ANNEX H: SUMMARY OF LAGO AGRIO'S FIRST INSTANCE AND APPELLATE COURT DECISIONS

I. First Instance Judgment Dated Feb. 14, 2011 (C-931)

1. (1) Chevron's February 3, 2011 motions and documents are added to the record. Refers to Old Civil Code ("CC") 2241 and 2256 (New CC 2214 and 2229); 169 ILO [International Labor Organization]; 23(6) and 86 of 1998 Constitution; Old CC 2260 (New CC 2236) [Popular Action]; 41 EMA.

2. (2)-(3) Summary of remedies sought 43 EMA; CC 2261.

3. (3)-(4) Summary of defenses asserted

4. (4)-(5) Competence The court has competence [jurisdiction] under the Constitution, OCJB [Organic Code of the Judicial Branch], 29 CCP [Code of Civil Procedure], 42 EMA in that the harm was incurred within the court's geographical jurisdiction; Chevron's allegation that it is not the successor to Texaco does not deprive the court of jurisdiction or competence, but would only bear on the defense of lack of a legitimate opposing party.

5. (6)-(16) Jurisdiction over Chevron The court also finds that Chevron is liable for Texaco's liability to plaintiffs for a number of reasons, including 337, 338 and 341 of the Law of Companies ("LC"), Chevron's press releases, statements of Chevron's CEO and President on which plaintiffs reasonably relied. Since Texaco directed, supervised and controlled TexPet's operations in Ecuador, Chevron is also liable for TexPet's acts.

6. (18)-(25) Corporate veil The court also determines that in any event the corporate veil should be pierced in this case; Texaco transferred capital to TexPet to allow it to meet expenses. (23)-(25) The court also discusses interlocking directors and officers. (25)-(26) Not to lift the corporate veil here would be to perpetuate a fraud, since Texaco controlled TexPet and

did not adequately capitalize it for its operations, but had to constantly infuse capital; Texaco was trying to leave the assets in the parent company and put the liabilities in the subsidiary.

7. (26)-(27) Improper joinder Pursuant to specific legal provisions, this action must be heard in a summary verbal proceeding, not an ordinary proceeding; Old CC 2241, 2256 and 2260 (New CC 2214, 2229 and 2236); 59 CCP and 42 and 43(5) EMA.

8. (27)-(28) Non-retroactivity of the EMA 7(20) CC; 42 and 43(5) EMA provides procedural norms, not substantive rights; 163(2) OCJB.

9. (28) Non-retroactivity of 169 ILO: This defense is upheld.

(29) Prescription (statute of limitations) with respect to Chevron 2259 CC; The merger binds Chevron to the order of the U.S. court tolling the limitations period with respect to Texaco.

10. (29) Plaintiffs' lack of connection with Chevron no direct connection is needed, and the merger of Texaco and Chevron supplies a sufficient connection with Chevron.

11. (30)-(33) Release pursuant to the 1995 Settlement Agreement The court finds that Plaintiffs are not bound by the Government's release because they are not signatories; the clear language shows that the Government and PetroEcuador gave a release only on their own behalf; the Constitution and international law prevent the Government from depriving Plaintiffs of their inalienable right to seek redress.

12. (34) Further discussion of the fact that the scope of the release did not include the Plaintiffs, so did not extinguish their claims.

13. (33)-(34) Failure to conform to New 2236 CC (Old 2260 CC): 43 EMA provides for verbal summary proceedings in cases of claimed environmental harm.

14. (35)-(36) FOURTH: Chevron's motions complaining of the Court's tardiness are baseless and evidence of bad faith.

15. (36)-(38) Judicial inspections Chevron has claimed that the terms of reference for over 100 judicial inspections constitute a "procedural contract," which the court denies; the court can accept or reject the experts' reports based on his own sound judgment; the judge is not required to appoint a third expert and must consider principles of procedural economy.

16. (39) Compliance with formalities and due process Chevron has alleged crucial errors everywhere, demonstrating its lack of objectivity; the judge in fact considered all of Chevron's challenges and claims of error in the proper manner.

17. (40) To the extent that Chevron argues that plaintiffs' experts testified to legal conclusions, the judge did not consider those conclusions since they were outside the expert's scope of expertise and were for the judge to decide.

18. (40)-(42) The judge reviews the redundant Chevron complaints about essential error in plaintiffs' expert reports and states that he could not have overlooked Chevron's position because it was repeated with respect to almost every one of plaintiffs' expert reports, such that "it is virtually impossible for an essential error to escape the eyes of the judge."

