction data limited to transactions in the "Oil and Gas Field Machinery and Equipment" and "Oil and Gas Equipment Services Industry" categories to identify the proportion of purchase prices paid in comparable transactions for intellectual property assets.³⁸³⁵ Mr Anson then applies a discount rate to reflect what a willing buyer would pay to a willing seller to acquire the Claimants' intellectual property assets.³⁸³⁶ Under this approach, Mr Anson values Chevron's intellectual property assets at USD 85,315,652.³⁸³⁷ By contrast, the Claimants state that Dr Kerr disregards the composition of the intellectual property assets and does not allocate any value to the technical know-how.³⁸³⁸
- (vi) *Royalty approach*: Mr Anson calculates the aggregate royalty rate for licence agreements with a tiered royalty structure and uses those aggregate royalty rates in calculating a median royalty rate of 3.75%. Under this approach, Mr Anson values Chevron's intellectual property assets at USD 82,583,524.³⁸³⁹ Mr Anson cautions

³⁸³³ Reply, para. 1078.

³⁸³⁴ Reply, para. 1079.

³⁸³⁵ Reply, paras. 1069-1071; Third Anson Expert Report, paras. 96, 99; Fourth Anson Expert Report, para. 133.

³⁸³⁶ Reply, para. 1072; Third Anson Expert Report, paras. 79-90.

³⁸³⁷ Fourth Anson Expert Report, para. 6.

³⁸³⁸ Reply, para. 1079; **RE-53**, Kerr and Smith Expert Report, paras. 105, 107.

³⁸³⁹ Reply, para. 1039; Fourth Anson Expert Report, para. 6, 145.

that Dr Kerr’s calculation of the median royalty rate, which treats each tiered royalty rate as a separate input, causes double-counting.³⁸⁴⁰

2362. Lastly, the Claimants clarify that Mr Anson’s valuation figures are higher than those provided during the “show cause” phase in 2013 because his valuation in the present stage of the Arbitration values a broader set of intellectual property assets, applies a valuation date of 30 April 2019 (instead of 31 December 2012), and takes account of relevant changes in the Ecuadorian market, including an increased demand for lubricants and the lifting of remittance controls on royalties.³⁸⁴¹ Therefore, the Claimants submit that there is no basis to view Mr Anson’s valuation with scepticism.³⁸⁴²

2. The Respondent’s Position

2363. While it is the Claimants’ burden to show that, but-for the Respondent’s Treaty breaches, their trademarks in Ecuador would not have been attached, the Respondent submits that Chevron still might have faced a large monetary judgment adjudicating the LAPs’ claims for their individual and collective, as opposed to diffuse, rights.³⁸⁴³ Accordingly, the Respondent considers that the Claimants have failed to show that, “had a Treaty-compliant Lago Agrio Court entered a large monetary judgment against Chevron, the LAPs would not have obtained the Trademark Attachments attaching [Chevron IP]’s trademarks’”.³⁸⁴⁴

2364. Even if the Claimants could show that trademark attachments would not have been ordered but for the Treaty breaches, the Respondent argues that the Claimants still would not be entitled to any damages because they have failed to establish that (i) they suffered a complete diminution in value of Chevron’s intellectual property assets; and (ii) that the diminution in value was a result of any Treaty breach.³⁸⁴⁵

³⁸⁴⁰ Reply, para. 1080; Fourth Anson Expert Report, paras. 143-144.

³⁸⁴¹ Reply, para. 1060.

³⁸⁴² Reply, para. 1060.

³⁸⁴³ Counter-Memorial, para. 1221.

³⁸⁴⁴ Counter-Memorial, para. 1221.

³⁸⁴⁵ Counter-Memorial, paras. 1212, 1223-1224; Rejoinder, para. 1692.

2365. First, noting that it is Chevron IP that actually owns the intellectual property assets at issue – not the two Claimants – the Respondent contends that the Claimants have failed to offer any proof that the trademark attachments caused the Claimants the same loss allegedly suffered by Chevron IP on a dollar-for-dollar basis.³⁸⁴⁶

2366. The Respondent argues that the Claimants have made no showing that there was any change in the value of the intellectual property assets since the trademark attachments.³⁸⁴⁷ In this regard, the Respondent considers two of the Swissoil agreements – the Trademark Licence and the Technology Licence – as the best evidence on record to calculate the pre-trademark attachment value of Chevron’s intellectual property assets.³⁸⁴⁸ Under these Licences, the Respondent explains, Chevron IP assigned no value to the trademarks. Further, under the Technology Licence, Swissoil was to pay Chevron IP a minimum annual royalty of USD 760,000 and up to a maximum annual royalty of USD 1,100,000 based on the sales made by ConAuto Compañía Anónima Automotriz (“**ConAuto**”) – an affiliate of Swissoil – of lubricants made using the technical know-how.³⁸⁴⁹ In the Respondent’s view, this implies that the strongest evidence concerning the value of the trademarks is the real-world value Chevron IP assigned to them, which is zero.³⁸⁵⁰

2367. Notwithstanding the actual real-world evidence of the pre-attachment value of the intellectual property assets, the Respondent criticizes the Claimants’ reliance on a set of hypothetical assumptions according to which the intellectual property assets were much more valuable prior to the trademark attachments.³⁸⁵¹

2368. Even if the Claimants were able to demonstrate that the intellectual property assets had substantial value prior to the trademark attachments, the Respondent insists that the Claimants have still failed to prove that the intellectual property assets lost value after the

³⁸⁴⁶ Counter-Memorial, para. 1218(b); Rejoinder, paras. 1694-1695.

³⁸⁴⁷ Counter-Memorial, para. 1225; Rejoinder, para. 1696.

³⁸⁴⁸ Rejoinder, paras. 1698, 1702.

³⁸⁴⁹ Counter-Memorial, paras. 1228-1230; **R-1995**, Document 23, Trademark Licence Agreement; **R-1995**, Document 24, Technology Licence Agreement.

³⁸⁵⁰ Counter-Memorial, para. 1232.

³⁸⁵¹ Rejoinder, paras. 1699-1701.

trademark attachments, much less all of their value as their damages claim requires.³⁸⁵² In this respect, the Respondent highlights that nothing in the embargo orders prevented Chevron IP from receiving payments outside of Ecuador under its existing agreements with Swissoil or any other licensing agreement.³⁸⁵³

2369. In the Respondent's view, a decline in market share in itself does not prove that the value of the underlying intellectual property suffers a diminution, given that several reasons that are unrelated to any Treaty breach could be attributable to the decline.³⁸⁵⁴ Specifically, the Respondent considers that price competition might be more credibly linked to the decline of the market share of a commodity product, such as lubricants.³⁸⁵⁵

2370. Additionally, the Respondent maintains that none of the Claimants' arguments prove a diminution in the value of the know-how since the know-how could be licenced separately from the trademarks, it served a separate purpose, and had independent value.³⁸⁵⁶ In particular, the Respondent notes that as a matter of Ecuadorian law, the trademark attachments do not encumber rights associated with the know-how and, thus, the know-how could not be subject to an attachment in any event.³⁸⁵⁷ Thus, despite their assertion that the trademarks and the technical know-how have a "symbiotic relationship", the Respondent points out that the Claimants have not proven that any loss in the value of the trademarks resulted in an equivalent loss to the know-how.³⁸⁵⁸

2371. Second, even if there was any diminution in value of Chevron's intellectual property rights, the Respondent argues that the Claimants have not proven that it occurred as a result of any Treaty breach.³⁸⁵⁹ Specifically, recalling the Tribunal's ruling that "public condemnatory statements regarding Chevron [] were also not the cause of an injury sustained by the Claimants" and that public statements by the Ecuadorian executive

³⁸⁵² Rejoinder, para. 1703.

³⁸⁵³ Counter-Memorial, para. 1242; Rejoinder, paras. 1703-1711.

³⁸⁵⁴ Rejoinder, para. 1705.

³⁸⁵⁵ Counter-Memorial, para. 1231; Rejoinder, para. 1706.

³⁸⁵⁶ Counter-Memorial, paras. 1243, 1249; Rejoinder, para. 1707.

³⁸⁵⁷ Counter-Memorial, para. 1244; **RE-45**, First Lombeida Expert Report, para. 55.

³⁸⁵⁸ Counter-Memorial, para. 1246; Rejoinder, para. 1707.

³⁸⁵⁹ Rejoinder, para. 1708.

branch did not amount to a denial of justice, the Respondent rejects the Claimants' suggestion that the Ecuadorian government's *Mano Sucia* media campaign was a breach of the Respondent's international obligations.³⁸⁶⁰

2372. Relying on the expert opinion of Professor Lombeida, the Respondent posits that even with the trademark attachment in place, the Claimants did not lose the right to control or administer the trademarks, with the exception of the right to transfer ownership of the trademarks.³⁸⁶¹ According to the Respondent, Chevron IP's ability to safeguard any goodwill associated with the trademarks was unaffected by the trademark attachments; rather, it maintained its ability to police the quality of the products bearing the trademarks, to bring an infringement action against an unauthorized user of the trademarks, and to file lawsuits for unfair competition.³⁸⁶² The Respondent further notes that the Claimants have not pointed to any evidence of counterfeit products, let alone suggested that Chevron IP attempted a lawsuit to enforce the trademarks or had a lawsuit rejected by an Ecuadorian court.³⁸⁶³ As such, the Claimants have not proved that the trademark attachments depressed their value.³⁸⁶⁴

2373. To the extent Chevron IP suffered any loss as a result of an inability to licence the trademarks, the Respondent takes the view that it is due to Chevron IP's failure to renew the trademark registrations, not to the trademark attachments.³⁸⁶⁵ In this regard, the Respondent disagrees with the Claimants that IEPI was legally qualified to act as a receiver or even accepted an appointment to that role.³⁸⁶⁶ Even if IEPI had assumed the role of receiver, the Respondent states that the role would have been limited to conserving the trademarks and maintaining their value for an eventual auction in aid of the enforcement of the Lago Agrio Judgment.³⁸⁶⁷ Professor Lombeida explains that under no

³⁸⁶⁰ Rejoinder, para. 1709; Track II Award, para. 8.68.

³⁸⁶¹ Counter-Memorial, para. 1235; **RE-45**, First Lombeida Expert Report, paras. 33, 39-43.

³⁸⁶² Counter-Memorial, para. 1238; Rejoinder, para. 1713; **RE-45**, First Lombeida Expert Report, para. 40; **RE-59**, Second Lombeida Expert Report, para. 30.

³⁸⁶³ Counter-Memorial, para. 1239; Rejoinder, para. 1714.

³⁸⁶⁴ Rejoinder, para. 1712.

³⁸⁶⁵ Counter-Memorial, para. 1237.

³⁸⁶⁶ Rejoinder, para. 1710; **RE-59**, Second Lombeida Expert Report, paras. 18-21.

³⁸⁶⁷ Rejoinder, para. 1710; **RE-59**, Second Lombeida Expert Report, paras. 28-31.

circumstances could IEPI have legally filed to renew the registration of the trademarks.³⁸⁶⁸ The Respondent notes that even the Claimants' expert, Dr Barzallo, never opined specifically that Chevron IP was prevented from renewing the trademarks.³⁸⁶⁹

2374. Third, even if the Claimants could get past all these hurdles, the Respondent argues that they are not entitled to the overly inflated valuation of their intellectual property losses.³⁸⁷⁰ Specifically, the Respondent takes issue with Mr Anson's use of the wrong valuation date, his inclusion of the purported value of Chevron's know-how in the damages calculation, and his use of "flawed" inputs in his two valuation methodologies:

- (i) *Valuation date:* According to the Respondent, the applicable valuation date should coincide with the date of the attachments in 2012. In the Respondent's view, applying a 30 April 2019 valuation date is unwarranted, as the proper approach to measure damages based on the loss of an asset is to value the asset immediately before the loss and then value what remains after the loss.³⁸⁷¹
- (ii) *Pricing:* In the Respondent's view, Mr Anson's calculation of the average price of USD 31.14 for lubricants bearing the trademarks in Ecuador in 2019 is based on outdated price lists with no applicability to Ecuador.³⁸⁷² Specifically, Mr Anson provides no reason why lubricant prices in Uruguay would correspond to Ecuador, how international marine customers compare to Ecuadorian lubricant consumers, and how the Producer Price Index for Petroleum Lubricating Oil and Grease Manufacturing has any relationship with Ecuador or its domestic market.³⁸⁷³ The 2019 Shell price list for Shell products, the Respondent continues, bears no relationship to the 2008 Chevron price list.³⁸⁷⁴ In contrast, Dr Kerr relies on the 2015 pricing data for finished lubricants in Ecuador from Kline Market Research,

³⁸⁶⁸ Rejoinder, para. 1716; **RE-59**, Second Lombeida Expert Report, para. 31.

³⁸⁶⁹ Rejoinder, para. 1715; **RE-59**, Second Lombeida Expert Report, para. 30.

³⁸⁷⁰ Counter-Memorial, para. 1255; Rejoinder, para. 1717.

³⁸⁷¹ Rejoinder, paras. 1720-1721; **RE-53**, Kerr and Smith Expert Report, paras. 9-12.

³⁸⁷² Rejoinder, para. 1729.

³⁸⁷³ Rejoinder, paras. 1730-1735; **RE-53**, Kerr and Smith Expert Report, para. 45; **RE-43**, Second Kerr Expert Report, para. 41.

³⁸⁷⁴ Rejoinder, para. 1736, **RE-53**, Kerr and Smith Expert Report, para. 34.

an independent third-party market analysis, which shows that the average price of lubricants in Ecuador in 2015 was USD 15.06.³⁸⁷⁵ According to the Respondent, this is comparable to the average price of comparable trademarked lubricants for sale in Ecuador on the MercadoLibre website.³⁸⁷⁶

- (iii) *Market size*: Given the historical trends of Ecuador’s lubricant market, Dr Kerr explains that market size projections must be taken with a grain of salt. The Respondent considers that Mr Anson “ignores that history.”³⁸⁷⁷ In Dr Kerr’s view, Mr Anson also fails to account for the impact of the COVID-19 pandemic on Ecuador’s lubricant market, as well as the prospect of an impending global recession.³⁸⁷⁸
- (iv) *Market share*: According to the Respondent, Mr Anson fails to account for the economic reasons behind the drop in Chevron’s market share, including the entry of low-cost competitors and the fact that the market shares of Chevron’s competitors also declined.³⁸⁷⁹
- (v) *Profit margin*: The Respondent notes that Mr Anson adopts the Chevron global profit margin without attempting to separate out the profit margin that would be attributable to Chevron’s international downstream segment. Using a 2.9% profit margin derived from Chevron’s own publicly filed financial statement would reduce Mr Anson’s damages calculation by over 75%, from USD 85 million to USD 18 million.³⁸⁸⁰ Mr Anson also fails to explain how an Ecuadorian lubricant operation would have a much greater profit margin than those of Shell and BP, which are 7.2% and 2.8%, respectively.³⁸⁸¹ In the Respondent’s view, Dr Kerr’s

³⁸⁷⁵ Rejoinder, para. 1738; **RE-53**, Kerr and Smith Expert Report, paras. 28-29, Schedule 7.

³⁸⁷⁶ Rejoinder, para. 1739; **RE-43**, Second Kerr Expert Report, Schedule 5.

³⁸⁷⁷ Rejoinder, para. 1742.

³⁸⁷⁸ Rejoinder, paras. 1742-1743.

³⁸⁷⁹ Rejoinder, paras. 1745-1746.

³⁸⁸⁰ Rejoinder, para. 1747; **RE-53**, Kerr and Smith Expert Report, paras. 67-71.

³⁸⁸¹ Rejoinder, para. 1749.

review of the profit margins for comparable companies in Ecuador confirms, in his opinion, that Mr Anson’s proposed 14.7% profit margin is unreasonable.³⁸⁸²

- (vi) *Purchase price allocation*: The Respondent asserts that, in determining a 23.7% purchase price allocation, Mr Anson incorrectly relies on transactions that were involved in upstream markets and operated in industrial markets at the supplier level, and not in the consumer and other markets in which trademarked products are sold.³⁸⁸³
- (vii) *Income approach*: The Respondent submits that Mr Anson fails to mention that Chevron sold its Ecuadorian lubricants operation, Lubricantes y Tambores del Ecuador, C.A. (“Lyteca”), to Swissoil in 2010 for the sum of USD 15.4 million, not including the trademarks or know-how. In the Respondent’s view, this stands in stark contrast to Mr Anson’s valuation of his hypothetical Ecuadorian lubricants business at USD 359.7 million, including the trademarks and the know-how, and USD 274.4 million without the trademarks and the know-how.³⁸⁸⁴
- (viii) *Royalty approach*: In the Respondent’s view, the 3.75% royalty rate applied by Mr Anson is derived from purported “comparable” royalty agreements that have nothing to do with lubricants or Ecuador. Further, contrary to Mr Anson’s opinion, the Respondent asserts that remittance controls did not constrain the royalty rate of the Technology Licence.³⁸⁸⁵ Instead of accounting for multiple royalty rates, Mr Anson takes the median of all of the rates mentioned in a given licence, which yields an artificially higher median royalty.³⁸⁸⁶

2375. In light of the foregoing, correcting each of Mr Anson’s purported errors affecting the foundational inputs and attributing 50% of the value of Chevron’s intellectual property assets to trademarks, the Respondent calculates a trademark valuation of USD 1.29

³⁸⁸² Rejoinder, para. 1751; **RE-53**, Kerr and Smith Expert Report, paras. 72-74.

³⁸⁸³ Rejoinder, para. 1753; **RE-53**, Second Kerr Expert Report, paras. 92-105.

³⁸⁸⁴ Rejoinder, para. 1754; **RE-53**, Kerr and Smith Expert Report, para. 86.

³⁸⁸⁵ Rejoinder, paras. 1755-1756; **RE-53**, Kerr and Smith Expert Report, paras. 95-98.

³⁸⁸⁶ Rejoinder, para. 1757; **RE-53**, Kerr and Smith Expert Report, paras. 99-104.

million under the income approach and USD 3.99 million under the relief from royalty approach.³⁸⁸⁷

3. The Tribunal's Analysis

(a) Introduction

2376. The Claimants' damages claim in Track III includes three different categories concerning separate yet related chains of events taking place in parallel in Ecuador. Under the present heading, the Tribunal will address only the Claimants' claim concerning the embargo of certain trademarks used for lubricant products in Ecuador. The Claimants' damages claim for the reimbursement of the legal fees and expenses disbursed in connection with the Lago Agrio Litigation is addressed separately in Section VIII.A above, while the Claimants' claim for the reimbursement of the legal fees and expenses disbursed in connection with the Ecuador Enforcement Proceedings is addressed separately in Section VIII.B above.

2377. In order to provide context for the Tribunal's decision on the Claimants' claim for intellectual property losses in Ecuador, the Tribunal will describe in this Section (i) the events leading to the attachment of Chevron's subsidiaries' intellectual property in Ecuador; and (ii) Chevron's lubricant business in Ecuador prior to the attachment, with a specific focus on the licence agreements between Chevron IP and Swissoil.

1. Attachment of intellectual property

2378. As already explained in Section VIII.B above, on 3 August 2012, in response to an application filed by the LAPs, the Lago Agrio Court issued a *mandamiento de ejecución* (i.e., order of enforcement) ordering Chevron to pay the sum of USD 19,041,414,529 per the Lago Agrio Judgment – or to turn over assets of equivalent value free of any encumbrances – within 24 hours.³⁸⁸⁸ On 15 October 2012, also in response to an application filed by the LAPs, the Lago Agrio Court ordered that the execution of the Lago Agrio Judgment “be applicable to the entirety of the assets” of Chevron (until such time as the entire obligation had been satisfied), which included Chevron's intellectual

³⁸⁸⁷ Rejoinder, para. 1728.

³⁸⁸⁸ **C-1404**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 3 August 2012 at 3:00 p.m.

property assets in Ecuador, all of Chevron and its affiliates' bank accounts in Ecuador or transfers through the Ecuadorian banking system, and Chevron's USD 96 million award against Ecuador from the *Chevron v. Ecuador I* arbitration (defined earlier as the "15 October 2012 Order").³⁸⁸⁹ With respect to intellectual property, the Court specifically ordered attachment over 13 assets:

A) The intellectual property assets identified by the petitioner in his motion; that is; Chevron, Texaco, Ursa, Havoline, Doro, Geotex, Meropa, Motex, Multigear, Regal, Taro, Texatherm, Thuban and all their distinctive logos and/or associated with each of these, and consequently over all royalties and any type of income that has been generated or that may come to be generated by use, sale, distribution or other measure; B) Likewise, attachment is decreed over all the income, royalties and in general, any monetary benefit linked to these brands, whether present or future, that Chevron Corp. may come to have, directly or through its subsidiaries, including those received by Chevron Intellectual Property LLC, as a result of the Distinctive Logo Use License Contract between Chevron Intellectual Property LLC (licensor) and Swissoil del Ecuador S.A. (licensee) . . .³⁸⁹⁰

2379. The following day, the Lago Agrio Court notified the attachment of the above-mentioned trademarks to IEPI.³⁸⁹¹ On 18 October 2012, Chevron argued that the judge who issued the 15 October 2012 Order lacked competence, requesting that the Order be declared null and void and that the judge refrain from continuing to hear this matter.³⁸⁹² A few days later, and without prejudice to its nullification request, Chevron filed a cassation appeal against the 15 October 2012 Order, requesting that the enforcement of the Order be suspended.³⁸⁹³

2380. On 25 October 2012, the Lago Agrio Court rejected Chevron's motions against the 15 October 2012 Order and, in response to a request from the LAPs, expanded the

³⁸⁸⁹ **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012 at 4:53 p.m., pp. 4-5. See **C-1575**, Plaintiff's Motion, 26 September 2012 at 8:39 a.m.

³⁸⁹⁰ **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012 at 4:53 p.m., p. 4.

³⁸⁹¹ **C-2755**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 0002-2003-0002P-CPJS Clerk's letter to the Ecuadorian Institute of Intellectual Property, 16 October 2012 at 4:53 p.m. The Court's order was also notified to Chevron's local bank in Ecuador (Banco Pichincha C.A.) and to all banks in the Ecuadorian financial system. See **C-1539**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 0002-2003-P-CPJS, Court Order, 16 October 2012 at 4:53 p.m.; **C-1540**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 0002-2003-P-CPJS, Notice of Embargo Order by Supervisory Agency of Banks and Insurance, 17 October 2012.

³⁸⁹² **C-2756**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Chevron's Motion, 18 October 2012.

³⁸⁹³ **C-2757**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Chevron's Appeal, 22 October 2012 at 4:59 p.m.

attachment to additional intellectual property assets “registered by Chevron and its subsidiaries”, including the following 54 trademarks owned by three of Chevron’s subsidiaries (Chevron IP, Texaco Inc., and Texaco Company) (jointly, “**Chevron’s IP Subsidiaries**”) (defined earlier as the “25 October 2012 Order”):

Havoline label design, registration No.15220, type PM [product mark]; Havoline label design (energy), registration No.15219, type PM; Havoline and Design ii, registration No.15218, type PM; Havoline formula 3 and Design, registration No.1490, type PM; Havoline, registration No.220, type PM; Texaco, un mundo de energía, registration No.7010, type PM; Texaco, un mundo de energía, registration No.2080, type SM [service mark]; t-texaco star design, registration No.2655, type PM; t-texaco star design; registration No.2626, type PM; Texaco, registration No.1915, type PM; Texaco and Design of a hexagonal edge with a star, registration No.140, type PM; Texacoat, registration No.513, type PM; Red star t greentexaco, registration No.457, type PM; Texaco, registration No.44, PM; Texaco, registration No.662, type SM; Texaco super outboard, registration No.1552, type PM; Texaco outboard, registration No.1553, type PM; Texaco vanguard, registration No.1554, type PM; Chevron, registration No.15133, type PM; Chevron, registration No.1334, type PM; Chevron design in blue, white and red, registration No.421, type PM; Chevron design in black and white, registration No.420, type PM; Chevron design in blue, white and red, surrounded by a white strip in the shape of a pentagon, registration No.419, type PM; Chevron, registration No.500, type PM; Chevron, registration No.38, PM; Chevron and Design (color), registration No.996, type PM; Chevron and Design (color), registration No.1032, type PM; Chevron and Design (color), registration No.422, type SM; Chevron and Design (white and black), registration No.997, type PM; Chevron and Design (white and black), registration No.998, type PM; Chevron and Design (white and black), registration No.423, type SM; Chevron and Design (black), registration No.2191, PM; Chevron and Design (black), registration No.2192, type SM; Chevron and Design (black), registration No.817, type PM; Chevron Design (color), registration No.2193, type PM; Chevron Design (color), registration No. 2194, type PM; Chevron Design (color), registration No.818, type SM; Chevron supreme, registration No.196, PM; Ursa super plus, registration No.265, PM; Ursa, registration No.204, type, PM; Ursa ofrece confianza, registration No.1220, type SM; Ursa delivers confidence, registration No.1221, type SM; Doro, registration No.500, type PM; Geotex, registration No.1324-10, type PM; Meropa, registration No.223, type PM; Motex, registration No.514, PM; Multigear, registration No.1536-10, PM; Rando, registration No.202, type PM; Regal, registration No.205, type PM; Taro, registration No.495, type PM; TDH, registration No.1551-10, type PM; Texatherm, registration No.1325-10, PM; Thuban, registration No.203, type PM; Universal, registration No.1550-10, type PM.³⁸⁹⁴

2381. Hereinafter, the Tribunal shall refer to the 15 October 2012 Order of the Lago Agrio Court (as further expanded by the Lago Agrio Court’s 25 October 2012 Order) as the “**Attachment Order**”.

³⁸⁹⁴ **C-1541**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbios, Case No. 21100-2003-0002, Amplification of Execution Order, 25 October 2012 at 11:23 a.m., pp. 1-2. *See also* Table A at para. 2400 below.

2382. Chevron subsequently filed several motions against the Court's expansion Order of 25 October 2012³⁸⁹⁵ and later sought, unsuccessfully, to challenge the judge who issued the Attachment Order.³⁸⁹⁶ On 16 January 2013, the Lago Agrio Court rejected Chevron's pending motions and, in addition, temporarily revoked the attachment of the award in the *Chevron v. Ecuador I* arbitration further to a submission from Ecuador's Attorney General.³⁸⁹⁷

2383. On 7 February 2013, the Tribunal issued its Fourth Interim Award on Interim Measures, deciding, *inter alia*, as follows:

- 1) The Tribunal declares that the Respondent has violated the First and Second Interim Awards under the Treaty, the UNCITRAL Rules and international law in regard to the finalisation and enforcement subject to execution of the Lago Agrio Judgment within and outside Ecuador, including (but not limited to) Canada, Brazil and Argentina;
- 2) The Tribunal decides that the Respondent shall show cause, in accordance with a procedural timetable to be ordered by the Tribunal separately, why it (the Respondent) should not compensate the First Claimant for any harm caused by the Respondent's violations of the First and Second Interim Awards . . .³⁸⁹⁸

2384. The Tribunal's above ruling led to a "show-cause" procedure involving two rounds of written submissions by the Parties between April and August 2013.³⁸⁹⁹ During this procedure, the Parties submitted valuation reports prepared by their respective intellectual property experts, Mr Anson and Dr Kerr.³⁹⁰⁰ However, the Tribunal ultimately deferred "all issues arising from the Claimants' claim for compensation under the Fourth Interim Award (the so-called 'Show Cause Procedure')" to Track III of the Arbitration.³⁹⁰¹

³⁸⁹⁵ See **C-2754**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Chevron's Motion, 30 October 2012 at 4:55 p.m.; **C-2758**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Chevron's Motion, 30 October 2012 at 4:58 p.m.; **C-2759**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Chevron's Motion, 30 October 2012 at 4:50 p.m.

³⁸⁹⁶ **C-2760**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002; Decision by the President of the Court, 14 December 2012 at 4:14 p.m.

³⁸⁹⁷ **C-1624**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 16 January 2013 at 10:52 a.m.

³⁸⁹⁸ Fourth Interim Award on Interim Measures, 7 February 2013, Part IV, p. 31.

³⁸⁹⁹ See Procedural Order No. 16, 19 March 2013, para. 6; Procedural Order No. 17, 5 June 2013, para. 5.

³⁹⁰⁰ See generally First Anson Expert Report; Second Anson Expert Report; **RE-43**, Second Kerr Expert Report.

³⁹⁰¹ Procedural Order No. 18, 9 August 2013, para. 7(2).

2385. In parallel, on 27 June 2013, the Lago Agrio Court ordered again the attachment of the amounts owed by Ecuador to Chevron as a result of the award in the *Chevron v. Ecuador I* arbitration, further to a motion from the LAPs (“**27 June 2013 Order**”).³⁹⁰² Chevron continued to seek the revocation of the Attachment Order and the 27 June 2013 Order, but the Court denied these motions.³⁹⁰³ On 5 July 2013, the National Director of International Affairs and Arbitration (a department within the Attorney General’s office) inquired with IEPI about the actions it had taken in response to the Attachment Order and the trademarks related to Chevron that had been attached as a result of that Order.³⁹⁰⁴ In response, IEPI explained that it had requested the Lago Agrio Court to “clarify and specify the trademark registration numbers to which the attachment order refers”, since “registrations do exist with the ‘CHEVRON’ denomination, but this does not mean that the titleholders to those registrations have any relationship to CHEVRON CORPORATION”.³⁹⁰⁵

2386. On 9 September 2013, at the request of the LAPs, the Lago Agrio Court notified to IEPI the attachment of 50 trademarks (“**9 September 2013 Order**”), as opposed to the 54 originally provided for in its 25 October 2012 Order.³⁹⁰⁶ Specifically, the 9 September

³⁹⁰² **C-1921**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002; Court Order, 27 June 2013 at 11:30 am. In February 2015, the LAPs requested that the amounts owed under the *Chevron v. Ecuador I* award be adjudicated to the ADF. However, the attachment of the award was eventually cancelled, reportedly, in 2016, also at the request of the LAPs. See **C-2771**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, LAPs’ Motion, 4 February 2015; **C-2772**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Chevron’s Motion, 5 October 2015 at 2:20 p.m.; **C-2775**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, LAPs’ Motion, 8 July 2016 at 4:56 p.m.; **C-2548/C-2777**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002 LAPs’ Motion, 21 July 2016 at 2:15 p.m.; Memorial, Appendix 8: Ecuador Trademark Embargo, fns 30, 48.

³⁹⁰³ See **C-1923**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 29 July 2013 at 2:34 p.m.; **C-2761**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Chevron’s Motion, 2 July 2013 at 5:02 p.m. See also **C-2762**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Chevron’s Motion, 9 September 2013 at 10:24 a.m.; **C-2763**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 9 September 2013 at 11:51 a.m.

³⁹⁰⁴ **C-1924**, Official Letter No. 13762, 5 July 2013.

³⁹⁰⁵ **C-1925**, Official Letter No. DE-IEPI-2013-171-OF, 11 July 2013.

³⁹⁰⁶ **C-2646/C-2763**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 9 September 2013 at 11:51 a.m.; **C-2764**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, LAPs’ motion, 5 September 2013. See also Table A at para. 2400 below.

2013 Order did not include the trademarks “Texacoat”, “Rando”, “TDH”, or “Universal”, which were also not listed in the 15 October 2012 Order of the Lago Agrio Court.³⁹⁰⁷ The Court instructed IEPI “to immediately make a margin note for each of the titles of the brands and distinctive signs so they reflect the ordered attachment” and further advised IEPI that it was “[t]hereby established as the legal custodian [“*depositario*”] of the attached property”.³⁹⁰⁸

2387. On 3 October 2013, IEPI replied to the Lago Agrio Court as follows regarding the 50 notified trademarks in the 9 September 2013 Order:

I hereby attach certified copies of 18 trademark registrations, duly annotated with the attachment order, as well as a CD containing the other 32 trademark registrations in PDF format, with electronic marginal notes and signatures.

The foregoing notwithstanding, I want to point out that most of the aforementioned [trademark] registrations are in the name of CHEVRON INTELLECTUAL PROPERTY LLC, that 8 of them have expired, inasmuch as they have not been duly renewed, and that for 13 of them there are marginal notes on precautionary measures concerning constitutional matters related to the license granted in favor of the company, Swissoil del Ecuador S.A. (SWISSOIL) . . .³⁹⁰⁹

2388. On 17 October 2013, IEPI issued a press release confirming the attachment of the trademarks and conveying the following statement from its Executive Director:

IEPI Executive Director Andrés Ycaza explained that with the attachment, Chevron loses the power to control its trademarks so it will not receive royalties from those trademark licenses. “This measure prohibits the transfer or sale of these intangibles assets and makes them available for administration by a third party.” In this case, and by order of the Court of Sucumbíos, the IEPI will be the depositary of these intangible assets, so the Institution will have the power to control and administer the trademarks so that they will not lose their value, Ycaza said.

Ycaza remarked that the purpose of this action is to find measures to obtain income from the sale of these trademarks, but under the court order. “The goal is to create a guarantee

³⁹⁰⁷ **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012 at 4:53 p.m., p. 4; **C-2646/C-2763**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 9 September 2013 at 11:51 a.m. See also Table A at para. 2400 below.

³⁹⁰⁸ **C-2646/C-2763**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 9 September 2013 at 11:51 a.m.; **C-2764**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, LAPs’ motion, 5 September 2013.

³⁹⁰⁹ **C-2765**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, IEPI’s Letter to Court, 3 October 2013. The Lago Agrio Court took note of IEPI’s fulfilment of the Attachment Order on 14 October 2013. See **C-2766**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 14 October 2013 at 11:02 a.m. See also Table A at para. 2400 below.

to secure the payment of a debt. The income the trademarks generate will no longer go to Chevron.”³⁹¹⁰

2389. On 20 January 2015, the LAPs requested that (i) the Lago Agrio Court order IEPI to renew the registration of the attached trademarks, given that some of them had expired or were about to expire; and (ii) the attached trademarks be valued and subsequently auctioned.³⁹¹¹ On 5 October 2015, Chevron opposed the LAPs’ request to renew 13 of the attached trademarks, arguing that (i) the LAPs were not entitled to request such renewal, since the assets at issue belonged to a third party (Chevron IP); and (ii) the majority of those trademarks had “irrevocably expired as a matter of law”.³⁹¹² The LAPs reiterated their renewal request in April 2016, which Chevron opposed again, insisting that this Tribunal’s awards on interim measures precluded the enforcement of the Lago Agrio Judgment.³⁹¹³ On 12 July 2016, the Lago Agrio Court denied the LAPs’ request to renew the attached trademarks.³⁹¹⁴ According to the Claimants’ Track III Memorial, the Lago Agrio Court has yet to rule on the LAPs’ request for a valuation and auction of the trademarks.³⁹¹⁵

³⁹¹⁰ **C-3224**, Press Release, *Ecuadorian Intellectual Property Institute Records the Attachment of 50 Chevron brands*, Government of Ecuador Secretary General of Communications, 17 October 2013, p. 1. *See also C-2141*, *IEPI attaches 50 Chevron brands*, EL TELÉGRAFO, 17 October 2013; **C-3464**, *Fifty Trademarks Will Not be Available to Chevron in Ecuador due to Attachment*, LAINFORMACION.COM, 18 October 2013.

³⁹¹¹ **C-2769**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, LAPs’ Motion, 20 January 2015 at 2:34 p.m.; **C-2770**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, LAPs’ Motion, 20 January 2015 at 2:42 p.m.

³⁹¹² **C-3227**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Chevron’s Motion, 5 October 2015 at 12:30 p.m. Chevron also requested that the LAPs’ request for the valuation and subsequent auction of the trademarks be rejected. *See C-3225*, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Chevron’s Motion, 11 July 2016 at 4:29 p.m., p. 6.

³⁹¹³ **C-3225**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Chevron’s Motion, 11 July 2016 at 4:29 p.m.; **C-3228**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, LAPs’ Motion, 11 April 2016 at 2:54 p.m.

³⁹¹⁴ **C-2776**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 12 July 2016 at 5:27 p.m., p. 3.

³⁹¹⁵ Memorial, Appendix 8: Ecuador Trademark Embargo, p. 10. The LAPs filed a motion before the Court in 2019, but its contents are unknown to the Claimants. *See C-2869*, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Docket showing LAPs’ Motion, 23 April 2019.

2. The licence agreements between Chevron IP and Swissoil

2390. The Parties have provided limited evidence to the Tribunal regarding the scope of Chevron’s lubricant business and the use of Chevron’s IP Subsidiaries’ trademarks and know-how in Ecuador prior to the issuance of the Attachment Order. The most significant materials on record concern Chevron’s arrangements with Swissoil, which are relevant to place in context the attachments ordered by the Lago Agrio Court.

2391. On 12 January 2010, Lyteca (an Ecuadorian affiliate of Chevron IP) and Swissoil entered into a Purchase and Sale Agreement whereby Lyteca sold certain assets to Swissoil (the “**Swissoil PSA**”). The Swissoil PSA specifically provided for the sale of (i) certain real estate assets for USD 1,388,705; (ii) certain inventory (including lubricants, base oil, additives, and packages) for USD 12,500,000; and (iii) other assets for USD 1,473,920.³⁹¹⁶ The closure of the Swissoil PSA, which appears to have materialised in June 2010, was subject to the execution of additional agreements involving or related to Chevron IP, including the four agreements described below.³⁹¹⁷

2392. First, Chevron IP entered into the Trademark Licence agreement with Swissoil, whereby Swissoil was granted “a limited, royalty-free, non-transferable, non-exclusive license to use” 17 trademarks owned by Chevron IP in Ecuador “only on and in connection with” certain products identified in the Trademark Licence.³⁹¹⁸ The Attachment Order issued at a later stage by the Lago Agrio Court covered 16 of the licenced trademarks expressly,³⁹¹⁹ as well as “all the income, royalties and in general, any monetary benefit linked to these brands, whether present or future”, that Chevron might receive as a result of the Trademark Licence.³⁹²⁰

³⁹¹⁶ **RE-53**, Kerr and Smith Expert Report, **Kerr Doc. 23**, CVX-Track III – 00016706-762, Art. I.

³⁹¹⁷ See **RE-53**, Kerr and Smith Expert Report, para. 14(a), **Kerr Doc. 23**, CVX-Track III – 00016706-762, Arts. 6.2(h), 7.2(f), **Kerr Doc. 24**, CVX-Track III – 00016000-062, p. 1.

³⁹¹⁸ **R-1995**, Document 23, Trademark Licence Agreement, Section 1(a).

³⁹¹⁹ “Soluble” is the only trademark listed in the Trademark Licence that was not included in the Attachment Order. See Table A at para. 2400 below, Item No. 55.

³⁹²⁰ The trademarks included in the Trademark Licence were Doro, Geotex, Havoline, Meropa, Motex, Multigear, Rando, Regal, Soluble, Super Outboard, Taro, TDH, Texatherm, Thuban, Universal, Ursa, and Vanguard. See **R-1995**, Document 23, Trademark Licence Agreement, Exhibit A. As already noted, Soluble was not attached. **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012 at 4:53

2393. Second, Chevron IP and Swissoil entered into a Technology Licence agreement, whereby Swissoil was granted “a non-exclusive, non-transferable license without right to sublicense to use” certain technical information in an “existing blending facility” of Swissoil in Ecuador, and only for purposes of manufacturing, packaging, marketing, distributing, using, and selling certain types of lubricants defined in the agreement.³⁹²¹ The licenced technical information included information and data related to the blending, packaging and marketing of the lubricants, certain product composition, characteristics and specifications, production and quality assurance procedures, and further know-how.³⁹²² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ³⁹²³

2394. Third, another division of Chevron, Chevron Products Company, and ConAuto, an affiliate of Swissoil, entered into the “Texaco and Chevron Lubrication Marketer Agreement (the “**Marketer Agreement**”), whereby ConAuto was appointed as a non-exclusive distributor of certain “Texaco and Chevron branded lubrication products” in Ecuador.³⁹²⁴

2395. Fourth, a Termination and Release Agreement was entered, under which ConAuto, *inter alia*, “release[d] certain claims against and acknowledge[d] certain rights of” three Chevron affiliates (Lyteca, Texaco Inc., and Chevron Global Energy Inc.).³⁹²⁵

p.m., p. 4; **C-1541**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Amplification of Execution Order, 25 October 2012 at 11:23 a.m., pp. 1-2. *See also* Table A at para. 2400 below.

³⁹²¹ **R-1995**, Document 24, Technology Licence Agreement, Sections 1.4, 2.1.

³⁹²² **R-1995**, Document 24, Technology Licence Agreement, Section 1.8.

³⁹²³ **R-1995**, Document 24, Technology Licence Agreement, Section 6.1. The minimum royalty fee would not be payable if a *force majeure* event occurred. *See R-1995*, Document 24, Technology Licence Agreement, Section 6.3.

³⁹²⁴ **RE-53**, Kerr and Smith Expert Report, **Kerr Doc. 25**, CVX – Track III – 00016763-805, Section 1.1.

³⁹²⁵ *See R-1995*, Document 23, Trademark Licence Agreement, p. 1; **R-1995**, Document 24, Technology Licence Agreement, p. 1. *See also RE-53*, Kerr and Smith Expert Report, **Kerr Doc. 25**, CVX – Track III – 00016763-805, Section 4.3(h).

2396. Shortly before the issuance of the Attachment Order, Swissoil and ConAuto filed an application for constitutional preventive measures to safeguard their constitutional rights in light of the impending attachment of Chevron's trademarks, with a view to protecting the Trademark Licence that authorized those applicants to distribute products using those trademarks. On 5 October 2012, the Guayas Criminal Investigation Court No. 15 issued a judgment deciding as follows:

I DECIDE: TO GRANT the preventive measures requested and for compliance with these measures in order to protect against the potential infringement of the rights the petitioner has alleged, it is ordered: 1. For the Ecuadorian Institute of Intellectual Property to maintain in the Registry for which it is responsible the administrative act of the License Agreement for Use of Distinctive and (sic) Signs entered into between Chevron Intellectual (sic) LLC and Swissoil del Ecuador S.A. (SWISSOIL) recorded on February 2, 2011, which ensures proper usage of the trademarks that the petitioners have requested. 2. During the term of such license, the National Customs Service of Ecuador shall not implement border measures against goods that bear licensed trademarks and that are described in the User License [illegible part below]. 3. The Hydrocarbons Regulation and Control Agency [shall] respect the [illegible part below] petitioners as authorized users to legally manufacture and distribute products with the Texaco and Chevron trademarks in processes for monitoring the production and commercialization of lubricant greases and oils for diesel and gasoline automotive use. 4. The petitioner is ordered to file, within the legal time bar period, the primary action and add it to this case file with the respective filing certificate. Having done so, the non-violability of the rights protected herein shall be subject to the decision of the judges having jurisdiction to hear the primary matter, the respective action for which must be filed by the petitioner within 90 days. This means that these preventive measures granted in this decision shall be temporary in nature for the aforementioned term. It is expressly provided that if the attachment, auction, and award of the above-mentioned trademarks were to occur, any payments, royalties, profits, or any other economic benefit arising from the license for use of distinctive signs shall be provided to the persons ordered by the competent Court, for purposes of safeguarding both the petitioner's rights and the rights of the plaintiffs in the primary proceedings, within which attachment of the trademarks may be ordered.³⁹²⁶

2397. Following the issuance of the 15 October 2012 Order, on 24 October 2012, Swissoil wrote to the Lago Agrio Court (i) taking note "of the obligation to withhold any outstanding or future payment or transfer of funds on the basis of the [Trademark Licence]"; and

³⁹²⁶ **RE-45**, First Lombeida Expert Report, **Lombeida-1**, Judgment of 5 October 2012 at 3:48 p.m., issued by the Guayas Criminal Investigation Court Number Fifteen in Case No. 09265-2012-0286, brought by Swissoil del Ecuador S.A. and Conauto Compañía Anónima Automotriz against IEPI, SENAE and the Office of the Attorney General of Ecuador, pp. 2-3. *See also* **RE-45**, First Lombeida Expert Report, paras. 58-60.

(ii) informing the court that, at that time, Swissoil had “no monetary obligations outstanding or to be assumed in relation to the [Trademark Licence]”.³⁹²⁷

2398. Approximately four years later, on 24 October 2016, the Guayas District Administrative Court No. 2 ordered:

1. The Ecuadorian Institute of Intellectual Property to maintain registration of the license agreement of distinctive signs, entered via the administrative act contained in order SD No. 2011-011, issued on February 2, 2011 by the Ecuadorian Institute of Intellectual Property (IEPI) in the respective record book; and, 2. That the Ecuadorian Institute of Intellectual Property (IEPI) and the National Customs Service of Ecuador be notified via official letter to duly comply with the provision contained in Article 219 of the Intellectual Property Law, which safeguards and protects the right of CONAUTO COMPAÑÍA ANÓNIMA AUTOTRIZ to carry out business activities in the country pursuant to the laws in force, with respect to the products whose distinctive signs are the trademarks distributed and identified in the various grounds contained in this judgment.³⁹²⁸

2399. While it is unclear how long these measures remained in force, it appears that the Attachment Order did not directly prevent Swissoil and ConAuto from continuing to import, commercialize, and distribute products in Ecuador bearing Chevron’s licensed trademarks.³⁹²⁹ Indeed, the Executive Director of IEPI confirmed that “the attachment d[id] not mean that the trademarks w[ould] be taken out of circulation from the national market, nor w[ould] consumers or the companies that s[old] these products be affected.”³⁹³⁰ The Tribunal notes that this is consistent with the Lago Agrio Court’s decision in the Attachment Order to attach, in addition to the trademarks themselves, any monetary benefits generated by the Trademark Licence for Chevron. In addition, the 13 trademarks for which IEPI wrote “marginal notes on precautionary measures concerning

³⁹²⁷ **RE-45**, First Lombeida Expert Report, **Lombeida-2**, Letter dated 24 October 2012 signed by the General Manager and CEO of Swissoil del Ecuador S.A., addressed to Dr Wilfrido Erazo, Acting Chief Judge of the Provincial Court of Sucumbíos, p. 2.

³⁹²⁸ **RE-45**, First Lombeida Expert Report, **Lombeida-3**, Judgment issued by the District Administrative Court seated in the canton of Guayaquil, Province of Guayas, Case No. 09801-2012-0956, 24 October 2016, in the proceeding brought by Swissoil del Ecuador and Conauto Cia. Anónima Automotriz against IEPI, National Customs Service of Ecuador, Attorney General of Ecuador, p. 9.

³⁹²⁹ **RE-45**, First Lombeida Expert Report, paras. 55, 59, 61.

³⁹³⁰ **C-3224**, Press Release, *Ecuadorian Intellectual Property Institute Records the Attachment of 50 Chevron brands*, Government of Ecuador Secretary General of Communications, 17 October 2013. *See also C-2141*, *IEPI attaches 50 Chevron brands*, EL TELÉGRAFO, 17 October 2013; **C-3464**, *Fifty Trademarks Will Not be Available to Chevron in Ecuador due to Attachment*, LAINFORMACION.COM, 18 October 2013.

constitutional matters related to the licence in favor of the company [Swissoil]” are all attached trademarks covered by the Trademark Licence.³⁹³¹

3. Consolidated overview

2400. For reference purposes, the Tribunal indicates for each trademark in Table A below (i) whether it was listed in the 15 October 2012 Order of the Lago Agrio Court; (ii) whether it was listed in the 25 October 2012 Order of the Lago Agrio Court, expanding the 15 October 2012 Order; (iii) whether it was notified for attachment by the Lago Agrio Court to IEPI on 9 September 2013; (iv) whether IEPI confirmed the annotation of the corresponding trademark registration on 3 October 2013; (v) the date of expiry of the corresponding trademark registration; and (vi) whether the trademark in question is included in the Trademark Licence.

³⁹³¹ **C-2765**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbios, Case No. 21100-2003-0002, IEPI’s Letter to Court, 3 October 2013. The 13 trademarks for which IEPI wrote marginal notes on precautionary measures are “Havoline”, “Texaco super outboard”, Texaco vanguard”, “Ursa”, “Doro”, “Geotex”, “Meropa”, “Motex”, “Multigear”, “Regal”, “Taro”, “Texatherm” and “Thuban” (see Items 5, 16, 18, 40, 43, 44, 45, 46, 47, 49, 50, 52, and 53 in Table A at para. 2400 below).

Table A

No.	Registration Number ³⁹³²	Name ³⁹³³	Owner ³⁹³⁴	Listed in 15 October 2012 Order? ³⁹³⁵	Listed in 25 October 2012 Order? ³⁹³⁶	Listed in 9 September 2013 Order? ³⁹³⁷	Annotated by IEPI on 3 October 2013? ³⁹³⁸	Date of Expiry ³⁹³⁹	Included in Trademark Licence? ³⁹⁴⁰
1	15220	Havoline Diseño de etiqueta	Chevron IP	Yes	Yes	Yes	Yes	26 February 2012	No

³⁹³² Registration numbers are taken from the Lago Agrio Court’s Order of 25 October 2012. **C-1541**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Amplification of Execution Order, 25 October 2012 at 11:23 a.m., pp. 1-2. The LAPs’ motion of 5 September 2013 and the Court’s order of 9 September 2013 use the same registration numbers. **C-2646/C-2763**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 9 September 2013 at 11:51 a.m.; **C-2764**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, LAPs’ motion, 5 September 2013. IEPI’s Letter to the Lago Agrio Court of 3 October 2012 includes years in the registration numbers, which are not reflected this table. **C-2765**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, IEPI’s Letter to Court, 3 October 2013.

³⁹³³ As found in the Lago Agrio Court’s order of 25 October 2012, unless otherwise indicated. **C-1541**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Amplification of Execution Order, 25 October 2012 at 11:23 a.m.

³⁹³⁴ As noted in IEPI’s letter to the Lago Agrio Court of 3 October 2013. **C-2765**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, IEPI’s Letter to Court, 3 October 2013. Where IEPI’s letter did not identify the owner of a specific trademark (*see* Items 12, 48, 51, and 54 in this Table), the Tribunal has resorted to the relevant trademark registration certificate provided by Professor Lombeida to identify the owner of the trademark in question.

³⁹³⁵ The Lago Agrio Court’s Order of 15 October 2012 did not list specific trademarks, but brands. For the present purposes, the table considers any trademark including the name of one of these brands to have been attached. The Attachment order specifies that it attaches “the intellectual property identified by the petitioner in his motion; that is; Chevron, Texaco, Ursa, Havoline, Doro, Geotex, Meropa, Motex, Multigear, Regal, Ttaro, Texatherm, Thuban.” **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012 at 4:53 p.m., p. 4.

