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September 11, 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 Corp. v. Donziger* (Nos. 14-0826, 14-0832) – Supplemental authority under Rule 28(j)
Chevron Corp. v. Yaijuaje, [2015] S.C.R. 42 (Can. Sept. 4, 2015) (attached)

Dear Ms. Wolfe:

Last Friday, the Supreme Court of Canada unanimously held that the Ecuadorian judgment "merits the assistance and attention of the Ontario courts." Op. ¶77. In so holding, the Court affirmed two lower courts and rejected Chevron's argument that Canadian courts lack jurisdiction to determine the judgment's enforceability. Three aspects of the decision bear emphasis:

First, although its holding was jurisdictional, the Court grounded its analysis in international-comity principles, much as this Court did in *Chevron v. Naranjo*, 667 F.3d 232 (2012). "Facilitating comity and reciprocity," the Court emphasized, are "two of the backbones" of the foreign-money-judgment-enforcement regime; they "call[] for assistance, not barriers." Op. ¶69. As "[c]ross-border transactions and interactions continue to multiply[,] … comity requires an increasing willingness on the part of courts to recognize the acts of other states"—not thwart them. Op. ¶75.

Second, just as *Naranjo* "stress[ed]" that the Ecuadorian plaintiffs "may seek to enforce [their] judgment in any country in the world where Chevron has assets," Op. ¶7, the Supreme Court did likewise: It explained that Chevron "may be called upon to answer for [its] debts in various jurisdictions" because of its "own behaviour and legal noncompliance." Op. ¶55.

Third, the Court emphasized—as did *Naranjo*—that "no unfairness results to judgment debtors from having to defend against recognition and enforcement proceedings." *Id.*; *Naranjo*, 667 F.3d at 246 (deeming this a "far better remedy" than a preemptive attack). After noting that Judge Kaplan's "decision and the underlying allegations of fraud are not before this Court," the Court made clear that on remand Chevron may raise "any one of the available defences to recognition and enforcement"—including "fraud, denial of natural justice, or public policy." Op. ¶¶7, 77.

In short, the Canadian decision reinforces what *Naranjo* already recognized: permitting a preemptive collateral attack would do great violence to international comity, while accomplishing nothing. That's also why there is no such cause of action, no standing, and no need for equitable relief. If Chevron must defend itself in Canada no matter what happens here, what is to be gained by injecting the U.S. courts into the fray?

Respectfully submitted,

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