19. (43)-(45) The expert answered all of Chevron's questions, except concerning the retroactive application of the law; Chevron tried to initiate 26 summary lawsuits to challenge experts, which the judge finds to be a litigation tactic and not an effort to correct essential errors; Chevron's assertions are really just disagreements over interpretation of data and application of law, which the judge could take into consideration in making his decision; the HAVOC Laboratory was ruled unaccredited by the Ecuadorian Accreditation Agency, but so was the Severn Trent Laboratory used by Chevron; the judge will consider both laboratories' results, keeping in mind that they had foreign, but not local Ecuadorian, accreditation.

20. (46)-(47) Chevron claims that the judge's acceptance of plaintiffs' waiver of its remaining inspections assumes that he has accepted plaintiffs' claims as proven; this is untrue and no judge on this case has ever said that; each party must prove its case and is free to withdraw proofs at the risk of not proving its case.

21. (48)-(49) Allegations of Calmbacher fraud and misconduct Chevron has submitted evidence that Dr. Calmbacher's expert reports were forged. Accordingly, although there were labor and payment issues between plaintiffs and Dr. Calmbacher, the judge will not consider Judge Calmbacher's testimony in this ruling.

22. (49)-(51) Allegations of Cabrera fraud and misconduct Chevron's motion that the Court not consider the Cabrera Report will be granted.

23. (51) Allegations of Donziger fraud and misconduct Donziger's statements, some of which are "disrespectful," are rejected and ignored; he is not a "procedure party" although has made statements on behalf of plaintiffs; no pressure has effectively been exerted on this Court, despite what Donziger may have said in front of the cameras.

24. (52)-(53) Allegations of Borja fraud and misconduct Borja was linked to Chevron and Chevron's defense team as a consultant; as a result of Borja's clandestine films Dr. Nuñez excused himself as a judge in this case; Borja's friend Escobar taped him stating that portions of Chevron's tests were manipulated to avoid showing pollution; but the judge will not credit Escobar any more than Borja as stating valid proofs; they will not be held to bind Chevron any more than Donziger's statements will be held to bind plaintiffs.

25. (53-55) Allegations regarding Chevron's wrongful suspension of El Guanta site inspection The evidence submitted shows that the inspection was suspended by the Judge, because he was misled by the request of Chevron's attorney who filed with the court a false

intelligence report procured by Captain Bravo (Ret.), a former military officer who was employed by Chevron as part of its private security team. Nevertheless, while Chevron's conduct delayed and hampered the inspection, it did not impact the final resolution of this case.

26. (55) Resolution of all procedural motions This concludes the Court's analysis of the parties' motions related to the processing of the case.

27. (55) "Dilatory" or "later discovered" defenses to be addressed

28. (56)-(57) Counterfeit plaintiff signatures and invalid powers of attorney Plaintiffs have ratified their signatures and none has complained that his signature was forged or otherwise supported Chevron's charge; thus Chevron's charge is reckless and indicative of bad faith; the same applies to the claim that plaintiffs' attorneys (Wray and Fajardo) did not have legally valid powers of attorney.

29. (56)-(57) Competence of this Court The Court cites the "savings" legislation and resolution of the National Council on the Judiciary extending the competence and powers of the Superior Courts pending the enactment of new laws.

30. (57)-(58) Chevron's claim of "ideological falsification" by Plaintiffs' economic damages experts Plaintiffs submitted their experts' economic assessments applicable to the remediation without the Court's involvement in their selection simply as a reference for the Court, not as damage reports; the Court accordingly has not accepted these assessments as damage reports, as they were expressly submitted only as statements of Plaintiffs' position; even if Plaintiffs had committed fraud by using the work of Dr. Barnthouse, they clearly did not try to deceive the Court with false damage reports because they correctly described them as economic assessments submitted in compliance with the Court's earlier order; indeed, Chevron had done the same with its own economic assessments.

31. (58)-(60) Incivility of both counsel and Chevrons' counsel's affronts to the impartiality of the Court The incivility on behalf of both counsel to each other will cancel itself out; however, Chevron's counsel has made unfounded and untrue accusations against the Court for "judicial lynching" and wrongful appointment of a court expert; the National Judicial Council rejected Chevron's complaint and found no irregularity in the Court's appointment of its expert; there have been constant unfounded claims of the Court's partiality throughout the proceedings.

32. (60) Motions to review prior rulings Rehearing of rulings can only be heard once, so requests for a second or more rehearing must be disallowed under CCP Art. 291.

33. (60) FIFTH: No informalities or due process violation Summary oral procedure was the correct and valid form for this environmental case.