³⁹³⁶ **C-1541**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Amplification of Execution Order, 25 October 2012 at 11:23 a.m., pp. 1-2.

³⁹³⁷ **C-2646/C-2763**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 9 September 2013 at 11:51 a.m. The same trademarks are listed in the LAPs’ motion of 5 September 2013. *See C-2764*, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, LAPs’ motion, 5 September 2013.

³⁹³⁸ **C-2765**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, IEPI’s Letter to Court, 3 October 2013.

³⁹³⁹ As noted in IEPI’s letter to the Lago Agrio Court of 3 October 2013. **C-2765**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, IEPI’s Letter to Court, 3 October 2013. Where IEPI’s letter did not identify the expiry date of a specific trademark (*see* Items 12, 48, 51, and 54 in this Table), the Tribunal has resorted to the relevant trademark registration certificate provided by Professor Lombeida to identify the expiry date of the trademark in question.

³⁹⁴⁰ **R-1995**, Document 23, Trademark Licence Agreement, Exhibit A.

No.	Registration Number ³⁹³²	Name ³⁹³³	Owner ³⁹³⁴	Listed in 15 October 2012 Order? ³⁹³⁵	Listed in 25 October 2012 Order? ³⁹³⁶	Listed in 9 September 2013 Order? ³⁹³⁷	Annotated by IEPI on 3 October 2013? ³⁹³⁸	Date of Expiry ³⁹³⁹	Included in Trademark Licence? ³⁹⁴⁰
2	15219	Havoline Diseño de etiqueta (energy)	Chevron IP	Yes	Yes	Yes	Yes	26 February 2022	No
3	15218	Havoline y Diseño ii	Chevron IP	Yes	Yes	Yes	Yes	26 February 2012	No
4	1490	Havoline formula 3 y Diseño	Texaco Inc.	Yes	Yes	Yes	Yes	8 June 2012	No
5	220	Havoline	Chevron IP	Yes	Yes	Yes	Yes	23 January 2015	Yes
6	7010	Texaco, un mundo de energía	Chevron IP	Yes	Yes	Yes	Yes	29 December 2008	No
7	2080	Texaco, un mundo de energía	Chevron IP	Yes	Yes	Yes	Yes	28 December 2008	No
8	2655	Diseño estrella t-texaco	Chevron IP	Yes	Yes	Yes	Yes	4 November 2005	No
9	2626	Diseño estrella t-texaco	Chevron IP	Yes	Yes	Yes	Yes	4 November 2015	No
10	1915	Texaco	Chevron IP	Yes	Yes	Yes	Yes	6 January 2015	No
11	140	Texaco y Diseño de un borde hexagonal con una estrella	Chevron IP	Yes	Yes	Yes	Yes	12 March 2023	No
12	513	Texacoat	Texaco Inc.	No	Yes	No	No	30 December 1980 ³⁹⁴¹	No
13	457	Estrella roja t-verde -texaco	Texaco Company	Yes	Yes	Yes	Yes	26 October 2004	No
14	44	Texaco	Chevron IP	Yes	Yes	Yes	Yes	17 August 2014	No
15	662	Texaco	Chevron IP	Yes	Yes	Yes	Yes	12 January 2015	No
16	1552	Texaco super outboard	Chevron IP	Yes	Yes	Yes	Yes	25 February 2020	Yes ³⁹⁴²

³⁹⁴¹ **RE-45**, First Lombeida Expert Report, **Lombeida-RG-51**, Trademark Registration Certificate No. 513-60, “Texacoat”, 30 December 1960.

³⁹⁴² “Super Outboard.” **R-1995**, Document 23, Trademark Licence Agreement, Exhibit A.

No.	Registration Number ³⁹³²	Name ³⁹³³	Owner ³⁹³⁴	Listed in 15 October 2012 Order? ³⁹³⁵	Listed in 25 October 2012 Order? ³⁹³⁶	Listed in 9 September 2013 Order? ³⁹³⁷	Annotated by IEPI on 3 October 2013? ³⁹³⁸	Date of Expiry ³⁹³⁹	Included in Trademark Licence? ³⁹⁴⁰
17	1553	Texaco outboard	Chevron IP	Yes	Yes	Yes	Yes	25 February 2020	No
18	1554	Texaco vanguard	Chevron IP	Yes	Yes	Yes	Yes	25 February 2020	Yes ³⁹⁴³
19	15133	Chevron	Chevron IP	Yes	Yes	Yes	Yes	4 October 2021	No
20	1334	Chevron	Chevron IP	Yes	Yes	Yes	Yes	16 May 2015	No
21	421	Diseño Chevron en negro y blanco ³⁹⁴⁴	Chevron IP	Yes	Yes	Yes	Yes	13 August 2014	No
22	420	Diseño Chevron en azul, blanco y rojo	Chevron IP	Yes	Yes	Yes	Yes	13 August 2014	No
23	419	Diseño Chevron en azul, blanco y rojo, rodeado de una faja blanca en forma de pentágono	Chevron IP	Yes	Yes	Yes	Yes	13 August 2014	No
24	500	Chevron	Chevron IP	Yes	Yes	Yes	Yes	18 December 2013	No
25	38	Chevron	Chevron IP	Yes	Yes	Yes	Yes	26 August 2016	No
26	996	Chevron y Diseño (a color)	Chevron IP	Yes	Yes	Yes	Yes	9 January 2016	No

³⁹⁴³ “Vanguard.” **R-1995**, Document 23, Trademark Licence Agreement, Exhibit A.

³⁹⁴⁴ The Tribunal notes that there is a discrepancy between the registration numbers assigned to the brands listed as Items 21 and 22 in this table in the Lago Agrio Court’s Order of 25 October 2012 (**C-1541**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Amplification of Execution Order, 25 October 2012 at 11:23 a.m., p. 1) and in IEPI’s letter to the Lago Agrio Court of 3 October 2013 (**C-2765**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, IEPI’s Letter to Court, 3 October 2013, p. 3). The Court’s Order assigns registration number 421 to “Diseño de Chevron en Azul, Blanco y Rojo”, while IEPI’s letter assigns the same registration number to “Diseño de Chevron en Negro y Blanco”. In turn, the Court’s Order assigns registration number 420 to “Diseño de Chevron en Negro y Blanco”, while IEPI’s letter assigns the same registration number to “Diseño de Chevron en Azul, Blanco y Rojo”. While the Tribunal has decided to follow the nomenclature laid out in IEPI’s letter in this table, it considers this discrepancy to be immaterial: whatever the correct registration number for these two trademarks might be, it is clear that they both fell under the scope of the Attachment Order and were annotated by IEPI.

No.	Registration Number ³⁹³²	Name ³⁹³³	Owner ³⁹³⁴	Listed in 15 October 2012 Order? ³⁹³⁵	Listed in 25 October 2012 Order? ³⁹³⁶	Listed in 9 September 2013 Order? ³⁹³⁷	Annotated by IEPI on 3 October 2013? ³⁹³⁸	Date of Expiry ³⁹³⁹	Included in Trademark Licence? ³⁹⁴⁰
27	1032	Chevron y Diseño (a color)	Chevron IP	Yes	Yes	Yes	Yes	9 January 2016	No
28	422	Chevron y Diseño (a color)	Chevron IP	Yes	Yes	Yes	Yes	9 January 2016	No
29	997	Chevron y Diseño (blanco y negro)	Chevron IP	Yes	Yes	Yes	Yes	9 January 2016	No
30	998	Chevron y Diseño (blanco y negro)	Chevron IP	Yes	Yes	Yes	Yes	9 January 2016	No
31	423	Chevron y Diseño (blanco y negro)	Chevron IP	Yes	Yes	Yes	Yes	9 January 2016	No
32	2191	Chevron y Diseño (negro)	Chevron IP	Yes	Yes	Yes	Yes	30 March 2016	No
33	2192	Chevron y Diseño (negro)	Chevron IP	Yes	Yes	Yes	Yes	31 March 2016	No
34	817	Chevron y Diseño (negro)	Chevron IP	Yes	Yes	Yes	Yes	31 March 2016	No
35	2193	Diseño de Chevron (a color)	Chevron IP	Yes	Yes	Yes	Yes	31 March 2016	No
36	2194	Diseño de Chevron (a color)	Chevron IP	Yes	Yes	Yes	Yes	31 March 2016	No
37	818	Diseño de Chevron (a color)	Chevron IP	Yes	Yes	Yes	Yes	31 March 2016	No
38	196	Chevron supreme	Chevron IP	Yes	Yes	Yes	Yes	5 September 2017	No
39	265	Ursa super plus	Texaco Inc.	Yes	Yes	Yes	Yes	21 March 1989 ³⁹⁴⁵	No
40	204	Ursa	Chevron IP	Yes	Yes	Yes	Yes	23 January 2015	Yes

³⁹⁴⁵ RE-45, First Lombeida Expert Report, Lombeida-RG-42, Trademark Registration Certificate No. 265-79, “Ursa Super Plus”, 30 January 2020.

No.	Registration Number ³⁹³²	Name ³⁹³³	Owner ³⁹³⁴	Listed in 15 October 2012 Order? ³⁹³⁵	Listed in 25 October 2012 Order? ³⁹³⁶	Listed in 9 September 2013 Order? ³⁹³⁷	Annotated by IEPI on 3 October 2013? ³⁹³⁸	Date of Expiry ³⁹³⁹	Included in Trademark Licence? ³⁹⁴⁰
41	1220	Ursa ofrece confianza	Chevron IP	Yes	Yes	Yes	Yes	15 March 2020	No
42	1221	Ursa delivers confidence	Chevron IP	Yes	Yes	Yes	Yes	15 March 2020	No
43	500	Doro	Chevron IP	Yes	Yes	Yes ³⁹⁴⁶	Yes	31 May 2016	Yes
44	1324-10	Geotex	Chevron IP	Yes	Yes	Yes	Yes	25 January 2020	Yes
45	223	Meropa	Chevron IP	Yes	Yes	Yes	Yes	23 January 2015	Yes
46	514	Motex	Chevron IP	Yes	Yes	Yes	Yes	30 December 2015	Yes
47	1536-10	Multigear	Chevron IP	Yes	Yes	Yes	Yes	25 February 2020	Yes
48	202	Rando	Texaco Inc.	No	Yes	No	No	19 April 2022 ³⁹⁴⁷	Yes
49	205	Regal	Chevron IP	Yes	Yes	Yes	Yes	23 January 2015	Yes
50	495	Taro	Chevron IP	Yes	Yes	Yes	Yes	31 May 2016	Yes
51	1551-10	TDH	Chevron IP	No	Yes	No	No	25 February 2020 ³⁹⁴⁸	Yes
52	1325-10	Texatherm	Chevron IP	Yes	Yes	Yes	Yes	25 January 2020	Yes
53	203	Thuban	Chevron IP	Yes	Yes	Yes	Yes	23 January 2015	Yes
54	1550-10	Universal	Chevron IP	No	Yes	No	No	25 February 2020 ³⁹⁴⁹	Yes
55	(N/A)	Soluble	Chevron IP	No	No	No	No	Unknown	Yes ³⁹⁵⁰

³⁹⁴⁶ In the 9 September 2013 Order, “Doro” is assigned registration number No. 265. *See C-2646/C-2763, Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 9 September 2013 at 11:51 a.m., p. 1.

³⁹⁴⁷ **RE-45**, First Lombeida Expert Report, **Lombeida-RG-52**, Trademark Registration Certificate No. 202/68, “Rando”, 30 January 2020.

³⁹⁴⁸ **RE-45**, First Lombeida Expert Report, **Lombeida-RG-53**, Trademark Registration Certificate No. 1551-10, “TDH”, 30 January 2020.

³⁹⁴⁹ **RE-45**, First Lombeida Expert Report, **Lombeida-RG-54**, Trademark Registration Certificate No. 1550-10, “Universal”, 30 January 2020.

³⁹⁵⁰ “Soluble” is the only trademark included in the Trademark Licence that was not included in the Attachment Order. *See* para. 2392 above. The Trademark Licence does not provide an application or registration number for “Soluble”; instead, it indicates “Application not Filed”. *See R-1995*, Document 23, Trademark Licence Agreement, Exhibit A.

2401. The Tribunal extracts several key observations from the above table:

- (i) The Claimants' claim for intellectual property losses relates to a total of 55 trademarks owned by Chevron's IP Subsidiaries.
- (ii) 54 of those trademarks were listed in the Attachment Order (in particular, in the 25 October 2012 Order of the Lago Agrio Court). The remaining one trademark ("Soluble", Item 55 in Table A above) was the only trademark included in the Trademark Licence that was not listed in the Attachment Order.
- (iii) As already noted, on 9 September 2013, the Lago Agrio Court notified to IEPI the attachment of 50 trademarks, as opposed to the 54 originally provided for in its 25 October 2012 Order. The 9 September 2013 Order did not include "Texacoat", "Rando", "TDH", or "Universal" (Items 12, 48, 51, and 54 in Table A above).
- (iv) From among the 50 trademarks annotated by IEPI on 3 October 2013 per the Lago Agrio Court's 9 September 2013 Order, eight had expired prior to the issuance of the Attachment Order: "Havoline Diseño de etiqueta", "Havoline y Diseño ii", "Havoline formula 3 y Diseño", "Texaco, un mundo de energía" (No. 7010), "Texaco, un mundo de energía" (No. 2080), "Diseño estrella t-texaco", "Estrella roja t verde – texaco", and "Ursa super plus" (Items 1, 3, 4, 6, 7, 8, 13, and 39 in Table A above). Accordingly, IEPI only annotated 42 trademarks that were actually in force.
- (v) In turn, from among the eight trademarks identified in the preceding paragraph, "Havoline formula 3 y Diseño" (Item 4 in Table A above) expired on 8 June 2012, meaning that the six-month grace period to renew that trademark did not conclude until December 2012 – that is, this trademark could have conceivably been renewed for a limited period after the issuance of the Attachment Order.³⁹⁵¹

(b) *Characterisation of the alleged damage*

2402. The Claimants submit that they are entitled to recover the intellectual property losses they suffered in Ecuador as direct damages, such that "Ecuador is required to compensate for

³⁹⁵¹ See para. 2419 below.

the value of the intellectual property that it embargoed.”³⁹⁵² Specifically, the Claimants seek USD 85,315,652 (or alternatively, USD 82,583,524) as compensation for the value of the attached trademarks and “the underlying technical know-how used to produce lubricants” (the asset which, in the Claimants’ submission, drives the value of Chevron’s trademarks in Ecuador).³⁹⁵³

2403. The Claimants’ expert, Mr Anson, describes his approach to the calculation of the damages sought under this heading as follows:

As a result of the Lago Agrio Judgment, the Trademarks have been made subject to embargo orders in Ecuador, effectively denying Chevron’s ability to exercise quality control over products bearing its Trademarks and denying it the value of the Technical Know-How underlying the Trademarks for these products. My analysis presents what the value of the Chevron [intellectual property, comprising the trademarks and the underlying technical know-how] would have been had the embargo orders not occurred, i.e., the But-For scenario. In contrast, under the situation that Chevron has lost or will lose all control and ownership of the Chevron [intellectual property], i.e., the As-Is scenario, the [intellectual property] would have no value to Chevron within Ecuador. The valuations I present are simply the difference between the But-For scenario, the value as though the Chevron [intellectual property] was not subject to embargo orders, and the As-Is scenario, the Chevron [intellectual property] having no value to Chevron within Ecuador. Since the As-Is scenario holds no value, it did not need to be calculated. Thus, the But-For scenario indicates the full loss of value of the Chevron [intellectual property].³⁹⁵⁴

2404. Each of the two elements of Mr Anson’s proposed analysis – the “As-Is scenario” and the “But-For scenario” – requires a distinct analysis.

2405. First, Mr Anson’s so-called “As-Is scenario” is essentially built upon two main assumptions: (i) the intellectual property assets at issue (*i.e.*, the trademarks and the underlying technical know-how) no longer “have . . . value to Chevron within Ecuador”; and (ii) this purported destruction of the full value of the trademarks and know-how is a consequence of the fact that “the [t]rademarks have been made subject to embargo orders in Ecuador”.³⁹⁵⁵ The Respondent disputes these two assumptions: in its view, in order to make such showing, the Claimants must prove “that the entire value of the trademarks

³⁹⁵² Memorial, para. 431; Reply, paras. 1038-1039. In the alternative, the Claimants contend that they are entitled to recover these losses as incidental damages. *See* Reply, paras. 1038, 1082.

³⁹⁵³ *See* Memorial, para. 434; Reply, para. 1039. *See also* Third Anson Expert Report, paras. 8, 32-33.

³⁹⁵⁴ Third Anson Expert Report, para. 51.

³⁹⁵⁵ Third Anson Expert Report, para. 51.

and the entire value of the know-how were lost” and that “that loss was due wholly to treaty breaches and that the loss was incurred 100 percent by the Claimants.”³⁹⁵⁶

2406. The Tribunal agrees with the Respondent that the Claimants must establish the two assumptions underlying Mr Anson’s “As-is Scenario” as a threshold issue on the basis of the evidence. The Tribunal shall therefore assess first in sub-section IX.B.3(c) below whether the Claimants have established that the intellectual property owned by Chevron’s IP Subsidiaries in Ecuador lost any value following the issuance of the Attachment Order. Subsequently, the Tribunal will assess in sub-section IX.B.3(d) below whether any such decrease in value was actually *caused* by the Attachment Order, in which case it would amount to a form of injury flowing from the recognition and enforcement of the Lago Agrio Judgment and, thus, from the Respondent’s Treaty breaches.

2407. To the extent that the Claimants successfully establish that any damage to Chevron’s intellectual property was caused by the Respondent’s Treaty breaches, sub-section IX.B.3(e) below shall address the difference in value that the underlying property would have had in the absence of Treaty breaches (*i.e.*, the so-called “But-For scenario”) as compared to the “As-Is” scenario to determine the amount of compensation owed to the Claimants under the present heading.

(c) *Did the intellectual property owned by Chevron’s IP Subsidiaries in Ecuador lose any value following the issuance of the Attachment Order?*

2408. Owing to their distinctive nature as intangible assets, the Tribunal shall examine first how trademarks and know-how may generally generate value for their owners (particularly within Ecuador) and, in turn, how such value may be lost. The Tribunal shall assess thereafter whether the trademarks and the know-how at issue lost any value after the issuance of the Attachment Order.

1. Trademarks and know-how in Ecuador

2409. The Respondent’s Ecuadorian law expert, Professor Lombeida, defines a trademark as “the distinctive sign that enables a product or service to be identified in the market and

³⁹⁵⁶ Track III Hearing Transcript, Day 2 (19 August 2022), p. 395 (Leonetti).

that distinguishes it from its competitors”.³⁹⁵⁷ In particular, upon registration of a trademark with the competent authority in Ecuador (IEPI, later known as SENADI) the owner acquires the right to (i) use the trademark directly or through duly authorized third parties; and (ii) prevent third parties from registering or using an identical or similar sign within Ecuador.³⁹⁵⁸ A trademark registration may also be transferred to another party.³⁹⁵⁹

2410. Accordingly, the exercise of ownership and other rights over a trademark under Ecuadorian law are dependent on the registration of that trademark with the relevant domestic authority. Such registration, if granted, has a term of ten years, and may be renewed for successive ten-year terms.³⁹⁶⁰ If renewal is not requested within a six-month period following the expiration date of the trademark, the registration “shall lapse by operation of law” (“*caducará de pleno derecho*”), meaning that the owner’s (and any third party’s) rights over the trademark are extinguished and the underlying sign becomes available to the public.³⁹⁶¹

2411. Based on the above, the Tribunal understands that Chevron’s IP Subsidiaries would have been able to derive revenues from their registered trademarks in Ecuador by (i) selling products bearing those trademarks (which can foster more effective and efficient marketing, and brand loyalty, among other things); (ii) charging royalties to third parties that were authorised to sell products bearing the trademarks; and/or (iii) selling the trademarks (*i.e.*, all rights associated with the trademarks) to a third party.³⁹⁶² The

³⁹⁵⁷ **RE-45**, First Lombeida Expert Report, para. 9. *See also* Barzallo Expert Report, para. 35; **C-3577**, Intellectual Property Law of Ecuador (Law No. 2006-013), Art. 194; Third Anson Expert Report, paras. 35-37. The Tribunal notes that the Claimants’ Ecuadorian law expert, Dr Barzallo, did not address these issues in detail in his expert report or at the Track III Hearing.

³⁹⁵⁸ **RE-45**, First Lombeida Expert Report, paras. 9-10, 15; **Lombeida-4**, Common Regime for Intellectual Property, Decision 486, Art. 162. *See also* **C-3577**, Intellectual Property Law of Ecuador (Law No. 2006-013), Arts. 216-217.

³⁹⁵⁹ **RE-45**, First Lombeida Expert Report, **Lombeida-4**, Common Regime for Intellectual Property, Decision 486, Art. 161. *See also* Barzallo Expert Report, para. 30.

³⁹⁶⁰ **RE-45**, First Lombeida Expert Report, para. 11; **Lombeida-4**, Common Regime for Intellectual Property, Decision 486, Art. 152.

³⁹⁶¹ **RE-45**, First Lombeida Expert Report, paras. 11, 13-14; **Lombeida-4**, Common Regime for Intellectual Property, Decision 486, Art. 174.

³⁹⁶² *See* Third Anson Expert Report, para. 39.

Tribunal also understands that the value of the trademarks would decrease if their owners were prevented from generating revenues by any of these means.

2412. Know-how, in turn, is not specifically defined or regulated under Ecuadorian law.³⁹⁶³

Legal scholarship (as upheld by the Court of Justice of the Andean Community) has nonetheless defined “know-how” as “all of the undisclosed technical information, regardless of whether it is patentable, necessary for the industrial production of a product or procedure and that originates from experience”.³⁹⁶⁴ In particular, Professor Lombeida opines that know-how is (i) “specialised knowledge in a specific area” that “has a monetary value in competitive advantage with respect to third parties”; (ii) “not protectable under an exclusive right such as an industrial property right”; and (iii) confidential.³⁹⁶⁵

2413. Notwithstanding any relationship that might exist between trademarks and know-how, it is clear that they are two distinct types of intangible assets.³⁹⁶⁶ Indeed, since know-how is not necessarily protected as an intellectual property right, the right to use certain know-how or technical information may be granted in a self-standing manner to a third party in a contract, licence, or similar legal transaction.³⁹⁶⁷ Professor Lombeida opines that, because of its very nature, know-how “cannot be subject to a preventive measure”, although “it would be possible to place an attachment on the proceeds that the use of that know-how may generate”.³⁹⁶⁸

2414. Therefore, the Tribunal considers that Chevron’s IP Subsidiaries could have derived revenues from any technical know-how they may have owned regarding the production of lubricants by (i) using that know-how to manufacture and later sell specific products;

³⁹⁶³ RE-45, First Lombeida Expert Report, paras. 19-20, 23-24.

³⁹⁶⁴ RE-45, First Lombeida Expert Report, **Lombeida-8**, Court of Justice of the Andean Community, Case 515-IP-2015, 15 March 2017. *See also* Track III Hearing Transcript, Day 6 (25 August 2022), p. 1411 (Barzallo).

³⁹⁶⁵ RE-45, First Lombeida Expert Report, para. 26.

³⁹⁶⁶ RE-45, First Lombeida Expert Report, paras. 21, 27; Barzallo Expert Report, paras. 31-39.

³⁹⁶⁷ RE-45, First Lombeida Expert Report, paras. 20, 24-25, 48-51; **Lombeida-9**, CHORRES BENAVENTE, H.: “*El contrato de know how o de provision de conocimientos técnicos: aspectos a ser considerados para su regulación normativa*”, *Ius et Praxis*, No. 2, vol. 4, 2008, available at <https://dialnet.unirioja.es/servlet/articulo?codigo=3056484>, pp. 452-454; **Lombeida-10**, Organic Code of Social Economy of Knowledge, Creativity, and Innovation (COESCI), 9 December 2016, Art. 81.

³⁹⁶⁸ RE-45, First Lombeida Expert Report, paras. 27, 52.

and/or (ii) charging royalties or fees to third parties for accessing and using the know-how. Once again, the Tribunal also understands that the value of the know-how would decrease if its owner was prevented from generating revenues by any of these means.

2415. Against this background, the Tribunal shall determine next whether the trademarks and/or the know-how at issue lost any value after the issuance of the Attachment Order.

2. Whether the trademarks lost any value after the issuance of the Attachment Order

2416. As already explained, the Claimants (and their expert, Mr Anson) submit that the attachment ordered by the Lago Agrio Court resulted in a “complete diminution” of the value of the trademarks.³⁹⁶⁹ The Respondent disputes this, asserting instead that the Claimants have failed to establish that “(a) the Trademarks had any economic value [for Chevron IP] before the Trademark Attachments and (b) after the Trademark Attachments they were rendered worthless”.³⁹⁷⁰

2417. At the outset, the Tribunal recalls that the owner of a trademark holds certain rights in Ecuador while the trademark is registered with the competent authority (IEPI, later known as SENADI) and remains in force.³⁹⁷¹ A trademark owner may derive an economic benefit from the registered trademark by virtue of those underlying rights.³⁹⁷² For this reason, a trademark registered in Ecuador constitutes an asset of, at minimum, potential value for as long as it remains in force. Put differently, so long as a trademark remains in force, the Tribunal cannot, without more, dismiss the possibility that it holds some value. Rather, the Tribunal would need to undertake a valuation of the asset to determine whether it holds any discernible value.

2418. In this respect, the Tribunal recalls that when IEPI recorded the attachment of Chevron’s trademarks pursuant to the Lago Agrio Court’s orders in October 2013, it noted that eight

³⁹⁶⁹ See Reply, paras. 1047, 1049; Third Anson Expert Report, para. 51. See also Track III Hearing Transcript, Day 15 (7 September 2022), p. 3467 (Miles) (asserting that “[t]he effect of the attachment was to cause Chevron to lose its Trademarks and all related benefits”).

³⁹⁷⁰ Counter-Memorial, paras. 1216, 1218.c), 1225-1226.

³⁹⁷¹ See para. 2403 above.

³⁹⁷² See para. 2408 above.

of the 50 relevant trademark registrations had expired.³⁹⁷³ One of those registrations had apparently expired in 1989, while four other registrations expired between 2004 and 2008.³⁹⁷⁴ Two other trademark registrations expired on 26 February 2012, meaning that the six-month period to request their renewal also lapsed before the Attachment Order was issued on 15 October 2012 (and also before the LAPs requested the attachment of the trademarks).³⁹⁷⁵ Once the rights of Chevron’s IP Subsidiaries over these trademarks (including the right to renew their registration) had permanently extinguished, they became effectively worthless assets. Accordingly, the Tribunal concludes that seven of the eight trademarks lost all of their value before the issuance of the Attachment Order (and/or the Lago Agrio Court’s expansion order of 25 October 2012).

2419. As for the one remaining trademark (“Havoline formula 3 y Diseño”), while it expired prior to the issuance of the Attachment Order, it did so on 8 June 2012, meaning that the six-month grace period to renew that trademark did not expire until December 2012.³⁹⁷⁶ To the extent that the relevant Chevron subsidiary (Texaco Inc.) still held some rights with respect to this trademark at the time the Attachment Order was issued in October 2012, the Tribunal considers that the trademark potentially had some value as an asset. The Tribunal shall therefore consider any potential decrease in value to this trademark as part of its analysis of the impact of the attachment on the remaining 42 trademarks.

2420. The remaining 42 trademarks held by Chevron’s IP Subsidiaries were in force at the time of the issuance of the Attachment Order. Professor Lombeida confirms that the registrations of these 42 trademarks attached by IEPI were set to expire by September

³⁹⁷³ See **C-2765**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, IEPI’s Letter to Court, 3 October 2013. See also Table A at para. 2400 and para. 2401(iv) above.

³⁹⁷⁴ See **C-2765**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, IEPI’s Letter to Court, 3 October 2013, pp. 2, 4; **RE-45**, First Lombeida Expert Report, **Lombeida-RG-42**, Trademark Registration Certificate No. 265-79, “Ursa Super Plus”, 30 January 2020. See also **RE-45**, First Lombeida Expert Report, Table 1, p. 21.

³⁹⁷⁵ See **C-1575**, Plaintiff’s Motion, 26 September 2012 at 8:39 a.m.; **C-2765**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, IEPI’s Letter to Court, 3 October 2013, p. 1.

³⁹⁷⁶ See para. 2401(v) above.

2023, and there is no indication that any of them was renewed.³⁹⁷⁷ There is also no evidence that the attachment over them was ever formally lifted.

2421. Similarly, the Trademark Licence and the Technology Licence were also expected to expire on 15 June 2020, and there is no indication that any similar licence or agreement was entered into between Chevron IP and Swissoil.³⁹⁷⁸ Dr Kerr and Mr Smith note that the “Chevron trademarks are being utilized by Swissoil and ConAuto today and have value in the market”, but neither Party has conclusively established that such use of the trademarks is permitted under a licence agreement between Chevron IP and Swissoil.³⁹⁷⁹

2422. In sum, the Tribunal concludes that 43 of the trademarks at issue (*i.e.*, the 50 attached trademarks notified by the Lago Agrio Court to IEPI on 9 September 2013 minus the seven trademarks over which Chevron’s IP Subsidiaries had extinguished their rights prior to the Attachment Order) granted certain rights to Chevron’s IP Subsidiaries before the issuance of the Attachment Order and expired while they were subject to the Attachment Order. This suffices to confirm that these trademarks had at least potential economic value before the issuance of the Attachment Order and lost all value they might have held afterwards. Hereinafter, the Tribunal shall refer to these trademarks as the “**43 Trademarks**”.³⁹⁸⁰

2423. The Respondent, however, has raised a distinct argument regarding a specific subset of 17 trademarks falling under the Trademark Licence (16 of which, the Tribunal recalls, were listed in the Attachment Order, and of which 13 were annotated by IEPI in October 2013).³⁹⁸¹ In the Respondent’s submission, such trademarks “were assigned no value” by

³⁹⁷⁷ See **RE-45**, First Lombeida Expert Report, Tables 1-2, para. 64. See also Track III Hearing Transcript, Day 12 (2 September 2022), pp. 2863-2864 (Lombeida).

³⁹⁷⁸ **RE-53**, Kerr and Smith Expert Report, **Kerr. 24**, Trademark Licence Agreement, Section 6.

³⁹⁷⁹ See **RE-53**, Kerr and Smith Expert Report, paras. 15, 113; **R-1995**, Document 23, Trademark Licence Agreement, Exhibit A; **RE-45**, First Lombeida Expert Report, Tables 1-2.

³⁹⁸⁰ For ease of reference, the 43 Trademarks correspond to the trademarks listed in Table A at para. 2400 above as Items 2, 4, 5, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 52, and 53.

³⁹⁸¹ See Table A at para. 2400 above. “Soluble” is the only trademark listed in the Trademark Licence that was not included in the Attachment Order.

Chevron IP in the licence – which, in its view, is “the strongest evidence concerning the value of the Trademarks”.³⁹⁸²

2424. The Tribunal is not persuaded by the Respondent’s argument. While it is true that the Trademark Licence did not specifically foresee any royalty payments for the use of the trademarks falling under its scope, this Licence formed part of a series of mutually-dependent transactions between several of Chevron’s subsidiaries and Swissoil, some of which did foresee some kind of compensation for Chevron’s subsidiaries.³⁹⁸³ In fact, the Respondent’s experts, Dr Kerr and Mr Smith, have calculated the current value of the trademarks by attributing to them 50% of the royalties payable under the Technology Licence.³⁹⁸⁴ Crucially, also, the Trademark Licence only granted *non-exclusive* rights to use certain trademarks. In other words, Chevron IP (the owner of all trademarks included in the Trademark Licence) could have potentially used and/or licenced all of the trademarks at issue irrespective of the terms of the Licence. For present purposes, the Tribunal considers that this suffices to confirm that, prior to the issuance of the Attachment Order, the trademarks covered by the Trademark Licence had actual or at least potential economic value.

2425. In sub-section IX.B.3(d) below, the Tribunal will analyse the extent, if any, to which the Attachment Order caused the 43 Trademarks to lose any value they might have held.

3. Whether the underlying technical know-how lost any value after the issuance of the Attachment Order

2426. While the Tribunal has concluded in the preceding Section that the 43 Trademarks had at least potential economic value before the attachment and were rendered worthless while under attachment due to their expiry, the same conclusion does not necessarily extend to the know-how underlying those trademarks. Indeed, the know-how stands in stark contrast with the trademarks themselves. Unlike the know-how, the 43 Trademarks were distinctly registered with IEPI and were formally annotated following the issuance of the

³⁹⁸² See Counter-Memorial, paras. 1228-1232.

³⁹⁸³ See paras. 2392-2395 above.

³⁹⁸⁴ See **RE-43**, Second Kerr Expert Report, para. 130, Schedule 21; **RE-53**, Kerr and Smith Expert Report, para. 113, Schedule 21.

Attachment Order. Similarly, unlike the 43 Trademarks, no technical know-how to produce lubricants was expressly attached by the Lago Agrio Court.³⁹⁸⁵

2427. The Claimants describe the know-how at issue as “[t]he know-how [which was] used for marketing and putting for sale in Ecuador Chevron-branded lubricants (motor oils) that were made with Chevron’s proprietary formulas and blending methods”.³⁹⁸⁶ In the context of his proposed valuation, Mr Anson further describes this know-how as “the underlying technical information . . . related to the products bearing these [attached] Trademarks”, which “enables the Trademarks to convey a consistent message to consumers” by serving “as an indicator of a consistent quality standard.”³⁹⁸⁷

2428. The question before the Tribunal is whether the technical know-how, as particularized by the Claimants, lost any value it may have had after the issuance of the Attachment Order. In essence, the Claimants argue that the value of the know-how was tied to that of the trademarks that were subject to the Attachment Order, such that “any impairment of Claimants’ ability to use and obtain value from the trademarks has a directly proportional impact on the value of the technical know-how”.³⁹⁸⁸ According to Mr Anson,

it would be illogical for Chevron to license the Technical Know-How in Ecuador without including the Trademarks. This could lead to consumers associating the quality of lubricant products, which are created based on Technical Know-How, with the brand of the licensee as opposed to Chevron, the owner. This consumer perception could potentially spread beyond the Ecuadorian border and cannibalize other aspects of Chevron’s global business. Thus, regardless of whether the Technical-Know was explicitly listed in the embargo order, the effect is that any restriction on Chevron’s ability to control the Trademarks (thus impairing the value of the Trademarks) would also impair the value of the Technical Know-How, which cannot be utilized except in combination with the Trademarks, and should be included in the value of the Chevron IP.³⁹⁸⁹

2429. In the Tribunal’s view, a necessary implication of this purported “symbiotic relationship” between trademarks and know-how is that the only technical know-how that could have possibly been affected by the attachment of the trademarks is that which was used in

³⁹⁸⁵ See Memorial, para. 434; Reply, para. 1054; Counter-Memorial, para. 1244; Rejoinder, para. 1707. See also Track III Hearing Transcript, Day 2 (19 August 2022), p. 396 (Leonetti), Day 15 (7 September 2022), pp. 3475-3476 (Miles); Barzallo Expert Report, para. 42; **RE-59**, Second Lombeida Expert Report, para. 33.

³⁹⁸⁶ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3470 (Miles).

³⁹⁸⁷ Third Anson Expert Report, paras. 8, 42; Fourth Anson Expert Report, para. 3.

³⁹⁸⁸ Reply, para. 1054.

³⁹⁸⁹ Fourth Anson Expert Report, para. 28.

connection with products bearing those trademarks. The burden thus falls on the Claimants to identify in a sufficiently detailed manner the products and technical know-how used to create such products which, in their submission, were affected by the attachment of the trademarks.

2430. In this respect, Mr Anson describes the content of the technical know-how underlying the Claimants' intellectual property losses claim by referring exclusively to the Technology Licence, which defines the licenced technical information as follows:

“Technical Information” shall mean product composition, characteristics and specifications of base oil, the formulation of Finished Products from base oil with additives, production and quality assurance procedures for base oil and the manufacture of Finished Products therefrom, and technical information and data relating to the blending, packaging, marketing of Finished Products. . .³⁹⁹⁰

2431. Similarly, Mr Anson identifies the products sold under Chevron's trademarks by reference to the Trademark Licence, which includes a list of 77 products.³⁹⁹¹

2432. Hence, the only technical know-how the Claimants have properly identified as an asset with economic value that might have been affected by the Attachment Order is the know-how that was licenced through the Technology Licence and was used in connection with the subset of trademarks included in the Trademark Licence (the “**Technical Information**”). The Claimants have not sufficiently identified any other form of know-how in a manner that allows the Tribunal to determine whether it suffered any decrease in value.

³⁹⁹⁰ **R-1995**, Document 24, Technology Licence Agreement, Section 1.8. The Technology Licence defines “Finished Products” as “lubricants to be blended from approved base oils and packaged, marketed, used and sold by Licensee [*i.e.*, Swissoil] utilizing Licensor's Technical Information licensed hereunder, . . . as it may be amended from time to time by mutual written agreement of the Parties”. *See id.* in Section 1.4.

³⁹⁹¹ *See R-1995*, Document 23, Trademark Licence Agreement, Exhibit B; Third Anson Expert Report, para. 52. Those products would indeed appear to include “Finished Products” as defined by the Technology Licence. *See R-1995*, Document 24, Technology Licence Agreement, p. 1.

2433. The Tribunal recalls in this connection that, from among the 43 Trademarks, only 13 were included in the Trademark Licence and expired while under the Attachment Order.³⁹⁹² The Tribunal shall refer to these trademarks as the “**13 Trademarks**”.³⁹⁹³

2434. Having established the scope of the know-how at issue and its connection with a subgroup of the trademarks falling under the Trademark Licence, the ensuing question for the Tribunal is whether the Technical Information lost any value it may have had after the issuance of the Attachment Order. The Tribunal recalls that in order for such know-how to lose any value, the Attachment Order must have precluded or hindered Chevron IP from (i) using the Technical Information to manufacture and later sell specific products; and/or (ii) charging royalties or fees to third parties for accessing and using the Technical Information.³⁹⁹⁴

2435. At the outset, the Tribunal recalls that the Technology Licence provided for the payment of annual royalties to Chevron IP, while the Trademark Licence was “royalty-free”. If any payments had ever been made to Chevron IP pursuant to the Trademark Licence, they would have fallen squarely within the scope of the Attachment Order, which expressly referred to this agreement.³⁹⁹⁵ The effects of the Attachment Order on payments owed to Chevron IP under the Technology Licence, by contrast, are far less clear.

2436. The Tribunal recalls in this respect that the Technology Licence foresaw a minimum yearly royalty of USD 760,000 regardless of the amount of sold barrels, which was to be transferred in quarterly instalments to an account designated by Chevron IP.³⁹⁹⁶ Had the Ecuadorian authorities seized any royalty (or other comparable) payments made to

³⁹⁹² See para. 2423 above.

³⁹⁹³ For ease of reference, the 13 Trademarks correspond to the trademarks listed in Table A at para. 2400 above as Items 5, 16, 18, 40, 43, 44, 45, 46, 47, 49, 50, 52, and 53. The Tribunal recalls that, from among the 17 trademarks included in the Trademark Licence, one (“Soluble”, Item 55 in Table A) was not listed in the Attachment Order, while three other trademarks (“Rando”, “TDH”, and “Universal”, listed respectively as items 48, 51, and 54 in Table A) were not annotated by IEPI.

³⁹⁹⁴ See para. 2414 above.

³⁹⁹⁵ **C-1532**, Execution Order Issued by the Provincial Court for Sucumbíos, 15 October 2012 at 4:53 p.m., p. 4.

³⁹⁹⁶ **R-1995**, Document 24, Technology Licence Agreement, Section 6. Only in the event of *force majeure* would the minimum royalty not be payable, and replaced by a fee based exclusively on the number of barrels sold. There is no evidence that such a *force majeure* event ever occurred, or that the Technology Licence was otherwise terminated prematurely.

Chevron’s subsidiaries pursuant to the Technology Licence, the documentary evidence of such attachment should be readily available. However, the Claimants have not provided evidence that any royalty payments made pursuant to the Technology Licence were ever attached by virtue of the Attachment Order, or that Swissoil was otherwise effectively prevented from making any such payments. Indeed, the Claimants have simply stated that “Chevron IP has received no royalty payments on the Chevron trademarks outside Ecuador”, but have made no reference to royalty payments under the Technology Licence.³⁹⁹⁷ In sum, there is no evidence that Chevron IP was ever precluded from receiving any royalty payments under the Technology Licence, whether as a result of the Attachment Order or for any other reason.

2437. This does not mean, however, that the ability of the Technical Information to generate economic returns under the Technology Licence was unimpaired following the issuance of the Attachment Order. Even if no payments due under the Technology Licence were ever seized, the Tribunal is persuaded by the Claimants that the expiry of the 13 Trademarks had an impact on Chevron IP’s ability to monetize the Technical Information due to the “symbiotic relationship” between the trademarks and know-how at stake.³⁹⁹⁸

2438. In this respect, the Tribunal accepts that the Trademark Licence and the Technology Licence were intended to operate as a “unified whole”, as the Claimants submit.³⁹⁹⁹ Indeed, both agreements, alongside the Marketer Agreement and the Termination and Release Agreement, were executed simultaneously “as a condition to the consummation of the transactions contemplated in the [Swissoil PSA]”.⁴⁰⁰⁰ The connection between the licenced trademarks and the licenced technical know-how is further reflected in multiple cross-references between the Trademark Licence and the Technology Licence. In particular, the Technology Licence provided that the Finished Products manufactured

³⁹⁹⁷ Reply, para. 1053. Similarly, following the issuance of the Attachment Order, Swissoil did not make reference to any payments being due under the Technology Licence. *See RE-45*, First Lombeida Expert Report, **Lombeida-2**, Letter dated 24 October 2012 signed by the General Manager and CEO of Swissoil del Ecuador S.A., addressed to Dr Wilfrido Erazo, Acting Chief Judge of the Provincial Court of Sucumbíos, p. 2. *See also RE-45*, First Lombeida Expert Report, para. 56.

³⁹⁹⁸ *See* para. 2428 above.

³⁹⁹⁹ Reply, paras. 1055-1056; Fourth Anson Expert Report, paras. 29-34.

⁴⁰⁰⁰ *See R-1995*, Document 23, Trademark Licence Agreement, p. 1; **R-1995**, Document 24, Technology Licence Agreement, p. 1.

with the Technical Information “shall be sold or otherwise conveyed” by Swissoil “only under the tradenames and trademarks licensed by [Chevron IP] to [Swissoil] in accordance with the [Trademark Licence]”.⁴⁰⁰¹ The Trademark Licence, in turn, provided that “all Products offered in connection with the Marks shall conform to the terms of the [Technology Licence] so as to protect the prestige of the Marks and the goodwill represented and symbolized thereby”.⁴⁰⁰² Crucially, the termination of the Technology Licence was foreseen as a ground for the termination of the Trademark Licence, and vice versa.⁴⁰⁰³

2439. In sum, the Technical Information was only granted to Swissoil for purposes of manufacturing products bearing the trademarks included in the Trademark Licence. It is therefore evident that the Trademark Licence and the Technology Licence were greatly dependent on each other, such that one of them could not fully operate without the other.

2440. Accordingly, the expiry of the 13 Trademarks must have necessarily had an impact on the exploitation of the underlying Technical Information in Ecuador, thus diminishing its value.⁴⁰⁰⁴ For instance, based on Mr Anson’s opinion, the Tribunal understands that if a trademark can no longer be used or enforced, the value of the underlying know-how in building brand equity or market differentiation can diminish significantly.⁴⁰⁰⁵ Similarly, if any limitations are placed on the use of a trademark, the potential licensees of the underlying know-how may no longer be interested in licensing a bundled package of trademarks and know-how, or will do so at lower royalty rates. Indeed, in certain circumstances, no licensing of the underlying-know how may be possible at all without the benefit of trademark protection. This holds particular importance here, as the Trademark and Technology Licences were “non-exclusive”, that is, Chevron IP retained

⁴⁰⁰¹ **R-1995**, Document 24, Technology Licence Agreement, Section 2.4.

⁴⁰⁰² **R-1995**, Document 23, Trademark Licence Agreement, Section 2(a)(i).

⁴⁰⁰³ **R-1995**, Document 23, Trademark Licence Agreement, Section 7(b); **R-1995**, Document 24, Technology Licence Agreement, Section 12.1.1.

⁴⁰⁰⁴ See para. 2434 above.

⁴⁰⁰⁵ See para. 2428 above.

the ability to licence the underlying trademarks and Technical Information to third parties other than Swissoil.⁴⁰⁰⁶

2441. At this stage, it is not necessary for the Tribunal to determine the precise manner or extent of the Technical Information's diminution in value. For present purposes, it suffices for the Tribunal to conclude that the Technical Information lost *some* value as a result of the expiry of the 13 Trademarks. The Claimants have otherwise failed to establish any diminution in value of any other technical know-how Chevron's IP Subsidiaries may have owned in Ecuador.

2442. For these reasons, the Tribunal is satisfied that the 43 Trademarks and the Technical Information underlying the 13 Trademarks had potential value before the issuance of the Attachment Order and lost at least some of that value thereafter. The ensuing question the Tribunal must address is whether such decrease in value was effectively caused by the Attachment Order.

(d) *Did the Attachment Order cause the 43 Trademarks and/or the Technical Information to lose any value?*

1. Introduction

2443. Before beginning its causation analysis, the Tribunal recalls the Claimants' position that their intellectual property losses in Ecuador constitute direct damages and are recoverable in the alternative as incidental damages.⁴⁰⁰⁷ As explained in paragraphs 321 and 396 above, any injury caused to the Claimants by the recognition or enforcement of any part of the Lago Agrio Judgment from 1 March 2012 onwards – whether through attachment, arrest, interim injunction, execution, or howsoever otherwise – constitutes a form of *direct* damage flowing naturally from the Respondent's Treaty breaches for which the Respondent is bound to make reparation under international law.

2444. Thus, the Claimants' claim under this heading, having been particularized as a claim for "the full value of the Trademarks attached by Ecuador, including the value of any and all

⁴⁰⁰⁶ See para. 2393 above.

⁴⁰⁰⁷ Reply, para. 1038.

monetary benefits linked to the Trademarks”,⁴⁰⁰⁸ must be addressed under the paradigm of direct damages in international law and, thus, of proximate causation. Conversely, such losses cannot qualify as incidental damages under Article 36 of the ILC Articles because they do not concern the Claimants’ efforts to repair damage and otherwise mitigate loss arising from the recognition and enforcement of the Lago Agrio Judgment.⁴⁰⁰⁹

2445. Accordingly, the Tribunal must determine whether there is a causal link between, on the one hand, the loss in value of the 43 Trademarks and the Technical Information and, on the other hand, the attachment of those trademarks ordered by the Lago Agrio Court – the relevant measure taken by the Respondent in furtherance of the enforcement of the Lago Agrio Judgment. Any intellectual property losses not caused by such attachment are not compensable in this Arbitration.

2446. The Tribunal further notes that two of the causation arguments raised by the Respondent are now moot in light of the Tribunal’s prior findings.

2447. On the one hand, the Respondent claims that the intellectual property at issue is not owned by any of the Claimants, but rather by Chevron’s IP Subsidiaries, none of which are claimants in this Arbitration.⁴⁰¹⁰ However, the Respondent avers, the Claimants have failed to prove that the trademark attachments “caus[ed] Claimants the same loss allegedly suffered by [Chevron IP] on a dollar-for-dollar basis”.⁴⁰¹¹

2448. The Tribunal has already addressed this question in paragraph 438 above: Chevron may in its own right claim compensation in this Arbitration for the injuries caused by the recognition and enforcement of the Lago Agrio Judgment to the assets of its subsidiaries listed in the 15 October 2012 Order of the Lago Agrio Court (*i.e.*, the Attachment Order). By virtue of the Lago Agrio Judgment, such order required the direct attachment of intellectual property assets in Ecuador that were owned by three of Chevron’s wholly-

⁴⁰⁰⁸ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3465 (Miles). *See also* Memorial, para. 431; Reply, para. 1058.

⁴⁰⁰⁹ *See* paras. 327-328 above.

⁴⁰¹⁰ Counter-Memorial, para. 1214; Rejoinder, para. 1694.

⁴⁰¹¹ Counter-Memorial, para. 1218.b; Rejoinder, para. 1695.

owned subsidiaries (Chevron IP, Texaco Inc. and Texaco Company) as well as over any benefit that these subsidiaries might derive from those assets.⁴⁰¹²

2449. On the other hand, the Respondent argues that the Claimants have not established that, had Ecuador complied with the Treaty, the trademarks would not have been attached.⁴⁰¹³ The Respondent asserts that “notwithstanding Ecuador’s breaches, Chevron still might have faced a large monetary judgment adjudicating the LAPs’ claims for their individual and collective, as opposed to diffuse, rights”, and adds that “it is reasonable to conclude that the LAPs would not have attempted to enforce that judgment any differently from how they sought to enforce the Lago Agrio Judgment”.⁴⁰¹⁴ The Respondent therefore concludes that the Claimants have failed to prove that any losses shown with respect to the attachment of the trademarks were caused by Ecuador’s Treaty breaches, such that Ecuador cannot be held responsible for them.⁴⁰¹⁵

2450. As explained by the Tribunal in Section VII.A.5 above, the applicable but-for scenario must be premised on a hypothetical Lago Agrio Judgment that dismisses the diffuse claims and at best ignores the individual claims.⁴⁰¹⁶ Accordingly, there is no basis to conclude that Chevron would in all probability have faced “a large monetary judgment” – or otherwise any judgment imposing some sort of pecuniary liability – in the but-for world. In other words, the Tribunal is satisfied that the relevant but-for scenario is one in which the Lago Agrio Court would not have ordered the attachment of Chevron’s intellectual property (or any other) assets. The Respondent’s argument is therefore dismissed.

2. Scope of the causation inquiry

2451. With the above threshold issues resolved, the Tribunal shall now assess whether the Attachment Order caused the 43 Trademarks and the Technical Information to lose any

⁴⁰¹² **C-1532**, Execution Order Issued by the Provincial Court for Sucumbios, 15 October 2012, p. 4. *See* para. 2380 above.

