

August 4, 2015

Catherine O'Hagan Wolfe
Clerk, U.S. Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
New York, NY 10007

Re: *Chevron v. Donziger* (Nos. 14-0826, 14-0832) – Supplemental authority under Rule 28(j)

Dear Ms. Wolfe:

The D.C. Circuit issued a decision today in *Chevron v. Republic of Ecuador*, affirming confirmation of a \$96 million arbitral award owed to Chevron by Ecuador. The decision is attached. As explained at pages 13 and 42 of our reply, the arbitral award's confirmation bears on two threshold issues in this appeal: Article III and RICO standing—both of which Chevron lacks.

As to Article III, Chevron has proposed three injuries: (1) “attachment” of the arbitral award, (2) “attachment” of Ecuadorian trademarks owned by indirect subsidiaries, and (3) costs of enforcement actions. Today's decision confirms that any injury caused by the award's attachment is far too speculative. If Chevron can enforce the award outside Ecuador, how is it injured by its attachment in Ecuador? And how would any harm be redressed by the injunction anyway? Chevron's other asserted injuries fare no better. It hasn't shown that any harm related to the subsidiary's trademarks could be redressed here. Nor could the injunction possibly redress costs incurred in foreign enforcement actions—actions the injunction expressly permits. And, as discussed in our supplemental letter brief, the potential future costs of defending a hypothetical U.S. enforcement action are highly speculative at best, and well short of “certainly impending.” Dkt. 422-1 at 6.

On RICO standing, Chevron's failure is even more glaring. Today's decision underscores that the arbitral award's attachment is exceedingly unlikely to ever cause any “actual, quantifiable” injury that is “clear and definite.” Reply 41. That disqualifies it as Chevron's RICO injury. *See* Reply 42-43; *Stochastic v. DiDomenico*, 995 F.2d 1158, 1165-67 (2d Cir. 1993). And, as explained in our reply (at 41-43), Chevron's other proposed injuries are vague, hypothetical, intangible, or self-inflicted.

Nor has Chevron come close to satisfying RICO's equally fundamental standing requirement: but-for causation. Time and again, we have raised this shortcoming and asked Chevron to explain how it can possibly demonstrate but-for causation. And time and again, Chevron has dodged the question, responding with conclusory statements citing to still more conclusory statements in its briefing. *See* Dkt. 426-1 at 10 n.7 (“Not so.”). RICO and Article III demand more.

Respectfully submitted,

/s/ Deepak Gupta

Deepak Gupta
Counsel for the Donziger Appellants