⁴⁰¹³ Counter-Memorial, paras. 1220-1221.

⁴⁰¹⁴ Counter-Memorial, para. 1221.

⁴⁰¹⁵ Counter-Memorial, para. 1222.

⁴⁰¹⁶ *See* paras. 386-390 above.

value. The Tribunal shall address causation first vis-à-vis the 43 Trademarks and thereafter as regards the Technical Information.

2452. As already noted, the Claimants seek compensation, *inter alia*, for the entire value of the attached trademarks.⁴⁰¹⁷ While it is undisputed that the Attachment Order did not formally dispossess Chevron's IP Subsidiaries of the trademarks, the Claimants submit that the value of these trademarks was completely diminished by the inability of Chevron's subsidiaries to exercise certain rights over them.⁴⁰¹⁸

2453. As addressed earlier, seven of the trademark registrations falling under the scope of the Attachment Order had already expired irreversibly at the time the Attachment Order was issued.⁴⁰¹⁹ As such, Chevron's IP Subsidiaries no longer held any rights over them that could have been impacted by the attachment.⁴⁰²⁰

2454. With respect to the 43 Trademarks that were in force at the time of the attachment, the Parties (and their respective experts on Ecuadorian law, Dr Barzallo and Professor Lombeida) agree that the attachment prevented Chevron's IP Subsidiaries from selling or otherwise transferring ownership of those trademarks.⁴⁰²¹ In the Tribunal's view, the loss of the ability to transfer the 43 Trademarks, by itself, constitutes a form of injury flowing from the Attachment Order (as further expanded by the Lago Agrio Court's order of 25 October 2012) and, therefore, from the Respondent's Treaty breaches.

2455. However, the loss of the ability to transfer ownership of the 43 Trademarks, taken by itself, did not necessarily render the trademarks worthless. As already explained, any trademark in Ecuador carries with it a bundle of associated rights, including the right to use the trademark, licence it, prevent any unauthorized use, obtain royalties for the use of the trademark by a third party, and renew it before its expiry.⁴⁰²² In the Tribunal's

⁴⁰¹⁷ See Memorial, para. 431; Reply, para. 1039.

⁴⁰¹⁸ See Reply, para. 1047; Third Anson Expert Report, paras. 7, 32, 51.

⁴⁰¹⁹ See paras. 2418-2419 above.

⁴⁰²⁰ See para. 2418 above.

⁴⁰²¹ See Counter-Memorial, para. 1235; Reply, para. 1047; **RE-45**, First Lombeida Expert Report, paras. 33, 39; **RE-59**, Second Lombeida Expert Report, paras. 5, 8; Barzallo Expert Report, paras. 29-30; Track III Hearing Transcript, Day 6 (25 August 2022), pp. 1439-1440 (Barzallo), Day 12 (2 September 2022), p. 2863 (Lombeida).

⁴⁰²² **C-3577**, Intellectual Property Law of Ecuador (Law No. 2006-013), Arts. 216-219.

understanding, the value of a trademark is also tied to the ability to exercise those rights. In this connection, the Parties and their respective Ecuadorian law experts have debated at length the question whether the Attachment Order had the effect of preventing Chevron's IP Subsidiaries from exercising such rights over their trademarks while the attachment was pending, thus diminishing their value.

2456. The Respondent's position is that the Claimants have not established any causal link between any diminution in the value of the trademarks and the attachment of the trademarks, since Chevron IP "actually retained all of the rights associated with trademark ownership and registration, with the exception of the right to transfer ownership of the Trademarks":⁴⁰²³

- (i) First, the Respondent argues that, as a matter of Ecuadorian law, Chevron IP "remained able to license, re-license, and renew their trademark registrations" following the attachment of the trademarks.⁴⁰²⁴ In the Respondent's view, Chevron's IP Subsidiaries' purported inability to licence certain trademarks following the attachment is "due to an intervening act attributable to Claimants' subsidiaries themselves", who chose not to renew the corresponding trademark registrations before their expiry.⁴⁰²⁵ The Respondent further explains that "IEPI was not legally qualified to act as a receiver" and "did not ever accept an appointment to that role", noting that "[e]ven if it had assumed the role of receiver, its role would have been to conserve the [t]rademarks so they maintained their value for an eventual auction", not to restrict Chevron IP "from licensing or otherwise utilizing the Trademarks prior to that auction."⁴⁰²⁶
- (ii) Second, the Respondent posits that, under Ecuadorian law, Chevron IP remained able to bring "an infringement action against an unauthorized user of the [t]rademarks" and/or "to prevent the registration of similar or identical signs and

⁴⁰²³ Counter-Memorial, paras. 1217, 1234-1235, 1240; **RE-45**, First Lombeida Expert Report, paras. 33, 39-43.

⁴⁰²⁴ Counter-Memorial, para. 1236; Rejoinder, para. 1711; **RE-45**, First Lombeida Expert Report, paras. 33, 39-43; **RE-59**, Second Lombeida Expert Report, paras. 8-14.

⁴⁰²⁵ Counter-Memorial, para. 1237; Rejoinder, paras. 1715-1716; **RE-59**, Second Lombeida Expert Report, paras. 30-31.

⁴⁰²⁶ Rejoinder, para. 1710; **RE-59**, Second Lombeida Expert Report, paras. 18-31.

file lawsuits for unfair competition”.⁴⁰²⁷ In any event, the Respondent insists that “there is no evidence of counterfeiting or of a failed attempt by [Chevron IP] to stop counterfeiting”, and nothing in the record suggests that a separate Ecuadorian court hearing such a counterfeit claim “would not properly adjudicate the claim”.⁴⁰²⁸

(iii) Third, in the Respondent’s submission, the Claimants have not shown that the restrictions on payments in Ecuador imposed by the Attachment Order “did, in fact, prevent the receipt of any economic benefit”.⁴⁰²⁹

2457. Conversely, the Claimants assert that a judicial attachment of intangible assets “materially restricts an owner’s ability to exercise rights over the trademarks, including renewing trademarks, opposing their unauthorized use, granting new licenses or entering into license agreements for the trademarks”.⁴⁰³⁰ Among other things, the Claimants note that given the Tribunal’s findings of denial of justice in its Track II Award “there is no reason to believe that proceedings launched by Chevron in Ecuadorian courts to prevent infringement of its seized trademarks would have been anything other than futile”.⁴⁰³¹ The Claimants further note that “significant concerns exist regarding sales of counterfeit lubricants in Ecuador” and that the absence of confirmed cases “only further illustrates the infirmity of the Ecuadorian regulatory and legal system”.⁴⁰³² Similarly, the Claimants explain that “it was only following the perfection of the embargo orders”, in October 2013, that IEPI “became the legal custodian of the trademarks, with sole authority to renew them”.⁴⁰³³ However, the Claimants note, “IEPI has failed to take any action to

⁴⁰²⁷ Counter-Memorial, para. 1238; Rejoinder, para. 1713; **RE-45**, First Lombeida Expert Report, para. 40; **RE-59**, Second Lombeida Expert Report, para. 30.

⁴⁰²⁸ Counter-Memorial, para. 1239; Rejoinder, paras. 1712, 1714.

⁴⁰²⁹ Counter-Memorial, paras. 1241-1242; **RE-45**, First Lombeida Expert Report, paras. 34, 57-58.

⁴⁰³⁰ Reply, para. 1047; Barzallo Expert Report, paras. 4, 18-23, 28-30, 41.

⁴⁰³¹ Reply, para. 1050.

⁴⁰³² Reply, paras. 1051-1052; **RE-43**, Second Kerr Expert Report, **Kerr Doc. 2**, Opportunities in Lubricants 2015: Latin America and Caribbean Market Analysis, Ecuador: Overview, p. 22.

⁴⁰³³ Reply, para. 1048; Barzallo Expert Report, paras. 4, 13, 16-19.

renew the Chevron trademarks”.⁴⁰³⁴ Lastly, the Claimants state that “Chevron IP has received no royalty payments on the Chevron trademarks outside Ecuador”.⁴⁰³⁵

2458. The Tribunal has carefully considered the Parties’ positions on whether Chevron’s IP Subsidiaries were prevented from exercising their rights over their 43 Trademarks while the attachment was in force, causing the trademarks to lose value as a result. However, in the Tribunal’s view, this question has been rendered immaterial to a significant extent by the fact that all of the 43 Trademarks expired at different times during the pendency of the Attachment Order, such that any and all rights that Chevron’s IP Subsidiaries might have had over them were fully extinguished.⁴⁰³⁶ As a result of their expiry, any value the 43 Trademarks may have had was definitively lost, regardless of whether the Attachment Order caused these trademarks to lose any portion of their value beforehand. Crucially, had the 43 Trademarks been renewed prior to their expiry, they might have maintained residual value for Chevron’s IP Subsidiaries to this day: to the Tribunal’s knowledge, the Lago Agrio Court has not yet ruled on the LAPs’ request for a valuation and auction of the trademarks.⁴⁰³⁷

2459. It is thus unnecessary for the Tribunal to address comprehensively whether the Attachment Order caused Chevron’s IP Subsidiaries to lose the right to use the 43 Trademarks, licence them, prevent any unauthorized use, or obtain royalties for the use of the trademark by a third party. In order to determine whether the Attachment Order caused the 43 Trademarks to lose all of their value, the Tribunal may circumscribe its analysis to the question whether Chevron’s IP Subsidiaries retained the right to request the *renewal* of the corresponding trademark registrations while under attachment or, conversely, whether they were legally precluded from applying for renewal while under attachment, in which case the Attachment Order would constitute the proper cause of the full loss of the value of the 43 Trademarks.

⁴⁰³⁴ Reply, para. 1049.

⁴⁰³⁵ Reply, para. 1053.

⁴⁰³⁶ See para. 2422 above.

⁴⁰³⁷ See para. 2389 above.

2460. As further set out below, the Tribunal has concluded that Chevron's IP Subsidiaries retained the right to request the renewal of the 43 Trademarks while under attachment, yet failed to seek to renew them before their expiry. Accordingly, the Tribunal shall assess thereafter whether Chevron's IP Subsidiaries' failure to request the renewal of the 43 Trademarks amounts to a breach of their duty to mitigate damage under international law, thus precluding recovery for this injury. As discussed later in greater detail, the Tribunal concludes that Chevron's IP Subsidiaries did not breach their duty to mitigate. As a result, the Tribunal concludes below that the proper cause of the expiry of the 43 Trademarks lies in the Respondent's failure to renew the corresponding trademark registrations during the pendency of the Attachment Order, in breach of its duty under Ecuadorian law to preserve the value of the 43 Trademarks while under attachment. Lastly, the Tribunal concludes that, by causing the expiry of the 43 Trademarks, the Respondent also caused the Technical Information to lose value.

3. Whether Chevron's IP Subsidiaries retained the ability to request the renewal of the 43 Trademarks while under attachment

2461. The Parties hold diverging views as to whether Chevron's IP Subsidiaries were legally precluded from requesting the renewal of the 43 Trademarks during the pendency of the Attachment Order. In this connection, the Claimants and their Ecuadorian law expert, Dr Barzallo, state that the perfection of the attachment in October 2013 "prevented Chevron from renewing the trademarks", since from that moment IEPI "became the legal custodian of the trademarks, with sole authority to renew them".⁴⁰³⁸ IEPI, they say, "knowingly allowed Chevron's trademarks to expire, thereby extinguishing Chevron's rights and resulting in a complete diminution of value".⁴⁰³⁹

2462. The Respondent and its Ecuadorian law expert, Professor Lombeida, state that "IEPI was not capable of serving as a judicial receiver", since "a judicial receiver must be a natural person" and "the law governing IEPI's powers did not endow it with the power to act as a judicial receiver".⁴⁰⁴⁰ In any event, regardless of whether IEPI was appointed as a receiver, the Respondent posits that Chevron's IP Subsidiaries remained able to renew

⁴⁰³⁸ Reply, paras. 1047-1048.

⁴⁰³⁹ Reply, para. 1049.

⁴⁰⁴⁰ **RE-59**, Second Lombeida Expert Report, paras. 18-21.

their trademark registrations following the attachment, noting that it was those subsidiaries that “chose not to renew” the relevant trademarks.⁴⁰⁴¹ According to the Respondent, “under no circumstances could IEPI have legally filed to renew the Trademarks’ registrations”; as such, the expiry of the trademarks was not caused by the attachment “or any failure to act of IEPI”.⁴⁰⁴²

2463. Two questions emerge against this background: (i) was IEPI effectively appointed as the receiver (“*depositario*”) of the 43 Trademarks under Ecuadorian law?; and, if so (ii) did such appointment preclude the Claimants from requesting the renewal of the 43 Trademarks? The Tribunal addresses each question in turn.

2464. As regards question (i), the issue of whether IEPI was appointed as the receiver of the 43 Trademarks must be determined by reference to Ecuadorian law. The Tribunal finds the following provisions to be of particular relevance in this regard:

- (i) Regarding the appointment of receivers, Article 17 of the Regulations for the Functioning of the Offices of Sheriffs and Judicial Receivers provides that a judicial receiver (“*depositario judicial*”) “is the official in charge of the safekeeping, custody, conservation, administration, defense and handling of property entrusted to the receiver by an order from a court or judge of competent jurisdiction.”⁴⁰⁴³
- (ii) As to the duties of a receiver, Article 312 of the Ecuadorian Organic Code of the Judicial Branch provides that “[j]udicial receivers are personally, civilly and criminally liable for the deposit, custody and preservation of all types of property they receive in the performance of their duties”.⁴⁰⁴⁴ Pursuant to Article 313 of the same Code, judicial receivers cannot make use or benefit from the deposited property; rather, they must ensure that it renders a revenue in favour of the owner

⁴⁰⁴¹ Counter-Memorial, paras. 37, 1214, 1236-1237; Rejoinder, paras. 1710, 1715.

⁴⁰⁴² Counter-Memorial, para. 1237; Rejoinder, para. 1716.

⁴⁰⁴³ **RE-59**, Second Lombeida Expert Report, **Lombeida-15**, Regulations for the Operation of the Offices of Sheriffs and Receivers and Rules for Setting the Fees for Receivers, Official Gazette No. 453, 24 October 2008, Art. 17.

⁴⁰⁴⁴ Barzallo Expert Report, **Barz-005**, Organic Code of the Judicial Branch, Art. 312. *See also* **RE-59**, Second Lombeida Expert Report, **Lombeida-15**, Regulations for the Operation of the Offices of Sheriffs and Receivers and Rules for Setting the Fees for Receivers, Official Gazette No. 453, 24 October 2008, Art. 17; Barzallo Expert Report, **Barz-004**, Code of Civil Procedure, Art. 916.

of the asset and the creditor.⁴⁰⁴⁵ Similarly, Article 391 of the General Organic Code of Procedure foresees that the judicial receiver “will become the custodian of the attached property”, such that this property will “remain under his/her care”.⁴⁰⁴⁶

2465. The Tribunal infers from these provisions that the appointment of a judicial receiver under Ecuadorian law must be premised on a court order. Upon appointment, receivers become responsible for the deposit, custody, and preservation of any property placed under their care.

2466. In this connection, the Tribunal recalls that IEPI was “established as the legal custodian [“*depositario*”] of the attached property” by the same Ecuadorian court that issued the attachment of the trademarks, exactly as requested by the LAPs.⁴⁰⁴⁷ IEPI never objected to this appointment or otherwise rejected it,⁴⁰⁴⁸ and actually indicated expressly its intention to undertake the role of a receiver. Specifically, IEPI confirmed through a public statement of its Executive Director that “IEPI w[ould] be the depositary of these intangible assets, so the Institution w[ould] have the power to control and administer the trademarks so that they w[ould] not lose their value”.⁴⁰⁴⁹

2467. Professor Lombeida states that “IEPI was not capable of serving as a judicial receiver” since, under her interpretation of the law, “a judicial receiver must be a natural person” and “the law governing IEPI’s powers did not endow it with the power to act as a judicial receiver”.⁴⁰⁵⁰ However, Professor Lombeida has not identified any piece of Ecuadorian legislation or a judicial decision expressly precluding IEPI from undertaking the role of

⁴⁰⁴⁵ Barzallo Expert Report, **Barz-005**, Organic Code of the Judicial Branch, Art. 313, p. 4.

⁴⁰⁴⁶ Barzallo Expert Report, **Barz-008**, General Organic Code of Procedure, Art. 391.

⁴⁰⁴⁷ **C-2764**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, LAPs’ motion, 5 September 2013; **C-2646/C-2763**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 9 September 2013 at 11:51 a.m.

⁴⁰⁴⁸ See Track III Hearing Transcript, Day 6 (25 August 2022), p. 1424 (Barzallo); Day 12 (2 September 2022), pp. 2880-2881, 2910-2911 (Lombeida).

⁴⁰⁴⁹ **C-3224**, Press Release, *Ecuadorian Intellectual Property Institute Records the Attachment of 50 Chevron brands*, Government of Ecuador Secretary General of Communications, 17 October 2013. See also **C-2141**, *IEPI attaches 50 Chevron brands*, EL TELÉGRAFO, 17 October 2013 (reporting on IEPI’s Executive Director’s statement that “[t]he official letter we received from the Provincial Court of Justice of Sucumbíos instructs the IEPI to be the receiver (administrator) of those brands”).

⁴⁰⁵⁰ **RE-59**, Second Lombeida Expert Report, paras. 18-21.

a judicial receiver, and the Tribunal has found no self-evident reason why IEPI would not be in a position to act in such capacity.

2468. Indeed, the duties of a receiver would appear to be consistent with the main mission of IEPI, to which the Intellectual Property Law grants “jurisdiction to provide, promote, encourage, prevent, protect and defend” intellectual property rights on behalf of the Ecuadorian government, “without prejudice to any civil or criminal actions that the judiciary branch may adjudicate on this subject matter”.⁴⁰⁵¹ In fact, the Regulations of the Intellectual Property Law expressly foresee that the Secretary General of IEPI may act as a receiver (“*depositario*”) in certain administrative proceedings.⁴⁰⁵² For her part, Professor Lombeida only cites the Organic Statute for Organizational Management for IEPI Processes, which mainly addresses organizational matters and would not appear to list in an exhaustive manner the tasks or “powers” attributed to IEPI.⁴⁰⁵³

2469. In this context, the Tribunal must underscore that it is not disputed that the appointment of IEPI as a receiver was ordered by the Lago Agrio Court and accepted (even if somewhat unofficially) by IEPI. While the Tribunal has given due consideration to Professor Lombeida’s disagreement with the legal interpretation of the Lago Agrio Court and IEPI’s Executive Director in this respect,⁴⁰⁵⁴ the evidence before the Tribunal suggests convincingly that IEPI was in a position to act as a receiver of the 43 Trademarks and did so.⁴⁰⁵⁵ Regardless of the merits of Professor Lombeida’s views, no Ecuadorian

⁴⁰⁵¹ See Barzallo Expert Report, **Barz-001**, Official Gazette No. 320, 19 May 1998, Art. 3. In particular, IEPI is in charge of the administrative protection of intellectual property rights. See **C-3577**, Intellectual Property Law of Ecuador (Law No. 2006-013), Art. 332.

⁴⁰⁵² **C-3576**, Regulation of the Intellectual Property Law of Ecuador published in the Official Registry No. 120, 1 February 1999, Art. 93. Dr Barzallo has also referred to legal entities serving as receivers in other types of proceedings. See **C-3575**, Regulations on Enforcement Jurisdiction (COSEDE), Art. 15; Track III Hearing Transcript, Day 6 (25 August 2022), pp. 1423-1424 (Barzallo). See also Track III Hearing Transcript, Day 6 (25 August 2022), pp. 1456-1458 (Barzallo).

⁴⁰⁵³ See generally **RE-59**, Second Lombeida Expert Report, para. 21, **Lombeida-17**, Organic Statute for Organizational Management for IEPI Processes, IEPI Resolution No. 177 (last modified 19 October 2012). See also Track III Hearing Transcript, Day 6 (25 August 2022), p. 1436 (Barzallo).

⁴⁰⁵⁴ Track III Hearing Transcript, Day 12 (2 September 2022), pp. 2908-2911 (Lombeida).

⁴⁰⁵⁵ The Tribunal is likewise not persuaded that IEPI acting as a receiver would be contrary to Article 226 of the Ecuadorian Constitution, as suggested by Professor Lombeida. Indeed, IEPI was appointed to act as a receiver by an Ecuadorian court in application of Ecuadorian law (including the Intellectual Property Law, which grants certain powers to IEPI “without prejudice to any civil or criminal actions that the judiciary branch may adjudicate”). See **RE-59**, Second Lombeida Expert Report, para. 21, **Lombeida-14**, Constitution of Ecuador (2008), Art. 226; Barzallo Expert Report, **Barz-001**, Official Gazette No. 320, 19 May 1998, Art. 3.

authority has adopted them, let alone pursued the necessary actions to modify the Lago Agrio Court’s orders in this respect.

2470. For these reasons, the Tribunal determines that IEPI was effectively made responsible for “the deposit, custody and preservation” of the 43 Trademarks⁴⁰⁵⁶ at least as from the issuance of the Lago Agrio Court’s Order of 9 September 2013 designating IEPI as custodian.⁴⁰⁵⁷

2471. In any event, even assuming that IEPI had not been effectively appointed as the receiver of the 43 Trademarks or was otherwise not capable of serving in that capacity, the Tribunal is persuaded that Ecuadorian law would have still required the appointment of a receiver other than IEPI to preserve the value of the 43 Trademarks while under attachment.

2472. In this connection, the Tribunal notes that the Ecuadorian Intellectual Property Law, which was enacted in 2006, provides that industrial property rights “are considered chattel [*bienes muebles*] exclusively for the creation of encumbrances thereon”.⁴⁰⁵⁸ In turn, the Ecuadorian Code of Civil Procedure – which Dr Barzallo and Professor Lombeida agree applies to the attachment of trademarks⁴⁰⁵⁹ – provides that “[r]eal or personal property [*bienes raíces o muebles*] will be attached by seizing the property and delivering it to the respective receiver”.⁴⁰⁶⁰ Other provisions of the Code of Civil Procedure referring to the receiver of the attached assets do not contain any exceptions as to the kinds of assets

⁴⁰⁵⁶ Barzallo Expert Report, **Barz-005**, Organic Code of the Judicial Branch, Art. 312.

⁴⁰⁵⁷ **C-2764**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, LAPs’ motion, 5 September 2013 p. 4; **C-2646/C-2763**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbíos, Case No. 21100-2003-0002, Court Order, 9 September 2013 at 11:51 a.m.

⁴⁰⁵⁸ **RE-45**, First Lombeida Expert Report, **Lombeida-11**, Intellectual Property Law, Art. 283.

⁴⁰⁵⁹ See Track III Hearing Transcript, Day 6 (25 August 2022), pp. 1415-1416 (Barzallo); Day 12 (2 September 2022), pp. 2865-2866 (Lombeida).

⁴⁰⁶⁰ Barzallo Expert Report, **Barz-003**, Code of Civil Procedure, Art. 450. The Tribunal notes that both quoted provisions refer to “*bienes muebles*” in their original Spanish versions, although the English translations submitted by the Parties differ with regard to this term. See also Track III Hearing Transcript, Day 12 (2 September 2022), pp. 2865-2866 (Lombeida); Barzallo Expert Report, **Barz-005**, Organic Code of the Judicial Branch, Art. 311.

that can be held by a receiver,⁴⁰⁶¹ while the Organic Code of the Judicial Branch suggests that judicial receivers may be granted responsibility over “all types of property”.⁴⁰⁶²

2473. In the Tribunal’s view, these provisions support the proposition that Ecuadorian law required the attachment of the 43 Trademarks to be followed by the appointment of a receiver or another person or entity to perform a comparable role,⁴⁰⁶³ notwithstanding the fact that the intangible nature of intellectual property assets prevents them from being physically apprehended by and/or deposited with a third party. Indeed, based on the materials on record, the Tribunal is persuaded that the attachment of trademarks under Ecuadorian law would not differ from the attachment of tangible assets for practical purposes. Professor Lombeida herself relies on Ecuadorian case law regarding the attachment of tangible assets to support her characterisation of the attachment of Chevron’s trademarks as a “precautionary measure”.⁴⁰⁶⁴ Notably, the judgment of the National Court of Justice cited by Professor Lombeida in this connection notes that a “depository” must take over the “custody and administration” of an asset following an attachment:

Attachment is a precautionary measure imposed during debt execution proceedings, ordered by a judge or whoever has that authority by legal mandate, which involves the immobilization of an asset to prevent it from being transferred in order to guarantee the fulfillment of an obligation; in the case of attachment, not only is transfer of the asset prohibited by act or contract, but also *the custody and administration passes to the hands of an official, a depository*.⁴⁰⁶⁵

2474. Based on the above, the Tribunal is not persuaded that the legal consequences of the attachment of an intellectual property asset, such as a trademark, under Ecuadorian law should be different from the legal consequences of the attachment of a tangible asset, except for the necessary practical implications derived from the intangible nature of intellectual property. The Tribunal is reluctant to draw another interpretation from the

⁴⁰⁶¹ Barzallo Expert Report, **Barz-002**, Code of Civil Procedure, Art. 439.

⁴⁰⁶² Barzallo Expert Report, **Barz-005**, Organic Code of the Judicial Branch, Art. 312.

⁴⁰⁶³ See Track III Hearing Transcript, Day 6 (25 August 2022), p. 1447 (Barzallo) (stating that “[t]he attachment must carry with it always the appointment of a receiver”).

⁴⁰⁶⁴ **RE-59**, Second Lombeida Expert Report, para. 11. See Track III Hearing Transcript, Day 12 (2 September 2022), p. 2895 (Lombeida).

⁴⁰⁶⁵ **RE-59**, Second Lombeida Expert Report, **Lombeida-19**, Judgment of 15 April 2013 of the Civil & Commercial Chamber of the National Court of Justice, Official Judicial Gazette 28, 2 May 2016 (emphasis by the Tribunal).

apparent absence of specific legal provisions on this matter, which might be a consequence of the fact that the attachment of intellectual property assets is relatively uncommon.⁴⁰⁶⁶

2475. Accordingly, even under the hypothesis that IEPI could not act as a receiver, the Tribunal is persuaded that Ecuadorian courts would have been required to appoint a receiver (or a comparable figure) to be in charge of the preservation of the 43 Trademarks, particularly in light of the LAPs' request to that effect. If, in such scenario, the Lago Agrio Court had failed to make such an appointment or had made an invalid appointment, the Ecuadorian judiciary (and hence, the Respondent as per Article 4 of the ILC Articles) would have remained responsible for the consequences of any wrongful administration of the 43 Trademarks during the attachment period.

2476. In the Tribunal's view, insofar as a requirement of exhaustion of local remedies may apply to this finding, it has already been satisfied. The Tribunal recalls that, in its Track II Award, it dismissed the Respondent's objections based on Chevron's failure to exhaust local remedies or to satisfy the requirement of judicial finality for its claims for denial of justice under the FET standard in Article II(3)(a) of the Treaty.⁴⁰⁶⁷ In that context, the Tribunal found that (i) on 1 March 2012 the Respondent declared the Lago Agrio Judgment enforceable in breach of several of the Tribunal's orders and awards on interim measures; and (ii) given that the Respondent (by its judicial branch) knowingly did not comply with these orders and awards, it would be inappropriate for the Respondent to profit from its own wrong by requiring Chevron to pursue local remedies against the enforcement of the Lago Agrio Judgment after that date.⁴⁰⁶⁸ Since the Attachment Order (dated October 2012) and the Lago Agrio Court's Order of 9 September 2013 designating

⁴⁰⁶⁶ For instance, the Code of Civil Procedure establishes a preference for the attachment of "money, property subject to a security interest or mortgaged property, or the property that was subject to prohibition against disposal, sequestration or withholding". Professor Carmigniani also suggests that it might have been unclear at some point whether the attachment of trademarks was possible. See Barzallo Expert Report, **Barz-002**, Code of Civil Procedure, Art. 439; **RE-59**, Second Lombeida Expert Report, **Lombeida-13**, Eduardo Carmigniani Valencia, *Attachment of Trademarks*, PROCEDURAL LAW (1998), p. 99.

⁴⁰⁶⁷ Track II Award, para. 7.154.

⁴⁰⁶⁸ Track II Award, para. 7.132.

IEPI as custodian are both premised on the enforcement of the unremedied Lago Agrio Judgment, the requirement of judicial finality also applies in connection with these orders.

2477. As regards question (ii) in paragraph 2463 above, having determined that IEPI – and, more generally, the Respondent’s authorities – were made responsible for the deposit, custody, and preservation of the 43 Trademarks while under attachment, the Tribunal must assess whether such circumstance precluded Chevron’s IP Subsidiaries from requesting the renewal of the 43 Trademarks.

2478. At the outset, the Tribunal recalls that the only evidence of any action related to the renewal of the 43 Trademarks after the issuance of the Attachment Order is the renewal of a single trademark registration, which was reportedly requested by Chevron IP in March 2013 and was eventually granted on 27 May 2013.⁴⁰⁶⁹ However, this renewal took place prior to the “perfection” of the Attachment Order in October 2013 (*i.e.*, IEPI’s confirmation of the annotation of the attachment in the relevant trademark registrations),⁴⁰⁷⁰ which is when the Claimants claim to have lost control over the trademarks.⁴⁰⁷¹ There is no indication that Chevron or its IP Subsidiaries sought to renew, or were granted renewal, of any of the 43 Trademarks following the perfection of the Attachment Order.

2479. Thus, the question whether Chevron’s IP Subsidiaries had the ability to request the renewal of the 43 Trademarks while under attachment must be addressed again by reference to Ecuadorian law. In this connection, Article 153 of the Common Regime on Industrial Property applicable in the Andean Community (including Ecuador) indicates that the renewal of a trademark registration may be requested by “[t]he owner of a registered trademark, or any party with a legitimate interest”.⁴⁰⁷² Professor Lombeida

⁴⁰⁶⁹ **RE-45**, First Lombeida Expert Report, **Lombeida-RG-34**, Trademark Registration Certificate No. 140-69, “Texaco and design of a hexagonal border with a star”, 30 January 2020, p. 2. *See* Track III Hearing Transcript, Day 12 (2 September 2022), pp. 2864, 2882 (Lombeida).

⁴⁰⁷⁰ *See* para. 2387 above.

⁴⁰⁷¹ *See* Reply, paras. 1047-1048; **C-2646/C-2763**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbios, Case No. 21100-2003-0002, Court Order, 9 September 2013 at 11:51 a.m.; **C-2765**, *Maria Aguinda, et al. v. Chevron Corp.*, Provincial Court of Justice of Sucumbios, Case No. 21100-2003-0002, IEPI’s Letter to Court, 3 October 2013.

⁴⁰⁷² **RE-59**, Second Lombeida Expert Report, **Lombeida-4bis**, Common Industrial Property Regime, Decision 486, Art. 153.

explains that “[a]lthough neither domestic law nor community law has defined legitimate interest, it can be understood as an interest that may be proven by a person who is directly or indirectly affected if the trademark lapses, such as the licensee, the creditor, the provider of the products that a trademark identifies, among others”.⁴⁰⁷³ At the Track III Hearing, Dr Barzallo appeared to admit that Chevron’s IP Subsidiaries could have sought to renew the trademarks, at least, until a judicial receiver was formally appointed, but noted that following such appointment “Chevron no longer had the obligations as administrator and as a custodian”.⁴⁰⁷⁴

2480. Based on the record before it, the Tribunal is not persuaded that the Attachment Order prevented Chevron’s IP Subsidiaries from requesting the renewal of the registration of the 43 Trademarks while under attachment. Chevron’s IP Subsidiaries remained the registered owners of the 43 Trademarks at all times until their expiry. Regardless of the consequences of the Attachment Order over such ownership, the Claimants have not convincingly explained why formal ownership would not suffice for Chevron’s IP Subsidiaries to qualify at the very least as a “party with a legitimate interest” for the purposes of Article 153 of the Common Regime on Industrial Property.⁴⁰⁷⁵ As such, the Tribunal is persuaded that Chevron’s IP Subsidiaries could have applied to renew the registrations, but failed to do so.

2481. However, the fact that Ecuadorian law expressly recognises the right to request a renewal to persons “having a legitimate interest” suggests that individuals or entities other than the formal owners of the 43 Trademarks may have also held a right to request the renewal of the corresponding trademark registrations. The Tribunal believes that, following the perfection of the Attachment Order, IEPI fell under this category of persons “having a legitimate interest”. As acknowledged by the Respondent itself, from the moment IEPI assumed the role of receiver its function became “to conserve the Trademarks so they maintained their value for an eventual auction in aid of enforcement of the Lago Agrio

⁴⁰⁷³ RE-45, First Lombeida Expert Report, para. 12.

⁴⁰⁷⁴ Track III Hearing Transcript, Day 6 (25 August 2022), pp. 1450-1452 (Barzallo).

⁴⁰⁷⁵ RE-59, Second Lombeida Expert Report, *Lombeida-4bis*, Common Industrial Property Regime, Decision 486, Art. 153.

Judgment”.⁴⁰⁷⁶ As already determined by the Tribunal in paragraph 2470 above, IEPI had an obligation to preserve the value of the trademarks, including by seeking to renew them.

2482. Even if IEPI had not been able to act as a receiver under Ecuadorian law, as Professor Lombeida asserts, the fact that the Lago Agrio Court expressly designated IEPI as the receiver of the trademarks evinces an understanding that the Ecuadorian authorities were required to take measures to preserve the value of the trademarks while under attachment, which, in the Tribunal’s view, would necessarily include seeking their renewal before their expiry. A different approach would deprive the attachment of any purpose. The Tribunal does not consider it necessary to determine which precise domestic Ecuadorian authority would have been authorised to request the renewal of the trademark registrations under Ecuadorian law in a scenario where IEPI was not empowered to do so: it is satisfied that any such authority would qualify as a “person with a confirmed actual or potential interest in maintaining and preserving the trademark registrations”, as characterised by Professor Lombeida.⁴⁰⁷⁷

2483. In sum, the Tribunal determines that while the Claimants have failed to establish that Chevron’s IP Subsidiaries were legally precluded from requesting the renewal of the 43 Trademarks, they have successfully established that Ecuadorian law required the Respondent’s authorities to take measures to preserve the value of the trademarks while under attachment, including seeking to renew them before their expiry.

4. Whether Chevron’s IP Subsidiaries breached their duty to mitigate by not requesting the renewal of the 43 Trademarks

2484. In view of the conclusion in the preceding section, the Respondent’s argument that Chevron’s IP Subsidiaries failed to meet their obligation to request the renewal of the 43 Trademarks can only be assessed as an allegation of failure to mitigate damage. In other words, the Tribunal must consider whether, in light of all relevant circumstances, Chevron’s IP Subsidiaries’ failure to request the renewal of the 43 Trademarks amounts

⁴⁰⁷⁶ Rejoinder, para. 1710. In the words of Professor Lombeida, “even if IEPI had validly been constituted as a judicial receiver to safeguard the attached trademarks, which it was not, this in no way means that CIP would have had lost its ability to use and enjoy its trademarks. Only CIP’s ability to dispose of them would have been limited to ensure their preservation for an eventual auction”. See **RE-59**, Second Lombeida Expert Report, para. 29.

⁴⁰⁷⁷ **RE-59**, Second Lombeida Expert Report, para. 31.

to an unreasonable failure to mitigate the damage resulting from their expiry.⁴⁰⁷⁸ The Tribunal rejects such proposition for two separate reasons.

2485. First, as already explained, the duty to preserve the value of the 43 Trademarks while under attachment, including the duty to request the renewal of the corresponding trademark registrations, rested with the Ecuadorian authorities as a matter of Ecuadorian law.⁴⁰⁷⁹ As such, the Tribunal is not persuaded that Chevron’s IP Subsidiaries should have been required to request the renewal of the attached trademarks, from which they could receive no economic benefit but from which the Ecuadorian authorities could – albeit for the benefit of the LAPs. For example, IEPI’s Executive Director statements in October 2013 that “[t]he income the trademarks generate w[ould] no longer go to Chevron”.⁴⁰⁸⁰ In another contemporaneous statement, he explained that, after the attachment was recorded at IEPI, Chevron

cannot dispose of [the trademarks]. It cannot use them, license them, generate royalties or income from them; it is not going to profit from the trademarks; instead the profits are part of the court’s order. . . . [T]he products will continue in the market . . . it is the royalties that will no longer go to Chevron but to whatever the judge decides.⁴⁰⁸¹

2486. Under these conditions, the Tribunal does not consider that Chevron failed to “act reasonably”⁴⁰⁸² by failing to request the renewal of trademarks that were under the custody of the Respondent’s authorities, much less in the contemporaneous context of the present dispute.

2487. Second, on this point, the Tribunal recalls again that when addressing the question of the exhaustion of local remedies (or judicial finality) as a prerequisite for the Denial of Justice

⁴⁰⁷⁸ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (11): “Even the wholly innocent victim of wrongful conduct is expected to act reasonably when confronted by the injury. Although often expressed in terms of a ‘duty to mitigate’, this is not a legal obligation which itself gives rise to responsibility. It is rather that a failure to mitigate by the injured party may preclude recovery to that extent.”

⁴⁰⁷⁹ See para. 2483 above.

⁴⁰⁸⁰ **C-3224**, Press Release, *Ecuadorian Intellectual Property Institute Records the Attachment of 50 Chevron brands*, Government of Ecuador Secretary General of Communications, 17 October 2013.

⁴⁰⁸¹ **C-3464**, *Fifty Trademarks Will Not be Available to Chevron in Ecuador due to Attachment*, LAINFORMACION.COM, 18 October 2013. See also **C-2141**, *IEPI attaches 50 Chevron brands*, EL TELÉGRAFO, 17 October 2013.

⁴⁰⁸² **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 31, Commentary (11).

Breach, the Tribunal determined that it would be wrong in principle to require Chevron to have pursued at the time any local remedy in Ecuador that lacked any reasonable prospect of a timely, effective and adequate protection against the enforcement of the Lago Agrio Judgment.⁴⁰⁸³ The Tribunal also found that it would be inappropriate for the Respondent to profit from its decision to breach the Tribunal's orders not to declare the Lago Agrio Judgment enforceable:

Before 1 March 2012, as already indicated, this Tribunal had ordered the Respondent, under its several orders and awards on interim measures, not to declare the Lago Agrio Judgment enforceable. Chevron was entitled to rely upon those orders and awards, which were legally binding upon the Respondent under the Arbitration Agreement to which the Respondent had decided to commit itself. Moreover, given that the Respondent (by its judicial branch) knowingly did not comply with these orders and awards, it would be inappropriate for the Respondent now to profit from its own wrong under the general principle of international law known by its Latin maxim: *nullus commodum capere de sua injuria propria*.⁴⁰⁸⁴

2488. The Tribunal finds that the same rationale applies in this context. After 1 March 2012, it would have been unreasonable to require the Claimants to continue to attempt to render the Lago Agrio Judgment unenforceable, which is a prerequisite to lifting the Attachment Order made in connection with that Judgment. Accordingly, as of that date, it would have been unreasonable to require Chevron's IP Subsidiaries to seek to renew trademarks that were subject to an Attachment Order issued in breach of the Tribunal's orders and awards and were earmarked for auction in aid of the enforcement of the Lago Agrio Judgment. To conclude otherwise would be tantamount to permitting the Respondent to profit from its own wrong. The Tribunal recalls in this respect that the first of the 43 Trademarks to expire (Item 4 in Table A above) did so on 8 June 2012.⁴⁰⁸⁵

2489. Accordingly, the Tribunal determines that the proper cause of the expiry of the 43 Trademarks lies in the Respondent's failure to renew the corresponding trademark registrations, which was in breach of its duty under Ecuadorian law to preserve the value of the 43 Trademarks while under attachment.

⁴⁰⁸³ Track II Award, para. 7.123.

⁴⁰⁸⁴ Track II Award, para. 7.132 (emphasis in original).

⁴⁰⁸⁵ See paras. 2400, 2419 above.

5. Whether the Attachment Order caused the Technical Information to lose value

2490. The Tribunal has determined in paragraph 2441 above that the Technical Information lost at least a portion of its value as a result of the expiry of the 13 Trademarks. By necessary implication, the Tribunal's finding that the Respondent's actions caused the 13 Trademarks (a subset of the 43 Trademarks) to expire leads to the conclusion that the same actions also caused the Technical Information underlying the 13 Trademarks to lose value.

2491. The Tribunal shall assess the extent of the Technical Information's diminution in value in Section IX.B.3(e) below.

6. Conclusion on causation

2492. For the reasons set out above, the Tribunal determines that the Respondent caused the 43 Trademarks to expire – and, therefore, lose all their value – by ordering an attachment over them and, subsequently, failing to renew the corresponding trademark registrations. Such conduct also caused the Technical Information to lose, at least, a portion of its value. The Respondent thus inflicted an injury on the Claimants under international law for which they must be compensated.

(e) *Valuation*

1. Introduction

2493. Having determined that a causal link exists between the Respondent's Treaty breaches and the injury for which damages are claimed under the present heading, the Tribunal shall now assess the extent of the damages suffered by Chevron's IP Subsidiaries as a result of the loss in value of the 43 Trademarks and the Technical Information.

2494. For its assessment of the compensation owed to the Claimants, the Tribunal shall draw guidance once again from the applicable full reparation standard set forth in *Chorzów Factory*, pursuant to which full reparation for an international illegal act "must, as far as

possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.”⁴⁰⁸⁶

2495. According to the Claimants, reparation in respect of their intellectual property losses should be made in the form of compensation for the value of all trademarks owned by Chevron’s IP Subsidiaries, as well as the underlying know-how.⁴⁰⁸⁷ For reasons already explained, however, compensation is due only in respect of the 43 Trademarks and the Technical Information, not in respect of other trademarks that were listed in the Attachment Order or other forms of know-how. Accordingly, in this Section the Tribunal shall limit itself to assessing the value of the 43 Trademarks and the Technical Information in a but-for, Treaty-compliant scenario.⁴⁰⁸⁸

2496. In valuing the 43 Trademarks and the Technical Information, the Tribunal has been aided primarily by three experts: Mr Weston Anson for the Claimants, and Dr William Kerr and Mr Gregory Smith for the Respondent. Both Mr Anson and Dr Kerr submitted reports in 2013 during the “show cause” procedure⁴⁰⁸⁹ as well as between 2019 and 2022 during Track III of the Arbitration.⁴⁰⁹⁰ Mr Anson testified at the Track III Hearing. Dr Kerr was joined in 2022 on his third expert report by Mr Smith, who testified on all three reports authored by Dr Kerr at the Track III Hearing.⁴⁰⁹¹

2497. Mr Anson provides valuations of the Claimants’ intellectual property losses as at 2012 and as at 2019, employing the same two methodologies for each valuation date.⁴⁰⁹² The

⁴⁰⁸⁶ **CLA-406**, *Case Concerning the Factory at Chorzów (Germany v. Poland)*, 1928 PCIJ Series A, No. 17, Judgment, 13 September 1928, p. 47.

⁴⁰⁸⁷ Memorial, para. 431; Reply, para. 1039.

⁴⁰⁸⁸ See paras. 2402-2407 above.

⁴⁰⁸⁹ First Anson Expert Report; Second Anson Expert Report; First Kerr Expert Report.

⁴⁰⁹⁰ Third Anson Expert Report; Fourth Anson Expert Report; **RE-43**, Second Kerr Expert Report; **RE-53** Kerr and Smith Expert Report.

⁴⁰⁹¹ Mr Smith states that he worked with Dr Kerr in developing all three of the reports, Track III Hearing Transcript, Day 12 (2 September 2022), pp. 2917-2918, 2921 (Smith).

⁴⁰⁹² First Anson Expert Report, Exhibits 1, 2; Third Anson Expert Report, Exhibits 3, 4.

Respondent's experts have not performed any independent valuation of the Claimants' intellectual property loss, instead offering "rebuttal analyses" of Mr Anson's reports.⁴⁰⁹³

2498. After describing Mr Anson's proposed valuation approaches, the Tribunal will assess whether such proposed approaches may support a valuation of the 43 Trademarks and the Technical Information. For the reasons set out below, the Tribunal rejects Mr Anson's valuation approaches, with the result that the Claimants' claim for damages under the present heading must be dismissed.

2. Mr Anson's Proposed Valuation Approaches

2499. Mr Anson states that several methodologies are commonly employed to value intellectual property, with the best method for a specific scenario depending on "the information available and the specific circumstances."⁴⁰⁹⁴ He explains that "[b]ased on the context of the situation we have chosen to employ the Income Approach and Relief from Royalty Approach [(respectively, the "**Income Approach**" and the "**RFR Approach**")]" as the most reasonable indications of value for the Chevron IP trademarks."⁴⁰⁹⁵ Each of these approaches is described in turn.

i. *The Income Approach*

2500. As described by Mr Anson, the Income Approach determines the current value of future economic benefits by way of a discounted cash-flow ("**DCF**") analysis.⁴⁰⁹⁶ However, Mr Anson notes that "only the Chevron IP trademarks are subject to the embargo orders.

⁴⁰⁹³ Track III Hearing Transcript, Day 12 (2 September 2022), pp. 2920-2921 (Smith). *See also* **RE-43**, Second Kerr Expert Report, paras. 7-10: "Anson 2019 offers two damages opinions based on the alleged losses to the value of the Trademarks caused by the Attachment. His calculations are excessively speculative. They are not supported by proper methodology or reliable economic analysis. Neither of the opinions accurately states the current value of the Trademarks or damages to the value of the Trademarks that might have been caused by the Attachment. Therefore, my opinion is that the damages as expressed in Anson 2019 should be rejected as being unduly speculative, based on unsound methodology and as having no basis in fact or economic evidence. However, if the Tribunal determines that an award for trademark damages is warranted, the damages amount should be computed only after correcting the obvious factual and computational errors committed by Mr. Anson. . . Schedule 1A shows that the total amount of damages calculated by Mr. Anson, after appropriate corrections, would be no more than \$1.29 million using an income approach and no more than \$3.99 million using a royalty approach."

⁴⁰⁹⁴ First Anson Expert Report, p. 12.

⁴⁰⁹⁵ First Anson Expert Report, p. 13; Third Anson Expert Report, para. 50.

⁴⁰⁹⁶ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1517 (Anson). Mr Anson explains that he applies "the same formulaic approach" in 2013 and 2019. *See* Track III Hearing Transcript, Day 7 (26 August 2022), p. 1541 (Anson).

Operating an actual lubricant business would require the use of additional tangible and intangible assets.”⁴⁰⁹⁷ Since there was no actual Chevron lubricants business in Ecuador immediately prior to the issuance of the Attachment Order,⁴⁰⁹⁸ Mr Anson explains that he must first “determin[e] the enterprise value of a lubricant sales operation in Ecuador using the Chevron IP Trademarks” before apportioning a share of the enterprise value to the trademarks themselves.⁴⁰⁹⁹ In his third report, Mr Anson updated this analysis to apportion a share of the value of this hypothetical enterprise to the trademarks and the underlying technical know-how.⁴¹⁰⁰

2501. To determine the value of the hypothetical enterprise, Mr Anson first calculates the free cash flow of the business after determining the value of four inputs: (i) the size of the market; (ii) the price of all the products in the market; (iii) the market share of the business in question; and (iv) the profit margins (calculated on earnings before income and tax).⁴¹⁰¹ The free cash flow of each year in the forecast period is calculated by taking this product and subtracting taxes and year-to-year changes in working capital.⁴¹⁰² The net present value of the free cash flows is then determined by applying a discount rate to the cash flows.⁴¹⁰³ Mr Anson calculates the net present value of the free cash flows over a forecast period of 10 years.⁴¹⁰⁴

2502. Mr Anson explains that, because trademarks have an “indefinite” life, he also calculates a terminal value,⁴¹⁰⁵ which is equivalent to “the present value of all future cash flows”

⁴⁰⁹⁷ First Anson Expert Report, p. 11.

⁴⁰⁹⁸ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1540 (Anson).

⁴⁰⁹⁹ First Anson Expert Report, p. 12.

⁴¹⁰⁰ Third Anson Expert Report, para. 97.

⁴¹⁰¹ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1518 (Anson). *See also* Track III Hearing Transcript, Day 12 (2 September 2022), p. 2924 (Smith).

⁴¹⁰² Track III Hearing Transcript, Day 7 (26 August 2022), p. 1541 (Anson); First Anson Expert Report, Exhibit 1.

⁴¹⁰³ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1518 (Anson).

⁴¹⁰⁴ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1521 (Anson); First Anson Expert Report, Exhibit 1.

⁴¹⁰⁵ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1521 (Anson).

beyond the forecast period “assuming the company will operate in perpetuity” and factors a stable growth rate, “generally . . . the rate of inflation.”⁴¹⁰⁶

2503. The enterprise value identified by Mr Anson is the sum of the net present value and the terminal value of the free cash flows over a 10-year period.⁴¹⁰⁷ The value of the intellectual property itself is then calculated as the result of multiplying the enterprise value by an appropriate allocation of value for the intellectual property.⁴¹⁰⁸

2504. The Respondent’s experts consider the use of the Income Approach in the present proceedings to be a “fantasy”.⁴¹⁰⁹ They opine that Mr Anson’s valuations “are not based on a review of actual or verifiable economic or financial data” but instead “were created based on an arbitrary and hypothetical description of a fictitious enterprise.”⁴¹¹⁰ In this connection, the Respondent’s experts state that Mr Anson ignores “the real-world evidence reflecting the use and value of the Trademarks”,⁴¹¹¹ referring to Chevron’s sale of its Ecuadoran lubricant business to Swissoil in 2010, including the sale of a lubricant operation by way of the Swissoil PSA, the Technology Licence, and the Trademark Licence.⁴¹¹² In any event, the Respondent’s experts consider the “fictitious” enterprise to be “based on arbitrary and often questionable assumptions”.⁴¹¹³

ii. The Royalty Rate Approach (RFR Approach)

2505. According to Mr Anson, under the RFR Approach “a hypothetical situation is created to estimate what a business would pay to license its own intellectual property assets in an

⁴¹⁰⁶ Third Anson Expert Report, para. 91.

⁴¹⁰⁷ Track III Hearing - Anson Direct Presentation (26 August 2022), Slides 16-17.

⁴¹⁰⁸ First Anson Expert Report, p. 18; Third Anson Expert Report, para. 97.

⁴¹⁰⁹ **RE-43**, Second Kerr Expert Report, paras. 73-75.

⁴¹¹⁰ First Kerr Expert Report, para. 4. *See also* First Kerr Expert Report, para. 15.

⁴¹¹¹ **RE-53**, Kerr and Smith Expert Report, para. 7(c).

⁴¹¹² First Kerr Expert Report, paras. 17-19. *See also* Counter-Memorial, paras. 1260-1261; **RE-53**, Kerr and Smith Expert Report, paras. 13-21.

⁴¹¹³ First Kerr Expert Report, para. 20. *See also* Counter-Memorial, para. 1261.

arms-length transaction. The value is then calculated as the present value of the avoided hypothetical royalty charges.”⁴¹¹⁴

2506. Applying the RFR Approach, Mr Anson first calculates a revenue base for a theoretical lubricants company by multiplying (i) the size of the market; (ii) prices of the products in the market; and (iii) the enterprise’s market share.⁴¹¹⁵ A royalty rate is then applied to this revenue stream⁴¹¹⁶ before subtracting estimated taxes, resulting in an after-tax hypothetical royalty charge.⁴¹¹⁷ The present value of the royalty income over the forecast period is provided by taking the sum of each year’s royalty income after applying a discount rate.⁴¹¹⁸ The terminal value is established in the same manner as in the Income Approach, which is then added to the present value of forecast cash flows.⁴¹¹⁹

2507. Mr Anson summarizes his proposed RFR Approach as follows:

It uses all of the inputs from the Income Approach with the exception that . . . we need to establish a reasonable royalty, because in the Relief from Royalty Approach, one applies [a] reasonable royalty to the revenues of the theoretical lubricants company.⁴¹²⁰

2508. The Tribunal observes that the RFR Approach is largely based on a modified DCF analysis when compared to the Income Approach. Mr Anson starts both analyses by calculating the revenue of lubricants sold using the trademarks and know-how.⁴¹²¹ Where under the Income Approach he then applies a profit margin, under the RFR Approach he

⁴¹¹⁴ First Anson Expert Report, p. 13. Mr Anson confirmed as correct that in applying the RFR Approach, he “create[d] [a] hypothetical situation where [he] determine[d] what this business would get if it just licensed its Trademarks as opposed to operating the business” (Track III Hearing Transcript, Day 7 (26 August 2022), pp. 1541-1542 (Anson)).

⁴¹¹⁵ Track III Hearing Transcript, Day 12 (2 September 2022), p. 2924 (Smith); First Anson Expert Report, Exhibit 2.

⁴¹¹⁶ Track III Hearing Transcript, Day 12 (2 September 2022), p. 2924 (Smith); First Anson Expert Report, Exhibit 2.

⁴¹¹⁷ Track III Hearing Transcript, Day 12 (2 September 2022), p. 2924 (Smith); First Anson Expert Report, Exhibit 2.

⁴¹¹⁸ First Anson Expert Report, Exhibit 2.

⁴¹¹⁹ First Anson Expert Report, Exhibit 2.

⁴¹²⁰ Track III Hearing Transcript, Day 7 (26 August 2022), pp. 1523-1524 (Anson). Mr Anson responds to these statements in the context of his 2019 valuation, but agrees that he applied the “same formulaic approach” in 2013. See Track III Hearing Transcript, Day 7 (26 August 2022), p. 1541 (Anson).

⁴¹²¹ First Anson Expert Report, Exhibits. 1, 2; Third Anson Expert Report, Exhibits 3, 4.

applies a reasonable royalty rate.⁴¹²² Both methods then adjust for taxes.⁴¹²³ Unlike the Income Approach, the RFR Approach does not adjust for working capital.⁴¹²⁴ Both analyses then apply a discount rate to find the net present value of future cash flows.⁴¹²⁵ The RFR Approach thus uses the revenue derived from the sale of lubricants bearing the trademarks to calculate the discounted cash flows of royalty income, whereas the Income Approach uses the same revenue base to calculate a total enterprise value, from which Mr Anson then apportions a share of the enterprise value to the Trademarks.⁴¹²⁶

2509. As in respect of the Income Approach, the Respondent's experts state that the RFR Approach, being "based on speculation about the operations of a hypothetical enterprise is fundamentally wrong and cannot provide a meaningful estimate of damages."⁴¹²⁷ In addition, the Respondent's experts assert that the RFR Approach contains a number of errors that Mr Anson has failed to address, including (i) the lack of comparable licences; (ii) a statistical error in the median royalty rate; and (iii) the lack of any economic evidence or financial analysis to support his contention that remittance controls in Ecuador or elsewhere in Latin America reduced negotiated royalty rates on any type of intellectual property.⁴¹²⁸

3. The Applicable Valuation Approach

2510. The crux of the Parties' disagreement on the applicable valuation methodology concerns Mr Anson's decision to provide a valuation of Chevron IP's Subsidiaries' trademarks based on the operation of a hypothetical lubricants business in Ecuador. According to the Respondent's experts, in estimating the value of the trademarks under both the Income Approach and the RFR Approach, Mr Anson "does not rely on what is most relevant in this matter: actual revenues and profits received from the sale of Chevron-branded

⁴¹²² First Anson Expert Report, Exhibits. 1, 2; Third Anson Expert Report, Exhibits 3, 4.

⁴¹²³ First Anson Expert Report, Exhibits. 1, 2; Third Anson Expert Report, Exhibits 3, 4.

⁴¹²⁴ First Anson Expert Report, Exhibits. 1, 2; Third Anson Expert Report, Exhibits 3, 4.

⁴¹²⁵ First Anson Expert Report, Exhibits. 1, 2; Third Anson Expert Report, Exhibits 3, 4.

⁴¹²⁶ See Track III Hearing Transcript, Day 7, pp. 1540-1542 (Anson).

⁴¹²⁷ RE-53, Kerr and Smith Expert Report, para. 22.

⁴¹²⁸ RE-53, Kerr and Smith Expert Report, paras. 94-112.

lubricant products in Ecuador.”⁴¹²⁹ They explain that, in the present case, the only pertinent evidence on record consists of the sale by Chevron of its Ecuadorian lubricants business in 2010 to Swissoil, as well as the Trademark Licence and the Technology Licence, which have been described in detail in paragraphs 2390-2399 above.

2511. The Tribunal notes that the Income Approach and the RFR Approach are both based on a DCF analysis. Accordingly, the Tribunal shall address first whether a DCF analysis may properly support a valuation of the 43 Trademarks and the Technical Information in the manner proposed by Mr Anson.

2512. At the outset, the Tribunal notes that, by applying his Income and RFR Approaches, Mr Anson purports to determine the fair market value of the intellectual property in respect of which the Claimants claim compensation.⁴¹³⁰ The Tribunal finds it to be a well-established principle in international law that “[c]ompensation reflecting the capital value of property taken or destroyed as the result of an internationally wrongful act is generally assessed on the basis of the ‘fair market value’ of the property lost”.⁴¹³¹ Numerous investment tribunals have resorted to the DCF method in order to determine fair market value for compensation purposes. However, the Commentary to the ILC Articles notes that tribunals generally adopt a cautious approach in applying such method, as it “analyses a wide range of inherently speculative elements”.⁴¹³²

2513. In this connection, the Tribunal observes that the Claimants have identified no cases in which an investment tribunal applied a DCF analysis based on the operation of a

⁴¹²⁹ First Kerr Expert Report, para. 15.

⁴¹³⁰ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1513 (Anson).

⁴¹³¹ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 36, Commentary (22).

⁴¹³² **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Art. 36, Commentary (26): “Since 1945, valuation techniques have been developed to factor in different elements of risk and probability. The discounted cash flow (DCF) method has gained some favour, especially in the context of calculations involving income over a limited duration, as in the case of wasting assets. Although developed as a tool for assessing commercial value, it can also be useful in the context of calculating value for compensation purposes. But difficulties can arise in the application of the DCF method to establish capital value in the compensation context. The method analyses a wide range of inherently speculative elements, some of which have a significant impact upon the outcome (e.g. discount rates, currency fluctuations, inflation figures, commodity prices, interest rates and other commercial risks). This has led tribunals to adopt a cautious approach to the use of the method. Hence, although income-based methods have been accepted in principle, there has been a decided preference for asset-based methods. . .”.

hypothetical enterprise to determine the value of an existing asset, as proposed by Mr Anson in this case. However, multiple investment arbitration awards set out useful criteria to determine whether applying a DCF analysis is appropriate in light of all relevant circumstances.

2514. For instance, the tribunal in *Quiborax v. Bolivia* noted that “the DCF method is widely accepted as the appropriate method to assess the [fair market value] of going concerns with a proven record of profitability”.⁴¹³³ The *Quiborax* tribunal relied in part on the World Bank Guidelines on the Treatment of Foreign Direct Investment (the “**World Bank Guidelines**”), which it stated “suggest that the market value of an expropriated investment may be determined ‘for a going concern with a proven record of profitability’” through the DCF method.⁴¹³⁴

2515. In the same vein, the *Sistem v. Kyrgyz Republic* tribunal quoted the World Bank Guidelines for the proposition that the DCF method is appropriate in valuing an expropriated investment in order to assess the:

amount that a willing buyer would normally pay to a willing seller after taking into account the nature of the investment, the circumstances in which it would operate in the future and its specific characteristics, including the period in which it would operate in the future and its specific characteristics, including the period in which it has been in existence, the proportion of tangible assets in the total investment and other relevant factors pertinent to the specific circumstances of each case.⁴¹³⁵

2516. In *Rusoro v. Venezuela*, the tribunal also observed that DCF valuations “have become usual in investment arbitrations whenever the fair market value of an enterprise must be established”.⁴¹³⁶ The same tribunal, however, noted that a DCF approach “cannot be

⁴¹³³ **CLA-757**, *Quiborax S.A. and Non Metallic Minerals S.A. v. Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015, para. 344. See also **RLA-779**, *OI European Group B.V. v. Venezuela*, ICSID Case No. ARB/11/25, Award, 10 March 2015, para. 658; **CLA-207**, *Enron Corp. and Ponderosa Assets, L.P. v. Argentina*, ICSID Case, No. ARB/01/3, Award, 22 May 2007, para. 385.

⁴¹³⁴ **CLA-757**, *Quiborax S.A. and Non Metallic Minerals S.A. v. Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015, para. 344. See also **CLA-207**, *Enron Corp. and Ponderosa Assets, L.P. v. Argentina*, ICSID Case, No. ARB/01/3, Award, 22 May 2007, fn 118.

⁴¹³⁵ **RLA-983**, *Sistem Mühendislik İnşaat Sanayi ve Ticaret A.Ş. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Award, 9 September 2009, para. 164.

⁴¹³⁶ **CLA-922**, *Rusoro Mining Ltd. v. Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016, para. 758.

applied to all types of circumstances”.⁴¹³⁷ In particular, the *Rusoro* tribunal found that “DCF works properly if all, or at least a significant part, of the following criteria are met”:

- The enterprise has an established historical record of financial performance;
- There are reliable projections of its future cash flow, ideally in the form of a detailed business plan adopted *in tempore insuspecto*, prepared by the company’s officers and verified by an impartial expert;
- The price at which the enterprise will be able to sell its products or services can be determined with reasonable certainty;
- The business plan can be financed with self-generated cash, or, if additional cash is required, there must be no uncertainty regarding the availability of financing;
- It is possible to calculate a meaningful WACC, including a reasonable country risk premium, which fairly represents the political risk in the host country;
- The enterprise is active in a sector with low regulatory pressure, or, if the regulatory pressure is high, its scope and effects must be predictable: it should be possible to establish the impact of regulation on future cash flows with a minimum of certainty.⁴¹³⁸

2517. Conversely, other investment tribunals declined to apply a DCF valuation, considering it overly speculative where an investment was not a going concern, had not established a performance record, or had not established its revenue.⁴¹³⁹ For instance, the tribunal in *Metalclad v. Mexico* noted:

Normally, the fair market value of a going concern which has a history of profitable operation may be based on an estimate of future profits subject to a discounted cash flow analysis . . . However, where the enterprise has not operated for a sufficiently long time to establish a performance record or where it has failed to make a profit, future profits cannot be used to determine going concern or fair market value.⁴¹⁴⁰

⁴¹³⁷ **CLA-922**, *Rusoro Mining Ltd. v. Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016, para. 759.

⁴¹³⁸ **CLA-922**, *Rusoro Mining Ltd. v. Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016, para. 759.

⁴¹³⁹ See, e.g., **CLA-41**, *Metalclad Corp. v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, paras. 120-121; **CLA-403**, *Wena Hotels Limited v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, paras. 123-124; **CLA-898**, *Bear Creek Mining Corporation v. Peru*, ICSID Case No. ARB/14/21, Award, 30 November 2017, para. 604.

⁴¹⁴⁰ **CLA-41**, *Metalclad Corp. v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, paras. 119-120.

2518. On this basis, the *Metalclad* tribunal considered it inappropriate to apply a DCF analysis to determine the fair market value of an expropriated landfill “because the landfill was never operative and any award based on future profits would be wholly speculative.”⁴¹⁴¹

2519. Similarly, the *Wena v. Egypt* tribunal declined to apply a DCF analysis in connection with the claimant’s claim for lost profits flowing from the seizure of two hotels on the basis that “an award based on such claims would be too speculative”.⁴¹⁴² In particular, the *Wena* tribunal ruled:

Like the *Metalclad* and *SPP* disputes, here, there is insufficiently “solid base on which to found any profit . . . or for predicting growth or expansion of the investment made” by Wena. Wena had operated the Luxor Hotel for less than eighteen months, and had not even completed its renovations on the Nile Hotel, before they were seized on April 1, 1991. In addition, there is some question whether Wena had sufficient finances to fund its renovation and operation of the hotels. Finally, the Tribunal is disinclined to grant Wena’s request for lost profits and lost opportunities given the large disparity between the requested amount (GB£ 45.7 million) and Wena’s stated investment in the two hotels (US\$8,819,466.93).⁴¹⁴³

2520. For the reasons set out below, the Tribunal finds Mr Anson’s proposed Income and RFR Approaches speculative and thus incapable of establishing “the situation which would, in all probability, have existed if [the Treaty breaches] had not been committed”, as required under *Chorzów Factory*.⁴¹⁴⁴

2521. Both the Income Approach and the RFR Approach are based on the operation of a hypothetical, non-existing enterprise, not a going concern. There is therefore no “history of profitable operation” on record that could properly support a DCF analysis.⁴¹⁴⁵ For instance, the Tribunal notes that the starting point for both analyses is the determination of the revenue of lubricants sold using the trademarks, but there is no basis on which this enterprise could conceivably “show that it will generate a reasonably foreseeable free

⁴¹⁴¹ **CLA-41**, *Metalclad Corp. v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, para. 121.

⁴¹⁴² **CLA-403**, *Wena Hotels Limited v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, para. 123.

⁴¹⁴³ **CLA-403**, *Wena Hotels Limited v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, para. 124.

⁴¹⁴⁴ **CLA-406**, *Case Concerning the Factory at Chorzów (Germany v. Poland)*, 1928 PCIJ Series A, No. 17, Judgment, 13 September 1928, p. 47.

⁴¹⁴⁵ **CLA-41**, *Metalclad Corp. v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, paras. 119-120.

cash flow in the coming years” by selling those lubricants.⁴¹⁴⁶ The enterprise has no track record or pre-attachment revenue projections that could support such finding, let alone any productive assets that could support a running sales operation or an established or prospective portfolio of clients. There is also no evidence that such hypothetical company had or would obtain financing to support its operation in Ecuador during the years for which cash flows are projected, much less in which conditions.⁴¹⁴⁷

2522. Apart from the question of whether it is appropriate to perform a DCF analysis based on a hypothetical enterprise, Mr Anson’s Income Approach and the RFR Approach also fail to consider the fact that Chevron IP appears to have received yearly royalties under the Technology Licence until, at least, 2020,⁴¹⁴⁸ which could lead to duplicative compensation.⁴¹⁴⁹

2523. Crucially, Mr Anson appears to have adopted a DCF analysis based on the operation of a theoretical enterprise because he was not provided with actual historical data of the sales of products bearing Chevron’s IP Subsidiaries’ trademarks in Ecuador. In particular, Mr Anson stated – without providing any support for such proposition – that “[i]t is often the case that intellectual property is valued without the benefit of actual historical revenue data, which the owner may view as proprietary”, in which case it is appropriate to “conduct extensive market research to develop forecasts.”⁴¹⁵⁰

2524. In this connection, the Claimants have acknowledged that they are in possession of proprietary historical data that could have supported a different analysis. During the document production phase of Track III, the Claimants declined to produce documents in their possession, custody, or control relating to (i) “business information regarding payments or volume of products and sole, and/or royalties owed under Swissoil

⁴¹⁴⁶ **RLA-779**, *OI European Group B.V. v. Venezuela*, ICSID Case No. ARB/11/25, Award, 10 March 2015, para. 658.

⁴¹⁴⁷ In this connection, the Tribunal dismisses Mr Anson’s proposed application of Chevron’s cost of debt as a proxy for the cost of debt of this hypothetical enterprise (Third Anson Expert Report, para. 81). The Claimants have not provided convincing reasons why both Chevron and this hypothetical enterprise would have the same cost of debt.

⁴¹⁴⁸ See paras. 2393, 2421, 2436 above. See also Third Anson Expert Report, para. 51: “Since the As-Is scenario holds no value, it did not need to be calculated.”

⁴¹⁴⁹ See paras. 2529-2532 below.

⁴¹⁵⁰ Reply, para. 1042; Third Anson Expert Report, para. 55; Fourth Expert Anson Report, para. 41.

Trademark License Agreement or Technology License Agreement”; (ii) “business information regarding historical revenue, pricing, and/or profit data for lubricant sales operations in Ecuador utilizing the Chevron IP”; (iii) “business information regarding pricing data for lubricant sales operations in Ecuador utilizing the Chevron IP”; (iv) “business information relating to the use or sale of products in Ecuador carrying the Trademarks, and/or the know-how that is the subject of the Technology License Agreement and the volume of products produced and sold, and/or royalties owed, under the Technology License Agreement”; and (v) “business information relating to the use or sale of products in Ecuador carrying the Trademarks, and/or the know-how that is the subject of the Technology License Agreement and the volume of products produced and sold, and/or royalties owed, under the Technology License Agreement, and payments under the Swissoil Trademark License Agreement or Technology License Agreement”.⁴¹⁵¹ In particular, the Claimants withheld production on the basis that extending attorneys’ and experts’-eyes only treatment to these documents could still cause substantial harm to Chevron, while noting that such documents were not relevant or necessary to test the intellectual property valuation performed by Mr Anson, who did not receive or rely upon these materials.⁴¹⁵²

2525. In respect of the purported harm that could have been caused to Chevron if such data had been provided to Mr Anson, the Claimants assert that “Petroecuador is a competitor of Chevron’s in the lubricants business. Claimants thus could not make their proprietary data available to Mr Anson without also making it available to Ecuador and Petroecuador.”⁴¹⁵³ While the Tribunal acknowledges the legitimacy of this concern, it does not discharge the Claimants’ burden of proof. As noted by the Tribunal in Procedural Order No. 72, regardless of the commercially sensitive nature of such information, the onus remains on the Claimants to establish their claim for alleged intellectual property losses.⁴¹⁵⁴

⁴¹⁵¹ Procedural Order No. 72, 8 February 2021, para. 49.

⁴¹⁵² See Procedural Order No. 72, 8 February 2021, paras. 49-51.

⁴¹⁵³ Reply, para. 1042.

⁴¹⁵⁴ Procedural Order No. 72, 8 February 2021, para. 54. See also Rejoinder, para. 1697.

2526. For these reasons, the Tribunal dismisses Mr Anson’s Income and RFR Approaches. The Tribunal must accordingly disregard the Respondent’s adjusted valuations based on those same approaches.⁴¹⁵⁵

2527. Having ruled out Mr Anson’s proposed Income and RFR Approaches, the Tribunal is left with no alternative valuations proposed by the Claimants to consider. In turn, the Respondent has not put forward its own independent valuation of the intellectual property assets underlying the Claimants’ claims: its primary position is that the Claimants “opted to build a damages model entirely on conjecture, divorced from any data regarding revenue or profits demonstrating the real-world value of [Chevron IP]’s intellectual property prior to, and after, the Trademark Attachments. This renders it impossible to determine whether, as a matter of fact, [Chevron IP] suffered an injury due to any reduction of value of the Chevron IP following the Trademark Attachments.”⁴¹⁵⁶ For the reasons stated above, the Tribunal agrees with the Respondent.

2528. In the circumstances, the Tribunal concludes that while the Claimants have established that Chevron’s IP Subsidiaries suffered an injury as a result of the Attachment Order, they have failed to establish the extent of the corresponding loss. The Claimants’ claim in respect of Intellectual Property Losses in Ecuador must therefore be dismissed.

2529. This conclusion notwithstanding, the Tribunal notes that the only real-world evidence on record that might have provided a basis for a valuation of at least a subset of 43 Trademarks (*i.e.*, the 13 Trademarks) and the Technical Information – the Trademark and Technology Licences⁴¹⁵⁷ – supports the conclusion that the Claimants are not owed any compensation.

2530. [REDACTED]
[REDACTED]
[REDACTED]

⁴¹⁵⁵ See para. 2375 above.

⁴¹⁵⁶ Rejoinder, para. 1696. *See also* para. 2497 above.

⁴¹⁵⁷ Rejoinder, para. 1698. In his First Expert Report, Mr Anson acknowledged that Chevron’s IP Subsidiaries’ royalty damages – in particular, the applicable royalty rate – should take into account Chevron’s IP agreements with Swissoil, since they are “as close to the ‘perfect comparables’ as there are”. *See* First Anson Expert Report, p. 17.

██████████⁴¹⁵⁸ While the Trademark Licence did not specifically foresee any royalty payments, the Trademark and Technology Licences should be considered as a unified whole.⁴¹⁵⁹ This means, in the Tribunal’s view, that the value of the trademarks and the technical know-how underlying those licences should also be determined as unified whole – without prejudice to the subsequent attribution of a portion of that overall value to each individual asset.⁴¹⁶⁰ Since these Licences constitute hard evidence of a stable and predictable source of income, the Tribunal believes it might have been possible to determine the value of the intellectual property assets falling under the Trademark and Technology Licences as the net present value of the royalty payments due to Chevron IP over the duration of the Technology Licence, with appropriate adjustments.

2531. Crucially, however, the Claimants have provided no evidence that Chevron IP was ever precluded from receiving any royalty payments under the Technology Licence, whether as a result of the Attachment Order or for any other reason.⁴¹⁶¹ Since the Technology Licence was in effect until 15 June 2020⁴¹⁶² and Swissoil and ConAuto were not prevented from continuing to import, commercialize, and distribute products in Ecuador bearing Chevron’s licensed trademarks during the attachment period,⁴¹⁶³ the Tribunal infers that Chevron IP received royalty payments under this Licence until that date. The Tribunal also notes that ConAuto continued to sell Chevron lubricant products beyond 15

⁴¹⁵⁸ **R-1995**, Technology Licence Agreement, Document 24, Section 6.1. *See* paras. 2390-2399 above.

⁴¹⁵⁹ *See* paras. 2438-2439 above.

⁴¹⁶⁰ *See* **RE-43**, Second Kerr Expert Report, para. 130, where Dr Kerr determines a “hypothetical measure of the actual value of the trademarks” assuming that “Chevron IP would receive technology fees as under the terms of the Technology License but that 50% of the fees should be attributed to the Trademarks.” Dr Kerr explains that “[t]he selection of a 50% allocation is done in the absence of information from Chevron as to the details of the relationship between Chevron IP and SDE and of the basis of the negotiations between them that resulted in the license agreements” (**RE-43**, Second Kerr Expert Report, fn 142). *See also* **RE-43**, Second Kerr Expert Report, Schedules 20 and 21; **RE-53**, Kerr and Smith Expert Report, Schedules 20 and 21. The Tribunal notes that Dr Kerr and Mr Smith’s analysis is not devised as an alternative valuation of Chevron’s IP Subsidiaries’ trademarks. Rather, it is meant to determine the hypothetical value of the trademarks in a scenario where Chevron becomes free to exploit the trademarks fully in Ecuador, with a view to subtracting that amount from the hypothetical but-for value of the trademarks to ensure that the Claimants are not awarded duplicative compensation (**RE-43**, Second Kerr Expert Report, paras. 126-130).

⁴¹⁶¹ *See* para. 2436 above.

⁴¹⁶² **R-1995**, Document 24, Technology Licence Agreement, Section 4; **RE-53**, Kerr and Smith Expert Report, para. 14(a), **Kerr Doc. 24**, CVX-Track III – 00016000-062, p. 1.

⁴¹⁶³ *See* para. 2399 above.

June 2020 in the real-world scenario,⁴¹⁶⁴ which suggests that Chevron IP continues to receive compensation for the sale of Chevron products in the Ecuadorian market.

2532. This implies that the cash flows supporting the real-world valuation of the intellectual property assets included in the Trademark and Technology Licences are equivalent to the cash flows supporting the but-for valuation of those same assets. Since damages are to be measured as the difference between the value of those assets in the real-world scenario and the but-for scenario,⁴¹⁶⁵ and since these values are equal, the difference is zero. In other words, the Claimants have failed to prove that Chevron IP suffered any losses as a result of the Attachment Order.

2533. In sum, for the reasons stated above, the Tribunal rejects the Claimants' damages claim in respect of Intellectual Property Losses in Ecuador.

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⁴¹⁶⁴ RE-53, Kerr and Smith Expert Report, para. 66.

⁴¹⁶⁵ See para. 2403 above.

C. MORAL DAMAGES

2534. The Claimants seek compensation “in the amount that the Tribunal deems just and proper” for the moral damages they allegedly suffered as a result of the Respondent’s Treaty breaches.⁴¹⁶⁶ In particular, the Claimants contend that the Criminal Proceedings initiated against Mr Ricardo Reis Vega and Dr Rodrigo Perez Pallares (TexPet’s Vice President and legal representative, respectively), the Respondent’s media campaign against the Claimants, and the Respondent’s breach of the Tribunal’s Interim Orders and Awards constitute the necessary “exceptional circumstances” that fulfil the three-part moral damages test articulated in *Lemire v. Ukraine*.⁴¹⁶⁷

2535. The Respondent asserts that the Claimants’ request for moral damages should be denied. In the Respondent’s submission, the alleged acts relied upon by the Claimants in support of their moral damages claim are not Treaty breaches, and, in any event, the Claimants have failed to prove any exceptional circumstances warranting moral damages.⁴¹⁶⁸

1. The Claimants’ Position

2536. First, in the Claimants’ submission, international law and arbitration tribunals have recognized and affirmed the possibility of awarding moral damages.⁴¹⁶⁹ In particular, the Claimants cite to the *Case Concerning Ahmadou Sadio Diallo* and *Dacia SRL v. Moldova* for the proposition that moral damages can be awarded when the claimant’s reputation has been affected, and may also be granted to corporations “should ordinary compensation fail to make a claimant whole”.⁴¹⁷⁰ The Claimants rely to this end on the three-part test articulated in *Lemire v. Ukraine*, under which moral damages may be awarded if the following requirements are met:

⁴¹⁶⁶ Memorial, paras. 150, 463.

⁴¹⁶⁷ Memorial, paras. 150, 447; Reply, paras. 1114-1115, 1122.

⁴¹⁶⁸ Counter-Memorial, para. 1311; Rejoinder, para. 1787.

⁴¹⁶⁹ Memorial, paras. 448-449.

⁴¹⁷⁰ Memorial, paras. 449, 451; **CLA-676**, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)*, Judgment, 2012 ICJ Reports 324, 19 June 2012, paras. 11, 19; **CLA-678**, *Dacia S.R.L. v. Moldova*, Judgment, ECHR Application No. 3052/04, 24 February 2009, para. 6.

- the State's actions imply physical threat, illegal detention or other analogous situations in which the ill-treatment contravenes the norms according to which civilized nations are expected to act;
- the State's actions cause a deterioration of health, stress, anxiety, other mental suffering such as humiliation, shame and degradation, or loss of reputation, credit and social position; and
- both cause and effect are grave or substantial.⁴¹⁷¹

2537. As to the “exceptional circumstances” entitling them to reparation, the Claimants first argue that the Respondent launched a global media campaign to promote the false narrative that the Claimants were liable for alleged “environmental crimes” in the Amazon as part of its national policy to promote the enforcement of the Lago Agrio Judgment.⁴¹⁷² This included action taken directly by the Ecuadorian government by way of the “*La Mano Sucia de Chevron*” campaign, as well as meetings at international fora such as the European Parliament.⁴¹⁷³

2538. The Claimants also assert that the Respondent targeted private individuals through the “*Los Vendepatria*” website, which provided “confidential personal information of Ecuadorian attorneys and experts who purportedly worked with Chevron”.⁴¹⁷⁴ According to the Claimants, the Respondent's attacks were intended to cause serious damage to their “reputation[s], credit and social position”, which calls for compensatory moral damages in accordance with international jurisprudence.⁴¹⁷⁵

2539. Furthermore, the Claimants submit that the “mental anguish, degradation, humiliation, shame and reputational damage” suffered by their employees Mr Veiga and Dr Pérez as a result of the Respondent's “abusive and meritless” criminal investigations warrant

⁴¹⁷¹ Memorial, paras. 452; Reply, para. 1115; Counter-Memorial, para. 1315; Rejoinder, para. 1788; **CLA-660**, *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, para. 333.

⁴¹⁷² Memorial, para. 458; Track II Award, paras. 4.183, 4.231.

⁴¹⁷³ Memorial, para. 458; Reply, para. 1119; Track II Award, para. 4.474.

⁴¹⁷⁴ Reply, para. 1119; **C-1964**, *The nations's traitors*, available at losvendepatria.com.

⁴¹⁷⁵ Memorial, paras. 152, 448-449, 453; **CLA-280**, *Lusitania Case (United States v. Germany)*, Award, PCIJ, 7 Rep. Int'l Arb., 1 November 1923; **CLA-234**, *Desert Line Projects LLC v. Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, para. 290; **CLA-676**, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)*, Judgment, 2012 ICJ Reports 324, 19 June 2012, paras. 11, 19.

compensatory moral damages.⁴¹⁷⁶ The Claimants recall in this respect the Tribunal’s finding that the Respondent colluded with the LAPs in the criminal investigations “for the purpose of disadvantaging Chevron’s defence in the Lago Agrio Litigation based on the 1995 Settlement Agreement.”⁴¹⁷⁷

2540. As such, relying on *Desert Line v. Yemen*, the Claimants posit that the Respondent’s misuse of its prosecutorial powers, together with the personal attacks it launched against Mr Veiga and Dr Pérez, constitute exceptional circumstances entitling them to moral damages.⁴¹⁷⁸ For the Claimants, the Respondent’s criminal prosecutions, together with the Respondent’s conduct in its global media campaign against the Claimants, contravene “the norms according to which civilized nations are expected to act.”⁴¹⁷⁹

2541. Second, regarding the evidence on record seeking to prove a loss of reputation, credit or social position, the Claimants note that the witness statements provided by Mr Veiga and Dr Pérez provide a recollection of the enormous toll that the Respondent’s actions had on them.⁴¹⁸⁰ The Claimants further assert that this evidence, along with other evidence they have submitted, is enough to establish a causal link between the State’s actions and the alleged harm as articulated in *Tecmed v. Mexico*.⁴¹⁸¹ In any event, to the extent there may be any “shortcomings in [the] evidence,” the Claimants note that international courts have granted moral damages “based on equitable considerations.”⁴¹⁸²

2542. Third, the Claimants submit that the Respondent’s actions and their effect on the Claimants, as well as their employees and attorneys, were grave and substantial as, testified by Mr Veiga and Dr Pérez.⁴¹⁸³ The threat of arrest and personal attacks hampered

⁴¹⁷⁶ Memorial, paras. 459-460; Reply, paras. 1120-1121; Third Veiga Witness Statement, paras. 7, 30-31, 33-34, 38; Pérez Pallares Witness Statement, paras. 3-5.

⁴¹⁷⁷ Memorial, para. 462; Reply, para. 1120; Track II Award, para. 5.239.

⁴¹⁷⁸ Reply, paras. 1121, 1124.

⁴¹⁷⁹ Memorial, para. 462; Reply, para. 1125.

⁴¹⁸⁰ Reply, para. 1126; Pérez Pallares Witness Statement, paras. 3-5; Third Veiga Witness Statement, paras. 22-38.

⁴¹⁸¹ Memorial, paras. 454, 457; **CLA-31**, *Técnicas Medioambientales Tecmed, S.A. v. Mexico*, ICSID Case No. ARB/AF/00/2, Award, 29 May 2003, para. 198.

⁴¹⁸² Reply, para. 1126; **CLA-676**, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment, 2012 ICJ Reports 324, 19 June 2012, para. 33.

⁴¹⁸³ Reply, para. 1127.

their ability to aid in the Lago Agrio Litigation and also forced Dr Pérez to leave Ecuador.⁴¹⁸⁴

2543. In addition, the Claimants argue that moral damages must be granted in light of the full circumstances of this case, including the failure to protect Chevron from gross violations of its due process rights, the refusal to investigate the fraud and corruption, and the refusal to comply with the Tribunal's Orders and Awards, which pressured the Claimants into accepting a "fraudulent and corrupt judgment".⁴¹⁸⁵

2544. Accordingly, the Claimants submit that the Tribunal has absolute discretion in quantifying moral damages, and as such, they request that moral damages be awarded in the amount that the Tribunal deems "just and proper".⁴¹⁸⁶ In support of their position, the Claimants turn to the *Lusitania* case where moral damages were awarded despite the complexity behind their estimation.⁴¹⁸⁷

2. The Respondent's Position

2545. The Respondent submits that the Claimants' request for moral damages should be denied because: (i) the alleged acts relied upon by the Claimants in support of their claim are not breaches of the Treaty; and (ii) there are no exceptional circumstances that could justify a moral damages award.⁴¹⁸⁸

2546. First, as per the Respondent, the Claimants must prove that the moral damages they claim were caused by Treaty breaches.⁴¹⁸⁹ Citing to *Bank Melli and Bank Saderat v. Bahrain*, the Respondent asserts that "a claim to damages of a moral character does not escape the burden of proof resting on a claimant",⁴¹⁹⁰ that is, a claim for moral damages must be

⁴¹⁸⁴ Reply, paras. 1126-1127; Pérez Pallares Witness Statement, para. 5; Third Veiga Witness Statement, para. 38.

⁴¹⁸⁵ Memorial, para. 153; Reply, para. 1122.

⁴¹⁸⁶ Memorial, para. 463; Reply, para. 1128.

⁴¹⁸⁷ Memorial, para. 448; **CLA-280**, *Lusitania Case (United States v. Germany)*, Award, PCIJ, 7 Rep. Int'l Arb, 1 November 1923.

⁴¹⁸⁸ Counter-Memorial, para. 1311; Rejoinder, para. 1787.

⁴¹⁸⁹ Rejoinder, para. 1791.

⁴¹⁹⁰ Rejoinder, para. 1790; **RLA-1040**, *Bank Melli Iran and Bank Saderat Iran v. Bahrain*, PCA Case No. 2017-25, Award, 9 November 2021, para. 793.

supported with specific evidence.⁴¹⁹¹ The Respondent also relies on the *Lemire* test to underscore the gravity of the conduct and the substantial effects required to prove moral damages.⁴¹⁹²

2547. In contrast to *Diallo*, where moral and mental harm were found to be “an inevitable consequence of the wrongful acts of the DRC”,⁴¹⁹³ the Respondent posits that neither the media campaign nor the criminal proceedings – the acts which allegedly resulted in moral damages – were found to be breaches of the Treaty.⁴¹⁹⁴ Therefore, the Respondent asserts that the *Diallo* case does not relieve the Claimants from their evidentiary burden.⁴¹⁹⁵

2548. The Respondent further argues that the witness statements of Mr Veiga and Dr Pérez – the only purported evidence of the alleged harm – were not accompanied by any specific evidence as to the purported loss of the Claimants’ reputation, credit, or social position.⁴¹⁹⁶ In any event, the Respondent considers that whether or not the two employees of TexPet suffered “severe anxiety, emotional anguish, degradation, humiliation, shame, and reputational damage” is not relevant to the Claimants’ entitlement to moral damages, given that the investigations concerned these individuals, not the Claimants.⁴¹⁹⁷

2549. Second, contrary to the Claimants’ assertion, the Respondent avers that moral damages have only been awarded in a minimal number of cases, which involved loss of life, physical injury or threats, illegal detention, or other extreme circumstances.⁴¹⁹⁸ As the *Lemire* tribunal made clear, a “loss of reputation . . . is not enough: the main question is

⁴¹⁹¹ Counter-Memorial, para. 1325.

⁴¹⁹² Rejoinder, paras. 1788-1789.

⁴¹⁹³ Counter-Memorial, para. 1328; Rejoinder, para. 1797; **CLA-676**, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment, 2012 ICJ Reports 324, 19 June 2012, para. 21.

⁴¹⁹⁴ Counter-Memorial, paras. 1319, 1328; Rejoinder, paras. 1792-1794; Track II Award, paras. 5.241, 8.17(iv), 8.68-8.69.

⁴¹⁹⁵ Rejoinder, para. 1797.

⁴¹⁹⁶ Counter-Memorial, para. 1327; Rejoinder, para. 1795.

⁴¹⁹⁷ Counter-Memorial, para. 1320; Rejoinder, para. 1795.

⁴¹⁹⁸ Counter-Memorial, paras. 1312-1314; Rejoinder, para. 1798; **CLA-280**, *Lusitania Case (United States v. Germany)*, Award, PCIJ, 7 Rep. Int’l Arb., 1 November 1923, p. 35; **CLA-676**, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)*, Judgment, 2012 ICJ Reports, 19 June 2012.

to determine whether the injury inflicted is substantial.”⁴¹⁹⁹ Yet, in the present case, the Respondent posits that the Claimants have failed to establish that their purported injuries are of sufficient gravity and were caused by “exceptional circumstances” of the kind recognized as pertinent by international law.⁴²⁰⁰ In this respect, the Respondent underscores that moral damages cannot be based on implied harm.⁴²⁰¹

2550. The Respondent highlights that circumstances such as the ones forming the basis of the Claimants’ moral damages claim have been found by investment tribunals not to meet the threshold for “exceptional circumstances” warranting an award of moral damages, *e.g.*, threats of false criminal accusations later rejected by State’s courts; acts affecting reputation that led to the loss of business opportunities; and acts affecting relationships with bankers, investors or major commercial partners.⁴²⁰²

2551. In regard to the Criminal Proceedings initiated against Mr Veiga and Dr Pérez, the Respondent, relying on *Gavazzi v. Romania*, argues that claims for moral damages where breaches resulted in health or psychological conditions have been rejected because “the injury suffered cannot be compared to that caused by armed threats, by the witnessing of deaths or by other similar situations in which tribunals in the past have awarded moral damages.”⁴²⁰³ On this basis, the Respondent asserts that the circumstances invoked by the Claimants do not meet the standards to warrant compensation for moral damages: the criminal investigations lasted a little over a year and there was “no lasting prejudice” to the Claimants, since the Ecuadorian National Court of Justice declared the nullity of the proceedings discontinuing the accusations.⁴²⁰⁴

⁴¹⁹⁹ Rejoinder, para. 1799; **RLA-433**, *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, para. 338.

⁴²⁰⁰ Counter-Memorial, para. 1321; Rejoinder, paras. 1801, 1803-1804.

⁴²⁰¹ Rejoinder, para. 1801.

⁴²⁰² Counter-Memorial, para. 1322; Rejoinder, para. 1802; **CLA-31**, *Tecnicas Medioambientales Tecmed S.A. v. Mexico*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, para. 198; **CLA-642**, *The Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2013, paras. 290-293; **CLA-664**, *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Award, 18 April 2017, paras. 295-296.

⁴²⁰³ Counter-Memorial, para. 1323; **CLA-664**, *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Award, 18 April 2017, paras. 295-296.

⁴²⁰⁴ Counter-Memorial, para. 1324; Rejoinder, para. 1803; **CLA-664**, *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Award, 18 April 2017, para. 295.

2552. Lastly, regarding the argument of the “willful violation of [the] Tribunal’s Interim Orders and Awards” as an exceptional circumstance, the Respondent asserts that the Tribunal did not find that the Respondent acted “willfully”. Furthermore, the Claimants did not provide any precedent where non-compliance with a tribunal’s order was deemed as grounds to award moral damages.⁴²⁰⁵ For the Respondent, the fact that such alleged non-compliance was only raised in the Claimants’ Reply evinces “how tenuous their ‘willful violation’ argument is now.”⁴²⁰⁶

3. The Tribunal’s Analysis

2553. The Tribunal’s analysis of the Claimants’ claim for moral damages must start with Article 31 of the ILC Articles, which reads:

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or *moral*, caused by the internationally wrongful act of a State.⁴²⁰⁷

2554. As gleaned from above, moral damages are recognized under international law as part of the injury for which a responsible State is bound to make full reparation. They are also subject to a requirement of proximate causation: to be compensable, moral damages must be caused by the internationally wrongful act of a State.

2555. Accordingly, as a form of direct damage, any moral damages must be proximately caused by the Respondent’s Treaty breaches to warrant compensation. The Tribunal recalls in this respect that, in this case, the injury caused by the Respondent’s Treaty breaches is circumscribed to any injury caused by the recognition or enforcement of any part of the Lago Agrio Judgment. Absent a finding of a separate and independent source of injury flowing from the Respondent’s internationally wrongful acts, reparation cannot go beyond this limit.⁴²⁰⁸

⁴²⁰⁵ Rejoinder, para. 1804.

⁴²⁰⁶ Rejoinder, para. 1804.

⁴²⁰⁷ **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), Art. 31 (emphasis by the Tribunal).

⁴²⁰⁸ See paras. 317, 321 above.

2556. Against this background, it becomes readily apparent that two of the three instances of alleged harmful conduct for which the Claimants claim moral damages – the Criminal Proceedings and the “media campaign against Chevron” – do not form part of the Respondent’s Treaty breaches. As such, any harm arising from such conduct is outside the scope of the compensable injury in this case.

2557. First, the Respondent’s “meritless persecution and criminal prosecution of Mr. Veiga and Dr. Pérez”,⁴²⁰⁹ as characterized by the Claimants themselves, is not connected to the Respondent’s Treaty breaches. The Tribunal determined in Track II that there is no causative link between the Criminal Proceedings and the Lago Agrio Judgment:

on 1 June 2011, these prosecutions were eventually discontinued by the Respondent’s National Court, ostensibly without interference by the Respondent’s Government. By that date, the Lago Agrio Judgment had been issued in favour of the Lago Agrio Plaintiffs notwithstanding the 1995 Settlement Agreement.

The Tribunal does not consider proven that these criminal investigations or prosecutions had any causative link with the conduct of the Lago Agrio Litigation or the ‘ghostwriting’ of the Lago Agrio Judgment by certain of the Lago Agrio Plaintiffs’ representatives. Indeed, after bribing Judge Zambrano, these representatives no longer needed to impugn the 1995 Settlement Agreement (with its related agreements) by means of these collusive criminal prosecutions.⁴²¹⁰

2558. In turn, whatever harm might have arisen from the Criminal Proceedings, originated before the date on which the Lago Agrio Judgment was certified as enforceable by the Lago Agrio Court (1 March 2012). In particular, the “severe mental and emotional distress” allegedly experienced by Mr Veiga and Dr Perez was the result of “‘intermittent investigations and prosecutions from [October] 2003 to [June] 2011’ [which] involved ‘vicious and unwarranted statements’ directed at Mr. Veiga and others ‘by senior members of the Government’”.⁴²¹¹ In other words, the Criminal Proceedings came to an end almost a year before the critical date of 1 March 2012. As already determined by this Tribunal, no direct damages arising before this date, whether material or moral in nature, are compensable in these proceedings.⁴²¹²

⁴²⁰⁹ Reply, para. 1114.

⁴²¹⁰ Track II Award, paras. 5.240-5.241.

⁴²¹¹ Memorial, para. 459.

⁴²¹² See para. 350 above.

2559. Second, the Respondent’s alleged “scorched-earth media campaign against Chevron”⁴²¹³ is also not connected to the Respondent’s Treaty breaches. As in the case of the Criminal Proceedings, the Tribunal rejected in its Track II Award the proposition that the Respondent’s media campaign amounted to a Treaty breach:

In Parts IV and V above, the Tribunal discounted, as a distinct matter in regard to the Lago Agrio Judgment, the numerous public condemnatory statements regarding Chevron made by President Correa and members of his administration. As regards the Lago Agrio Litigation more generally, although particularly vicious in regard to Mr Veiga and Dr Pérez, Chevron’s other legal representatives in Ecuador and (later) Dr Guerra, *these statements were also not the cause of any injury sustained by the Claimants in the Lago Agrio Litigation or under the Lago Agrio Judgment.*

Moreover, as the Respondent submitted, Governments sometimes resort to extreme political language as regards alleged damage to the environment caused by foreign oil companies. The Tribunal does not consider such political, even populist, statements by a State’s executive branch, however regrettable, as amounting by themselves to a denial of justice. This applies necessarily to a situation where *the sole cause for the denial of justice lies elsewhere within the State’s judicial branch – as it does in the present case.*⁴²¹⁴

2560. Similarly, any harm arising from this alleged “media campaign against Chevron” was not caused by the recognition and enforcement of the Lago Agrio Judgment and, as such, does not form part of the compensable injury in this case.

2561. A separate analysis of the moral damages allegedly arising from the Interim Awards Breach is in order. The Claimants submit in essence that the Respondent’s “willful violation of this Tribunal’s Interim Orders and Awards” inflicted moral damages on Chevron and its employees.⁴²¹⁵ In particular, against the background of the Criminal Proceedings and the Respondent’s alleged “media campaign against Chevron”, the Claimants assert that:

Ecuador willfully violated the Tribunal’s Interim Orders and Awards and thus intentionally and knowingly subjected Chevron to substantial risks of enforcement of a fraudulent and corrupt Judgment, with the intent of creating undue pressure to settle. This, too, is an exceptional circumstance warranting moral damages.⁴²¹⁶

⁴²¹³ Reply, para. 1114.

⁴²¹⁴ Track II Award, paras. 8.68-8.69 (emphasis by the Tribunal).

⁴²¹⁵ Reply, para. 1114.

⁴²¹⁶ Reply, para. 1122.

2562. In the Tribunal's view, this claim must also fail. First, while the Interim Awards Breach forms part of the Respondent's Treaty breaches,⁴²¹⁷ the Tribunal has also found that any losses said to have flowed from the Interim Awards Breach are subsumed within the losses flowing from the Denial of Justice and Umbrella Clause Breaches.⁴²¹⁸ In other words, the fact remains that the only injuries for which compensation is warranted in Track III are the injuries arising from the recognition and enforcement of the Lago Agrio Judgment.⁴²¹⁹

2563. Second, the Tribunal recalls that it has already granted substantial monetary compensation to the Claimants for the incidental damages arising from the recognition and enforcement of the Lago Agrio Judgment.⁴²²⁰ While the Tribunal does not rule out the possibility that the recognition and enforcement of the Lago Agrio Judgment may have also adversely impacted the Claimants' reputation, the Tribunal does not consider it necessary to grant additional monetary compensation in respect of moral damages.

2564. For these reasons, the Tribunal rejects the Claimants' claim for moral damages.

2565. In view of this conclusion, the Tribunal does not consider it necessary to address other issues that were debated between the Parties regarding the Claimants' claim for moral damages, including *(i)* whether a showing of grave, exceptional, or extreme circumstances is required to award moral damages; *(ii)* whether corporations, as opposed to natural persons, may claim moral damages under international law; *(iii)* whether a company may claim moral damages for harm suffered by its employees; and *(iv)* whether compensation is warranted on the basis of the Interim Awards Breach as a matter of principle.⁴²²¹

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⁴²¹⁷ Track II Award, para. 10.18.

⁴²¹⁸ See para. 416 above.

⁴²¹⁹ See para. 377 above.

⁴²²⁰ See Section VIII.O above.

⁴²²¹ See para. 416 above.

X. INTEREST

2566. The Claimants request that the Tribunal award compound interest both pre- and post-award to wipe out the consequences of the Respondent's Treaty breaches and make them "whole" in accordance with the principle of full reparation.⁴²²² They argue that they should be fully compensated for the loss of use of the funds they were forced to spend in various legal proceedings as a result of the Respondent's Treaty breaches.⁴²²³ Accordingly, in the Claimants' submission, interest should be paid from the date of occurrence of the damage until the Respondent's full and final payment.⁴²²⁴

2567. In contrast, the Respondent argues that the Claimants are not entitled to any interest because they have not proven that any should be awarded.⁴²²⁵ If the Tribunal were to award any interest, it should be at a rate lower than what the Claimants seek.⁴²²⁶

A. THE CLAIMANTS' POSITION

2568. *Sufficiency of evidence*: In support of their interest claim, the Claimants submit the expert report of Mr Sequeira, who calculates pre-award interest on the legal fees and expenses that the Claimants claim as damages.⁴²²⁷ Mr Sequeira relies on analyses from the Claimants' other experts to determine whether and when the underlying invoices for the claimed fees and costs were paid.⁴²²⁸ For the Claimants, Mr Sequeira's reliance on the analysis of other experts is appropriate, since, in order to calculate the pre-award interest, Mr Sequeira required other experts to establish the amount of costs incurred by Chevron in the Lago Agrio Litigation and related proceedings.⁴²²⁹

⁴²²² Memorial, para. 438; Reply, paras. 1129, 1131-1132; **CLA-671**, *ConocoPhillips Petrozuata B.V. v. Venezuela*, ICSID Case No. ARB/07/30, Award, 8 March 2019, paras. 214-225; **CLA-672**, *Copper Mesa Mining Corp. v. Ecuador*, PCA Case No. 2012-2, Award, 15 March 2016, para. 8.11; **CLA-673**, *Occidental Petroleum Corporation v. Ecuador*, ICSID Case No. ARB/06/11, Award, 5 October 2012, para. 834.

⁴²²³ Reply, para. 1130.

⁴²²⁴ Reply, para. 1132.

⁴²²⁵ Counter-Memorial, paras. 1283-1284; Rejoinder, para. 1824.

⁴²²⁶ Counter-Memorial, para. 1285; Rejoinder, para. 1825.

⁴²²⁷ Memorial, para. 440.

⁴²²⁸ Reply, para. 1135.

⁴²²⁹ Reply, para. 1135.

2569. The Claimants add that they have produced the invoices and other relevant documents underlying the legal fees and expenses for which they claim compensation as damages, which are set out in Appendix 2 to their Reply.⁴²³⁰

2570. *Starting date:* As to the Respondent's argument that pre-award interest should run only from 27 June 2018, the Claimants submit that the Respondent breached the Umbrella Clause of the Treaty no later than 1 January 2004 or, alternatively, on 14 February 2011 when the Lago Agrio Judgment was issued, or 1 March 2012, when the Respondent declared the Lago Agrio Judgment enforceable.⁴²³¹

2571. As regards the Denial of Justice Breach, the Claimants maintain that the date of the Respondent's Treaty breach was the date of the first composite act on 22 August 2006 (*i.e.*, when the judicial inspections were terminated) or 1 April 2008, the date of Mr Cabrera's first "ghostwritten" expert report.⁴²³² In the alternative, the Claimants posit that the Denial of Justice Breach crystallized no later than 1 March 2012, when the Lago Agrio Judgment became enforceable.⁴²³³

2572. *Appropriate rate:* Mr Sequeira invites the Tribunal to consider the application of four different interest rates:⁴²³⁴

- (i) *Ecuador's cost of debt:* The Claimants consider this rate to be reasonable – in fact, the most appropriate – because it “represents the rate of interest paid to other willing lenders (*i.e.*, sovereign bond investors) with a monetary claim against [Ecuador].”⁴²³⁵ Also known as the “coerced loan theory,” the Claimants assert that this approach has been endorsed by commentary and used by multiple arbitral tribunals.⁴²³⁶ Similarly, in Mr Sequeira's opinion, since the Claimants are

⁴²³⁰ Reply, para. 1134. *See also* Reply, Updated Appendix 2.

⁴²³¹ Reply, paras. 1136-1137.

⁴²³² Reply, para. 1138.

⁴²³³ Reply, para. 1138.

⁴²³⁴ First Sequeira Expert Report, para. 71.

⁴²³⁵ Memorial, para. 442; Reply, para. 1153; First Sequeira Expert Report, para. 73.

⁴²³⁶ Reply, paras. 1154, 1156; **CLA-403**, *Wena Hotels Limited v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, para. 128, fn 289; **CLA-470**, Jeffery M. Colón and Michael S. Knoll, *Prejudgment Interest in International Arbitration*, in *TRANSNATIONAL DISPUTE MANAGEMENT*, Vol. 4, Issue 6 (2007), pp. 11-12; **CLA-921**, *Cargill, Incorporated v. Mexico*, ICSID Case No. ARB(AF)/05/2, Award, 18 September 2009, para. 544.

“effectively unwilling lenders” to Ecuador, it is “logical[.]” to be compensated at an interest rate that is at least equal to that which Ecuador pays to its willing lenders.⁴²³⁷ According to Mr Sequeira, Ecuador’s cost of debt averaged approximately 11% between 2003 and 2019.⁴²³⁸ An award of interest at a rate less than Ecuador’s borrowing cost, the Claimants posit, would be tantamount to Ecuador obtaining a below-market rate loan from Chevron, thus benefitting economically from its wrongdoing.⁴²³⁹

- (ii) *LIBOR + 4%*: Noting that LIBOR is one of the most widely cited benchmark rates, also frequently applied by arbitral tribunals, the Claimants submit that “[its] use should not be controversial.”⁴²⁴⁰ The Claimants further note that arbitral tribunals have generally applied a premium of 4% over the LIBOR rate to account for the fact that only the most solvent and creditworthy borrowers are able to borrow money from banks at the prime rate.⁴²⁴¹ The Claimants state that even after *Yukos Universal v. Russia*, in which the tribunal rejected the LIBOR rate, arbitral tribunals have continued to apply LIBOR + 4%.⁴²⁴²
- (iii) *U.S. Prime rate + 2%*: Similar to LIBOR, the Claimants note that the U.S. Prime rate has been used by international tribunals, though infrequently by investment tribunals, as an appropriate benchmark rate to determine the borrowing rate of an investor.⁴²⁴³ Further, since not all enterprises can borrow money from banks at the

⁴²³⁷ Memorial, para. 442; Reply, para. 1153; First Sequeira Expert Report, para. 73.

⁴²³⁸ First Sequeira Expert Report, para. 76.

⁴²³⁹ Reply, para. 1155.

⁴²⁴⁰ Reply, para. 1158; **CLA-922**, *Rusoro Mining Ltd. v. Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016, paras. 836-837; **RLA-779**, *OI European Group B.V. v. Venezuela*, ICSID Case No. ARB/11/25, Award, 10 March 2015, para. 942.

⁴²⁴¹ Memorial, para. 443; Reply, paras. 1160-1162; **CLA-922**, *Rusoro Mining Ltd. v. Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016, para. 838; **CLA-924**, *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Venezuela (II)*, ICSID Case No. ARB/12/23, Award, 12 December 2016, para. 772; **RLA-791**, *Murphy Exploration and Production Company – International v. Ecuador (II)*, PCA Case No. 2012-16, Partial Final Award, 6 May 2016, para. 517.

⁴²⁴² Reply, para. 1160.

⁴²⁴³ Memorial, para. 444; Reply, para. 1164.

U.S. Prime rate, a premium of 2% is appropriate to reflect a rate that is broadly available in the market.⁴²⁴⁴

(iv) *Chevron's weighted average cost of capital ("WACC")*: Citing academic sources, the Claimants submit that their WACC could be used as an appropriate interest rate to reflect their opportunity cost resulting from being deprived of funds as a result of the Respondent's Treaty breaches.⁴²⁴⁵

2573. By contrast, the Claimants argue that a short-term, risk-free rate, as proposed by the Respondent, would unduly reward the Respondent for its conduct and enable it to avoid compliance.⁴²⁴⁶ According to the Claimants, the use of 6-month or 1-year U.S. Treasury bills has been rejected by investment tribunals on the basis that it is "unreasonably low" and "is inadequate to fulfil the *Chorzów* standard".⁴²⁴⁷

2574. Rejecting the Respondent's suggestion that there is a trend towards granting interest at the U.S. Treasury bill rate, un-augmented, the Claimants clarify that the tribunals in *Occidental v. Ecuador* and *Vestey v. Venezuela* awarded the U.S. Treasury bill rate because the claimants in those cases requested its application and the respondents did not oppose it.⁴²⁴⁸

2575. *Simple or compound interest*: For the Claimants, interest awarded on a compound basis reflects more accurately what a claimant would have been able to earn on the sums owed if it had been paid in a timely manner, while simple interest would not provide full compensation.⁴²⁴⁹ According to the Claimants, investment tribunals have confirmed that compound interest is the most accepted and appropriate method to compensate a claimant

⁴²⁴⁴ Memorial, para. 444; Reply, para. 1165; First Sequeira Expert Report, para. 81.

⁴²⁴⁵ Memorial, para. 445; Reply, paras. 1167-1168; **CLA-936**, John Y. Gotanda and Thierry J. Sénéchal, *Interest as Damages*, in COLUMBIA JOURNAL OF TRANSNATIONAL LAW, Vol 47, No. 3 (2009), pp. 527-528.

⁴²⁴⁶ Reply, paras. 1139, 1150.

⁴²⁴⁷ Reply, paras. 1140-1144; **CLA-602**, *Flughafen Zürich A.G. and Gestión e Ingeniería IDC S.A. v. Venezuela*, ICSID Case No. ARB/10/19, Award, 18 November 2014, para. 961; **CLA-920**, *Alpha Projektholding GmbH v. Ukraine*, ICSID Case No. ARB/07/16, Award, 8 November 2010, para. 514; **RLA-811**, *South American Silver Limited v. Bolivia*, PCA Case No. 2013-15, Award, 22 November 2018, para. 889.

⁴²⁴⁸ Reply, paras. 1147-1149; **CLA-673**, *Occidental Petroleum Corp. v. Ecuador*, ICSID Case No. ARB/06/11, Award, 5 October 2012, para. 842; **CLA-904**, Matthew Secomb, *INTEREST IN INTERNATIONAL ARBITRATION* (2019), para. 3.399.

⁴²⁴⁹ Memorial, para. 439; Reply, para. 1175.

fully for the delay between the date of harm suffered and the award of damages, *i.e.*, to make a claimant whole.⁴²⁵⁰ The Claimants add that compound interest would promote efficiency of enforcement.⁴²⁵¹

2576. *Tax implications*: In the Claimants' view, the fact that that they took a tax deduction for the legal fees they claim as damages in this Arbitration is irrelevant for the purposes of quantum.⁴²⁵² According to the Claimants, it is firmly established in investment jurisprudence that the tax consequences of an arbitral award in an investor's home country are irrelevant for the purpose of determining the amount of compensation owed.⁴²⁵³ The Claimants assert that tribunals have refused to gross-up awards to account for the investor's future tax liability in its home country because it is highly speculative and outside the realm of the compensation analysis.⁴²⁵⁴

2577. The Claimants rely on the tribunal's finding in the *Chevron v. Ecuador I* award that there must "exist[] a specific provision in an agreement or an established practice between the parties relating to their allocation, collection or withholding" for taxes to fall within the ambit of the Tribunal's assessment of damages.⁴²⁵⁵ According to the Claimants, there is no provision in any agreement or established practice between the Parties concerning Chevron's future income tax obligations to the U.S. Treasury, the State of California

⁴²⁵⁰ Reply, paras. 1169-1173; **CLA-228**, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentina*, ICSID Case No. ARB/97/3, Award, 20 August 2007, para. 9.2.6; **CLA-242**, *Middle East Cement Shipping and Handling Co. SA v. Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002, para. 174; **CLA-403**, *Wena Hotels Limited v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, para. 129; **CLA-657**, *Compañía del Desarrollo v. Costa Rica*, ICSID Case No. ARB/96/1, Award, 17 February 2000, para. 101.

⁴²⁵¹ Reply, para. 1174; **CLA-467**, John Y. Gotanda, *A Study of Interest*, in VILLANOVA UNIVERSITY SCHOOL OF LAW WORKING PAPER SERIES, Paper 83 (2007), p. 4; **CLA-470**, Jeffery M. Colón and Michael S. Knoll, *Prejudgment Interest in International Arbitration*, in TRANSNATIONAL DISPUTE MANAGEMENT, Vol. 4, Issue 6 (2007), p. 8.

⁴²⁵² Reply, para. 567.

⁴²⁵³ Reply, paras. 573-575, 577; **CLA-240**, *Ceskoslovenska Obchodni Banka, A.S. v. Slovakia*, ICSID Case No. ARB/97/4, Award, 29 December 2004, para. 367; **RLA-813**, *William Ralph Clayton, Bilcon of Delaware, Inc. and others v. Canada*, PCA Case No. 2009-04, Award on Damages, 10 January 2019, para. 313.

⁴²⁵⁴ Reply, paras. 576, 578; **CLA-766**, *Les Laboratoires Servier, S.A.A., Biofarma, S.A.S., Arts et Techniques du Progres S.A.S. v. Poland*, PCA Case No. 2010-12, Award, 14 February 2012, para. 666; **RLA-760**, *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum, 22 May 2012, para. 485.

⁴²⁵⁵ Reply, para. 583; **RLA-351**, *Chevron Corporation and Texaco Petroleum Company v. Ecuador*, PCA Case No. 2007-02/AA277, Final Award on the Merits, 31 August 2011, para. 311.

(where Chevron is based) or to any other governmental authority.⁴²⁵⁶ The Claimants add that Chevron's corporate income taxes in the U.S. are entirely unrelated to Ecuador.⁴²⁵⁷

2578. In view of the foregoing, the Claimants submit that the Tribunal should not consider the tax consequences of any award it renders on account of theoretical tax savings.⁴²⁵⁸

B. THE RESPONDENT'S POSITION

2579. *Sufficiency of evidence:* According to the Respondent, the Claimants have failed to substantiate their interest claims with any primary evidence.⁴²⁵⁹ Specifically, the Respondent argues that Mr Sequeira's calculations are based entirely on the analyses of other experts, which are "unsupported" and "severely deficient."⁴²⁶⁰ In its Counter-Memorial, the Respondent noted that no supporting data or analysis had been presented by the Claimants to verify any of the assumptions or calculations that were made in Appendix 2 to the Claimants' Memorial.⁴²⁶¹

2580. *Starting date:* The Respondent contests the Claimants' assertion that pre-award interest started to accrue as early as 2004, arguing that the Respondent's Treaty breaches crystallized only on 27 June 2018, the date of the Judgment of the Constitutional Court rejecting Chevron's request to impugn the Lago Agrio Judgment.⁴²⁶² Accordingly, no international responsibility on the part of the Respondent could have arisen before this date.⁴²⁶³

2581. *Appropriate rate:* Assuming *arguendo* that the Tribunal were inclined to award interest, the Respondent submits that a short-term risk-free rate, such as the yield on 6-month or 1-year U.S. Treasury bills, would be appropriate and consistent with economic theory and

⁴²⁵⁶ Reply, para. 584.

⁴²⁵⁷ Reply, para. 586.

⁴²⁵⁸ Reply, paras. 580, 588.

⁴²⁵⁹ Counter-Memorial, paras. 1287, 1289.

⁴²⁶⁰ Counter-Memorial, para. 1289.

⁴²⁶¹ Counter-Memorial, para. 1290.

⁴²⁶² Counter-Memorial, para. 1288.

⁴²⁶³ Counter-Memorial, para. 1288.

practice.⁴²⁶⁴ Given that a damages award is not exposed to any business risk, the Respondent contends that an interest rate based upon risk-free instruments constitutes a “commercially reasonable interest rate” in this context.⁴²⁶⁵ This rate, according to the Respondent, would ensure that the Claimants are compensated for their actual loss and are not overcompensated for a risk they did not bear.⁴²⁶⁶ Emphasizing that it gained no economic benefit from the Treaty breaches at issue, the Respondent also cites *Vestey v. Venezuela* to emphasize that “reparation [] is not concerned with the possible enrichment of the Respondent.”⁴²⁶⁷

2582. The Respondent distinguishes the jurisprudence cited by the Claimants as support against the application of a risk-free rate.⁴²⁶⁸ Instead, the Respondent refers to decisions supporting an interest rate approximating the U.S. Treasury bill rate in this case.⁴²⁶⁹ Noting that the tribunals in these cases used a rate matching the average borrowing rate of the claimant during the damages period, the Respondent points out that Chevron’s borrowing rate averaged only 1.5% throughout the Claimants’ entire proposed damages period, which is similar to the average 6-month or 1-year U.S. Treasury bill rate.⁴²⁷⁰

2583. The Respondent considers inappropriate the four interest rates proposed by the Claimants, arguing that the Claimants and Mr Sequeira failed to account for other risks associated

⁴²⁶⁴ Counter-Memorial, paras. 1291, 1294, 1296; Rejoinder, para. 1837; **RE-42**, First Flores Expert Report, para. 31.

⁴²⁶⁵ Counter-Memorial, paras. 1295-1296.

⁴²⁶⁶ Rejoinder, paras. 1838, 1840, 1850; **QE-25**, *Vestey Group Limited v. Venezuela*, ICSID Case No ARB/06/4, Award, 15 April 2016, para. 440.

⁴²⁶⁷ Rejoinder, paras. 1844-1845; **QE-25**, *Vestey Group Limited v. Venezuela*, ICSID Case No ARB/06/4, Award, 15 April 2016, para. 440.

⁴²⁶⁸ Rejoinder, paras. 1837-1838; **RLA-811**, *South American Silver Limited v. Bolivia*, PCA Case No. 2013-15, Award, 22 November 2018, paras. 878, 891-892; **CLA-296**, *Bernardus Henricus Funnekotter and others v. Zimbabwe*, ICSID Case No. ARB/05/6, Award, 22 April 2009, paras. 143-144; **CLA-920**, *Alpha Projektholding GmbH v. Ukraine*, ICSID Case No. ARB/07/16, Award, 8 November 2010, para. 514.

⁴²⁶⁹ Rejoinder, para. 1837.

⁴²⁷⁰ Rejoinder, para. 1837; **CLA-602**, *Flughafen Zürich A.G. and Gestion e Ingenieria IDC S.A v. Venezuela*, ICSID Case No. ARB/10/19, Award, 18 November 2014, para. 965; **CLA-94**, *National Grid P.L.C. v. Argentina*, UNCITRAL, Award, 3 November 2008, paras. 291-294.

with such higher rates, including investment and maturity risks. The Respondent argues with respect to each of Claimants' proposed interest rates as follows:⁴²⁷¹

- (i) *Ecuador's cost of debt*: According to the Respondent, using Ecuador's cost of debt would include compensation for *ex-ante* lending risk to Ecuador, which is not a risk faced by the Claimants in the context of an *ex-post* damages award.⁴²⁷² The Claimants' interest rate is also likely inflated by a premium for maturity.⁴²⁷³ The Respondent argues that the Claimants cannot be likened to "unwilling lenders" because Ecuador received no economic benefit from the amounts the Claimants allegedly spent in legal and other costs.⁴²⁷⁴ The Respondent also takes issue with Mr Sequeira's calculation which, in its view, is not grounded in reality, pointing out that his approach creates and uses "proxies" instead of applying Ecuador's actual cost of debt.⁴²⁷⁵
- (ii) *LIBOR + 4%*: The Respondent asserts that LIBOR rates have been subject to manipulation for years, are in the process of being discontinued, and have been "discredited" as a benchmark interest rate in arbitration, as concluded by the tribunal in *Yukos Universal v. Russia*.⁴²⁷⁶ Even if LIBOR were a legitimate benchmark rate, the Respondent rejects the Claimants' proposed 4% premium, given that the Claimants have a history of borrowing at rates that correspond to discounts from the 12-month LIBOR rate.⁴²⁷⁷
- (iii) *U.S. Prime rate + 2%*: In the same vein, the Respondent maintains that the Claimants could have borrowed money at a discount, not a premium, with respect to the U.S. Prime rate, given their size and credit rating.⁴²⁷⁸

⁴²⁷¹ Rejoinder, para. 1843.

⁴²⁷² Counter-Memorial, para. 1301; Rejoinder, para. 1849.

⁴²⁷³ Counter-Memorial, para. 1301; Rejoinder, para. 1844.

⁴²⁷⁴ Counter-Memorial, para. 1301; Rejoinder, para. 1844.

⁴²⁷⁵ Rejoinder, para. 1850; Second Sequeira Expert Report, paras. 78-82.

⁴²⁷⁶ Counter-Memorial, para. 1302; Rejoinder, para. 1856; **RE-42**, First Flores Expert Report, para. 48.

⁴²⁷⁷ Counter-Memorial, para. 1303; Rejoinder, para. 1859; **RE-42**, First Flores Expert Report, para. 51; **RE-56**, Second Flores Expert Report, paras. 75-76.

⁴²⁷⁸ Counter-Memorial, para. 1304; Rejoinder, paras. 1861-1862.

(iv) *Chevron's WACC*: The Respondent contends that WACC cannot be a proxy for a "commercially reasonable rate", as it is not a rate at which money is lent or borrowed.⁴²⁷⁹ It notes, in addition, that Mr Sequeira has failed to explain why Chevron's WACC would be a proper measure for Texaco Petroleum Company's alleged losses.⁴²⁸⁰ As with Ecuador's cost of debt, the Respondent posits that awarding interest at Chevron's WACC would result in compensating the Claimants for risks they did not bear: in the Respondent's view, it is entirely speculative that the Claimants would have invested the funds used for legal expenses in some money-making venture.⁴²⁸¹ WACC would also fail to account for the downside of whatever hypothetical investment the Claimants would have made.⁴²⁸²

2584. *Simple or compound interest*: Contrary to the Claimants' suggestion, the Respondent submits that there is no uniform practice under international law of awarding compound interest to an injured party.⁴²⁸³ Rather, the general approach has been to award simple interest, in particular, in non-expropriation cases like this Arbitration.⁴²⁸⁴ The Respondent criticizes the Claimants' focus on the potential unjust enrichment of a respondent, which is not the governing standard for an award on interest.⁴²⁸⁵ In this respect, the Respondent takes the view that the only unjust enrichment potentially in play here is that of the Claimants – "if the [interest] rate is set too high, the claimant may have [an] incentive [to prolong arbitration]."⁴²⁸⁶

2585. *Tax implications*: According to the Respondent, to the extent that the Claimants suffered any harm by paying legal fees, that harm was reduced by the tax benefits they received:

⁴²⁷⁹ Counter-Memorial, para. 1305.

⁴²⁸⁰ Rejoinder, para. 1851.

⁴²⁸¹ Counter-Memorial, para. 1305; Rejoinder, para. 1854.

⁴²⁸² Rejoinder, paras. 1852-1853.

⁴²⁸³ Counter-Memorial, para. 1308.

⁴²⁸⁴ Counter-Memorial, para. 1308, fn 2445; Rejoinder, paras. 1863-1864, 1867; **RLA-357**, *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. Mexico*, ICSID Case No. ARB(AF)/04/5, Award, 21 November 2007, paras. 298, 300; **CLA-657**, *Compañía del Desarrollo v. Costa Rica*, ICSID Case No. ARB/96/1, Award, 17 February 2000, para. 101.

⁴²⁸⁵ Rejoinder, para. 1869.

⁴²⁸⁶ Rejoinder, para. 1970; **CLA-470**, Jeffery M. Colón and Michael S. Knoll, *Prejudgment Interest in International Arbitration*, in *Transnational Dispute Management*, Vol. 4, Issue 6 (2007), p. 3.

the Claimants deducted 35% of their claimed legal fees on their taxes each year prior to 2018, and 21% after that.⁴²⁸⁷

2586. In the Respondent's view, granting the Claimants interest on the full amounts of legal fees they allegedly paid at the rate corresponding to Ecuador's cost of debt, without accounting for the tax deductions they took, would unjustly enrich the Claimants up to USD 455 million.⁴²⁸⁸ Moreover, due to the decrease in the U.S. corporate tax rate from 35% to 21% in 2018, the Respondent argues that the Claimants would have to pay only a 21% tax rate on any award.⁴²⁸⁹ The difference between the two rates, the Respondent asserts, is profit that will enrich the Claimants beyond their purported injury, for up to USD 107 million.⁴²⁹⁰ Therefore, under the Claimants' proposed interest rates, the combined value of these tax effects would amount to USD 562.9 million, or 71% of their principal claimed legal fee damages.⁴²⁹¹

2587. Consequently, drawing from the full reparation standard under *Chorzów Factory*, the Respondent submits that the Tribunal should factor in tax effects to prevent the Claimants from being unjustly enriched by their alleged injuries.⁴²⁹² This means that any damages awarded must be reduced by at least the difference between the marginal U.S. corporate tax rate when the applicable fees were deducted and the marginal tax rate when the damages award is paid.⁴²⁹³

C. THE TRIBUNAL'S ANALYSIS

1. Legal Principles

2588. According to the Claimants, they are entitled to "receive interest on any damages at a rate which will fully 'wipe out the consequences' of Respondent's actions" in accordance with

⁴²⁸⁷ Counter-Memorial, para. 1306; Rejoinder, paras. 548-550, 561.

⁴²⁸⁸ Rejoinder, para. 551.

⁴²⁸⁹ Rejoinder, para. 552.

⁴²⁹⁰ Rejoinder, para. 552.

⁴²⁹¹ Counter-Memorial, para. 1307; Rejoinder, para. 553; **RE-56**, Second Flores Expert Report, paras. 12, 142.

⁴²⁹² Rejoinder, paras. 554-556.

⁴²⁹³ Counter-Memorial, paras. 1306-1307; Rejoinder, para. 565.

the principle of full reparation set forth in *Chorzów Factory*.⁴²⁹⁴ The Claimants posit that an interest award is the “application of *Chorzów* to the loss of the time value of money” and that Chevron “should be fully compensated for its loss of use of the money.”⁴²⁹⁵ In the Claimants’ submission, pre-award interest is appropriate⁴²⁹⁶ and no distinction should be drawn between pre- and post-award interest, since full reparation requires an award of interest until the date of payment.⁴²⁹⁷

2589. The Respondent counters that interest is not an “automatic entitlement”; rather, it is only “payable when necessary to ensure full reparation.”⁴²⁹⁸ In the Respondent’s view, interest is meant to “compensate for the time value of money and certain macroeconomic risks like inflation”; in particular, it seeks to compensate “for not having had the use of the money between the date when it ought to have been paid and the date of the payment.”⁴²⁹⁹ The Respondent submits that, “as a general principle, the awarded interest rate should compensate for the time value of money, the loss of purchasing power, and specific risks.”⁴³⁰⁰ The Respondent adds that interest is not meant to be punitive.⁴³⁰¹

(a) *Applicable Legal Standard*

2590. As already explained, the Tribunal is guided in its assessment of damages under international law by the full reparation standard, set forth in *Chorzów Factory*, pursuant to which a damages award “must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.” The Tribunal also recalls that Article 31(1) of the ILC Articles focuses on restoring the status of the injured party, stating that “[t]he responsible

⁴²⁹⁴ Memorial, para. 438.

⁴²⁹⁵ Reply, para. 1130.

⁴²⁹⁶ Reply, para. 1131.

⁴²⁹⁷ Reply, para. 1132.

⁴²⁹⁸ Counter-Memorial, para. 1286; Rejoinder, para. 1824.

⁴²⁹⁹ Counter-Memorial, para. 1292; **RLA-717**, *Southern Pacific Properties Ltd. v. Egypt*, ICSID Case No. ARB/84/3, Award, 20 May 1990, para. 219.

⁴³⁰⁰ Counter-Memorial, para. 1295; **RLA-798**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in J. INT’L DISPUTE SETT., Vol. 8 (2017), p. 61.

⁴³⁰¹ Rejoinder, para. 1829.

State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”⁴³⁰²

2591. Both Parties also refer to Article 38 of the ILC Articles, entitled “Interest”,⁴³⁰³ which provides that:

1. Interest on any principal sum payable under this Chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.⁴³⁰⁴

2592. The Commentary to Article 38 of the ILC Articles explains that interest is awarded “as an aspect of full reparation” if necessary to put the injured party in the position in which it should have been absent the internationally wrongful act.⁴³⁰⁵ Thus, “[i]nterest is not an autonomous form of reparation, nor is it a necessary part of compensation in every case”, but instead forms a part of damages insofar as full reparation is required under international law.⁴³⁰⁶

2593. Professor Marboe likewise explains that “[i]nterest represents an important part of compensation or damages, but it is not a separate remedy”.⁴³⁰⁷ Investment tribunals have made similar observations. For instance, in *LG&E*, the tribunal explained that “interest is part of ‘full’ reparation to which the Claimants are entitled to assure that they are made whole”.⁴³⁰⁸ Similarly, the tribunal in *Metalclad* stated that interest serves “to restore the

⁴³⁰² See para. 303 above.

⁴³⁰³ Reply, para. 1129; Rejoinder, para. 1829.

⁴³⁰⁴ **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10 at 43, UN Doc. A/56/10 (2001), Art. 38.

⁴³⁰⁵ **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10 at 43, UN Doc. A/56/10 (2001), Commentary to Art. 38, para. 2.

⁴³⁰⁶ **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10 at 43, UN Doc. A/56/10 (2001), Commentary to Art. 38, para. 1.

⁴³⁰⁷ See also **VP-39**, Irmgard Marboe, *CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2017), para. 6.04.

⁴³⁰⁸ **CLA-684**, *LG&E Energy Corp. v. Argentina*, ICSID Case No. ARB/02/1, Award, 25 July 2007, para. 55.

Claimant to a reasonable approximation of the position in which it would have been if the wrongful act had not taken place”.⁴³⁰⁹

2594. Based on the above, the Tribunal determines that interest under international law must be granted on principal amounts awarded to the extent required to “make full reparation for the injury caused” by the Respondent’s Treaty breaches and to “re-establish the situation which would, in all probability, have existed” for the Claimants absent those breaches.

(b) Function of Interest

2595. The Parties, together with their experts, have provided helpful materials to the Tribunal concerning the function of interest in the assessment of damages.

2596. Dr Secomb notes that “interest is first and foremost an element of compensation”⁴³¹⁰ whose “primary role is to compensate the claimant for the time value of money” for the period during which “it did not have the use of the sum in question.”⁴³¹¹ Professor Gotanda describes interest similarly:

Interest is a sum of money paid or payable as compensation for the temporary withholding of money. Today, interest is often awarded without proof of actual loss. Courts and tribunals presume that the delayed payment of money deprives the injured party of the ability to invest the sum owed. Thus, a party is entitled to compensation for this loss.⁴³¹²

2597. Professor Marboe likewise explains that “in the first place, interest should address the claimant’s financial disadvantage of not being able to dispose of the amount of money”.⁴³¹³ Professor Affolder summarizes that “[i]nterest in the damages context refers to the compensation allowed by law for the loss of the use of money during the time between the accrual of the claim and the date of actual payment.”⁴³¹⁴

⁴³⁰⁹ **CLA-41**, *Metalclad Corp. v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, para. 128.

⁴³¹⁰ **CLA-904**, Matthew Secomb, *INTEREST IN INTERNATIONAL ARBITRATION* (2019), para. 2.127.

⁴³¹¹ **CLA-904**, Matthew Secomb, *INTEREST IN INTERNATIONAL ARBITRATION* (2019), para. 2.169.

⁴³¹² **CLA-467**, John Y. Gotanda, *A Study of Interest*, in VILLANOVA UNIVERSITY SCHOOL OF LAW WORKING PAPER SERIES, Paper 83 (2007), pp. 3-4.

⁴³¹³ **VP-39**, Irmgard Marboe, *CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2017), para. 6.09.

⁴³¹⁴ **CLA-469**, Natasha Affolder, *Awarding Compound Interest in International Arbitration*, *AM. REV. INT’L ARB.*, Vol. 12, No. 1 (2001), p. 3.

2598. Investment tribunals have understood interest in much the same way. For example, the tribunal in *Vivendi v. Argentina* explained that:

The object of an award of interest is to compensate the damage resulting from the fact that during the period of non-payment by the debtor, the creditor is deprived of the use and disposition of that sum he was supposed to receive.⁴³¹⁵

2599. Drawing from the above, as well as the basic premise that the primary function of interest is to provide compensation as necessary to achieve full reparation, the Parties and their experts identify two components potentially recoverable through an interest award: time value of money and opportunity cost.⁴³¹⁶ Each is addressed in turn.

1. Time value of money

2600. The Respondent's expert, Dr Flores, accepts a definition of time value of money as the deferral of consumption.⁴³¹⁷ Mr Sequeira explains that the concept of the time value of money represents the notion that money held in the past possesses greater value than the same nominal sum today, owing both to the erosive effects of inflation and to the principle that individuals generally prefer to receive funds sooner rather than later.⁴³¹⁸ Both Parties' experts agree that the time value of money is reflected in a risk-free interest rate, which often coincides with the rates of U.S. Treasury securities.⁴³¹⁹ The experts also agree that the applicable interest rate must compensate for the time value of money.⁴³²⁰

2601. Based on the foregoing, the Tribunal considers it uncontroversial between the Parties that an award of interest should compensate for the time value of money by applying, at least, a risk-free interest rate.

⁴³¹⁵ **CLA-228**, *Compañía de Aguas del Aconquija, S.A. and Vivendi Universal, S.A. v. Argentina*, ICSID Case No. ARB/97/3, Award, 20 August 2007, para. 9.2.3.

⁴³¹⁶ See First Sequeira Expert Report, para. 67; Track III Hearing Transcript, Day 13 (5 September 2022), p. 3121 (Flores).

⁴³¹⁷ Track III Hearing Transcript, Day 13 (5 September 2022), p. 3121 (Flores).

⁴³¹⁸ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1665 (Sequeira).

⁴³¹⁹ **RE-56**, Second Flores Expert Report, paras. 46-47; Track III Hearing Transcript, Day 7 (26 August 2022), p. 1665 (Sequeira).

⁴³²⁰ See, e.g., First Sequeira Expert Report, para. 67; **RE-56**, Second Flores Expert Report, para. 46.

2. Opportunity cost

2602. According to Mr Sequeira, the term “opportunity cost” encapsulates the notion that “if a damaged party receives timely compensation, they would invest that money or deploy that cash to achieve some incremental economic benefit over and above the Risk-Free Rate.”⁴³²¹ Dr Flores, in turn, describes opportunity cost as the lost ability to do other things with the money.⁴³²² Whereas Mr Sequeira asserts that interest should serve to compensate for the cost of lost opportunity, Dr Flores disagrees.⁴³²³

2603. The Claimants submit that pre-award interest must account for opportunity cost.⁴³²⁴ They contend that the vast majority of investment tribunals have reached a similar conclusion in determining interest rates.⁴³²⁵ Countering Dr Flores, the Claimants argue that it is irrelevant whether Chevron had cash reserves at the time,⁴³²⁶ since Dr Flores agrees that the more relevant question is what the Claimants would have done with the funds of which they were deprived at that time.⁴³²⁷

2604. On the other hand, the Respondent argues that interest should not factor in opportunity costs⁴³²⁸ because the Tribunal’s Award is not exposed to risk before the date of issuance.⁴³²⁹ The Respondent contests the Claimants’ proposed rates on the basis that each includes “significant Risk Premium[s]”, including for default risk and maturity risk.⁴³³⁰ In the Respondent’s view, risk comes with potential reward, but also potential loss, and the Claimants “want all of the upside with none of the downside.”⁴³³¹ The

⁴³²¹ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1665 (Sequeira).

⁴³²² Track III Hearing Transcript, Day 13 (5 September 2022), p. 3121 (Flores).

⁴³²³ *See, e.g.*, First Sequeira Expert Report, para. 67; **RE-56**, Second Flores Expert Report, para. 46.

⁴³²⁴ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3495 (Kehoe).

⁴³²⁵ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3496 (Kehoe).

⁴³²⁶ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3497 (Kehoe).

⁴³²⁷ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3498 (Kehoe).

⁴³²⁸ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3632 (Leonetti).

⁴³²⁹ Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3632-3633 (Leonetti).

⁴³³⁰ Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3634-3636 (Leonetti).

⁴³³¹ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3635 (Leonetti).

Respondent further argues that the spread between the Claimants' proposed rates "establishes that they bear no relationship to the purpose of interest".⁴³³²

2605. Lastly, the Respondent notes Mr Sequeira's opinion that Chevron could have used the funds of which it was deprived in any of a number of ways – including paying down existing debt, avoiding taking new debt, investing in existing or new projects, share buybacks, dividends, or holding the funds as cash.⁴³³³ It submits, however, that there is no concrete evidence on what Chevron would have done with those funds, since no Chevron employees testified on this matter.⁴³³⁴ Rather, the Respondent submits that, as Chevron held substantial cash reserves, at approximately USD 12 billion, the Claimants "were never deprived of any investment opportunity" by the use of some of its funds to pay for legal fees.⁴³³⁵

2606. In considering whether opportunity cost is to be compensated through an interest award, the Tribunal applies again the full compensation standard enshrined in *Chorzów Factory* and Article 31 of the ILC Articles. The Tribunal has already established that interest must "make full reparation for the injury caused" by the Respondent's Treaty breaches so as to "re-establish the situation which would, in all probability, have existed".⁴³³⁶ Accordingly, the applicable interest rate must take into account opportunity cost to the extent that the Claimants are able to demonstrate that the specific opportunities they lost form part of the "situation which would, in all probability, have existed" absent the Treaty breaches. There are limitations to this test since an award accounting for returns that would not have been obtained by the injured party "in all probability" would lead to overcompensation.

2607. In the present case, the Tribunal is not satisfied that the Claimants have met their burden of proving Chevron's opportunity costs. The Tribunal does not have before it convincing evidence of how Chevron would have used the sums in question had they been freely at its disposal at particular points in time. Rather, the Claimants and Mr Sequeira

⁴³³² Track III Hearing Transcript, Day 15 (7 September 2022), p. 3635 (Leonetti).

⁴³³³ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3635 (Leonetti).

⁴³³⁴ Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3635-3636 (Leonetti).

⁴³³⁵ Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3645-3646 (Leonetti).

⁴³³⁶ See para. 2594 above.

consistently propose activities that Chevron “could” have undertaken in but-for scenarios.⁴³³⁷ For instance, Mr Sequeira provides the following explanation of what the Claimants “could” have done:

[I]f Chevron had received timely compensation for the cost it claimed, it could have deployed that cash in different ways. It could have used that to pay down existing debt, avoid taking on new debt, invest in existing projects, invest in new projects, use it for share buybacks, dividends, a variety of different ways.⁴³³⁸

2608. The Claimants also submit that:

One cannot reasonably assume that if Chevron had excess cash coming in, it would sit idly in the bank or be invested in T-Bills or something. The more neutral assumption, as Mr. Sequeira testified, is that the cash would be deployed.⁴³³⁹

2609. The Tribunal cannot accept the above propositions without more. In applying the full reparation standard, the Tribunal cannot, in the absence of evidence, engage in speculation or presume that the funds of which Chevron was deprived would have been employed for some alternative productive purpose. Such exercise would not be consistent with the analysis required under *Chorzów Factory*. As rightly noted by the Respondent, the Claimants have provided no convincing evidence illustrating what Chevron would have done with the funds of which it was deprived in a Treaty-compliant but-for scenario, such as paying down existing debt, avoiding taking new debt, investing in existing or new projects, share buybacks, dividends, or holding such funds as a cash reserve.⁴³⁴⁰

2610. This does not, however, end the analysis. As affirmed by Professor Gotanda, courts and tribunals do not always require proof of opportunity cost.⁴³⁴¹ In certain circumstances, one may validly infer that the Claimants, as rational economic actors, would have made productive use of funds available to them.

⁴³³⁷ See, e.g., Reply, para. 1131 (“Chevron could have invested US\$ 800 million and earned an appropriate return on its investment”); First Sequeira First Expert Report, paras. 26, 84 (“Claimants could reasonably have invested these funds in the ordinary course of business”); Second Sequeira Expert Report, para. 49 (“Claimants could have invested the money”), 93 (“Claimants could reasonably have invested these funds in the ordinary course of business”), 97 (“Claimants could equally have invested in higher risk/higher return ventures”).

⁴³³⁸ Track III Hearing Transcript, Day 7 (26 August 2022), pp. 1665-1666 (Sequeira).

⁴³³⁹ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3497 (Kehoe).

⁴³⁴⁰ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3635 (Leonetti).

⁴³⁴¹ **CLA-467**, John Y. Gotanda, *A Study of Interest*, in VILLANOVA UNIVERSITY SCHOOL OF LAW WORKING PAPER SERIES, Paper 83 (2007), pp. 3-4.

2611. Nevertheless, even where such inference might be appropriate, it would not extend to presuming that the Claimants would have in all circumstances made *optimal* use of the funds available to them. As already explained, the evidence does not support the proposition that they did so in the actual scenario, and therefore they cannot be assumed to have done so in the but-for scenario.⁴³⁴²

2612. Furthermore, as discussed below in the context of WACC as a proposed interest rate, the Tribunal considers that it would be speculative to reward the Claimants for a risk not taken.⁴³⁴³ On this point, the Tribunal agrees with the observation of the *Sistem v. Kyrgyzstan* tribunal that a claimant “might have made spectacularly good, or disastrously bad decisions” with their funds.⁴³⁴⁴ The tribunal in *Guaracachi-Rurelec v. Bolivia* stated in like manner that it is inappropriate to apply an interest rate that “includes an *ex ante* allowance for forward-looking business risks which should not be applied *ex post*”.⁴³⁴⁵ While perhaps Chevron could have made riskier decisions than investing at the risk-free rate, the Tribunal has no concrete evidence that it would have done so, and moreover has no evidence that said riskier decision would have paid off.

2613. Consequently, the Tribunal declines to grant compensation for loss of opportunity to the extent that it requires speculation as to what opportunities (and *ex ante* risks) Chevron might have taken, and what payoffs it might have received.

3. Other putative rationales

2614. The Tribunal notes that the Claimants have proposed two additional reasons beyond compensation for an award of interest: (i) preventing unjust enrichment by the Respondent, and (ii) encouraging the Respondent to settle legitimate claims promptly.⁴³⁴⁶

⁴³⁴² See para. 2653 below.

⁴³⁴³ See para. 2653 below.

⁴³⁴⁴ **RLA-983**, *Sistem Mühendislik İnşaat Sanayi ve Ticaret A.Ş. v. Kyrgyzstan*, ICSID Case No. ARB(AF)/06/1, Award, 9 September 2009, para. 194.

⁴³⁴⁵ **RLA-996**, *Guaracachi America, Inc. and Rurelec PLC v. Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014, para. 615.

⁴³⁴⁶ Reply, para. 1174; **CLA-904**, Matthew Secomb, INTEREST IN INTERNATIONAL ARBITRATION (2019), paras. 2.126-2.127, 2.130, 2.132, fn 166; Charles N Brower and Jeremy K Sharpe, *Awards of Compound Interest in*

2615. First, as regards unjust enrichment, the Tribunal refers again to Article 38 of the ILC Articles, pursuant to which interest is “payable when necessary in order to ensure full reparation”.⁴³⁴⁷ As discussed in paragraph 2590 above, the full reparation standard is focused on restoring the position of the Claimants. Accordingly, international law requires the granting of interest as necessary to re-establish the situation in which the Claimants – as opposed to the Respondent – would have found themselves in a Treaty-compliant counterfactual scenario. The ILC Articles do not explicitly consider unjust enrichment on the part of the respondent as an element of interest under Article 38. The Commentary to Article 38 also emphasizes only the entitlements of the “injured State”, but at no point discusses the status of the *injuring* State.⁴³⁴⁸

2616. Second, the Tribunal is not persuaded that interest, whether applied pre- or post-award, should be regarded a tool to encourage prompt payment of the Award. In the context of reparation, interest forms part of compensation to the injured party. In turn, compensation under international law must remain, as the Commentary to the ILC Articles indicates, “purely compensatory”:

As compared with satisfaction, the function of compensation is to address the actual losses incurred as a result of the internationally wrongful act. In other words, the function of article 36 is purely compensatory, as its title indicates. Compensation corresponds to the financially assessable damage suffered by the injured State or its nationals. It is not concerned to punish the responsible State, nor does compensation have an expressive or exemplary character.⁴³⁴⁹

2617. By extension, if compensation does not serve to incentivize or disincentivize particular conduct through punitive or exemplary damages, neither does interest. Accordingly, it is simply not the function of interest to incentivize good behaviour in the form of prompt

International Arbitration: The Aminoil Non-Precedent in LIBER AMICORUM IN HONOUR OF ROBERT BRINER (2005), p. 155; **CLA-936**, John Y. Gotanda and Thierry J. S  n  chal, *Interest as Damages*, in COLUMBIA JOURNAL OF TRANSNATIONAL LAW, Vol 47, No. 3 (2009), pp. 495-496.

⁴³⁴⁷ **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10 at 43, UN Doc. A/56/10 (2001), Art. 38(1).

⁴³⁴⁸ See generally **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10 at 43, UN Doc. A/56/10 (2001), Art. 38.

⁴³⁴⁹ **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10 at 43, UN Doc. A/56/10 (2001), Commentary to Art. 38(1), para. 4.

payment of the award, just as it is not the function of interest to incentivize the post-award behaviour of any party in any other manner.

2. Period

2618. Having determined for what purpose interest shall accrue, the Tribunal turns to determining the period when interest should run.

2619. Elsewhere in this Award, the Tribunal has determined that compensation for the legal fees and expenses incurred by Chevron should be determined as of the date on which the underlying services were performed. Such date represents the moment when the relevant mitigation measures were effectively taken and also when the legal obligation to pay those services arose.⁴³⁵⁰

2620. However, the Tribunal notes that, for purposes of assessing interest, Chevron did not actually lose the use of its funds until the date of payment of the underlying invoices. Until that point, the Claimants were able to make productive use of the sums in question. Consequently, the Tribunal considers that interest on Chevron's damages should only begin to run from the date on which each invoice for legal fees and expenses was paid by Chevron.⁴³⁵¹

2621. As to the question of until when interest should run, the Tribunal notes that the Claimants request both pre- and post-award interest.⁴³⁵² The Claimants request higher post-award interest than pre-award interest "to incentivize Ecuador to comply with its Treaty

⁴³⁵⁰ See para. 2079 above.

⁴³⁵¹ The Tribunal recognises that the Respondent first argued in its Counter-Memorial that the Claimants had failed to substantiate their interest claims with primary evidence. See para. 2579 above. The Tribunal understands the Respondent to have abandoned this argument, which the Respondent does not make in either its Rejoinder or at the Track III Hearing. To the extent that the argument is maintained, the Tribunal has dealt with the sufficiency of the Claimants' evidence in determining whether the Claimants have proven the principal sums of its damages claims.

⁴³⁵² Memorial, para. 438.

obligations to pay the Award.”⁴³⁵³ The Respondent submits that the same rate should be used for both periods.⁴³⁵⁴

2622. As already explained, full reparation aims to make the injured party whole, not to incentivize any particular conduct by the injuring party following the Award.⁴³⁵⁵ Nevertheless, the Tribunal accepts that that pre- and post-award interest function differently. Whereas pre-award interest is governed exclusively by the rules on compensation under international law, post-award interest is not. As the ILC explained in the Commentary to Article 38:

Article 38 does not deal with post-judgement or moratory interest. It is only concerned with interest that goes to make up the amount that a court or tribunal should award, i.e. compensatory interest. The power of a court or tribunal to award post-judgement interest is a matter of its procedure.⁴³⁵⁶

2623. The Tribunal will thus determine the pre- and post-award interest rates separately.

3. Simple or Compound Interest

2624. Next, the Tribunal turns to the question of the potential compounding of interest. The Claimants request compound interest,⁴³⁵⁷ whereas the Respondent submits that simple interest is more appropriate.⁴³⁵⁸

2625. The Tribunal is mindful that international investment tribunals have not adopted a uniform position regarding the compounding of interest. For example, in its 2010 award, the *Gemplus v. Mexico* tribunal stated that:

it is clear [] that the current practice of international tribunals [] is to award compound and not simple interest. In the Tribunal’s opinion, there is now a form of ‘jurisprudence *constante*’ where the presumption has shifted from the position a decade or so ago with the

⁴³⁵³ The Claimants made this request in their closing submissions at the Track III Hearing (*See* Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3500-3501 (Kehoe)). In their written submissions, they seek the same rate for both (*See* Memorial, para. 474; Reply, paras. 1132, 1151).

⁴³⁵⁴ *See, e.g.*, Track III Hearing Transcript, Day 15 (7 September 2022), p. 3646 (Leonetti).

⁴³⁵⁵ *See* para. 2616 above.

⁴³⁵⁶ **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10 at 43, UN Doc. A/56/10 (2001), Commentary to Art. 38(1), para. 12.

⁴³⁵⁷ Reply, para. 1175.

⁴³⁵⁸ Rejoinder, para. 1826.

result it would now be more appropriate to order compound interest, unless shown to be inappropriate in favour of simple interest, rather than vice versa.⁴³⁵⁹

2626. Yet almost a decade later, the tribunal in *RREEF Infrastructure* stated that “it [was] conscious that there is no *jurisprudence constante* as to the choice between compound or simple interest.”⁴³⁶⁰

2627. This divergence of views on compound interest is broadly due to differing perceptions of the practice of international courts and tribunals under international law. Those opposed to compound interest frequently cite to the statement in the Commentary to the ILC Articles, now a quarter of a century old, to the effect that “special circumstances” are necessary to justify compound interest:

The general view of courts and tribunals has been against the award of compound interest, and this is true even of those tribunals which hold claimants to be normally entitled to compensatory interest . . . The preponderance of authority thus continues to support the view [that] the arbitral case law in matters involving compensation of one State for another for damages suffered by the nationals of one within the territory of the other . . . is unanimous . . . in disallowing compound interest. In these circumstances, very strong and quite specific arguments would be called for to grant such interest. [. . . Thus,] given the present state of international law, it cannot be said that an injured State has any entitlement to compound interest, in the absence of special circumstances which justify some element of compounding as an aspect of full reparation.⁴³⁶¹

2628. On the other hand, tempering this purported rule against compound interest is the aforementioned principle that “[t]he awarding of interest depends on the circumstances of each case; in particular, on whether an award of interest is necessary in order to ensure full reparation”.⁴³⁶² Accordingly, the Tribunal is not persuaded that a presumption in favour or against any form of interest exists in international law.

⁴³⁵⁹ **CLA-658**, *Gemplus S.A. v. Mexico*, ICSID Case Nos. ARB(AF)/04/3 and ARB(AF)/04/4, Award, 16 June 2010, paras. 16-26.

⁴³⁶⁰ **CLA-919**, *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Spain*, ICSID Case No. ARB/13/30, Award, 11 December 2019, para. 67.

⁴³⁶¹ **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10 at 43, UN Doc. A/56/10 (2001), Commentary to Art. 38(1), paras. 8-9.

⁴³⁶² **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10 at 43, UN Doc. A/56/10 (2001), Commentary to Art. 38, para. 7.

2629. For its part, guided by the same full reparation standard enshrined in *Chorzów Factory* and in the ILC Articles, the Tribunal has found above that awarding interest is necessary to compensate the Claimants for their inability to use their funds. The Tribunal has further found that this compensation must account for the time value of money.⁴³⁶³

2630. In the Tribunal's view, this resolves the question: compensation for the time value of money generally requires an award of compound interest to provide full reparation.⁴³⁶⁴ As the *Pankki v. Estonia* tribunal explained:

[C]ompound interest reflects economic reality. The time value of money in free market economies is measured in compound interest; simple interest cannot be relied upon to produce full reparation for a claimant's loss occasioned by delay in payment [].⁴³⁶⁵

2631. The Tribunal finds persuasive Dr Secomb's explanation that inflation is cumulative, "akin to compounding", requiring compound interest:⁴³⁶⁶

Because inflation is cumulative, compounding interest is effectively necessary to maintain a constant real rate of return on the original loan, plus the interest on the loan. Put otherwise, granting simple interest, when inflation is compound, means that the real rate of return will inevitably erode over time.⁴³⁶⁷

2632. In the Tribunal's view, therefore, an award of simple interest would not appropriately update the value of the Claimants' losses from the date of loss to its current value.

2633. The Tribunal further notes that there is substantial support for the proposition that compound interest is necessary to provide full reparation.⁴³⁶⁸ For example, the tribunal in *Wena Hotels v. Egypt* stated that:

⁴³⁶³ See Section X.C.1(b)1 above.

⁴³⁶⁴ See, e.g., **CLA-936**, John Y. Gotanda and Thierry J. Sénéchal, *Interest as Damages*, in COLUMBIA JOURNAL OF TRANSNATIONAL LAW, Vol 47, No. 3 (2009), p. 509 ("In today's finance world, compound interest is the international standard applied in most time value applications").

⁴³⁶⁵ **CLA-654**, *Pankki et al. v. Estonia*, ICSID Case No. ARB/04/6, Award, 19 November 2007, para. 345. See also **RLA-787**, *Hrvatska Elektroprivreda d.d. v. Slovenia*, ICSID Case No. ARB/05/24, Award, 17 December 2015, para. 556 ("compounding interest reflects simple economic sense").

⁴³⁶⁶ **CLA-904**, Matthew Secomb, INTEREST IN INTERNATIONAL ARBITRATION (2019), para. 2.112.

⁴³⁶⁷ **CLA-904**, Matthew Secomb, INTEREST IN INTERNATIONAL ARBITRATION (2019), para. 2.113.

⁴³⁶⁸ See **VP-39**, Irmgard Marboe, CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL INVESTMENT LAW (2017), paras. 6.237-6.248 ("This brief overview shows that compound interest as opposed to simple interest is predominantly accepted in recent international investment arbitration. It is regarded as better

[A]n award of compound (as opposed to simple) interest is generally appropriate in most modern, commercial arbitrations. As Professor Gotanda has observed “almost all financing and investment vehicles involve compound interest . . . If the claimant could have received compound interest merely by placing its money in a readily available and commonly used investment vehicle, it is neither logical nor equitable to award the claimant only simple interest.”⁴³⁶⁹

2634. Having decided that compound interest is required by the full reparation standard in the circumstances of this case, the Tribunal must determine the appropriate compounding period. The Tribunal notes that the compounding period “can have a significant impact on the amount of the award.”⁴³⁷⁰ Considering the relationship between compounding period and the interest rate, Professor Affolder warns against “the artificial separation” of the two.⁴³⁷¹ Professors Colón and Knoll also caution that tribunals “should therefore use the same compounding period in computing the award as the reference interest rate.”⁴³⁷² The Tribunal will thus determine below the compounding period based on the maturity of the applicable interest rate.⁴³⁷³

4. Pre-Award Interest Rate

2635. The Tribunal turns next to determining the applicable pre-award interest rate.

2636. The Tribunal observes that, at the Track III Hearing, the Claimants invoked Article 3(1) of the Treaty for the proposition that the interest should be “at a commercially reasonable rate.”⁴³⁷⁴ The Claimants assert that their four proffered rates – *i.e.*, Ecuador’s cost of debt, LIBOR + 4%, U.S. Prime rate + 2%, and Chevron’s WACC – are such “commercially

reflecting actual economic realities both for the purpose of remedying the loss actually incurred by the injured party and for the prevention of unjustified enrichment of the respondent state.”); **CLA-936**, John Y. Gotanda and Thierry J. Sénéchal, *Interest as Damages*, in COLUMBIA JOURNAL OF TRANSNATIONAL LAW, Vol 47, No. 3 (2009), pp. 508-509.

⁴³⁶⁹ **CLA-403**, *Wena Hotels Limited v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, para. 129.

⁴³⁷⁰ **CLA-936**, John Y. Gotanda and Thierry J. Sénéchal, *Interest as Damages*, in COLUMBIA JOURNAL OF TRANSNATIONAL LAW, Vol 47, No. 3 (2009), p. 533; **CLA-470**, Jeffery M. Colón and Michael S. Knoll, *Prejudgment Interest in International Arbitration*, in TRANSNATIONAL DISPUTE MANAGEMENT, Vol. 4, Issue 6 (2007), p. 18.

⁴³⁷¹ **CLA-469**, Natasha Affolder, *Awarding Compound Interest in International Arbitration*, AM. REV. INT’L ARB, Vol. 12, No. 1 (2001), p. 25.

⁴³⁷² **CLA-470**, Jeffery M. Colón and Michael S. Knoll, *Prejudgment Interest in International Arbitration*, in TRANSNATIONAL DISPUTE MANAGEMENT, Vol. 4, Issue 6 (2007), p. 18.

⁴³⁷³ See para. 2670 below.

⁴³⁷⁴ Track III Hearing Transcript, Day 1 (18 August 2022), p. 204 (Silbert).

reasonable interest rates.”⁴³⁷⁵ The Respondent, on the other hand, notes that the Treaty refers to interest only in Article 3, which deals with expropriation.⁴³⁷⁶

2637. The Tribunal agrees with the Respondent that “[t]his is not an expropriation case”.⁴³⁷⁷ The Claimants’ legal fees and expenses awarded as incidental damages do not arise from an expropriation. Accordingly, the provision in Article 3(1) of the Treaty on “commercially reasonable” interest rates does not apply as such in this case.

2638. Instead, in determining the appropriate interest rate, the Tribunal remains guided by the full reparation standard, with the objective of fully compensating the Claimants for the time value of their money. Correspondingly, the Tribunal, constrained to establish the situation which “in all probability” would have existed but for the Respondent’s Treaty breaches, may not speculate as to how the Claimants would have used the funds of which they were deprived, nor grant the Claimants compensation for activities which they have not proven that they would have undertaken in a Treaty-compliant but-for scenario.

2639. The Parties have proposed five possible interest rates: (i) Ecuador’s Cost of Debt; (ii) Chevron’s WACC; (iii) LIBOR + 4%; (iv) U.S. Prime + 2%; and (v) U.S. Treasury bills. The Tribunal addresses each proposed rate *seriatim*.

(a) *Ecuador’s Cost of Debt*

2640. The Claimants argue that Ecuador’s cost of debt is “the most appropriate interest rate” under a “coerced loan theory”.⁴³⁷⁸ The Claimants draw support from the scholarship of Professors Colón and Knoll, who explain that the coerced loan theory “treats the harm of the respondent as a forced borrowing by the respondent”, which must be repaid at the interest rate of the Respondent’s unsecured debt.⁴³⁷⁹ The Claimants explain that this is logical because:

⁴³⁷⁵ Track III Hearing Transcript, Day 1 (18 August 2022), p. 205 (Silbert).

⁴³⁷⁶ Track III Hearing Transcript, Day 2 (19 August 2022), p. 409 (Leonetti).

⁴³⁷⁷ Track III Hearing Transcript, Day 2 (19 August 2022), p. 409 (Leonetti).

⁴³⁷⁸ Reply, para. 1153.

⁴³⁷⁹ Reply, para. 1154; **CLA-470**, Jeffery M. Colón and Michael S. Knoll, *Prejudgment Interest in International Arbitration*, in TRANSNATIONAL DISPUTE MANAGEMENT, Vol. 4, Issue 6 (2007), pp. 11-12.

If Ecuador were to pay interest at less than its cost of debt, it would be as if Ecuador had obtained a below-market rate loan from Chevron at the time of Ecuador's breach and would thereby benefit economically from its own wrongdoing and undercompensate Chevron in the process. Furthermore, an award of interest at a rate less than the state's borrowing cost would incentivize states to essentially "refinance" their fiscal obligations by withholding money from the private sector.⁴³⁸⁰

2641. The Claimants further note that several tribunals have adopted this theory.⁴³⁸¹

2642. In response, the Respondent asserts that the dispute does not involve an expropriation, and moreover, the Respondent has "received no economic benefit" from its Treaty breaches.⁴³⁸² For the same reason, it disputes that awarding a lower interest rate would "incentivize states . . . to withhold money from the private sector," as Ecuador is not accused of such activity in these proceedings.⁴³⁸³ Regardless, Ecuador relies on arbitral jurisprudence and the writings of Professor Marboe to argue that Ecuador's cost of debt is the wrong standard, as it has nothing to do with the full reparation of the Claimants.⁴³⁸⁴ The Respondent further asserts that the use of its cost of debt would be inappropriate, as the rate incorporates the risk of sovereign default, which the Claimants do not face.⁴³⁸⁵

2643. The Tribunal observes that the Claimants' justification for employing Ecuador's cost of debt is premised on the Respondent's status as a supposed "borrower" in a "coerced loan".⁴³⁸⁶ According to the Claimants, Ecuador could benefit economically from this "coerced loan", which could create perverse incentives for States to disregard their international obligations. However, as already explained, the full reparation standard is not concerned with incentivizing any particular behaviour by the injuring party.⁴³⁸⁷

⁴³⁸⁰ Reply, para. 1155.

⁴³⁸¹ Reply, paras. 1154, 1156; **CLA-403**, *Wena Hotels Limited v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, para. 128, fn 289; **CLA-470**, Jeffery M. Colón and Michael S. Knoll, *Prejudgment Interest in International Arbitration*, in TRANSNATIONAL DISPUTE MANAGEMENT, Vol. 4, Issue 6 (2007), p. 10; **CLA-921**, *Cargill, Incorporated v. Mexico*, ICSID Case No. ARB(AF)/05/2, Award, 18 September 2009, para. 544.

⁴³⁸² Rejoinder, para. 1844.

⁴³⁸³ Rejoinder, para. 1844.

⁴³⁸⁴ Rejoinder, paras. 1845-1848.

⁴³⁸⁵ The Respondent also asserts that the Claimants do not apply "Ecuador's actual [cost of debt] in a consistent fashion" (See Rejoinder, paras. 1849-1850).

⁴³⁸⁶ See para. 2640 above.

⁴³⁸⁷ See para. 2616 above.

Rather, its objective is to place the *injured party* in the position it would have enjoyed but for the injury arising from an internationally wrongful act. As such, in applying the standard, this Tribunal must seek to make the injured party whole, not to discourage certain conduct on the part of the injuring party.

2644. Moreover, the Claimants have not convincingly shown how applying interest at the Respondent's cost of debt would re-establish the situation which would, in all probability, have existed absent the Treaty breaches. Indeed, the Claimants' expert, Mr Sequeira, recognizes that "Ecuador's Cost of Debt is specific to the Respondent"⁴³⁸⁸ and that the coerced loan theory "really looks at it from the perspective of the Respondent."⁴³⁸⁹ This echoes Professor Marboe's observation that, when following the coerced loan theory, "the amount of interest has nothing to do with the claimant's actual loss, but rather depends on the respondent's risk characteristics."⁴³⁹⁰

2645. In addition, the Tribunal notes that the Claimants' "coerced loan theory" does not "re-establish the situation which would, in all probability, have existed if that act had not been committed". Whereas a coerced loan may be an accurate depiction of the actual scenario, it bears no relationship with the but-for scenario. The Claimants have submitted no evidence that, in a Treaty-compliant but-for scenario, Chevron would have made a loan to the Respondent. To the contrary, the Claimants' expert, Mr Sequeira, testified that he does not "think that [Chevron] was ever an investor in Ecuadorian bonds".⁴³⁹¹ In the Tribunal's view, to grant the Claimants interest equivalent to compensation for a loan would not be consistent with the applicable counterfactual scenario. The Tribunal therefore declines to apply Ecuador's cost of debt as the interest rate for this case.

(b) Chevron's WACC

2646. The Claimants also submit that Chevron's WACC could serve as an appropriate interest rate.⁴³⁹² The Claimants assert that in the but-for scenario, the funds that went to legal fees

⁴³⁸⁸ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1668 (Sequeira).

⁴³⁸⁹ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1671 (Sequeira).

⁴³⁹⁰ **VP-39**, Irmgard Marboe, *CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2017), para. 6.110.

⁴³⁹¹ Track III Hearing Transcript, Day 8 (29 August 2022), p. 1827 (Sequeira).

⁴³⁹² Reply, paras. 1167-1168.

and expenses “could have been used either to pay off debts or to re-invest in the business.”⁴³⁹³ The Claimants assert that several commentators, including Professor Gotanda and Mr Sénéchal, consider a publicly held company’s WACC to be the appropriate rate.⁴³⁹⁴ Mr Sequeira adds that the WACC is the most appropriate rate from an economic standpoint.⁴³⁹⁵

2647. The Respondent counters that Chevron’s WACC could not be the appropriate interest rate for Texaco Petroleum Company, the Second Claimant, or for Chevron’s subsidiaries.⁴³⁹⁶ In addition, the Respondent notes that while Mr Sequeira believes that the WACC represents the expected returns from the Claimants investing in their business, he fails to acknowledge that they could have lost money on those projects.⁴³⁹⁷ Consequently, the Respondent submits that applying the WACC would “fail to account for the downside of these hypothetical investments” and the possibility that Chevron would have lost money.⁴³⁹⁸ The Respondent also contends that the rate “fails to account for what Chevron Corp. actually did with its spare cash between 2004 [and 20]19”, during which time the Claimants held substantial amounts of cash reserves.⁴³⁹⁹ Dr Flores, the Respondent’s expert, calculates that Chevron “earned on average 2.2% on its cash reserves” from 2004 to 2021.⁴⁴⁰⁰

2648. Mr Sequeira explains that the WACC is “the return that average investors expect on average with cash that is deployed by this Claimant in this case.”⁴⁴⁰¹ In other words, he describes it as “a measure of the opportunity cost associated with the funds Claimants used due to the alleged breaches.”⁴⁴⁰² The Respondent’s expert, Dr Flores, similarly

⁴³⁹³ Reply, para. 1167.

⁴³⁹⁴ Reply, para. 1168; **CLA-936**, John Y. Gotanda and Thierry J. Sénéchal, *Interest as Damages*, in COLUMBIA JOURNAL OF TRANSNATIONAL LAW, Vol 47, No. 3 (2009), pp. 527-528.

⁴³⁹⁵ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1734 (Sequeira).

⁴³⁹⁶ Rejoinder, para. 1851.

⁴³⁹⁷ Rejoinder, para. 1852.

⁴³⁹⁸ Rejoinder, paras. 1852-1853; **QE-40**, Julie Carey, Christian Dippon and Will Taylor, “Measuring Economic Damages with Maximum Certainty”, *Global Arbitration Review*, 30 April 2019, p. 4.

⁴³⁹⁹ Rejoinder, paras. 1854-1855; **RE-56**, Second Flores Expert Report, paras. 91, 96-97, Figure 7.

⁴⁴⁰⁰ Rejoinder, para. 1855; **RE-56**, Second Flores Expert Report, para. 97.

⁴⁴⁰¹ Track III Hearing Transcript, Day 7 (26 August 2022), p. 1673 (Sequeira).

⁴⁴⁰² First Sequeira Expert Report, para. 84.

defines WACC as “the average expected return required by shareholders and bondholders to invest in a company or project.”⁴⁴⁰³

2649. Mr Sequeira submits that “[i]f the Tribunal determines that Claimants should be compensated for the opportunity cost of having been deprived of the ability to reinvest these funds in their business”, then “the application of WACC [would] be reasonable”.⁴⁴⁰⁴

2650. On the other hand, Dr Flores explains that the WACC “includes compensation for *ex ante* business risks to which Claimants’ claimed amounts in this arbitration have not been exposed”.⁴⁴⁰⁵ Dr Flores submits that “a claimant is not entitled to compensation for risks it did not bear”⁴⁴⁰⁶ since there is no guarantee that the return on investment expected by the WACC would actually be achieved.⁴⁴⁰⁷ He opines that using WACC as an interest rate assumes that funds would have been invested in “endeavours with the same risks of Chevron’s average project.”⁴⁴⁰⁸ He notes, however, that “those risks could have materialized as negative returns”, and the fact that the Claimants were never exposed to those risks makes such compensation inappropriate.⁴⁴⁰⁹ Dr Flores submits that scholars and investment tribunals have found that the WACC is not an appropriate interest rate as, while injured claimants are “deprived of the opportunity to invest”, they are likewise “not exposed to the risk of those investments”.⁴⁴¹⁰ Dr Flores adds that the Claimants held an annual average of USD 11.7 billion in cash and short-term investments from 2004-2019, yet claim spending of, on average, USD 49.6 million in legal expenses over this

⁴⁴⁰³ **RE-42**, First Flores Expert Report, para. 56.

⁴⁴⁰⁴ Second Sequeira Expert Report, para. 95.

⁴⁴⁰⁵ **RE-56**, Second Flores Expert Report, para. 88.

⁴⁴⁰⁶ **RE-42**, First Flores Expert Report, para. 57.

⁴⁴⁰⁷ **RE-56**, Second Flores Expert Report, para. 90.

⁴⁴⁰⁸ **RE-42**, First Flores Expert Report, para. 57.

⁴⁴⁰⁹ **RE-42**, First Flores Expert Report, para. 57.

⁴⁴¹⁰ **RE-42**, First Flores Expert Report, paras. 58-59; **QE-40**, Julie Carey, Christian Dippon and Will Taylor, “Measuring Economic Damages with Maximum Certainty”, *Global Arbitration Review*, 30 April 2019, p. 4; **CLA-674/QE-41**, *Burlington Resources Inc. v. Ecuador*, ICSID Case No ARB/08/5, Decision on Reconsideration and Award, 7 February 2017, paras. 532-533. *See also* **RE-56**, Second Flores Expert Report, para. 92; **CLA-573/QE-85**, *EDF International S.A., SAUR International S.A. and Leon Participaciones Argentinas S.A. v. Argentina*, ICSID Case No. ARB/03/23, Award, 11 June 2012, para. 1336.

timeframe. Consequently, he considers it speculative to assert that the Claimants were forced “to forgo investing in their ‘ordinary course of business’”.⁴⁴¹¹

2651. The Tribunal observes that a number of investment arbitration tribunals have previously rejected awarding a claimant’s WACC as an interest rate.⁴⁴¹² For instance, the *EDF v. Argentina* tribunal rejected such request on the basis that the claimants had not presented evidence that they “could or would have earned the high-risk WACC rate.”⁴⁴¹³ Dr Secomb similarly observes that, despite some academic support,⁴⁴¹⁴ “[t]he use of WACC has been criticized.”⁴⁴¹⁵ He notes that the tribunal in *Burlington v. Ecuador* found the claimant’s WACC “contains an element of reward for risk that is inappropriate . . . because [the claimant] no longer bears the risk of operation”.⁴⁴¹⁶

2652. The Tribunal concurs with the analysis in *Burlington v. Ecuador*:

[T]he Tribunal agrees with Ecuador that the WACC is not necessarily the appropriate actualization rate for this purpose. The WACC contains an element of cost of capital that allows cash flows to reflect the time value of money, but it also includes a reward for all the risks involved in doing business. The WACC is thus appropriate to discount future cash flows, because these flows are adjusted to reflect the time value of money (i.e., that 100 dollars in the future are worth less today) and to reflect the risks of doing business due to the fact that the operator's profit-making capacity is not certain.

By contrast, using the WACC as an actualization rate for past cash flows could overcompensate Burlington. While the WACC contains an element of cost of capital that would allow past cash flows to reflect the time value of money (i.e., that 100 dollars in the past are worth more today), it also contains an element of reward for risk that is inappropriate here because Burlington no longer bears the risk of operation. As Fisher and

⁴⁴¹¹ **RE-56**, Second Flores Expert Report, para. 91.

⁴⁴¹² **VP-39**, Irmgard Marboe, *CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2017), paras. 6.103-6.105; **CLA-573/QE-85**, *EDF International S.A., SAUR International S.A. and Leon Participaciones Argentinas S.A. v. Argentina*, ICSID Case No. ARB/03/23, Award, 11 June 2012, para. 1336; **CLA-615**, *TECO v. Guatemala*, ICSID Case No. ARB/10/17, Award, 19 December 2013, paras. 766, 768; **CLA-693**, *Swisslion DOO Skopje v. Macedonia*, ICSID Case No ARB/09/16, Award, 6 July 2012, para. 358.

⁴⁴¹³ **CLA-573/QE-85**, *EDF International S.A., SAUR International S.A. and Leon Participaciones Argentinas S.A. v. Argentina*, ICSID Case No. ARB/03/23, Award, 11 June 2012, para. 1336.

⁴⁴¹⁴ **CLA-904**, Matthew Secomb, *INTEREST IN INTERNATIONAL ARBITRATION* (2019), paras. 3.343, 3.345.

⁴⁴¹⁵ **CLA-904**, Matthew Secomb, *INTEREST IN INTERNATIONAL ARBITRATION* (2019), fn 539.

⁴⁴¹⁶ **CLA-674/QE-41**, *Burlington Resources Inc. v. Ecuador*, Decision on Reconsideration and Award, ICSID Case No ARB/08/5, 7 February 2017, para. 533; **CLA-904**, Matthew Secomb, *INTEREST IN INTERNATIONAL ARBITRATION* (2019), fn 539.

Romaine conclude . . . a claimant is entitled to interest compensating for the time value of money, but not for risk.⁴⁴¹⁷

2653. Similarly, the Claimants here are not entitled to compensation for a risk they did not take.

An interest rate which rewards a risk not taken “only pick[s] the winning side of an investment”.⁴⁴¹⁸ Risk implies a chance of reward, but also of loss. Absent convincing evidence that the Claimants were prevented from undertaking a specific investment that did prove successful, it would be speculative and unjustified to presume that they would have invariably invested in successful ventures. The Tribunal has no such specific evidence before it.⁴⁴¹⁹ Thus, the Tribunal cannot use Chevron’s WACC to compensate the Claimants for a hypothetical lucrative investment, just as it cannot reduce the Claimants’ compensation for a hypothetical loss.⁴⁴²⁰

2654. Moreover, as observed by Professor Marboe, the WACC “represents an *ex ante* expectation involving certain risks, while pre-award interest is an *ex post* calculation of compensation only requiring time-value adjustments to an awarded damages amount known with certainty.”⁴⁴²¹ To the extent that the Tribunal is concerned here with an *ex post* calculation of compensation for the time value of money, it finds the use of Chevron’s WACC inappropriate.

2655. For the foregoing reasons, the Tribunal declines to award an interest rate equivalent to Chevron’s WACC.

⁴⁴¹⁷ **CLA-674/QE-41**, *Burlington Resources Inc v. Ecuador*, Decision on Reconsideration and Award, ICSID Case No ARB/08/5, 7 February 2017, paras. 532-533.

⁴⁴¹⁸ See **QE-40**, Julie Carey, Christian Dippon, Will Taylor, “Measuring Economic Damages with Maximum Certainty”, *Global Arbitration Review*, 30 April 2019, p. 4; **QE-20**, Franklin M. Fisher and R. Craig Romaine, Janis Joplin's Yearbook and the Theory of Damages, in *JOURNAL OF ACCOUNTING AUDITING AND FINANCE*, Vol. 5, No. 1 (1990), pp. 145-157.

⁴⁴¹⁹ See paras. 2606-2612 above.

⁴⁴²⁰ See **QE-20**, Franklin M. Fisher and R. Craig Romaine, Janis Joplin's Yearbook and the Theory of Damages, in *JOURNAL OF ACCOUNTING AUDITING AND FINANCE*, Vol. 5, No. 1 (1990), p. 146.

⁴⁴²¹ See **VP-39**, Irmgard Marboe, *CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2017), paras. 6.100-6.101.

(c) *Benchmark Rates*

2656. The Claimants further propose two adjusted benchmark interest rates: the 12-month USD LIBOR rate plus a premium of 4%,⁴⁴²² and the U.S. Prime rate plus a premium of 2%.⁴⁴²³ The Respondent, on the other hand, proposes a risk-free rate at the 6-month or 1-year U.S. Treasury bill rate.⁴⁴²⁴ The Tribunal will discuss all three benchmark rates under this heading.

2657. At the outset, the Tribunal notes Mr Sequeira's explanation that LIBOR + 4% and U.S. Prime + 2% are closely related:

Historically, LIBOR + 2% has closely tracked the US Prime rate of interest. As such, LIBOR + 4% would be a commercial rate of interest on par with the US Prime rate + 2%, which we apply in our third calculation of pre-award interest.⁴⁴²⁵

2658. The Tribunal considers that this close relationship permits it to exclude LIBOR from detailed consideration for reasons of judicial economy. With the phase-out of LIBOR in June 2023, the Tribunal is disinclined to apply an interest rate in a 2025 award using an interbank lending rate that was been officially phased out over two years prior. The Tribunal is also reluctant to apply the USD LIBOR12M fallback rate proposed by the Claimants as an alternative, as the Parties did not fully brief the Tribunal on its application.⁴⁴²⁶

2659. Given Mr Sequeira's confirmation that the proposed LIBOR + 4% is on par with the U.S. Prime + 2%, and given that the U.S. Prime rate has been and continues to be published, the Tribunal proceeds instead to consider the Claimants' proposal of the U.S. Prime rate + 2%.

⁴⁴²² First Sequeira Expert Report, para. 77.

⁴⁴²³ First Sequeira Expert Report, para. 80.

⁴⁴²⁴ Rejoinder, para. 1830.

⁴⁴²⁵ First Sequeira Expert Report, para. 79. *See also* Track III Hearing Transcript, Day 7 (26 August 2022), p. 1689 (Sequeira).

⁴⁴²⁶ E-mail from the Claimants to the Tribunal, 3 August 2023; E-mail from the Respondent to the Tribunal, 31 August 2023.

2660. The Claimants submit that “[t]he U.S. Prime rate is the interest rate commercial banks charge their most creditworthy borrowers.”⁴⁴²⁷ They state that this rate has been applied by the Iran-U.S. Claims Tribunal, although infrequently by investment treaty tribunals.⁴⁴²⁸ Mr Sequeira explains that:

The US Prime Rate is typically calculated by adding a 3% margin to the Federal Funds Rate, or the overnight rate that banks charge to lend reserve balances to each other. Various types of American lending institutions use the rate as an index or base rate for the pricing of short- and medium-term financial products.⁴⁴²⁹

2661. Mr Sequeira further submits that he “consider[s] US Prime + 2% to be representative of a commercially reasonable rate over the entire 2004 to 2019 period.”⁴⁴³⁰

2662. In reply, the Respondent contends that the U.S. Prime rate + 2% is “arbitrary and unsupported”.⁴⁴³¹ Relying on Dr Flores’ opinion, the Respondent argues that Chevron can in fact borrow money at a discount compared to the U.S. Prime rate.⁴⁴³² According to Dr Flores, “[b]orrowing at negative spreads over U.S. Prime is commonly observed”.⁴⁴³³ In particular, he states that given Chevron’s size and credit rating, it can borrow money at a discount, not a premium, with respect to U.S. Prime.⁴⁴³⁴ As such, applying the Claimants’ proposed U.S. Prime rate + 2% would “result in overcompensating Claimants above what is economically reasonable.”⁴⁴³⁵

2663. Instead, Dr Flores suggests that an interest rate equivalent to a “short-term risk-free rate, such as the yield of 6-month or 1-year U.S. Treasury bills, is consistent with economic

⁴⁴²⁷ Reply, para. 1164; **CLA-665**, *Sylvania Tech. Sys., Inc. v. Iran*, IUSCTR, Case No. 64, Award No. 180-64-1, 27 June 1985, pp. 15-16, fn 6.

⁴⁴²⁸ The Claimants note that US Prime + 2% was applied in *TECO v. Guatemala* (See Reply, paras. 1164-1166; **CLA-615**, *TECO v. Guatemala*, ICSID Case No. ARB/10/17, Award, 19 December 2013, para. 767).

⁴⁴²⁹ First Sequeira Expert Report, para. 80 (internal citations removed).

⁴⁴³⁰ Second Sequeira Expert Report, para. 92.

⁴⁴³¹ Counter-Memorial, para. 1304.

⁴⁴³² Counter-Memorial, para. 1304; Rejoinder, paras. 1861-1862.

⁴⁴³³ **RE-42**, First Flores Expert Report, paras. 54-55 (emphasis removed); **RE-56**, Second Flores Expert Report, para. 86.

⁴⁴³⁴ **RE-42**, First Flores Expert Report, paras. 54-55 (emphasis removed); **RE-56**, Second Flores Expert Report, para. 86.

⁴⁴³⁵ **RE-42**, First Flores Expert Report, para. 26.

theory and practice.”⁴⁴³⁶ In this connection, the Respondent submits that due to the fact that time value of money, loss of purchasing power, and specific risks are priced together in interest rates, international tribunals overcome uncertainty and reduce speculation by applying the interest rate of a risk-free instrument.⁴⁴³⁷ Since the Claimants “should not be compensated for risk that they did not bear”, and because “a damages award is not exposed to any business risk”, the Respondent contends that “the yield of 6-month or 1-year U.S. Treasury bills constitutes a reasonable commercial rate” of interest.⁴⁴³⁸ The Respondent further argues that the use of a risk-free rate avoids speculation as to what the Claimants would have done with their funds.⁴⁴³⁹ In this case, the Respondent highlights that the U.S. Treasury bill rate was “virtually identical” to the Claimants’ short-term borrowing rates in any event.⁴⁴⁴⁰ Lastly, the Respondent contends that the cases relied upon by the Claimants in which a risk-free rate was applied are distinguishable, and assert that there is ample academic and jurisprudential support for the use of a risk-free rate.⁴⁴⁴¹

2664. The Claimants respond that “the risk-free rate is inappropriate because it is based on terms for short-term debt . . . which garner lower interest rates than long-term debt”.⁴⁴⁴² Since “Ecuador has owed Chevron interest for well over a decade,” higher rates applicable to long-term debts should be used.⁴⁴⁴³ The Claimants also cite international investment tribunals and scholars who have found that risk-free rates do not fully compensate

⁴⁴³⁶ **RE-42**, First Flores Expert Report, para. 27.

⁴⁴³⁷ Counter-Memorial, para. 1295. *See also* Rejoinder, paras. 1833-1835.

⁴⁴³⁸ Counter-Memorial, paras. 1296-1297; **CLA-673**, *Occidental Petroleum Corp. v. Ecuador*, ICSID Case No ARB/06/11, Award, 5 October 2012, paras. 842, 848; **QE-25**, *Vestey Group Limited v. Venezuela*, ICSID Case No ARB/06/4, Award, 15 April 2016, paras. 328, 446. *See also* Rejoinder, paras. 1831-1832; **RLA-983**, *Sistem Mühendislik İnşaat Sanayi ve Ticaret A.Ş. v. Kyrgyzstan*, ICSID Case No. ARB(AF)/06/1, Award, 9 September 2009, para. 194; **QE-25**, *Vestey Group Limited v. Venezuela*, ICSID Case No ARB/06/4, Award, 15 April 2016, para. 440.

⁴⁴³⁹ Rejoinder, para. 1836.

⁴⁴⁴⁰ Track III Hearing Transcript, Day 2 (19 August 2022), p. 410 (Leonetti).

⁴⁴⁴¹ Rejoinder, paras. 1837-1841.

⁴⁴⁴² Reply, para. 1139.

⁴⁴⁴³ Reply, para. 1139.

investors as required by the full reparation standard.⁴⁴⁴⁴ Relying on Professor Gotanda and Mr Sénéchal, the Claimants assert that the use of risk-free rates such as the U.S. Treasury bill “ignores the reality that businesses typically invest in opportunities that have a significantly greater amount of risk than” these rates, such that the tribunals are misapplying *Chorzów Factory*.⁴⁴⁴⁵ The Claimants further deny that the Respondent’s referenced cases support the latter’s position.⁴⁴⁴⁶

2665. The quantum experts are also of two minds as regards the appropriateness of a risk-free rate. In support of the application of a risk-free rate, Dr Flores opines that the Claimants are not entitled to their opportunity cost of capital.⁴⁴⁴⁷ He cites Fisher and Romaine, who explain:

The plaintiffs’ opportunity cost of capital includes a return that compensates the plaintiff for the average risk it bears. But, in depriving the plaintiff of an asset worth Y at time 0, the defendant also relieved it of the risks associated with investment in that asset. The plaintiff is thus entitled to interest compensating it for the time value of money, but it is not also entitled to compensation for the risks it did not bear. Hence prejudgment interest should be awarded at the risk-free interest rate.⁴⁴⁴⁸

2666. Dr Flores explains that different commercial interest rates relate to different risks, such that higher rates reflect higher perceived risks.⁴⁴⁴⁹ He also explains that longer-term rates include maturity risk, making them not risk-free.⁴⁴⁵⁰ He opines that “a damages award is

⁴⁴⁴⁴ Reply, paras. 1140-1144; **CLA-94**, *National Grid P.L.C. v. Argentina*, UNCITRAL, Award, 3 November 2008, paras. 292-293; **CLA-296**, *Bernardus Henricus Funnekotter and others v. Zimbabwe*, ICSID Case No. ARB/05/6, Award, 22 April 2009, paras. 143-144; **CLA-602**, *Flughafen Zürich A.G. y Gestión e Ingeniería IDC S.A. v. Venezuela*, ICSID Case No. ARB/10/19, Award, 18 November 2014, para. 961; **CLA-920**, *Alpha Projektholding GmbH v. Ukraine*, ICSID Case No. ARB/07/16, Award, 8 November 2010, para. 514; **CLA-936**, John Y. Gotanda and Thierry J. Sénéchal, *Interest as Damages*, in COLUMBIA JOURNAL OF TRANSNATIONAL LAW, Vol 47, No. 3 (2009), pp. 526-527; **RLA-811**, *South American Silver Limited v. Bolivia*, PCA Case No. 2013-15, Award, 22 November 2018, para. 889.

⁴⁴⁴⁵ Reply, para. 1146; **CLA-936**, John Y. Gotanda and Thierry J. Sénéchal, *Interest as Damages*, in COLUMBIA JOURNAL OF TRANSNATIONAL LAW, Vol 47, No. 3 (2009), pp. 508-510, 513.

⁴⁴⁴⁶ Reply, paras. 1147-1149.

⁴⁴⁴⁷ **RE-42**, First Flores Expert Report, para. 28; **RE-56**, Second Flores Expert Report, para. 44.

⁴⁴⁴⁸ **RE-42**, First Flores Expert Report, para. 28; **QE-20**, Franklin M. Fisher and R. Craig Romaine, Janis Joplin’s Yearbook and the Theory of Damages, in JOURNAL OF ACCOUNTING AUDITING AND FINANCE, Vol. 5, No. 1 (1990), p. 146. See also **RE-42**, First Flores Expert Report, para. 30; **QE-21**, Mark Kantor, VALUATION FOR ARBITRATION: COMPENSATION STANDARDS, VALUATION METHODS AND EXPERT EVIDENCE (2008), p. 49.

⁴⁴⁴⁹ **RE-42**, First Flores Expert Report, para. 31; **QE-22**, James Dow, *Interest* in THE GUIDE TO DAMAGES IN INTERNATIONAL ARBITRATION (2018), p. 308.

⁴⁴⁵⁰ **RE-42**, First Flores Expert Report, para. 32; **RE-56**, Second Flores Expert Report, paras. 46-49.

not exposed to risk” and, accordingly, interest should be calculated applying a short-term risk-free rate, as other arbitral tribunals have awarded.⁴⁴⁵¹ He therefore disagrees with Mr Sequeira that opportunity cost should be compensated, opining that to do so “incorrectly assum[es] that a risky investment would have delivered its promised returns with 100% certainty.”⁴⁴⁵² He distinguishes or disagrees with the authors presented by Mr Sequeira.⁴⁴⁵³

2667. For his part, Mr Sequeira states that the risk-free rate is economically inappropriate, as it does not compensate for both the time value of money and the opportunity cost of money.⁴⁴⁵⁴ He opines that a damages award against a State “is exposed to similar risks as a sovereign bond issued by that [S]tate”.⁴⁴⁵⁵ In his view, the academic authorities relied upon by Dr Flores “are not representative of the broad range of economic arguments” on the subject and are contradicted by other literature.⁴⁴⁵⁶ Mr Sequeira also considers that a long-term interest rate should be used, as the Claimants have not had the option to choose to roll over their short term rates, reinvest, or use their money as they desired.⁴⁴⁵⁷ He notes that DCF analyses typically use the 10-year Treasury note as the risk-free rate.⁴⁴⁵⁸ Mr Sequeira also submits that several arbitral awards do not support Dr Flores’ proposed rate.⁴⁴⁵⁹

2668. In the Tribunal’s view, the choice between applying the U.S. Prime rate and the U.S. Treasury bills rate, which is significantly lower, ultimately rests upon the notion of compensation for risk and, in particular, on whether compensating for such risk is an

⁴⁴⁵¹ **RE-42**, First Flores Expert Report, paras. 32-33; **QE-24** *Occidental Petroleum Corp. v. Ecuador*, ICSID Case No ARB/06/11, Award, 5 October 2012, paras. 842, 848; **QE-25**, *Vestey Group Limited v. Venezuela*, ICSID Case No ARB/06/4, Award, 15 April 2016, paras. 328, 446. *See also* **RE-56**, Second Flores Expert Report, para. 39; **QE-20**, Franklin M. Fisher and R. Craig Romaine, Janis Joplin's Yearbook and the Theory of Damages, in *JOURNAL OF ACCOUNTING AUDITING AND FINANCE*, Vol. 5, No. 1 (1990), p. 146.

⁴⁴⁵² **RE-56**, Second Flores Expert Report, para. 44.

⁴⁴⁵³ **RE-56**, Second Flores Expert Report, paras. 50-58.

⁴⁴⁵⁴ Second Sequeira Expert Report, paras. 45, 49.

⁴⁴⁵⁵ Second Sequeira Expert Report, paras. 17, 48; **VP-41**, John D. Taurman and Jeffrey C. Bodington, *Measuring damage to a firm's profitability: ex ante or ex post*, in *ANTITRUST BULLETIN* (1992), p. 11.

⁴⁴⁵⁶ Second Sequeira Expert Report, paras. 50-51.

⁴⁴⁵⁷ Second Sequeira Expert Report, para. 52.

⁴⁴⁵⁸ Track III Hearing Transcript, Day 8 (29 August 2022), p. 1817 (Sequeira).

⁴⁴⁵⁹ Second Sequeira Expert Report, paras. 53-76.

appropriate function of interest. The Tribunal has already established that the function of interest is to provide compensation adequate to ensure full reparation, accounting for the time value of money during the period Chevron was deprived of its use, and not to compensate Chevron for risks it did not bear.⁴⁴⁶⁰ On this basis, the Tribunal considers that the U.S. Treasury bill rate, which the Parties and their experts agree reflects the time value of money but not other risks, is the appropriate interest rate for application in this case.

2669. By contrast, the Claimants' suggestion that the Tribunal apply U.S. Prime + 2% accounts for additional risks that are not convincingly shown to be compensable in this case. As Mr Sequeira stated, the U.S. Prime rate is typically calculated by adding a 3% margin to the overnight rate that banks charge to lend reserve balances to each other. This 3% administrative spread covers considerations particular to commercial borrowing, such as bank funding costs, liquidity risks, capital charges, and profit. Thus, the Tribunal understands that the U.S. Prime rate itself already incorporates a premium that prices other factors beyond the time value of money. Adding another 2% margin to the U.S. Prime rate is not shown to be warranted, especially given that, as Dr Flores explains, creditworthy borrowers such as Chevron can typically borrow money at a discount with respect to U.S. Prime.⁴⁴⁶¹ This observation is echoed by Mr Sequeira, who stated that he has seen Chevron loans at less than the U.S. Prime rate, and agreed that "at times", "some of the most creditworthy customers . . . can borrow money at below the Prime Rate".⁴⁴⁶² Further, the Tribunal notes Dr Flores' observation that Chevron's borrowing rate during the claimed damages period (2004 to 2019) averaged only 1.5%,⁴⁴⁶³ closer to the risk-free U.S. Treasury bill rate than to U.S. Prime + 2%. Thus, even the theory that Chevron was forced to borrow funds to replace those withheld by the Respondent – and ignoring the large cash reserves maintained by Chevron – would not support a rate significantly exceeding the risk-free rate.

2670. As regards the maturity rate, the Tribunal observes that it is common for investment tribunals applying a risk-free rate to choose either 6-month or 1-year U.S. Treasury bills.

⁴⁴⁶⁰ See paras. 2596, 2653 above.

⁴⁴⁶¹ **RE-56**, Second Flores Expert Report, para. 86.

⁴⁴⁶² Track III Hearing Transcript, Day 8 (29 August 2022), pp. 1859-1860 (Sequeira).

⁴⁴⁶³ **RE-42**, First Flores Expert Report, para. 65; **QE-3**, Other Supporting Calculations, Tabs 3, 4.

Considering that Chevron has been deprived of at least some of the funds for which it requests compensation for a decade or even longer, the Tribunal considers a 1-year maturity rate better reflects the time value of money over the relevant period, also bearing in mind that the compounding period should be equal to the maturity of the interest rate.⁴⁴⁶⁴

2671. The Tribunal therefore grants pre-award interest at 1-year U.S. Treasury bill rate, compounded annually.

5. Post-Award Interest Rate

2672. Having determined the pre-award interest rate, the Tribunal now turns to the post-award interest rate. The Claimants have argued that the Respondent's risk of default should be factored into the post-award interest rate.⁴⁴⁶⁵ For its part, the Respondent appears to acknowledge that the risk reflected in an interest rate could change once an award is issued, noting that "[a]ny award from this Tribunal is not exposed to any risk at least until the Date of the Award, and we would contend after that".⁴⁴⁶⁶

2673. As previously explained, pre- and post-award interest have different legal bases.⁴⁴⁶⁷ Nevertheless, nothing in the procedural framework of this Arbitration leads to a variation in the overall compensatory aim of post-award interest from that of pre-award interest.

2674. In the Tribunal's view, however, pre- and post-award interest contain different risk profiles. As the tribunal in *Gold Reserve v. Venezuela* explained in its discussion of post-award interest:

the purpose of post-Award interest is arguably different – damages become due as at the date of the Award, and from this time, Respondent is essentially in default of payment. As such, the Tribunal considers that continuing to apply a risk-free interest rate would be inappropriate.⁴⁴⁶⁸

⁴⁴⁶⁴ See para. 2634 above.

⁴⁴⁶⁵ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3499 (Kehoe).

⁴⁴⁶⁶ Track III Hearing Transcript, Day 15 (7 September 2022), p. 3632 (Leonetti).

⁴⁴⁶⁷ See paras. 2621-2623 above.

⁴⁴⁶⁸ **CLA-617**, *Gold Reserve v. Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, para. 856.

2675. The Tribunal agrees with this analysis. Once the Award is issued, the Claimants essentially become creditors of the Respondent. To this point, the Tribunal recalls that the PCIJ assigned a post-award interest rate reflecting the parties' creditor-debtor status through a reference to "public loans" in *S.S. Wimbledon*.⁴⁴⁶⁹ This additional risk must be considered in establishing an appropriate post-award interest rate. In doing so, the Tribunal emphasizes that the post-award interest rate remains compensatory, not punitive.

2676. Yet, despite the creditor analogy, the Tribunal declines to award Ecuador's cost of debt as the post-award interest rate for two separate reasons. First, arbitral awards are not equivalent to sovereign bonds. Unlike sovereign bonds, this Award falls under the enforcement provisions of the New York Convention. As the Respondent noted:

While Ecuador has certainly defaulted on its sovereign debt obligations in the past, it cannot walk away from arbitration awards . . . Ecuador has no such option [to declare bankruptcy under Chapter 11 of the U.S. Bankruptcy Code] under international law, which is why there is no litigation risk, which is why there should be no premium for that risk either pre-award or post-award.⁴⁴⁷⁰

2677. The Tribunal is not persuaded that the enforcement of the Award carries *no* risk, but considers that, in effect, an arbitral award enforceable under the New York Convention could place the Claimants in the position of privileged creditors. As enforcement under the New York Convention carries less risk, the post-award interest rate must come at a discount to the Ecuadorian cost of debt.

2678. Furthermore, the Tribunal must consider only the evidence on the record of these proceedings. No short-term Ecuadorian debt instruments have been proposed as a basis to determine the interest rate applicable to damages in this Arbitration. The only alternative evidence provided by the Claimants and Mr Sequeira are long-term Ecuadorian sovereign bonds, with lengths of 20, 10, 7, and 5 years.⁴⁴⁷¹ As both experts

⁴⁴⁶⁹ **RLA-697**, *Case of the S.S. Wimbledon*, Judgment, PCIJ Series A, No. 1, 17 August 1923, para. 56 ("As regards the rate of interest, the Court considers that in the present financial situation of the world and *having regard to the conditions prevailing for public loans, the 6 % claimed is fair*; this interest, however, should run, not from the day of the arrival of the 'Wimbledon' at the entrance to the Kiel Canal, as claimed by the applicants, but *from the date of the present judgment*, that is to say from the moment when the amount of the sum due has been fixed and the obligation to pay has been established.") (emphasis by the Tribunal).

⁴⁴⁷⁰ Track III Hearing Transcript, Day 15 (7 September 2022), pp. 3633-3634 (Leonetti).

⁴⁴⁷¹ See Second Sequeira Expert Report; Appendix G.4.

have acknowledged, longer-term rates carry maturity risk.⁴⁴⁷² The Tribunal does not deem it appropriate to incorporate maturity risk, which arises from the time-dependent sensitivity of long-term bonds to interest rate fluctuations, into the post-award interest rate.⁴⁴⁷³ Similarly, using a longer maturity for the post-award interest rate would equate to presuming prolonged non-payment by the Respondent of the Award, which the Tribunal declines to do.

2679. As for Chevron's WACC, as already discussed in paragraph 2653 above, the Tribunal has declined to apply this rate for being insufficiently supported by evidence in this case.

2680. As for the benchmark rates proposed by the Parties, as discussed in paragraphs 2668 to 2669 above, the Tribunal considers the U.S. Treasury bill rate to be more appropriate, since it reflects solely the compensatory function of the time value of money, and not other factors more closely related to the cost of commercial borrowing.

2681. To account for the enforcement risk after the issuance of this Award, which the Tribunal recognized in paragraph 2677 above, the Tribunal considers it appropriate to adjust the pre-award interest rate by adding a risk premium of 2% to the rate of 1-year U.S. Treasury bills, compounded annually.

6. Tax implications

2682. As discussed in Section VII.F above, the Respondent requests that, when assessing compensation, the Tribunal consider the undisputed fact that the Claimants took a tax deduction for the legal fees and expenses they claim as damages in this Arbitration at the published marginal tax rate prevailing in the United States at the relevant times – which was 35% between 1993 and 2018 and 21% from 2018 onwards.⁴⁴⁷⁴ The Claimants acknowledge that they reduced the amount of corporate income tax they owed by paying these legal fees and expenses.⁴⁴⁷⁵ As a consequence, the Respondent asserts that (i) any damages awarded to the Claimants must be reduced by the difference between the

⁴⁴⁷² Second Sequeira Expert Report, para. 84; **RE-42**, First Flores Expert Report, para. 32.

⁴⁴⁷³ **RE-42**, First Flores Expert Report, para. 32.

⁴⁴⁷⁴ Counter-Memorial, para. 1306; Rejoinder, para. 548; Reply, para. 567.

⁴⁴⁷⁵ Reply, para. 567.

marginal U.S. corporate tax rate when the applicable fees were deducted and the marginal tax rate when the damages award is paid;⁴⁴⁷⁶ and (ii) for the purposes of determining the amount of an interest award, the Respondent requests that the Tribunal calculate any interest on the Claimants' losses net of tax savings, not on the full amounts spent as legal fees and expenses.⁴⁴⁷⁷

2683. The Tribunal has previously determined that grossing down its damages award to account for the Claimants' tax savings on account of their legal fees and expenses spent is outside the realm of compensation analysis and therefore inappropriate.⁴⁴⁷⁸ Moreover, such exercise is also inherently speculative, as any purported "tax savings" – or whether such "tax savings" will materialize at all – can only be determined at the time of enforcement and is hence uncertain.⁴⁴⁷⁹

2684. In a similar vein, the Tribunal must reject the Respondent's request that interest be calculated on the Claimants' losses net of tax savings. In particular, while there is no dispute that the Claimants took a tax deduction for the legal fees and expenses they claim as damages in this Arbitration,⁴⁴⁸⁰ the Respondent has not established that such deductions translated effectively into tax *savings*. For instance, while the Claimants may have suffered a tax-deductible loss, their taxable income in any of the relevant years may have been too low to apply a deduction. Any deductions applied by the Claimants may have also been reversed thereafter as a result of a tax audit or a change in the law. Similarly, a deduction taken by Chevron in the United States may have had to be offset by foreign tax obligations, particularly in view of the involvement of Chevron's international subsidiaries in the events underlying the present dispute.

2685. As noted in paragraph 518 above, the Tribunal is not prepared to reduce the determination of the tax liability of this Award to a simple arithmetical exercise, particularly without having had the benefit of evidence from tax experts. This decision is made particularly in

⁴⁴⁷⁶ Rejoinder, para. 565.

⁴⁴⁷⁷ Counter-Memorial, para. 1306.

⁴⁴⁷⁸ See para. 512 above.

⁴⁴⁷⁹ See para. 517 above.

⁴⁴⁸⁰ Reply, para. 567.

light of the absence of a fuller briefing on the Claimants' overall tax situation during the relevant period, which, as just explained, may well have affected the Claimants' tax liability in numerous ways other than by way of tax deductions.

2686. Accordingly, the Tribunal rejects the Respondent's request that interest be calculated on the Claimants' losses net of tax savings, not on the full amounts spent as legal costs.

D. CONCLUSION ON INTEREST

2687. For the foregoing reasons, the Tribunal:

- (i)* Grants, with respect to Chevron' legal fees and expenses awarded as incidental damages under Section VIII above, pre-award interest calculated at the 1-year U.S. Treasury bill rate, from the date of payment of each invoice until the date of this Award, compounded annually;
- (ii)* Grants, with respect to all damages awarded to Chevron, post-award interest at the rate of 1-year U.S. Treasury bill + 2%, from the date of this Award until the date of full payment, compounded annually; and
- (iii)* Rejects the Respondent's request that interest be calculated on the Claimants' losses net of tax savings, not on the full amounts spent as legal costs.

2688. For the reasons set out in paragraphs 2293-2296 above, interest must be calculated on the basis of the Respondent's Damages Model. On the date of the last version of the Respondent's Damages Model filed with the Tribunal prior to the issuance of this Award (dated 15 October 2025), pre-award interest amounted to USD 40,404,250.51.

* * *

XI. INDEMNIFICATION

2689. The Claimants request that the Tribunal order the Respondent “to indemnify them and their affiliates for any further damages resulting from pending or future actions to enforce the Lago Agrio Judgment.”⁴⁴⁸¹ In the Claimants’ view, this relief is warranted in view of the Tribunal’s finding in the Track II Award that “any injury” to the Claimants “caused by the recognition or enforcement of any part of the Lago Agrio Judgment . . . shall be injuries for which the Respondent is liable to make reparation under international law”.⁴⁴⁸² It follows therefrom, in the Claimants’ view, that the Tribunal can exercise its discretion to grant corresponding relief, in the form of an indemnity order, in circumstances where the risk of enforcement of the Lago Agrio Judgment has not been dispelled.⁴⁴⁸³

2690. The Respondent submits that contingent, speculative, and indeterminate damages cannot be awarded under international law.⁴⁴⁸⁴ On this basis, the Respondent argues that the Tribunal should deny the Claimants’ request for indemnification, as it is predicated on “an extremely remote possibility” of hypothetical harm.⁴⁴⁸⁵

A. THE CLAIMANTS’ POSITION

2691. According to the Claimants, by failing to render the Lago Agrio Judgment unenforceable in Ecuador and abroad, the Respondent has refused to comply with the Tribunal’s past orders and awards and remains in continuing breach of its obligations under the Treaty.⁴⁴⁸⁶ The likelihood that the Respondent’s breach will continue, the Claimants assert, is further evidenced by the Respondent’s lack of assurance in its response to this indemnification claim that it will comply with the Tribunal’s orders.⁴⁴⁸⁷ Therefore, the

⁴⁴⁸¹ Memorial, para. 469; Reply, para. 1179.

⁴⁴⁸² Memorial, para. 470; Reply, para. 1205; Track II Award, para. 10.11.

⁴⁴⁸³ Memorial, para. 466; Reply, paras. 1181-1182, 1205.

⁴⁴⁸⁴ Counter-Memorial, paras. 1330-1332; Rejoinder, para. 1811; **RLA-57**, *Occidental Exploration and Production Company v. Ecuador*, LCIA Case No. UN 3467, Final Award, 1 July 2004, para. 210.

⁴⁴⁸⁵ Rejoinder, para. 1822.

⁴⁴⁸⁶ Memorial, para. 466; Reply, para. 1180; First Award on Interim Measures, Part VI(2)(o); Track II Award, para. 10.13(i).

⁴⁴⁸⁷ Reply, para. 1206.

Claimants consider that there is nothing speculative about their request for indemnification.⁴⁴⁸⁸ Rather, in the Claimants' view, it is entirely appropriate for them to seek an indemnity order for future damages as a way of defending themselves against the Respondent's continuing breach of the Treaty.⁴⁴⁸⁹

2692. According to the Claimants, it is well established that future damages are compensable in principle; the question that remains for the Tribunal is to determine the threshold of certainty required.⁴⁴⁹⁰ As to the relevant standard, the Claimants acknowledge that their indemnity request based on the occurrence of a contingent event – the enforcement of the Lago Agrio Judgment – is unprecedented because investment jurisprudence has established that future damages can be awarded “based on future events that are reasonably certain to occur” and “can only be awarded for loss that is certain.”⁴⁴⁹¹ In such circumstances, the Claimants contend that it would not be logical to apply the same threshold for immediate compensation for future damages and to an indemnity for these: other factors should also be considered.⁴⁴⁹²

2693. Specifically, the Claimants rely on cases in which arbitral tribunals have given particular consideration to the respondent's conduct, including its continued wrongdoings and non-compliance, to award indemnities or compensation for future losses.⁴⁴⁹³ The Claimants

⁴⁴⁸⁸ Reply, para. 1207.

⁴⁴⁸⁹ Reply, paras. 1189, 1207.

⁴⁴⁹⁰ Reply, paras. 1183-1186; **CLA-291**, ILC Articles on State Responsibility, Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10 at 43, UN Doc. A/56/10 (2001), Commentary to Art. 36, paras. 4, 27; **CLA-652**, Sergey Ripinsky & Kevin Williams, DAMAGES IN INTERNATIONAL INVESTMENT LAW (2016) pp. 115-116; **CLA-683**, Hans van Houtte and Bridie McAsey, *Future Damages in Investment Arbitration – a Tribunal with a Crystal Ball?* in PRACTISING VIRTUE: INSIDE INTERNATIONAL ARBITRATION (2015), pp. 642, 653.

⁴⁴⁹¹ Memorial, para. 471; **CLA-683**, Hans van Houtte and Bridie McAsey, *Future Damages in Investment Arbitration – a Tribunal with a Crystal Ball?* in PRACTISING VIRTUE: INSIDE INTERNATIONAL ARBITRATION (2015), pp. 643-657; **CLA-684**, *LG&E Energy Corp., LG&E Capital Corp., LG&E International, Inc. v. Argentina*, ICSID Case No. ARB/02/1, Award, 25 July 2007, para. 89; **CLA-685**, *Swenson v. Bushman Inv. Propts., Ltd.*, 870 F. Supp. 2d 1049 (D. Idaho 2012).

⁴⁴⁹² Reply, para. 1189.

⁴⁴⁹³ Memorial, para. 468; Reply, paras. 1191-1195, 1197, 1199; **CLA-227**, *Siemens A.G. v. Argentina*, ICSID Case No. ARB/02/8, Award, 6 February 2007, para. 387; **CLA-652**, Sergey Ripinsky and Kevin Williams, DAMAGES IN INTERNATIONAL INVESTMENT LAW (2016), pp. 115-116; **CLA-684**, *LG&E Energy Corp., LG&E Capital Corp., LG&E International, Inc. v. Argentina*, ICSID Case No. ARB/02/1, Award, 25 July 2007, para. 97; **CLA-927**, *Hochtief AG v. Argentina*, ICSID Case No. ARB/07/31, Decision on Liability, 29 December 2014, para. 327; **RLA-766**, *Total S.A. v. Argentina*, ICSID Case No. ARB/04/01, Award, 27 November 2013, paras. 190-191.

further note that the International Court of Justice recognized the possibility of issuing orders concerning continuing breaches, giving particular weight to the respondent State's good faith when deciding whether or not to grant the order.⁴⁴⁹⁴ The Claimants also highlight that other tribunals have ordered post-award tax indemnities.⁴⁴⁹⁵

2694. Conversely, the Claimants criticize the Respondent's reliance on several legal authorities that did not address a request for an indemnity, but rather concerned claims for lost profits and the application of the DCF method.⁴⁴⁹⁶

2695. Turning to the facts of this case, the Claimants argue that the Respondent's years-long refusal to comply with the Tribunal's orders, coupled with its silence on the enforcement risk in its response to the indemnity relief, warrants an assumption that the Respondent will persist in its unlawful conduct.⁴⁴⁹⁷ In light of this, the Claimants submit that the Tribunal should give particular consideration to the certainty of the Respondent's continuing breach of the Treaty, as well as its continuing violations of the Tribunal's orders and awards to date, to conclude that "[its] persistent violations have eroded any presumption of good faith."⁴⁴⁹⁸

2696. Lastly, the Claimants note that the Respondent has the means at its disposal to avoid any indemnity by simply rendering the Lago Agrio Judgment permanently unenforceable, as ordered by the Tribunal.⁴⁴⁹⁹

⁴⁴⁹⁴ Reply, para. 1197; **CLA-928**, *Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, ICJ Reports 2009, 13 July 2009, p. 267, para. 150.

⁴⁴⁹⁵ Reply, paras. 1201-1203; **CLA-929**, *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Spain*, ICSID Case No. ARB/15/36, Award, 6 September 2019, paras. 705-706; **RLA-789**, *Crystallex International Corporation v. Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, para. 184.

⁴⁴⁹⁶ Reply, para. 1190; **RLA-57**, *Occidental Exploration and Production Company v. Ecuador*, LCIA Case No. UN 3467, Final Award, 1 July 2004, para. 210; **RLA-746**, *Mohammad Ammar Al-Bahloul v. Tajikistan*, SCC Case No. V (064/2008), Final Award, 8 June 2010, para. 102.

⁴⁴⁹⁷ Reply, paras. 1196, 1198.

⁴⁴⁹⁸ Reply, para. 1204.

⁴⁴⁹⁹ Memorial, para. 472; Reply, para. 1208.

B. THE RESPONDENT'S POSITION

2697. In the Respondent's view, the Claimants' request for indemnity for "contingent damages" is contrary to basic principles of law because there is no justification for the Claimants to be awarded reparations in any form for the losses that they allege they may, but have yet, to incur.⁴⁵⁰⁰

2698. First, the Respondent argues that while only "the actual losses incurred as a result of the international wrongful act" are recoverable under applicable principles of international law, the Claimants have failed to prove "both the principle of the loss and its extent."⁴⁵⁰¹ According to the Respondent, the Claimants seek to create an entirely new standard for "contingent damages" by relying on inapposite authorities.⁴⁵⁰² The Respondent clarifies that the cases cited by the Claimants to exemplify orders of indemnity all involved a measure of certainty that is absent in this case.⁴⁵⁰³

2699. By contrast, the Respondent suggests that if the Claimants were to seek to enforce an indemnity order issued by this Tribunal to recover legal expenses incurred to defend against future recognition and enforcement efforts, a domestic court chosen by the Claimants would be tasked with determining the amount of the indemnity obligation, thus requiring such court to address legal and factual issues that could be comparable to those arising in Track III of the Arbitration.⁴⁵⁰⁴ For the Respondent, establishing such mechanism for domestic courts to address potential future damages claims would be in contravention of the express agreement of the Contracting Parties of the Treaty to resolve disputes before an international tribunal.⁴⁵⁰⁵

⁴⁵⁰⁰ Counter-Memorial, paras. 1330-1331.

⁴⁵⁰¹ Counter-Memorial, para. 1331; **RLA-804**, *Caratube International Oil Company LLP and Dr. Devincci Salah Hourani v. Kazakhstan*, ICSID Case No. ARB/13/13, Award, 27 September 2017, para. 1104; **CLA-291**, ILC Articles on State Responsibility Art. 36, Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10 at 43, UN Doc. A/56/10 (2001), Commentary to Art. 36, para. 4.

⁴⁵⁰² Counter-Memorial, para. 1335; Rejoinder, para. 1810.

⁴⁵⁰³ Rejoinder, para. 1811.

⁴⁵⁰⁴ Rejoinder, paras. 1813-1815.

⁴⁵⁰⁵ Rejoinder, para. 1817.

2700. Second, as acknowledged by the Claimants, the Respondent maintains that future damages can only be awarded for loss that is certain and that “the assessment of damages cannot be based on conjecture or speculation”.⁴⁵⁰⁶ Yet, the Claimants’ request, according to the Respondent, is predicated on the “infinitesimal risk” that the LAPs will seek to enforce the Judgment – noting, in this respect, that the LAPs have not filed any new enforcement actions since the initiation of the Gibraltar Proceedings.⁴⁵⁰⁷

2701. In this connection, the Respondent points out that the Claimants have in fact admitted that “the likelihood of the fraudulent Judgment ever being enforced has been greatly reduced” and that “[d]ue to the defects associated with the Ecuadorian [J]udgment, [Chevron] does not believe the [J]udgment has any utility in calculating a reasonably possible loss (or a range of loss).”⁴⁵⁰⁸ Accordingly, in the Respondent’s view, there is no basis for the Claimants’ contention that the Respondent will seek to support the enforcement of the Lago Agrio Judgment.⁴⁵⁰⁹

2702. Third, the Respondent posits that there can be no “continuing violations” of the Tribunal’s orders and interim awards because all prior interim measures have now lapsed.⁴⁵¹⁰ In particular, the Respondent rejects the Claimants’ allegation of a “continuing violation” of the Track II Award, arguing that the Respondent has taken steps to comply with the Tribunal’s final orders.⁴⁵¹¹

2703. As to the Claimants’ specific indemnity requests, the Respondent submits the following:

- (i) As held by the Tribunal, public statements by the Respondent’s government do not constitute Treaty breaches and the Respondent is not responsible for the LAPs’ actions.⁴⁵¹² Therefore, the Claimants are not entitled to be indemnified against “any

⁴⁵⁰⁶ Counter-Memorial, para. 1332; **RLA-746**, *Mohammad Ammar Al-Bahloul v. Tajikistan*, SCC Case No. V (064/2008), Final Award, 8 June 2010, para. 39.

⁴⁵⁰⁷ Rejoinder, paras. 1806, 1809, 1812; 1819; Kobre Witness Statement, para. 32.

⁴⁵⁰⁸ Counter-Memorial, para. 1333; Rejoinder, para. 1819; Memorial, para. 155; **R-1939**, Chevron Annual Report (2018), p. 73.

⁴⁵⁰⁹ Rejoinder, para. 1821.

⁴⁵¹⁰ Rejoinder, para. 1820.

⁴⁵¹¹ Rejoinder, para. 1820.

⁴⁵¹² Rejoinder, paras. 1807, 1821; Track II Award, paras. 5.229, 8.68-8.69.

costs incurred in responding to the public relations campaigns by which the LAPs' lawyers and/or Ecuador target Chevron".⁴⁵¹³

- (ii) The Claimants' request for indemnity "from and against any loss, expenses, liability, damage or cost (including litigation costs and attorneys' and experts' fees) incurred by Claimants and their affiliates arising out of [] any related Ecuadorian Criminal Proceedings" should also be rejected because the Tribunal has already determined that the Criminal Proceedings do not constitute Treaty breaches.⁴⁵¹⁴
- (iii) Lastly, the Respondent is critical of the Claimants' request that the Tribunal order the Respondent to satisfy the Lago Agrio Judgment directly "in the event that any court orders the recognition or enforcement of the Judgment".⁴⁵¹⁵ According to the Respondent, the Tribunal has no power to intrude in domestic court proceedings and reconfigure the litigants or to order the Respondent, who was not a party to the Lago Agrio Litigation, to assume affirmative obligations and substitute the Claimants as debtor of the Judgment.⁴⁵¹⁶

C. THE TRIBUNAL'S ANALYSIS

2704. The Claimants request an indemnity order as "corresponding relief"⁴⁵¹⁷ for the Tribunal's declaration reproduced below from its Track II Award that the Respondent is liable to make reparation for any injuries to the Claimants caused by the recognition or enforcement of the Lago Agrio Judgment:

The Tribunal declares that any injury to the First Claimant or the Second Claimant caused by the recognition or enforcement of any part of the Lago Agrio Judgement within or without Ecuador (as decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) shall be injuries for which the Respondent is liable to make reparation under international law.⁴⁵¹⁸

⁴⁵¹³ Rejoinder, para. 1807.

⁴⁵¹⁴ Rejoinder, para. 1808; Track II Award, para. 5.241.

⁴⁵¹⁵ Rejoinder, para. 1816; Reply, para. 1212(7).

⁴⁵¹⁶ Rejoinder, para. 1816.

⁴⁵¹⁷ Reply, para. 1205.

⁴⁵¹⁸ Track II Award, para. 10.11.

2705. More precisely, the Claimants seek indemnification, or remedies akin to an indemnification, under seven distinct claims for relief. In particular, the Claimants request in their Reply an award granting the following relief:

4. Ordering Ecuador to indemnify and hold harmless Claimants for any and all damages, including fees and costs, arising from Ecuador's violation of any injunctive relief this Tribunal has granted or will in the future grant;
5. Ordering Ecuador to indemnify and hold harmless Claimants from and against any costs incurred in responding to the public relations campaign by which the LAPs' lawyers and/or Ecuador target Chevron;
- ...
7. Ordering that, in the event that any court orders the recognition or enforcement of the Judgment, Ecuador must satisfy the Judgment directly;
8. Awarding Claimants any sums that the nominal LAPs or any other party collect against Claimants or their affiliates in connection with enforcing the Judgment;
9. Awarding Claimants contingent damages in the amount of the Lago Agrio Judgment, contingent on the enforcement of the Judgment and to the extent enforced;
10. Ordering Ecuador to indemnify and hold harmless Claimants from and against any loss, expense, liability, damage or cost (including litigation costs and attorneys' and experts' fees) incurred in any jurisdiction by Claimants or their affiliates arising out of: (i) any and all attempts to seek the recognition or enforcement of the Judgment within or without Ecuador (including any sums collected in connection with the Judgment); and (ii) the Lago Agrio Litigation in Ecuador and any related Ecuadorian Criminal Proceedings;
11. Ordering Ecuador to indemnify and hold harmless Claimants from and against any loss, expense, liability, damage or cost (including litigation costs and attorneys' and experts' fees) arising from Ecuador's violations of the Tribunal's Orders and Awards;⁴⁵¹⁹

2706. Setting aside certain items that will be addressed separately in paragraphs 2715 and 2719 to 2722 below, the requests for relief quoted in the preceding paragraph, while phrased in various ways, are in substance aligned in seeking an order that the Respondent "indemnify [the Claimants] and their affiliates for any further damages resulting from pending or future actions to enforce the Lago Agrio Judgment".⁴⁵²⁰ Indeed, notwithstanding the fact that two of those requests concern an *award* of future damages (*i.e.*, requests for relief (8)

⁴⁵¹⁹ Reply, para. 1212.

⁴⁵²⁰ Reply, para. 1179.

and (9)) the Claimants clarify that they do not request that the Respondent “pay them now for future damages”, but rather seek only for the Tribunal to issue an indemnity *order*.⁴⁵²¹ The Tribunal will conduct its analysis on the basis of this understanding.

2707. As to the forms of damage for which the Claimants seek indemnification, the requests for relief set out in the quote in paragraph 2705 above refer both to direct damages arising from future enforcement efforts, such as requests for relief (7) to (9), and to any incidental expenses that may be incurred in the future to mitigate the injury arising from such enforcement efforts, such as request for relief (10).

2708. Against this background, the Tribunal is not satisfied that the Claimants have established the necessary predicates for the granting of an indemnity order.

2709. First, even where a respondent State has been declared liable to repair the injury arising from an internationally wrongful act, damages that have not been established with the requisite degree of certainty remain, at best, uncertain or speculative and therefore cannot be awarded under international law.⁴⁵²² Thus, in order for the Tribunal to award damages in this Arbitration – including future damages – the Claimants must prove the existence of a concrete injury arising from the recognition and enforcement of the Lago Agrio Judgment, as well as the extent of such injury. Only then will the Tribunal be in a position to order the payment of damages. The Tribunal would be reluctant to issue such order unless the quantum of the obligation has been conclusively determined or at least can be readily quantified at the time that the indemnity order is made.

2710. Second, the future damages in respect of which the Claimants seek an indemnity order remain far from being established with any meaningful degree of certainty. To the contrary, assessing such damages would require a domestic court to conduct a comprehensive damages analysis not unlike that performed by this Tribunal in Track III of the Arbitration. Compounding this uncertainty, such domestic court would be required

⁴⁵²¹ Reply, para. 1189.

⁴⁵²² Rejoinder, para. 1811; **RLA-57**, *Occidental Exploration and Production Company v. Ecuador*, LCIA Case No. UN 3467, Final Award, 1 July 2004, para. 210 (declining to “order the payment of compensation or a refund or amounts that are not due or paid” on the basis that “contingent and [i]ndeterminate damage cannot be awarded”); **CLA-452**, *Amoco International Finance Corp v. Iran*, IUSCTR Case No. 56, Partial Award No. 310-56-3, 14 July 1987, para. 238 (“One of the best settled rules of the law of international responsibility of States is that no reparation for speculative or uncertain damage can be awarded”).

to determine not merely the quantum of the loss, but also, as a threshold matter, whether such loss satisfies the requirements under international law to qualify as direct or incidental damages arising from the recognition and enforcement of the Lago Agrio Judgment. The Tribunal concurs with the Respondent's description of how such a hypothetical scenario might unfold, and its associated complexities:

Though Claimants do not make this explicit, they would have the Tribunal go down a rabbit hole in which at some indeterminate time, in some unknown country, the LAPs would seek to enforce the impugned Lago Agrio Judgment, after an extended period of inactivity on that hopeless cause. This, the hypothesis goes, would lead Claimants to incur defense costs of an uncertain amount and the prospect of the LAPs succeeding in obtaining a judgment outside of Ecuador domesticating the fraudulent Lago Agrio Judgment. To suspend disbelief further, then the LAPs would manage to collect on the domesticated judgment in some unknown way, which could take the form of attaching assets of unknown value. The amounts for which Claimants seek indemnity would include the defense costs (the reasonableness . . . of which would need to be litigated before some unknown domestic court) and the value of whatever was collected (which could give rise to a valuation dispute in some unknown court not unlike the battle in this arbitration over the value of the Chevron subsidiary's trademark portfolio).⁴⁵²³

2711. Lastly, the Tribunal is disinclined to devise a procedural mechanism that might oblige a domestic court to engage with matters exceeding its competence. Pursuant to the Treaty, an "investment dispute" such as the present one is subject to the dispute resolution procedures set out in Article VI, including binding arbitration in accordance with the UNCITRAL Arbitration Rules. As just explained, an indemnity order might effectively require a domestic court to adjudicate matters forming part of the present investment dispute, over which this Tribunal presently retains jurisdiction. In the circumstances, the Tribunal is not persuaded that a domestic court constitutes a suitable forum for supervising the application of the indemnity order as framed by the Claimants.

2712. For these reasons, the Tribunal declines to issue an order that the Respondent "indemnify [the Claimants] and their affiliates for any further damages resulting from pending or future actions to enforce the Lago Agrio Judgment".⁴⁵²⁴ This ruling extends to the Claimants' requests for relief (7), (8), (9), and (10)(i), as set out in paragraph 1212 of the Claimants' Reply and reproduced in paragraph 2705 above.

⁴⁵²³ Rejoinder, para. 1812.

⁴⁵²⁴ Reply, para. 1179.

2713. This conclusion should not be understood to imply that future damages are not compensable under international law. The Tribunal accepts that international law allows the recovery of future losses, such as loss of profits.⁴⁵²⁵ In such instances, however, the analytical challenge lies primarily in assessing the quantum of those future losses and discounting them to present value. Critically, in loss of profits cases the event triggering the injury – usually some form of deprivation of property – would normally lie in the past, which is why future losses may be traced directly back to such event with reasonable certainty.⁴⁵²⁶

2714. By contrast, in the instant case the event triggering the injury – any additional attempt to enforce the Lago Agrio Judgment – lies in the future and its occurrence is, as of yet, uncertain. Absent further details about its targets and other surrounding circumstances, any losses arising from such hypothetical enforcement action would be speculative and thus non-compensable.

2715. The same conclusion applies in respect of (i) the Claimants' request for relief (4), as reproduced in the quote in paragraph 2705 above, which concerns an indemnity for "any and all damages, including fees and costs, arising from Ecuador's violation of any injunctive relief this Tribunal has granted or will in the future grant"; and (ii) request for relief (11), concerning an indemnity for "any loss, expense, liability, damage or cost (including litigation costs and attorneys' and experts' fees) arising from Ecuador's violations of the Tribunal's Orders and Awards". Potential future breaches of the Tribunal's orders and awards, as well as any potential losses arising therefrom, are inherently speculative, as their occurrence and scope remain, at this stage, uncertain.

⁴⁵²⁵ **CLA-652/RLA-738**, Sergey Ripinsky and Kevin Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2016) p. 115 ("In principle, international law allows recovery of both past and future losses. Future losses encompass losses that lie in the future both in relation to the breach and in relation to the arbitral award, and usually manifest themselves in the form of loss of profits or incidental expenses. Recoverability of future damages, specifically the loss of profit, is conditioned on a number of factors and may be limited. Past losses are generally brought to their present day values by adding interest, while future losses are discounted.")

⁴⁵²⁶ **CLA-660/RLA-433**, *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, para. 246 ("Once causation has been established, and it has been proven that the in bonis party has indeed suffered a loss, less certainty is required in proof of the actual amount of damages; for this latter determination Claimant only needs to provide a basis upon which the Tribunal can, with reasonable confidence, estimate the extent of the loss.") See also para. 548 above.

2716. The present case must also be distinguished from other cases invoked by the Claimants where indemnification was awarded in relation to future events, as those instances involved (i) a clearly defined triggering event; and (ii) a quantification of future damages established with sufficient certainty.

2717. For instance, the tribunal in *Total v. Argentina* declared that “future requests for additional retroactive taxes on exports from Tierra del Fuego for the period 2002-2006 would also be in breach of Article 3 of the BIT”.⁴⁵²⁷ On this basis, the tribunal declared that should the claimant or one of its local subsidiaries “be compelled to pay any such taxes to Argentina’s tax authorities, Claimant Total S.A. would be entitled any such taxes with interest under this Award”.⁴⁵²⁸ As rightly noted by the Respondent, in *Total* the quantum of the indemnity obligation – the levying of additional taxes by Argentina’s tax authorities – “would become ‘certain’ immediately upon the triggering event and would not need to be adjudicated by a court enforcing the indemnity”.⁴⁵²⁹ In the Tribunal’s view, the same proposition applies to *Siemens v. Argentina*,⁴⁵³⁰ *OperaFund v. Spain*,⁴⁵³¹ and

⁴⁵²⁷ **RLA-766**, *Total S.A. v. Argentina*, ICSID Case No. ARB/04/01, Award, 27 November 2013, para. 281.

⁴⁵²⁸ **RLA-766**, *Total S.A. v. Argentina*, ICSID Case No. ARB/04/01, Award, 27 November 2013, para. 281.

⁴⁵²⁹ Rejoinder, para. 1811.

⁴⁵³⁰ **CLA-227**, *Siemens A.G. v. Argentina*, ICSID Case No. ARB/02/8, Award, 6 February 2007, para. 387 (“The Tribunal considers that the claim on account of post-expropriation costs is justified in order to wipe out the consequences of the expropriation. As regards the sub-contractors’ claims, Argentina has affirmed to have taken the necessary measures to ensure that these claims are transferred to Argentina. The Tribunal acknowledges this affirmation and decides that Argentina shall hold the Claimant, its subsidiaries and affiliates, wherever located, harmless from, and indemnify the same in respect of, any claims heretofore or hereafter asserted against any of them by any of the following subcontractors. . .”).

⁴⁵³¹ **CLA-929**, *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Spain*, ICSID Case No. ARB/15/36, Award, 6 September 2019, para. 705 (“However, the Tribunal does not agree with Respondent that the tax gross up is prohibited under the first sentence of Article 21(1) of the ECT or that this creates a tax gross up carve-out. There is nothing in Article 21 of the ECT prohibiting a tax gross up or limiting a tax gross up to ensure full reparation. To the Tribunal, it is clear that Spain as the Respondent is to pay the entire amount of damages and cannot charge and deduct Spanish taxes on the amount awarded. As other Tribunals have done in similar cases, in view of Respondent’s express objection, there is indeed a need to clarify that. Therefore, as a precaution, the Tribunal concludes and will expressly provide in the dispositive of this Award that the Award is made net of all taxes and/or withholdings by Spain, and Spain is ordered to indemnify Claimants for any tax liability or withholding that may be imposed in Spain.”)

Swenson v. Bushman Inv. Properties Ltd. – a case which, the Tribunal notes, arose under the laws of Idaho, not international law.⁴⁵³²

2718. The Claimants also rely on *LG&E v. Argentina*, in which the tribunal declared that Argentina was “liable for the payment of compensation as long as Argentina failed to restore” a pre-existing gas tariff regime. The Tribunal also considers this case to be inapposite: the *LG&E* tribunal itself characterized such declaration as a “recognition of [] responsibility”,⁴⁵³³ not unlike this Tribunal’s declaration that the Respondent is liable to make reparation for any injuries to the Claimants caused by the recognition or enforcement of the Lago Agrio Judgment.⁴⁵³⁴ In other words, the *LG&E* tribunal did not order indemnification: it issued a declaration of liability.

2719. A separate analysis of the Claimants’ requests for relief (5) and (10)(ii), as reproduced in the quote in paragraph 2705 above, is in order. These requests, in contrast to the Claimants’ other indemnification requests, concern purported future harm arising from

⁴⁵³² **CLA-685**, *Swenson v. Bushman Inv. Propts., Ltd.*, 870 F. Supp. 2d 1049 (D. Idaho 2012), pp. 14-15 (“At the arbitration, the investors argued that their entire \$2.7 million investment in the property had been destroyed because the property—which was supposed to be debt-free—was encumbered with a deed of trust and county tax lien. The Swensons argued that the deed of trust had been partially released, which meant that even if the deed of trust was foreclosed, the investors would retain their interest in the property—thus getting exactly what they bargained for. The arbitrator concluded that the investors were entitled to roughly \$458,000, which represented the amount needed to pay off the tax lien, plus land management costs the investors had incurred . . . The arbitrator did not accept the argument that the investors had lost their entire \$2.7 million investment. He concluded that the investors would be entitled to a damages award for this larger sum only if they actually lost their property interests due to a foreclosure. So he fashioned a flexible award, which called for a ‘potential prospective’ damages award against Douglas Swenson, which would be triggered if the investors lost the interest in the property due to a foreclosure of the deed of trust or the county tax lien. *See Final Award*, at 5 (‘If Claimants’ interest in the property is foreclosed as a result of the Deed of Trust or Arapahoe County tax lien, Claimants shall be entitled to prospective actual damages from Mr. Swenson in the amount of \$2,729,186.13’).”)

⁴⁵³³ **CLA-684**, *LG&E Energy Corp., LG&E Capital Corp., LG&E International, Inc. v. Argentina*, ICSID Case No. ARB/02/1, Award, 25 July 2007 paras. 96-97 (“Fourthly, Claimants’ arguments that they would have to bear the risk and uncertainty resulting from Argentina’s conduct and the burden to seek periodic additional relief at great cost and expense are not entirely without merit. However, the Claimants have chosen to maintain their investments in Argentina regardless of its reluctance to re-establish the gas regulatory framework following the end of the State of Necessity period. The decision to maintain their investments in Argentina has its consequences: (i) the impact of Argentina’s conduct on the value of investments has not crystallized and is subject to the changing regulatory environment and fluctuations of the stock market; (ii) lost future profits are uncertain and their calculation is speculative; and (iii) compensation could only be awarded for damages actually suffered and sufficiently proven. This is in no way a reward to Argentina for its continued wrongdoing. This Tribunal has established that the abrogation of the basic guarantees of the gas tariff regime has breached Argentina’s obligations under the Treaty. This breach makes Argentina liable for the payment of compensation as long as Argentina failed to restore such regime after 28 February 2005. The recognition of this responsibility is, on the contrary, an incentive to Argentina to restore the tariff regime or at least to engage in genuine arms-length negotiations to avoid future condemnatory decisions.”)

⁴⁵³⁴ See para. 2704 above.

conduct that bears no relation to the Respondent's Treaty breaches and which, accordingly, is outside the scope of the compensable injury in this case.

2720. First, request for relief (5) concerns an indemnity from "any costs incurred in responding to the public relations campaign by which the LAPs' lawyers and/or Ecuador target Chevron". However, the Tribunal rejected in its Track II Award the proposition that the Respondent's media campaign amounted to a Treaty breach:

In Parts IV and V above, the Tribunal discounted, as a distinct matter in regard to the Lago Agrio Judgment, the numerous public condemnatory statements regarding Chevron made by President Correa and members of his administration. As regards the Lago Agrio Litigation more generally, although particularly vicious in regard to Mr Veiga and Dr Pérez, Chevron's other legal representatives in Ecuador and (later) Dr Guerra, *these statements were also not the cause of any injury sustained by the Claimants in the Lago Agrio Litigation or under the Lago Agrio Judgment.*

Moreover, as the Respondent submitted, Governments sometimes resort to extreme political language as regards alleged damage to the environment caused by foreign oil companies. The Tribunal does not consider such political, even populist, statements by a State's executive branch, however regrettable, as amounting by themselves to a denial of justice. This applies necessarily to a situation where *the sole cause for the denial of justice lies elsewhere within the State's judicial branch – as it does in the present case.*⁴⁵³⁵

2721. Accordingly, as already found by the Tribunal, any harm arising from this alleged "public relations campaign against Chevron" was not caused by the recognition and enforcement of the Lago Agrio Judgment and, as such, does not form part of the compensable injury in this case.⁴⁵³⁶ In the circumstances, no indemnification for such harm is warranted.

2722. Second, request for relief (10)(ii) concerns an indemnity from "any loss, expense, liability, damage or cost (including litigation costs and attorneys' and experts' fees) incurred in any jurisdiction by Claimants or their affiliates arising out of [] the Lago Agrio Litigation in Ecuador and any related Ecuadorian Criminal Proceedings". To the extent this request concerns harm arising from the Criminal Proceedings, the Tribunal has already rejected in its Track II Award and elsewhere in this Award the Claimants' arguments that (i) there is a causative link between the Criminal Proceedings and the Lago

⁴⁵³⁵ Track II Award, paras. 8.68-8.69 (emphasis by the Tribunal).

⁴⁵³⁶ See para. 2560 above.

Agrio Judgment;⁴⁵³⁷ (ii) any harm arising from the Criminal Proceedings is compensable in this Arbitration.⁴⁵³⁸ Accordingly, no indemnification for such harm is warranted.

2723. In sum, for the reasons set out above, the Tribunal rejects the Claimants' requests for relief (4), (5), (7), (8), (9), (10), and (11), as set out in paragraph 1212 of the Claimants' Reply.

2724. Notwithstanding this conclusion, the Tribunal reiterates its declaration that any injury to the First Claimant or the Second Claimant caused by the recognition or enforcement of any part of the Lago Agrio Judgement within or without Ecuador (as decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) shall be injuries for which the Respondent is liable to make reparation under international law.⁴⁵³⁹

* * *

⁴⁵³⁷ Track II Award, paras. 5.240-5.241.

⁴⁵³⁸ See paras. 2000, 2558 above.

⁴⁵³⁹ Track II Award, para. 10.11.

XII. INJUNCTIVE RELIEF

2725. The Claimants request that the Tribunal order injunctive relief “to wipe out all the consequences of Ecuador’s internationally wrongful acts and to achieve the obligations of result that the Tribunal imposed” in its Track II Award.⁴⁵⁴⁰ According to the Claimants, the Respondent continues to fail to comply with the Track II Award, thus exacerbating and increasing the Claimants’ damages.⁴⁵⁴¹

2726. The Respondent submits that the Claimants are not entitled to further injunctive relief, as such requests are outside the scope of Track III and have already been granted by the Tribunal in its Track II Award.⁴⁵⁴² In any event, the Respondent considers that it has complied with the Tribunal’s orders in the Track II Award “to the extent possible under Ecuadorian Law”.⁴⁵⁴³

A. THE CLAIMANTS’ POSITION

2727. According to the Claimants, the Respondent must cease its “continued refusal” to comply with the Tribunal’s Orders and Awards.⁴⁵⁴⁴ The Claimants describe such non-compliance as “habitual” and “deliberate” since the Tribunal issued its First Interim Award in 2012. In the Claimants’ submission, the Respondent’s arguments “as to its alleged compliance and the alleged impossibility of its compliance” with the Tribunal’s Orders and Awards are meritless: the Respondent “is legally obligated to achieve a specific result.”⁴⁵⁴⁵

2728. In particular, the Claimants note that the Respondent has not removed the status of enforceability of the Lago Agrio Judgment.⁴⁵⁴⁶ In the Claimants’ submission, the Respondent could have dissolved the enforcement order of the Lago Agrio Judgment (*mandamiento de ejecución*) or made a public statement acknowledging the corruption

⁴⁵⁴⁰ Memorial, para. 161.

⁴⁵⁴¹ Memorial, para. 160.

⁴⁵⁴² Counter-Memorial, para. 1342-1343.

⁴⁵⁴³ Rejoinder, paras. 1920-1925.

⁴⁵⁴⁴ Memorial, paras. 156-161. *See also* Reply, para. 116.

⁴⁵⁴⁵ Reply, para. 131.

⁴⁵⁴⁶ Reply, para. 132.

impacting the Judgment.⁴⁵⁴⁷ Instead, the Respondent has continued to align itself publicly with the LAPs and their counsel, Mr Fajardo, in violation of Articles 29 and 30 of the ILC Articles, pursuant to which the legal consequences of an internationally wrongful act do not affect the continued duty of the responsible State to discharge the breached obligation.⁴⁵⁴⁸

2729. According to the Claimants, the Respondent's refusal to comply with the Tribunal's Awards and Orders is also evidenced by public statements "from the highest levels of Ecuador's government" made after the issuance of the Track II Award.⁴⁵⁴⁹ For instance, the Claimants allege that: (i) Ecuador's Vice President, Ms María Alejandra Vicuña, described this Arbitration as a "national cause", adding that all Ecuadorians "should condemn the arbitral award";⁴⁵⁵⁰ (ii) Ecuador's Attorney General expressed his "absolute empathy" for the LAPs, announced that the LAPs had met with the Office of Presidency, and confirmed that they "could work together";⁴⁵⁵¹ and (iii) Vice President Vicuña stated during an interview that Ecuador's fundamental goal was to avoid the enforcement of the Award.⁴⁵⁵²

2730. As further evidence of the Respondent's non-compliance, the Claimants point to the order issued by the Ombudsman's Office of Ecuador in September 2018, whereby it granted a request from Mr Fajardo and directed the Ombudsman's Office of Sucumbíos to "oversee" the enforcement of the Lago Agrio Judgment, which was issued with no notice

⁴⁵⁴⁷ Reply, para. 132.

⁴⁵⁴⁸ Memorial, para. 156; Reply, para. 135; **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Arts. 29-30(a).

⁴⁵⁴⁹ Memorial, para. 156.

⁴⁵⁵⁰ Memorial, para. 157; **C-3063**, Vice President of Ecuador, Maria Alejandra Vicuña's Twitter Account, 8 September 2018, available at <https://twitter.com/mariaalevicuna/status/1038533796705067008>.

⁴⁵⁵¹ Reply, para. 135; **C-3084**, Radio Interview of Attorney General Salvador, RADIO CENTRO, 11 September 2018, available at <http://www.juiciocrudo.com/video/entrevista-radio-centro-inigo-salvador-11-sep-2018/285> at minute 30.

⁴⁵⁵² Memorial, para. 157; **C-3085**, TV Interview of Vice President Maria Alejandra Vicuña, TC TV, 14 September 2018, available at <https://www.youtube.com/watch?v=65qnUBp43Cc&feature=youtube>.

to Chevron and lacked any reference to the “fraud, bribery, and corruption through which the Judgment was obtained”.⁴⁵⁵³

2731. For these reasons, the Claimants request that the Tribunal reach “a finding that Ecuador has breached the obligations of result in §10.13 of the Track II Award and a re-affirmation that they remain binding on Ecuador”.⁴⁵⁵⁴

B. THE RESPONDENT’S POSITION

2732. The Respondent requests that the Tribunal reject the Claimants’ request for injunctive relief, which it describes as “duplicative” and going beyond the scope of Track III. In the Respondent’s view, pursuant to Procedural Order No. 23, “non-monetary remedies were to be dealt with in Track II only”.⁴⁵⁵⁵ The Respondent adds that the Claimants waived any claims for injunctive relief in Track III when, prior to the issuance of the Track II Award, they indicated which of their prayers for relief in the Arbitration remained extant, and “did not highlight a single request for injunctive relief as remaining extant in Track III.”⁴⁵⁵⁶

2733. In any event, the Respondent states that it has not refused to comply with the Track II Award, and has instead “taken all the steps that are legally permissible to fulfil the Tribunal’s orders and continues to do so.”⁴⁵⁵⁷ The Respondent argues that a formal investigation was initiated against Judge Zambrano, by virtue of communications sent by the State Attorney General regarding the Track II Award to, *inter alia*, the President of the National Assembly, the President of the Republic, the Chief Judge of the Constitutional Court, and the Prosecutor’s Office.⁴⁵⁵⁸

⁴⁵⁵³ Memorial, para. 158; **C-3064**, Ombudsman’s Order of Admission, No. 001-DPE-DPS-2018-001218-KB, 25 September 2018, para. 4.

⁴⁵⁵⁴ Track III Hearing, Day 1 (18 August 2022), Claimants’ Opening Statement Presentation, Slide 277.

⁴⁵⁵⁵ Counter-Memorial, para. 1345; Procedural Order No. 23, 10 February 2014, para. 4.

⁴⁵⁵⁶ Counter-Memorial, paras. 1346-1347; Claimants’ Letter to the Tribunal, Appendix A – Claimants’ Extant Claims for Relief, 19 March 2018.

⁴⁵⁵⁷ Rejoinder, para. 1920.

⁴⁵⁵⁸ Rejoinder, para. 1920; **R-2144**, Letter of Ecuador’s Attorney General to the President of the National Assembly, 19 September 2018; **R-2145**, Letter of Ecuador’s Attorney General to President Lenín Moreno, 17

2734. The Respondent also submits that there is no legal mechanism under Ecuadorian law for the Respondent to take action to annul a judgment of an Ecuadorian court with *res judicata* effect that has already been reviewed by all higher instance courts.⁴⁵⁵⁹ Consequently, the Respondent argues that Ecuador has executed the Tribunal's orders in the Track II Award by notifying competent foreign authorities and informing the President of the Provincial Court of Sucumbíos about the Award.⁴⁵⁶⁰ According to the Respondent, "the State Attorney General understands that in accordance with this notification, the Provincial Court of Sucumbíos will not certify any copies of the Lago Agrio Judgment, which are necessary to seek its enforcement abroad."⁴⁵⁶¹

2735. In sum, the Respondent considers that while it cannot under Ecuadorian law legally annul the Lago Agrio Judgment, it has taken "concrete steps to comply with the Tribunal's orders in the Second Partial Award" to render the Lago Agrio Judgment unenforceable, while also initiating criminal investigations into the judicial conduct found by this Tribunal to be in violation of the Treaty.⁴⁵⁶²

C. THE TRIBUNAL'S ANALYSIS

2736. The Tribunal's Track II Award sets forth a series of orders constituting corrective measures intended to wipe out all the consequences of the Respondent's internationally wrongful acts, so as to re-establish as far as possible the situation which would have existed if those internationally wrongful acts had not been committed by the Respondent.⁴⁵⁶³ In relevant part, the Track II Award reads:

October 2018; **R-2146**, Letter of Ecuador's Attorney General to the General Prosecutor, 17 October 2018; **R-2147**, Letter of Ecuador's Attorney General to the General Prosecutor, 15 January 2019; **R-2148**, Letter of Ecuador's Attorney General to the General Prosecutor, 23 January 2019; **R-2155**, Letter of Ecuador's Attorney General to the Chief Judge of the Provincial Court of Sucumbíos, 8 April 2019; **R-2156**; Letter of Ecuador's Attorney General to the President of the Constitutional Court, 22 April 2019. According to the Respondent, at the date of submission of the Rejoinder, the investigation against Judge Zambrano was still ongoing.

⁴⁵⁵⁹ Rejoinder, para. 1923.

⁴⁵⁶⁰ Rejoinder, paras. 1921-1922.

⁴⁵⁶¹ Rejoinder, paras. 1921-1922.

⁴⁵⁶² Rejoinder, para. 1925.

⁴⁵⁶³ Track II Award, paras. 9.17-9.18.

10.13 The Respondent shall, to the satisfaction of the Tribunal and as unconditional obligations of result (save where otherwise indicated):

- (i) Take immediate steps, of its own choosing, to remove the status of enforceability from the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts);
- (ii) take immediate steps, of its own choosing, to preclude any of the Lago Agrio Plaintiffs, any “trust” purporting to represent their interests (including the “Frente de Defensa La Amazonia”), any of the Lago Agrio Plaintiffs’ representatives, and any non-party funder from enforcing any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts), directly or indirectly, whether by attachment, arrest, interim injunction, execution or howsoever otherwise;
- (iii) on notice from the First or Second Claimants, advise promptly in writing any State (including its judicial branch), where the Lago Agrio Plaintiffs may be seeking directly or indirectly, now or in the future, the enforcement or recognition of any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) of this Tribunal’s declarations and orders regarding the Respondent’s internationally wrongful acts comprising a denial of justice resulting from the Lago Agrio Judgment (as thus decided); and, for this purpose (being required by legal duty or to pursue a legal right), any Party shall be entitled, notwithstanding Article 32(5) of the UNCITRAL Arbitration Rules, to disclose to the State’s judicial branch (on whatever terms that its courts may order) a copy of this Award and its earlier awards, orders and decision;
- (iv) abstain from collecting or receiving, directly or indirectly, any proceeds from the enforcement or recognition of any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) within or without Ecuador;
- (v) return promptly to the First Claimant any such proceeds that (notwithstanding the foregoing) come into the Respondent’s custody, possession or control;
- (vi) take corrective measures, of its own choosing, to “wipe out all the consequences” of all the Respondent’s internationally wrongful acts in regard to the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts), within the meaning of Article 31 of the International Law Commission’s Articles on State Responsibility, excepting only reparation in the form of compensation (as to which, see Section E below);
- (vii) comply with its obligations towards the First Claimant and the Second Claimant as “Releasees” under the 1995 Settlement Agreement, in accordance with Article II(3)(c) of the Treaty; and
- (viii) subject to further order of this Tribunal in Track III, make full reparation in the form of compensation for any injuries caused to the First Claimant and the

Second Claimant by the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate Court, Cassation and Constitutional Courts).⁴⁵⁶⁴

2737. In Track III, the Claimants request additional injunctive relief “to wipe out all of the consequences of Ecuador’s internationally wrongful acts and to achieve the obligations of result that the Tribunal imposed” in the Track II Award.⁴⁵⁶⁵ In particular, the Claimants request an award granting the following relief:

6. Ordering Ecuador to use all measures necessary to enjoin enforcement of the Judgment in compliance with the Track II Award;
- ...
12. Ordering Ecuador to refrain from providing any funding or support to the LAPs or Related Parties that may assist or support any efforts to seek the recognition or enforcement of the Judgment within or without Ecuador;
13. Ordering Ecuador to cease violations of Procedural Order Nos. 17, 26, 58, 64, and 67;
14. Ordering Ecuador immediately to cease its continuing violations of the Treaty and the Tribunal’s Awards;
15. Ordering Ecuador to protect the rights of Claimants’ lawyers, experts, witnesses, litigation vendors, consultants, and contractors involved in any litigation or proceedings relating to the Lago Agrio Judgment, whether within or without Ecuador, including this arbitration, the proceedings in the Aguinda litigation in Ecuador, Southern District of New York proceedings, Section 1782 proceedings, recognition and enforcement actions, Gibraltar proceedings and others discussed in this Memorial and its attachments and to take all steps necessary to ensure they are not subject to arbitrary action (including searches, seizure of person or belongings, arrest or detention), harassment, retaliation, intimidation, threats or public derogatory statements;⁴⁵⁶⁶

2738. In addition, at the Track III Hearing the Claimants made a request that the Tribunal reach “a finding that Ecuador has breached the obligations of result in §10.13 of the Track II Award and a re-affirmation that they remain binding on Ecuador”.⁴⁵⁶⁷

⁴⁵⁶⁴ Track II Award, para. 10.13.

⁴⁵⁶⁵ Memorial, para. 161.

⁴⁵⁶⁶ Reply, para. 1212. The Tribunal notes that the Claimants also identified request for relief (11) in paragraph 1212 of their Reply as a request for injunctive relief (*see* Reply, para 141, fn 301). Request for relief (11) was addressed by the Tribunal as part of its analysis of the Claimants’ request for indemnification in Section XI above.

⁴⁵⁶⁷ Track III Hearing - Claimants’ Opening Statement Presentation, Slide 277.

2739. At the outset, the Tribunal confirms and restates with full force and effect the Orders set out in paragraph 10.13 of the Track II Award, which are reproduced in paragraph 2736 above. As set out there and later re-confirmed by the Tribunal in its Decision on the Request for Interpretation, the Respondent is required to comply with such orders to the satisfaction of the Tribunal and as unconditional obligations of result – that is, the Respondent must secure the specified results, not merely make its best efforts to secure those results.⁴⁵⁶⁸

2740. Foremost among the obligations of result incumbent upon the Respondent is the obligation to take immediate steps, of its own choosing, to remove the status of enforceability from the Lago Agrio Judgment.⁴⁵⁶⁹

2741. The Respondent submits that “there is no legal mechanism under Ecuadorian law for the Respondent to take action to annul a judgment of an Ecuadorian court with *res judicata* effect, which has been reviewed by all higher instance courts, including the Constitutional Court.”⁴⁵⁷⁰ However, while it “cannot legally annul the Lago Agrio Judgment”, the Respondent submits that it “did take concrete steps to comply with the Tribunal’s orders in the Second Partial Award toward rendering the Lago Agrio Judgment unenforceable.”⁴⁵⁷¹

2742. Notably, the Respondent states that (i) Ecuador’s Attorney General’s office briefed the National Assembly, the President of the Republic, the Chief Judge of the Constitutional Court, and the Chief Judge of the court sitting in Sucumbíos on the content of the Track II Award so that they could “consider actions to take within the scope of their powers” in connection with the Award;⁴⁵⁷² (ii) an “investigation process into the wrongdoing identified by the Tribunal in its Track II Award began against Judge Zambrano” and was ongoing at the time of the filing of the Rejoinder;⁴⁵⁷³ (iii) foreign authorities have been advised of the Tribunal’s findings in relation to the Lago Agrio Judgment by sending

⁴⁵⁶⁸ Decision on Request for Interpretation, para. 16.

⁴⁵⁶⁹ Track II Award, para. 10.13(i).

⁴⁵⁷⁰ Rejoinder, para. 1923.

⁴⁵⁷¹ Rejoinder, para. 1925.

⁴⁵⁷² Rejoinder, para. 1920.

⁴⁵⁷³ Rejoinder, para. 1921. The Rejoinder was filed on 20 May 2022.

notifications to “competent authorities” in Argentina, Brazil, and Canada;⁴⁵⁷⁴ and (iv) following Ecuador’s Attorney General’s notification to the President of the Provincial Court of Sucumbíos of the content of the Track II Award, “the State Attorney General understands that in accordance with this notification, the Provincial Court of Sucumbíos will not certify any copies of the Lago Agrio Judgment, which are necessary to seek its enforcement abroad.”⁴⁵⁷⁵

2743. The Tribunal does not consider that the steps taken by the Respondent towards removing the status of enforceability of the Lago Agrio Judgment are sufficient to fulfil the terms of the Tribunal’s Orders set out in paragraph 10.13 of the Track II Award. In the Tribunal’s view, the Respondent’s failure to render the Lago Agrio Judgment unenforceable to this date reflects a continuing pattern originating with the Interim Awards Breach, which the Respondent committed by rendering the Lago Agrio Judgment final, enforceable, and subject to execution within Ecuador no later than 3 August 2012 (upon its judiciary’s certifying the Lago Agrio Judgment’s enforceability), in violation of the First and Second Interim Awards.⁴⁵⁷⁶ In addition, the Claimants have identified multiple ways in which, in their submission, the Respondent could have met this obligation after the issuance of the Track II Award, such as by Ecuador’s Attorney General filing a motion to stay or dissolve the *mandamiento de ejecución* (the Lago Agrio Judgment’s enforcement order) issued by the Provincial Court of Justice of Sucumbíos on 3 August 2012, or the courts dissolving the enforcement order on their own initiative.⁴⁵⁷⁷ In the circumstances, the Tribunal is left with persisting doubts as to whether the Respondent has exhausted all efforts to comply with the Tribunal’s Orders and Awards in this Arbitration.

2744. Having said that, the adequacy of the Respondent’s efforts is immaterial to the assessment of compliance with the Tribunal’s order to remove the status of enforceability from the Lago Agrio Judgment (an unconditional obligation of result). In this regard, it appears undisputed that the steps undertaken by the Respondent in connection with the Lago

⁴⁵⁷⁴ Rejoinder, para. 1921.

⁴⁵⁷⁵ Rejoinder, paras. 1921-1922.

⁴⁵⁷⁶ Fourth Interim Award, paras. 78-79. *See also* Section VII.B above.

⁴⁵⁷⁷ Reply, para. 132, Letter from the Claimants to the Tribunal dated 4 May 2020.

Agrio Judgment fall short of achieving the result mandated by the Tribunal in paragraph 10.13(i) of the Track II Award. The alleged impediment to the attainment of this result – specifically, the absence of a legal mechanism under Ecuadorian law to remove the status of enforceability from the Lago Agrio Judgment – even if established, would not excuse the failure to fulfil the obligations under the Orders set out in paragraph 10.13 of the Track II Award. Pursuant to Article 32 (“Irrelevance of Internal Law”) of the ILC Articles, “[t]he responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part”. Such obligations include the obligation to make full reparation for the injury caused by the Respondent’s internationally wrongful acts in the form mandated by the Tribunal.⁴⁵⁷⁸

2745. Accordingly, the Tribunal finds that as of the date of this Award, the Respondent has failed to meet its obligation to remove the status of enforceability from the Lago Agrio Judgment through steps of its own choosing, as required under paragraph 10.13(i) of the Track II Award. The Lago Agrio Judgment’s ongoing enforceability under Ecuadorian law further reflects the Respondent’s failure to meet the unconditional obligations of result set forth in paragraphs 10.13(ii), (vi), and (vii) of the same Award.⁴⁵⁷⁹

2746. The Respondent remains bound to achieve the unconditional obligations of result identified in paragraphs 10.13(i), (ii), (vi), and (vii) of the Track II Award. To this extent, the Tribunal grants request for relief (6), as set forth in paragraph 2737 above.

2747. The Tribunal turns now to request for relief (12) set forth in paragraph 2737 above, which seeks an award “[o]rdering Ecuador to refrain from providing any funding or support to the LAPs or Related Parties that may assist or support any efforts to seek the recognition or enforcement of the Judgment within or without Ecuador”.

2748. Save as otherwise indicated earlier in this Section, the Tribunal declines to grant request for relief (12). Paragraph 10.13(ii) of the Track II Award already requires, as an obligation of result, that the Respondent

⁴⁵⁷⁸ **CLA-291**, ILC Articles on Responsibility of States for Internationally Wrongful Acts (updated compilation) (2001), Arts. 31, 32.

⁴⁵⁷⁹ See para. 2736 above.

take immediate steps, of its own choosing, to preclude any of the Lago Agrio Plaintiffs, any “trust” purporting to represent their interests (including the “Frente de Defensa La Amazonia”), any of the Lago Agrio Plaintiffs’ representatives, and any non-party funder from enforcing any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts), directly or indirectly, whether by attachment, arrest, interim injunction, execution or howsoever otherwise;

2749. As framed by the Claimants, request for relief (12) is for an order that the Respondent take *specific* steps – *i.e.*, “refrain from providing any funding or support to the LAPs or Related Parties” – vis-à-vis third parties who may seek to have the Lago Agrio Judgment recognized or enforced within or without Ecuador, or which may support those efforts. As such, granting request for relief (12) would contradict the Tribunal’s determination that the Respondent must take steps *of its own choosing* to achieve the obligation of result identified in paragraph 10.13(ii) of the Track II Award, which, as already noted, remains otherwise in full force and effect.

2750. In turn, request for relief (13) set forth in paragraph 2737 above is for an award “[o]rdering Ecuador to cease violations of Procedural Order Nos. 17, 26, 58, 64, and 67”. In the Tribunal’s view, the Claimants have failed to sufficiently particularize the violations of those orders purportedly committed by the Respondent. Request for relief (13) is accordingly rejected. The Tribunal reiterates, however, that the confidentiality order set out in Procedural Order No. 58 dated 22 May 2019 (and extended in Procedural Order No. 64 dated 29 May 2020) shall remain in effect for all Track III materials until expressly abrogated.⁴⁵⁸⁰

2751. The Tribunal turns next to request for relief (14) set forth in paragraph 2737 above, which seeks an award “[o]rdering Ecuador immediately to cease its continuing violations of the Treaty and the Tribunal’s Awards.” As already noted, the Track II Award includes a series of declarations and orders constituting corrective measures intended to wipe out all the consequences of the Respondent’s internationally wrongful acts – that is, the Respondent’s “violations” for the purposes of request for relief (14).⁴⁵⁸¹ Such measures include the orders set out in paragraph 10.13 of the Track II Award, which the Respondent must meet as unconditional obligations of result to the Tribunal’s satisfaction. As also

⁴⁵⁸⁰ Procedural Order No. 67, 28 September 2020, para. 19.

⁴⁵⁸¹ Track II Award, paras. 9.17-9.18.

noted, the Tribunal confirms and restates with full force and effect such orders.⁴⁵⁸² In the circumstances, save as otherwise indicated in paragraphs 2745-2746 above, the Tribunal believes that granting additional relief pursuant to request for relief (14) would be duplicative of its prior orders and is therefore unnecessary. Request for relief (14) is accordingly rejected.

2752. Lastly, the Tribunal turns to request for relief (15) set forth in paragraph 2737 above. The Tribunal is unable to grant request for relief (15) in the terms in which it has been framed by the Claimants. Among other things, the Claimants have failed to particularize the specific “rights of Claimants’ lawyers, experts, witnesses, litigation vendors, consultants, and contractors” the Respondent should be ordered to protect. The Claimants have also failed to identify any instance of “arbitrary action” that is either currently in progress or imminently threatened against the individuals referenced in request for relief (15). This request for relief is therefore rejected.

2753. In sum, for the above reasons, the Tribunal:

- (i) Confirms and restates with full force and effect the orders set out in paragraph 10.13 of the Track II Award;
- (ii) Declares that, by failing to remove the status of enforceability from the Lago Agrio Judgment through steps of its own choosing to this date, the Respondent has failed to meet its obligations under paragraphs 10.13(i), (ii), (vi), and (vii) of the Track II Award and, accordingly, orders the Respondent to take immediate steps to meet these obligations;
- (iii) Reiterates that, pursuant to Procedural Order No. 67, the confidentiality order set out in Procedural Order No. 58 (and extended in Procedural Order No. 64) shall remain in effect for all Track III materials until expressly abrogated;
- (iv) Save as otherwise indicated in paragraphs 2745-2746 above, rejects requests for relief (12), (13), (14), and (15) set out in paragraph 1212 of the Claimants’ Reply; and

⁴⁵⁸² See para. 2739 above.

- (v) Recalls that, as noted in its Decision on Interpretation, if it were alleged in this Arbitration that the Respondent was not complying with any part of paragraph 10.13 of the Track II Award and that such non-compliance affected any further relief to be ordered by the Tribunal in this Arbitration, the Tribunal would, on the application of any Party, decide on the matter as may be appropriate.⁴⁵⁸³

* * *

⁴⁵⁸³ Decision on Request for Interpretation, para. 18.

XIII. RELIEF

A. INTRODUCTION

2754. The Tribunal here addresses the Claimants’ and the Respondent’s material requests for relief in Track III as set out in Section IV above, in the light of the decisions taken in this Award, together with the Tribunal’s earlier Awards, Decisions, and Orders. These requests are taken from the Parties’ respective communications of 20 October 2025, wherein they indicated which of their requests of relief made in this Arbitration remain extant in Track III.⁴⁵⁸⁴

2755. The Tribunal has fully considered the Parties’ respective written and oral submissions regarding their respective requests for relief. Given the several decisions made by the Tribunal in this Award, it is unnecessary to set out these submissions for the purpose of this Award, beyond the Parties’ specific requests for relief.

B. THE CLAIMANTS’ REQUESTS FOR RELIEF

2756. For this Track III, in light of its decisions in this Award, the Tribunal addresses below the material relief sought by the Claimants in the form of specific orders highlighted in yellow, blue and green in their marked-up Enclosure 1 to their letter of 20 October 2025 and recited in Section IV.A above. As noted there, the Claimants highlighted only requests for relief included in their Reply, as set out in paragraph 111 above. For each of the below requests, the Tribunal identifies the specific subparagraph of paragraph 1212 of the Claimants’ Reply where the request appears.

2757. Paragraph 1212 of the Claimants’ Reply: *“To “make full reparation in the form of compensation for any injuries caused to the First Claimant and the Second Claimant by the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate Court, Cassation and Constitutional Courts),” in addition to the Track II relief already ordered, Claimants request an Award on Track III granting the following relief:”*

⁴⁵⁸⁴ Letter from the Claimants to the Tribunal dated 20 October 2025, Enclosure 1; Letter from the Respondent to the Tribunal dated 20 October 2025, Enclosure 1.

2758. This general request is granted in principle, on the terms and subject to the determinations that follow.

2759. Request for Relief No. (1): “*Awarding Claimants all of their costs in Tracks I, II, and III of these proceedings*”.

2760. This request is not granted in this Award, any such costs being issues allocated to Track IV as set out in paragraph 95 above.

2761. Request for Relief No. (2)(a): “*Awarding Claimants all of their damages, including all costs and attorneys’ fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: US\$ 161,525,161.89 in relation to the Lago Agrio Litigation*”.

2762. This request is granted to the extent that Chevron is awarded USD 41,587,664.54 as damages in connection with the Lago Agrio Litigation, as set out in paragraph 2296 above.

2763. Request for Relief No. (2)(b): “*Awarding Claimants all of their damages, including all costs and attorneys’ fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 62,363,592.93 in relation to the Section 1782 Actions*”.

2764. This request is granted to the extent that Chevron is awarded USD 8,728,717.69 as damages in connection with the Section 1782 Proceedings, as set out in paragraph 2296 above.

2765. Request for Relief No. (2)(c): “*Awarding Claimants all of their damages, including all costs and attorneys’ fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 323,180,099.51 in relation to the RICO Action*”.

2766. This request is granted to the extent that Chevron is awarded USD 33,322,257.24 as damages in connection with the RICO Litigation, as set out in paragraph 2296 above.

However, any sums collected by Chevron in connection with the *Amazonia* Damages Judgments, as well as any costs Chevron may in the future collect in the RICO Litigation, must be deducted from the amount of compensation due to Chevron, as set out in paragraph 1523 above.

2767. Request for Relief No. (2)(d): “*Awarding Claimants all of their damages, including all costs and attorneys’ fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 3,582,889.44 in relation to the Ecuador Enforcement Action*”.

2768. This request is granted to the extent that Chevron is awarded USD 1,261,521.19 as damages in connection with the Ecuador Enforcement Proceedings, as set out in paragraph 2296 above.

2769. Request for Relief No. (2)(e): “*Awarding Claimants all of their damages, including all costs and attorneys’ fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 25,695,438.12 in relation to the Argentina Enforcement Action*”.

2770. This request is granted to the extent that Chevron is awarded USD 10,469,299.38 as damages in connection with the Argentina Enforcement Proceedings, as set out in paragraph 2296 above.

2771. Request for Relief No. (2)(f): “*Awarding Claimants all of their damages, including all costs and attorneys’ fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 20,668,398.44 in relation to the Brazil Enforcement Action*”.

2772. This request is granted to the extent that Chevron is awarded USD 14,136,263.73 as damages in connection with the Brazil Recognition Proceedings, as set out in paragraph 2296 above.

2773. Request for Relief No. (2)(g): *Awarding Claimants all of their damages, including all costs and attorneys' fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 39,798,158.90 in relation to the Canada Enforcement Action*".

2774. This request is granted to the extent that Chevron is awarded USD 30,047,127.12 as damages in connection with the Canada Enforcement Proceedings, as set out in paragraph 2296 above.

2775. Request for Relief No. (2)(h): *"Awarding Claimants all of their damages, including all costs and attorneys' fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 26,166,897.09 in relation to defense against recognition and enforcement in other countries and general recognition and enforcement work"*.

2776. This request is granted to the extent that Chevron is awarded USD 14,282,909.81 as damages in connection with the Costs of Planning Against Potential Enforcement in Other Jurisdictions category of damages, as set out in paragraph 2296 above.

2777. Request for Relief No. (2)(i): *"Awarding Claimants all of their damages, including all costs and attorneys' fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 38,421,547.26 in relation to the Gibraltar Actions and General Offensive Measures"*.

2778. This request is granted to the extent that Chevron is awarded USD 26,566,930.75 as damages in connection with the Gibraltar Proceedings, as set out in paragraph 2296 above.

2779. Request for Relief No. (2)(j): *"Awarding Claimants all of their damages, including all costs and attorneys' fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 47,213,917.33 in relation to the general defense against the Lago Agrio fraud and the resulting fraudulent Judgment"*.

2780. This request is not granted, as set out in paragraph 1980 above.

2781. Request for Relief No. (2)(k): *“Awarding Claimants all of their damages, including all costs and attorneys’ fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 6,933,905.69 in relation to the Ecuadorian Criminal Proceedings”*.

2782. This request is not granted, as set out in paragraph 2001 above.

2783. Request for Relief No. (2)(l): *“Awarding Claimants all of their damages, including all costs and attorneys’ fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 34,653,249.61 in relation to the BIT Non-Counsel-of-Record Fees”*.

2784. This request is not granted, as set out in paragraph 2052 above. The Tribunal defers to Track IV its determination of the Claimants’ costs claim under Articles 38 and 40 of the UNCITRAL Arbitration Rules in respect of the legal fees and expenses falling under the damages category “Treaty Arbitration Costs incurred by Non-Counsel of Record”.

2785. Request for Relief No. (2)(m): *“Awarding Claimants all of their damages, including all costs and attorneys’ fees incurred by Claimants in uncovering and proving the Judgment fraud, and preparing for and defending against enforcement of the Lago Agrio Judgment in any jurisdiction, including: . . . US\$ 3,676,711.53 in relation to the Dutch Set-Aside Proceedings”*.

2786. This request is not granted, as set out in paragraph 2030 above.

2787. Request for Relief No. (3)(a): *“Awarding Claimants: US\$ 85,315,652 in compensation for the Ecuador IP Losses”*.

2788. This request is not granted, as set out in paragraph 2533 above.

2789. Request for Relief No. (3)(b): *“Awarding Claimants: . . . US\$ 13 million in compensation for the Argentina Embargo Losses”*.

2790. This request is not granted, as set out in paragraph 2349 above.

2791. Request for Relief No. (3)(c): “*Awarding Claimants: . . . Moral Damages in the amount that the Tribunal deems just and proper*”.

2792. This request is not granted, as set out in paragraph 2564 above.

2793. Request for Relief No. (4): “*Ordering Ecuador to indemnify and hold harmless Claimants for any and all damages, including fees and costs, arising from Ecuador’s violation of any injunctive relief this Tribunal has granted or will in the future grant*”.

2794. This request is not granted, as set out in paragraph 2723 above.

2795. Request for Relief No. (5): “*Ordering Ecuador to indemnify and hold harmless Claimants from and against any costs incurred in responding to the public relations campaign by which the LAPs’ lawyers and/or Ecuador target Chevron*”.

2796. This request is not granted, as set out in paragraph 2723 above.

2797. Request for Relief No. (6): “*Ordering Ecuador to use all measures necessary to enjoin enforcement of the Judgment in compliance with the Track II Award*”.

2798. This request, albeit in different forms of wording, has already been addressed above in paragraphs 2739-2745 and 2753 above. It is therefore unnecessary to address it here separately.

2799. Request for Relief No. (7): “*Ordering that, in the event that any court orders the recognition or enforcement of the Judgment, Ecuador must satisfy the Judgment directly*”.

2800. In respect of this request, the Tribunal reiterates (i) its declaration in paragraph 10.11 of the Track II Award that any injury to the First Claimant or the Second Claimant caused by the recognition or enforcement of any part of the Lago Agrio Judgment within or without Ecuador (as decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) shall be injuries for which the Respondent is liable to make reparation under international law; (ii) its order in paragraph 10.13(iv) of the Track II Award that the Respondent shall abstain from collecting or receiving, directly or indirectly, any proceeds from the enforcement or recognition of any part of the Lago Agrio Judgment (as also

decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) within or without Ecuador; and (iii) its order in paragraph 10.13(v) of the Track II Award that the Respondent shall return promptly to the First Claimant any such proceeds that (notwithstanding the foregoing) come into the Respondent's custody, possession or control. Save as otherwise indicated here, this request is not granted, as set out in paragraph 2723 above.

2801. Request for Relief No. (8): *“Awarding Claimants any sums that the nominal LAPs or any other party collect against Claimants or their affiliates in connection with enforcing the Judgment”*.

2802. In respect of this request, the Tribunal reiterates (i) its declaration in paragraph 10.11 of the Track II Award that any injury to the First Claimant or the Second Claimant caused by the recognition or enforcement of any part of the Lago Agrio Judgment within or without Ecuador (as decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) shall be injuries for which the Respondent is liable to make reparation under international law; (ii) its order in paragraph 10.13(iv) of the Track II Award that the Respondent shall abstain from collecting or receiving, directly or indirectly, any proceeds from the enforcement or recognition of any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) within or without Ecuador; and (iii) its order in paragraph 10.13(v) of the Track II Award that the Respondent shall return promptly to the First Claimant any such proceeds that (notwithstanding the foregoing) come into the Respondent's custody, possession or control. Save as otherwise indicated here, this request is not granted, as set out in paragraph 2723 above.

2803. Request for Relief No. (9): *“Awarding Claimants contingent damages in the amount of the Lago Agrio Judgment, contingent on the enforcement of the Judgment and to the extent enforced”*.

2804. This request is not granted, as set out in paragraph 2723 above.

2805. Request for Relief No. (10): *“Ordering Ecuador to indemnify and hold harmless Claimants from and against any loss, expense, liability, damage or cost (including litigation costs and attorneys' and experts' fees) incurred in any jurisdiction by Claimants*

or their affiliates arising out of: (i) any and all attempts to seek the recognition or enforcement of the Judgment within or without Ecuador (including any sums collected in connection with the Judgment); and (ii) the Lago Agrio Litigation in Ecuador and any related Ecuadorian Criminal Proceedings”.

2806. This request is not granted, as set out in paragraph 2723 above.

2807. Request for Relief No. (11): *“Ordering Ecuador to indemnify and hold harmless Claimants from and against any loss, expense, liability, damage or cost (including litigation costs and attorneys’ and experts’ fees) arising from Ecuador’s violations of the Tribunal’s Orders and Awards”.*

2808. This request is not granted, as set out in paragraph 2723 above.

2809. Request for Relief No. (12): *“Ordering Ecuador to refrain from providing any funding or support to the LAPs or Related Parties that may assist or support any efforts to seek the recognition or enforcement of the Judgment within or without Ecuador”.*

2810. This request is not granted except as set out in paragraph 2753(iv) above.

2811. Request for Relief No. (13): *“Ordering Ecuador to cease violations of Procedural Order Nos. 17, 26, 58, 64, and 67”.*

2812. The Tribunal reiterates that, pursuant to Procedural Order No. 67, the confidentiality order set out in Procedural Order No. 58 (and extended in Procedural Order No. 64) shall remain in effect for all Track III materials until expressly abrogated. Save as aforesaid, this request is not granted.

2813. Request for Relief No. (14): *“Ordering Ecuador immediately to cease its continuing violations of the Treaty and the Tribunal’s Awards”.*

2814. This request is not granted except as set out in paragraph 2753(iv) above.

2815. Request for Relief No. (15): *“Ordering Ecuador to protect the rights of Claimants’ lawyers, experts, witnesses, litigation vendors, consultants, and contractors involved in any litigation or proceedings relating to the Lago Agrio Judgment, whether within or without Ecuador, including this arbitration, the proceedings in the Aguinda litigation in*

Ecuador, Southern District of New York proceedings, Section 1782 proceedings, recognition and enforcement actions, Gibraltar proceedings and others discussed in this Memorial and its attachments and to take all steps necessary to ensure they are not subject to arbitrary action (including searches, seizure of person or belongings, arrest or detention), harassment, retaliation, intimidation, threats or public derogatory statements”.

2816. This request is not granted, as set out in paragraph 2752(iv) above.

2817. Request for Relief No. (16): *“Awarding Claimants’ costs incurred in this Arbitration until completion”.*

2818. This request is not granted in this Award, any such costs being issues allocated to Track IV as set out in paragraph 95 above.

2819. Request for Relief No. (17): *“Awarding both compound pre- and post-award interest until the date of payment”.*

2820. This request is granted to the extent set out in paragraphs 2687-2688 above.

2821. Request for Relief No. (18): *“Such other and further relief as the Tribunal shall deem just and proper.”*⁴⁵⁸⁵

2822. This general request has been addressed by the Tribunal in its several decisions above. To the extent necessary and appropriate, the Tribunal defers to Track IV this request as to any further relief or undecided issues outstanding from Track I, IB, II, and III.

C. THE RESPONDENT’S REQUESTS FOR RELIEF

2823. For this Track III, in light of its decisions in this Award, the Tribunal addresses below the material relief sought by the Respondent in the form of specific orders identified as “Track III” in blue and/or “Track IV” in green in its marked-up Enclosure 1 to its letter of 20 October 2025 and recited in Section IV.B above. For each of the below requests,

⁴⁵⁸⁵ Reply, para. 1212. See fn 2079: “The relief requested herein is not intended to limit the requests for relief made by Claimants in their other Memorials, which are incorporated herein by reference to the extent extant and not already granted.”

the Tribunal identifies the Respondent's submission containing each request, as well as the specific paragraph and subparagraph where the request appears.

1. Requests for Relief in Track 1 Counter-Memorial dated 3 July 2012

2824. Request for Relief in paragraph 263[7]: “*Declare further that the Respondent is under no obligation to indemnify, protect, defend or otherwise hold Claimants harmless against claims by third parties*”.

2825. This request is granted only to the extent that the Tribunal rejects the Claimants' requests for relief (4), (5), (7), (8), (9), (10), and (11) set out in paragraph 1212 of the Claimants' Reply, concerning indemnification, as indicated in paragraph 2723 above. Save as aforesaid, this request is not granted.

2826. In addition, the Tribunal confirms and restates with full force and effect the orders set out in paragraph 10.13 of the Track II Award, including, without limitation (i) its order in paragraph 10.13(ii) that the Respondent shall take immediate steps, of its own choosing, to preclude any of the Lago Agrio Plaintiffs, any “trust” purporting to represent their interests (including the “Frente de Defensa La Amazonia”), any of the Lago Agrio Plaintiffs' representatives, and any non-party funder from enforcing any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts), directly or indirectly, whether by attachment, arrest, interim injunction, execution or howsoever otherwise; (ii) its order in paragraph 10.13(iii) that on notice from the First or Second Claimants, the Respondent advise promptly in writing any State (including its judicial branch), where the Lago Agrio Plaintiffs may be seeking directly or indirectly, now or in the future, the enforcement or recognition of any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) of this Tribunal's declarations and orders regarding the Respondent's internationally wrongful acts comprising a denial of justice resulting from the Lago Agrio Judgment (as thus decided); (iv) its order in paragraph 10.13(iv) that the Respondent abstain from collecting or receiving, directly or indirectly, any proceeds from the enforcement or recognition of any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) within or without Ecuador; (v) its order in paragraph 10.13(v) that the Respondent return promptly to the First Claimant any such proceeds that (notwithstanding the foregoing) come into the

Respondent's custody, possession or control; and (vi) its order in paragraph 10.13(vii) that the Respondent comply with its obligations towards the First Claimant and the Second Claimant as "Releasees" under the 1995 Settlement Agreement, in accordance with Article II(3)(c) of the Treaty.

2827. Request for Relief in paragraph 263[9]: "*Award Respondent all costs and attorneys' fees in connection with this phase of the proceedings*".

2828. This request is not granted in this Award, any such costs being issues allocated to Track IV as set out in paragraph 95 above.

2829. Request for Relief in paragraph 263[10]: "*Award Respondent any further relief that the Tribunal deems just and proper*".

2830. To the extent necessary and appropriate, the Tribunal defers to Track IV any further relief or undecided issues outstanding from Track I, IB, II, and III.

2. Requests for Relief in Track 1 Rejoinder Memorial dated 26 October 2012

2831. Request for Relief in paragraph 192[1]: "*Denies all the relief and each remedy requested by Claimants in relation to Track 1, including the relief and remedies requested in Paragraph 272 of Claimants' Reply on the Merits*".

2832. This general request, as well as other similar requests identified below, have been addressed by the Tribunal in its several decisions in this Award, as well as earlier awards and decisions. To the extent necessary and appropriate, the Tribunal defers to Track IV this request as to any further relief or undecided issues outstanding from Track I, IB, II, and III.

2833. Request for Relief in paragraph 192[8]: "*Declares further that the Respondent is under no obligation to indemnify, protect, defend or otherwise hold Claimants harmless against claims by, or judgments or other relief obtained by, third parties including the claims filed by the Lago Agrio Plaintiffs, the Lago Agrio Judgment, and the enforcement thereof*".

2834. The Tribunal reiterates its ruling in paragraphs 2825-2826 above in connection with this request.

2835. Request for Relief in paragraph 192[11]: “*Awards Respondent all costs and attorneys’ fees incurred by Respondent in connection with this phase of the proceedings*”.

2836. The Tribunal reiterates its ruling in paragraph 2828 above in connection with this request.

2837. Request for Relief in paragraph 192[12]: “*Awards Respondent any further relief that the Tribunal deems just and proper*”.

2838. The Tribunal reiterates its ruling in paragraph 2830 above in connection with this request.

3. Requests in Track 1 Supplementary Counter-Memorial dated 31 March 2014

2839. Request for Relief in paragraph 143(a): “*Denies all the relief and each remedy requested by Claimants in relation to Track 1, including the relief and remedies requested in Paragraph 32 of Claimants’ Supplemental Track 1 Memorial*”.

2840. The Tribunal reiterates its ruling in paragraph 2832 above in connection with this request.

2841. Request for Relief in paragraph 143(g): “*Awards Respondent all costs and attorneys’ fees incurred by Respondent in connection with this phase of the proceedings*”.

2842. The Tribunal reiterates its ruling in paragraph 2828 above in connection with this request.

2843. Request for Relief in paragraph 143(h): “*Awards Respondent any further relief that the Tribunal deems just and proper*”.

2844. The Tribunal reiterates its ruling in paragraph 2830 above in connection with this request.

4. Requests in Track II Counter Memorial on the Merits dated 18 February 2013

2845. Request for Relief in paragraph 542(f): “*Otherwise dismissing all of Claimants’ claims against the Republic in these arbitration proceedings as meritless*”.

2846. The Tribunal reiterates its ruling in paragraph 2832 above in connection with this request.

2847. Request for relief in paragraph 542(g): “*Awarding all costs and attorneys’ fees incurred by the Republic in this arbitral proceeding*”.

2848. The Tribunal reiterates its ruling in paragraph 2828 above in connection with this request.

2849. Request for relief in paragraph 542(h): “*Any other and further relief that the Tribunal deems just and proper*”.

2850. The Tribunal reiterates its ruling in paragraph 2830 above in connection with this request.

2851. Request for relief in paragraph 545: “*The Republic reserves its rights to supplement its pleadings and request for relief*”.

2852. The Tribunal takes note of this reservation of rights.

5. Requests in Track II Rejoinder on the Merits dated 16 December 2013

2853. Request for relief in paragraph 387(a): “*Denies all the relief and each remedy requested by Claimants in relation to Track II, including the relief and remedies requested in Paragraph 424 of Claimants’ Amended Track II Reply on the Merits*”.

2854. The Tribunal reiterates its ruling in paragraph 2832 above in connection with this request.

2855. Request for relief in paragraph 387(h): “*Alternatively, even if any of Claimants’ claims are upheld, orders the arbitration proceedings to continue to Track 3, so that the Tribunal may assess what Chevron’s liability should have been for the claims asserted in Lago Agrio so that the Tribunal may fashion a final award that takes into consideration such liability*”.

2856. The Tribunal recalls its determination, set out in paragraphs 7.37 to 7.45 of the Track II Award, that the Respondent (i) has no standing to bring a cross-claim for environmental damage caused to individual plaintiffs alleging personal harm in the Lago Agrio Litigation; and (ii) the Tribunal has no jurisdiction under the Treaty to decide upon the merits of these individual plaintiffs’ claims for personal harm against Chevron (not being diffuse claims).

2857. To the extent Respondent seeks to offset the Claimants’ damages claim on account of environmental liability arising from claims brought against Chevron in the Lago Agrio Litigation, the Tribunal recalls that, as noted in paragraph 191 above, during the Hearing on a Partial Award held in March 2021 Counsel for the Respondent clarified that the Respondent is “not seeking any offset against [the Claimants’] legal costs damages claim

for any environmental liability.”⁴⁵⁸⁶ In turn, in its Partial Award on Track III, the Tribunal ruled that its past findings preclude an offset based on an indemnification order.⁴⁵⁸⁷

2858. For these reasons, this request is not granted. For completeness, however, the Tribunal also recalls its rulings in paragraphs 128-167 and 188 of the Partial Award on Track III, as well as paragraphs 378-395 and 731-738 above, concerning the Tribunal’s determination of the applicable Treaty-compliant but-for scenario and its impact on the Claimants’ damages claims.

2859. Request for relief in paragraph 387(i): “*Declares further that the Respondent is under no obligation to indemnify, protect, defend or otherwise hold Claimants harmless against claims by third parties.*”

2860. The Tribunal reiterates its ruling in paragraphs 2825-2826 above in connection with this request.

2861. Request for relief in paragraph 387(j): “*Declares that the 1995 Settlement Agreement has no effect on the claims brought in the Lago Agrio Litigation*”.

2862. This request is not granted, as set out, *inter alia*, in paragraphs 9.102, 9.104, 9.106, 9.108, 9.116, 9.118, and 10.7-10.9 of the Track II Award.

2863. Request for relief in paragraph 387(k): “*Otherwise dismisses all of Claimants’ claims against the Republic in these arbitration proceedings as meritless*”.

2864. The Tribunal reiterates its ruling in paragraph 2832 above in connection with this request.

2865. Request for relief in paragraph 387(l): “*Orders, pursuant to Article 40 of the UNCITRAL Arbitration Rules, Claimants to pay all costs and expenses of this arbitration proceeding, including the fees and expenses of the Tribunal and the cost of the Republic’s legal representation, plus pre-award and post-award interest thereon*”.

2866. The Tribunal reiterates its ruling in paragraph 2828 above in connection with this request.

⁴⁵⁸⁶ Partial Award on Track III, para. 185.

⁴⁵⁸⁷ Partial Award on Track III, para. 142.

2867. Request for relief in paragraph 387(m): “*Awards any other and further relief that the Tribunal deems just and proper*”.

2868. The Tribunal reiterates its ruling in paragraph 2830 above in connection with this request.

2869. Request for relief in paragraph 388: “*The Republic reincorporates by reference its Request for Relief in Track I and in its Track II Counter-Memorial on the Merits to the extent that such Request remains pending.*”

2870. To the extent relevant, the Tribunal reiterates its rulings in paragraph 2832 above in connection with this request.

2871. Request for relief in paragraph 389: “*The Republic reserves its rights to supplement its pleadings and request for relief.*”

2872. The Tribunal takes note of this reservation of rights.

6. Requests in Track II Supplemental Counter-Memorial dated 7 November 2014

2873. Request for relief in paragraph 481(c): “*Declaring that Claimants do not possess the rights they claim to have under the 1995 Settlement Agreement, the 1998 Final Release, and/or the 1996 Local Settlements in connection with the Lago Agrio Litigation.*”

2874. The Tribunal reiterates its ruling in paragraph 2862 above in connection with this request.

2875. Request for relief in paragraph 481(e): “*Denying all the relief and each remedy requested by Claimants in relation to Track II, including the relief requested in Paragraph 199 of their Supplemental Track II Memorial on the Merits*”.

2876. The Tribunal reiterates its ruling in paragraph 2832 above in connection with this request.

2877. Request for relief in paragraph 482(b): “*Declares that the Respondent is under no obligation to indemnify, protect, defend or otherwise hold Claimants harmless against claims by third parties, including but not limited to, Claimants’ request for attorneys’ fees incurred in any enforcement action in any jurisdiction*”.

2878. The Tribunal reiterates its ruling in paragraphs 2825-2826 above in connection with this request.

2879. Request for relief in paragraph 482(c): “*Declares that Claimants are not entitled to moral damages*”.

2880. This request is granted, as set out in paragraph 2564 above.

2881. Request for relief in paragraph 483: “*In all events, the Republic requests that, pursuant to Article 40 of the UNCITRAL Arbitration Rules, Claimants be ordered to pay all costs and expenses of this arbitration proceeding, including the fees and expenses of the Tribunal and the cost of the Republic’s legal representation, plus pre-award and post-award interest thereon. The Republic also asks that the Tribunal grant it any other and further relief that the Tribunal deems just and proper.*”

2882. The Tribunal reiterates its rulings in paragraphs 2828 and 2830 above in connection with this request.

2883. Request for Relief in paragraph 484: “*The Republic incorporates by reference its Request for Relief in Track I and in its Track II Counter-Memorial and Rejoinder on the Merits to the extent that such Requests remain pending.*”

2884. To the extent relevant, the Tribunal reiterates its rulings in paragraph 2832 above in connection with this request.

7. Requests in Track II Supplemental Rejoinder on the Merits dated 17 March 2015

2885. Request for relief in paragraph 446(c): “*Declaring that Claimants do not possess the rights they claim to have under the 1995 Settlement Agreement, the 1998 Final Release, and/or the 1996 Local Settlements in connection with the Lago Agrio Litigation*”.

2886. The Tribunal reiterates its ruling in paragraph 2862 above in connection with this request.

2887. Request for relief in paragraph 446(e): “*Denying all the relief and each remedy requested by Claimants in relation to Track II, including the relief requested in Paragraph 435 of their Supplemental Track II Reply*”.

2888. The Tribunal reiterates its ruling in paragraph 2832 above in connection with this request.

2889. Request for relief in paragraph 447(b): *“Declares that the Respondent is under no obligation to indemnify, protect, defend or otherwise hold Claimants harmless against claims by third parties, including but not limited to, Claimants’ request for attorneys’ fees incurred in any enforcement action in any jurisdiction”*.

2890. The Tribunal reiterates its ruling in paragraphs 2825-2826 above in connection with this request.

2891. Request for relief in paragraph 447(c): *“Declares that Claimants are not entitled to moral damages”*.

2892. The Tribunal reiterates its ruling in paragraph 2880 above in connection with this request.

2893. Request for relief in paragraph 448: *“In all events, the Republic requests that, pursuant to Article 40 of the UNCITRAL Arbitration Rules, Claimants be ordered to pay all costs and expenses of this arbitration proceeding, including the fees and expenses of the Tribunal and the cost of the Republic’s legal representation, plus pre-award and post-award interest thereon. The Republic also asks that the Tribunal grant it any other and further relief that the Tribunal deems just and proper”*.

2894. The Tribunal reiterates its ruling in paragraph 2828 above in connection with this request.

2895. Request for Relief in paragraph 449: *“The Republic incorporates by reference its Request for Relief in Track I and in its Track II Counter-Memorial, Rejoinder, and Supplemental Counter-Memorial, to the extent that such Requests remain pending.”*

2896. To the extent relevant, the Tribunal reiterates its rulings in paragraph 2832 above in connection with this request.

8. Requests in Submission on Costs dated 28 November 2018

2897. In this Submission on Costs, the Respondent claimed a total of USD 72,825,262.65 for legal fees and costs, while reserving its right to update this amount. In this respect, the Tribunal reiterates its ruling in paragraph 2828 above in connection with this request.

9. Requests in Counter-Memorial on Damages dated 28 February 2020

2898. Request for Relief in paragraph 1382(a): *“Denying all the relief and each remedy requested by Claimants in paragraph 479 of their Memorial on Damages and paragraph 1212 of their Reply”*.

2899. This request is not granted, subject to the Tribunal’s declarations and orders in Section XIV below.

2900. Request for Relief in paragraph 1382(b): *“Should the Tribunal consider that its Interim Awards have not been superseded by the Second Partial Award on Track II, granting Respondent’s application of 1 March 2013 for “Reconsideration of the First, Second and Fourth Interim Awards” and vacating those Awards”*.

2901. This request is not granted. As noted in paragraph 415 above, the Tribunal declines to reconsider and instead re-confirms that the Respondent violated its First and Second Interim Awards on Interim Measures dated 25 January and 16 February 2012 in breach of Article VI of the Treaty, Article 32(3) of the UNCITRAL Arbitration Rules and international law.

2902. Request for Relief in paragraph 1382(c): *“Pursuant to Article 40 of the UNCITRAL Arbitration Rules, ordering Claimants to pay all the costs and expenses of this arbitration proceeding, including the fees and expenses of the Tribunal and the costs of Respondent’s legal representation and assistance, plus pre-award and post-award interest thereon.”*

2903. The Tribunal reiterates its ruling in paragraph 2828 above in connection with this request.

2904. Request for Relief in paragraph 1383: *“Respondent also asks that the Tribunal grant it any other and further relief that the Tribunal deems just and proper”*.

2905. The Tribunal reiterates its ruling in paragraph 2830 above in connection with this request.

10. Requests in Response to the Claimants’ Request for a Partial Award dated 19 May 2020

2906. Request for Relief in paragraph 214(1): *“Reject the relief sought in paragraph 175 of the Claimants’ Request for a Partial Award”*.

2907. The Tribunal recalls that paragraph 175 of the Claimants' Request for a Partial Award reads:

In light of the foregoing, Claimants respectfully ask the Tribunal for a Partial Award declaring that:

(1) Ecuador's claim for a reduction in damages in this case based upon its hypothetical "but-for" scenario is precluded by the doctrine of *res judicata* and/or international law.

(2) What Ecuador in its Counter-Memorial refers to as "collective" claims are in fact "diffuse" claims encompassed in the 1995 and 1998 Settlement and Release Agreements, as previously determined by the Tribunal in its prior awards and decisions, which are *res judicata*.

(3) Ecuador's argument that Claimants failed to mitigate their damages by not pursuing local remedies under Ecuadorian law is precluded under the doctrine of *res judicata*.

2908. In its Partial Award on Track III, the Tribunal ruled that (i) there is no finding in the Tribunal's Track II Award that the entire Lago Agrio proceeding was pervaded by a denial of justice comprised of fraud and corruption, such that it would bar the Respondent's request for a reduction in damages based upon a hypothetical "but-for" scenario as a matter of *res judicata* or international law;⁴⁵⁸⁸ (ii) its prior rulings do not preclude an offset based on individual claims or collective claims, to the extent that it refers to the legal costs that the Claimants would in all probability have incurred in defending themselves against those claims in a Treaty-compliant Lago Agrio Litigation;⁴⁵⁸⁹ and (iii) the Tribunal's prior rulings do not preclude the Respondent's argument that the Claimants failed to mitigate their damages by not pursuing local remedies under Ecuadorian law.⁴⁵⁹⁰

2909. Furthermore, the Tribunal's determinations regarding the applicable Treaty-compliant but-for scenario and its impact on the Claimants' damages claims are set out in paragraphs 378-395 and 731-738 above. In turn, in paragraph 477 above the Tribunal has dismissed the Respondent's defences based on the Claimants' failure to mitigate (i) by failing to recuse Judge Zambrano; (ii) by failing to post a bond to suspend the enforceability of the Lago Agrio Judgment; (iii) by failing to file an action under the CPA.

⁴⁵⁸⁸ Partial Award on Track III, paras. 125-127, 188(i).

⁴⁵⁸⁹ Partial Award on Track III, para. 188(ii).

⁴⁵⁹⁰ Partial Award on Track III, para. 188(iv).

2910. The Respondent's request under the present heading is rejected to the extent it contradicts the Tribunal's aforementioned determinations.

2911. Request for Relief in paragraph 214(2): "*Declare that Respondent's contentions for reduction of damages based on its "but-for" argument are not precluded by res judicata and/or international law*".

2912. The Tribunal reiterates its ruling in paragraph 188(iii) of the Partial Award on Track III that any hypothetical but-for scenario offset should in principle be limited to the confines of the claims actually pleaded by the 48 named Lago Agrio Plaintiffs and to the actual Lago Agrio Litigation record. It also reiterates its ruling in paragraphs 2907-2909 above. The Respondent's request under the present heading is rejected to the extent it contradicts the Tribunal's aforementioned determinations.

2913. Request for Relief in paragraph 214(4): "*Declare that the consideration of Respondent's but-for argument shall not be limited to evidence in the record of the Lago Agrio proceedings*".

2914. The Tribunal reiterates its ruling in paragraph 2912 in connection with this request.

2915. Request for Relief in paragraph 214(6): "*Award Respondent all of its costs of arbitration, including its cost of representation, in connection with the Request together with interest at a reasonable rate*".

2916. The Tribunal reiterates its ruling in paragraph 2828 above in connection with this request.

11. Requests in Second Submission on the Claimants' Request for a Partial Award dated 15 January 2021

2917. Request for Relief in paragraph 283(1): "*Reject the relief sought in paragraph 175 of the Claimants' Request for a Partial Award and paragraphs 222 and 223 of Claimants' Second Submission*".

2918. The Tribunal reiterates its ruling in paragraph 2912 in connection with this request.

2919. Request for Relief in paragraph 283(2): "*Declare that Respondent's contentions for reduction of damages based on its "but-for" argument are not precluded by res judicata and/or international law*".

2920. The Tribunal reiterates its ruling in paragraph 2912 in connection with this request.

2921. Request for Relief in paragraph 283(4): “*Declare that the consideration of Respondent’s but-for argument shall not be limited to evidence in the record of the Lago Agrio proceedings*”.

2922. The Tribunal reiterates its ruling in paragraph 2912 in connection with this request.

2923. Request for Relief in paragraph 283(6): “*Award Respondent all of its costs of arbitration, including its cost of representation, in connection with the Request together with interest at a reasonable rate*”.

2924. The Tribunal reiterates its ruling in paragraph 2828 above in connection with this request.

2925. Request for Relief in paragraph 284: “*Respondent respectfully requests further that the Tribunal decline to make determinations with respect to the issues raised by Claimants’ arguments, as identified above, pertaining to the merits of Respondent’s environmental but-for argument and proceed to the consideration of all Track III issues*”.

2926. The Tribunal reiterates its ruling in paragraph 2912 in connection with this request.

12. Requests in Rejoinder on Damages dated 28 May 2022

2927. Request for Relief in paragraph 1940(a): “*Denying all the relief and each remedy requested by Claimants in paragraph 479 of their Memorial on Damages and paragraph 1212 of their Reply*”.

2928. The Tribunal reiterates its ruling in paragraph 2899 above in connection with this request.

2929. Request for Relief in paragraph 1940(b): “*Should the Tribunal consider that its Interim Awards have not been superseded by the Second Partial Award on Track II, granting Respondent’s application of 1 March 2013 for “Reconsideration of the First, Second and Fourth Interim Awards” and vacating those Awards*”.

2930. The Tribunal reiterates its ruling in paragraph 2899 above in connection with this request.

2931. Request for Relief in paragraph 1940(c): “*Pursuant to Article 40 of the UNCITRAL Arbitration Rules, ordering Claimants to pay all the costs and expenses of this arbitration*”.

proceeding, including the fees and expenses of the Tribunal and the costs of Respondent's legal representation and assistance, plus pre-award and post-award interest thereon."

2932. The Tribunal reiterates its ruling in paragraph 2828 above in connection with this request.

2933. Request for Relief in paragraph 1941: *"Respondent also asks that the Tribunal grant it any other and further relief that the Tribunal deems just and proper"*.

2934. The Tribunal reiterates its ruling in paragraph 2830 above in connection with this request.

13. Request in Respondent's Cash Call Application dated 2 September 2022

2935. In this Application, Respondent requests that the Tribunal "strike from the damages claim any fees and costs that Claimants attribute to the [Claimants'] Ecuador Legal Team, and in the alternative, draw an adverse inference against Claimants for failing to produce the invoices referenced in Claimants' Cash Call documents."

2936. The Tribunal's determinations in respect of the Cash Calls are set out in paragraphs 2091-2148 above. For the reasons set out therein, the Respondent's request under the present heading is rejected.

* * *

XIV. THE OPERATIVE PART

2937. For the reasons set out in this Award, based on the evidential materials adduced in these arbitration proceedings together with its earlier awards, orders and decisions, the Tribunal makes the following orders under the Treaty and international law:

A. DECLARATIONS AND ORDERS AS TO COMPENSATION

2938. The Tribunal declares that in order to make full reparation in the form of compensation for the injuries caused to the First and Second Claimant by the recognition and enforcement of the unremedied Lago Agrio Judgment (as also decided by the Lago Agrio Appellate Court, Cassation and Constitutional Courts), the Respondent must pay the following sums to the First Claimant:

- (i) USD 41,587,664.54, representing legal fees and expenses awarded as damages in connection with the Lago Agrio Litigation;**
- (ii) USD 1,261,521.19, representing legal fees and expenses awarded as damages in connection with the Ecuador Enforcement Proceedings;**
- (iii) USD 10,469,299.38, representing legal fees and expenses awarded as damages in connection with the Argentina Enforcement Proceedings;**
- (iv) USD 14,136,263.73, representing legal fees and expenses awarded as damages in connection with the Brazil Recognition Proceedings;**
- (v) USD 30,047,127.12, representing legal fees and expenses awarded as damages in connection with the Canada Enforcement Proceedings;**
- (vi) USD 14,282,909.81, representing legal fees and expenses awarded as damages in connection with the damages category “Costs of Planning Against Potential Enforcement in Other Jurisdictions”;**
- (vii) USD 33,322,257.24, representing legal fees and expenses awarded as damages in connection with the RICO Litigation, as decided by the majority of the Tribunal;**

- (viii) USD 8,728,717.69, representing legal fees and expenses awarded as damages in connection with the Section 1782 Proceedings;**
- (ix) USD 26,566,930.75, representing legal fees and expenses awarded as damages in connection with the Gibraltar Proceedings;**
- (x) Pre-award interest on the amounts indicated earlier in this paragraph, calculated at the 1-year U.S. Treasury bill rate, from the date of payment of each invoice corresponding to legal fees and expenses awarded by the Tribunal as damages until the date of this Award, compounded annually; and**
- (xi) Post-award interest at the rate of 1-year U.S. Treasury bill + 2 %, which shall otherwise be calculated in the same manner as pre-award interest, from the date of this Award until the date of full payment.**

2939. The Tribunal declares that any sums collected by the First Claimant in connection with the *Amazonia* Damages Judgments, as well as any costs the First Claimant may in the future collect in the RICO Litigation, must be deducted from the amount of compensation due to the First Claimant under paragraph 2938(vii) above.

2940. The Tribunal orders the Respondent to pay the amounts indicated in paragraph 2938 above to the First Claimant, subject to its declaration in paragraph 2939 above.

2941. The Tribunal reiterates its declaration in paragraph 10.11 of the Track II Award that any injury to the First Claimant or the Second Claimant caused by the recognition or enforcement of any part of the Lago Agrio Judgment within or without Ecuador (as decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) shall be injuries for which the Respondent is liable to make reparation under international law.

B. DECLARATIONS AND ORDERS AS TO INJUNCTIVE RELIEF

2942. The Tribunal confirms and restates with full force and effect the orders set out in paragraph 10.13 of the Track II Award.

2943. The Tribunal declares that the Respondent, by failing to remove the status of enforceability from the Lago Agrio Judgment through steps of its own choosing to

this date, has failed to meet its obligations under paragraphs 10.13(i), (ii), (vi), and (vii) of the Track II Award and, accordingly, orders the Respondent to take immediate steps to meet these obligations.

C. LEGAL AND ARBITRATION COSTS

2944. All issues relating to the allocation and assessment of costs and expenses (within the meaning of Articles 38-40 of the UNCITRAL Arbitration Rules), as claimed by the Claimants and the Respondent, are currently assigned for further submissions by the Parties later in these arbitration proceedings. These issues are not decided in this Award.

2945. Pursuant to paragraph 13 of Procedural Order No. 84, dated 13 November 2022, and subject to any further order of the Tribunal, the Parties shall each file a statement of their respective costs no later than 90 days after the issuance of this Award.

D. MISCELLANEOUS

2946. The Tribunal declines to reconsider and instead re-confirms, as declared in its Fourth Interim Award and confirmed its Track II Award, that the Respondent violated its First and Second Interim Awards on Interim Measures dated 25 January and 16 February 2012 in breach of Article VI of the Treaty, Article 32(3) of the UNCITRAL Arbitration Rules and international law.

2947. The Parties' extant requests for relief, as marked-up in the enclosures to their respective letters dated 20 October 2025, shall be addressed by the Parties in Track IV of these arbitration proceedings.

2948. Save as aforesaid, the requests for relief made by the First and Second Claimants for decision in this Track III are not granted, and the requests for relief made by the Respondent for decision in this Track III are not granted.

2949. This Award, although separately signed by the Tribunal's members on three signing pages, constitutes a "partial award" signed by the three arbitrators under Article 32 of the UNCITRAL Arbitration Rules.

Made at The Hague, the Netherlands as the place (or seat) of this Arbitration, by the
Tribunal,

On 17 November 2025

Dr Horacio Grigera Naón:

*Subject to his Note of Partial Dissent
On the Rico Litigation Claim*



Professor Vaughan Lowe KC:

Professor Albert Jan van den Berg (President):

Made at The Hague, the Netherlands as the place (or seat) of this Arbitration, by the Tribunal,

On 17 November 2025

Dr Horacio Grigera Naón:



Professor Vaughan Lowe KC:

Professor Albert Jan van den Berg (President):

**Made at The Hague, the Netherlands as the place (or seat) of this Arbitration, by the
Tribunal,**

On 17 November 2025

Dr Horacio Grigera Naón:

Professor Vaughan Lowe KC:

Professor Albert Jan van den Berg (President):