34. (60)-(74) SIXTH: Applicable environmental laws and regulations in effect The Court analyzes the laws in effect at the time that Chevron was Operator. Up until 1971 there was no law or regulation in place which established specific technical environmental obligations for the operator; in 1974 the Hydrocarbons Law Regulations required the Operator "to prevent harm to or danger to persons, property, natural resources …"; the Concession allowed the Operator to use the Concession without depriving the villages of the flow of water they need or depriving the waters of their potable and pure qualities; the Health Code in effect at the time also prevented unsanitary or toxic materials to be deposited in the soil or water without treatment; the Hydrocarbons Law of 1971 also required the Operator to protect flora and fauna and other natural resources; the Water Law also became effective in 1962; the State's control of the Operator does not serve to release the Operator from the consequences of violation of these laws; Chevron was legally bound to avoid any form or mode of contamination; the fact that specific regulations did not exist at the time setting maximum levels of contamination is of no

consequence; the Court agrees that retroactive application of later regulations is improper, and it has not done so; Chevron received numerous administrative fines and punishments for contamination of soil and water, so it was obviously aware that such contamination was proscribed; later numerical parameters for discharges have not been applied retroactively, but merely observed by the Court as reference parameters.

35. (74)-90) SEVENTH: Discussion of competing theories of extra-contractual liability and damages causation where defendant engaged in risky or hazardous activities, but did not intend to cause harm Judge states that Plaintiffs pled liability under Article 2256 [now Article 2229] of the Civil Code for risky or hazardous activities; refers to a 2002 Supreme Court decision. Requirements are (1) some legal harm (certain harm), (2) defendant's negligence or other "fault," and (3) a causal nexus between the two; a risky or hazardous activity presumes a causal nexus, and the burden of proof is on defendant to disprove the nexus; the fact that the State administratively authorized and regulated certain of Chevron's activities does not release Chevron from third-party liability; memoranda in the record of administrative sanctions imposed on Chevron by the State show the express reservation of third-party rights, so Chevron was aware of this at the time; the record also shows that Chevron did not intend to cause harm; however, Chevron clearly had knowledge of the potential harm it was causing, making that harm "foreseeable" and in civil law tantamount to intentional misconduct; there is an objective and a subjective method of determining whether harm is "foreseeable"; Judge relies on 1962 book "*Primer of Oil and Gas Production*" for the objective test of what a "good oil company" should do; the chapter by a Texaco employee also shows that this harm was "foreseeable" by Chevron under the subjective test as well; Judge discusses "risk distribution mechanism" ("no fault") which countries have been adopting to apply to endeavors which are beneficial but have greater

attendant risks; in these situations modern jurisprudence presumes "the fault of whoever uses and takes advantage of the risky thing through which the harm occurred"; Judge goes through the four different legal theories of "causation" and chooses the "theory of sufficient causation" or "the culpable creation of the unjustified risk of a hazardous situation"; the USA, England and Australia have developed the theory of the substantial factor and the theory of the most probable cause; this needs two elements: (1) the reasonable medical probability and (2) the substantial factor; in this complicated case, the separate "harms" must be analyzed separately.

36. (90)-(92) EIGHTH: The allowable relief sought in the complaint The relief sought in the complaint cannot supersede what the law allows or provides; because the State and municipalities have released Chevron, the funds cannot go to them to perform the remediation but under Article 43 of the EMA the Judge must award the funds to a qualified entity – not the Government – to carry out a lawful remediation, not necessarily the remediation (return to pristine conditions) that Plaintiffs have requested.

37. (92)-(154) NINTH: Judge's three major findings of fact (1) Texaco Petroleum Company (TexPet) was the Consortium Operator and legally responsible for Consortium operations (92-94); (2) environmental harm resulted from Texaco's operations (94-125); and (3) other types of harm also resulted from those operations (125-154).

1. Responsibility (92)-(94)

38. It is uncontested and legally proven that the operation of the Concession was the responsibility of TexPet as Operator under the Napo Agreement (JOA) until June 1990 (93); the Court notes that under Article 46.1 of the Concession Agreement the Operator, both as agent and principal, was obliged to protect "the flora and fauna and other natural resources" (93).

2. Environmental Harm (94)-(125)

39. The conflicting expert conclusions will be ignored but their evidentiary source is consistent and reliable, allowing the Court itself to draw reasonable conclusions as to contamination (95); Ecuadorian legislation as to maximum allowable limits of hydrocarbon concentration is used merely as a reference point, not applied retroactively (96); the absence of any regulation setting maximum limits for hexavalent Chromium (Chromium VI) concentrations did not implicitly authorize this hazardous substance to be dumped into the environment (99); discussion of TPH in samples (99); the Court finds that TPH levels should be considered along with rest of evidence since it is not a precise indicator of health risks (101); BTEX and PAH should also be considered, but TPH should not be ignored (101).

a. Contaminants In Soil (102)-(111)

40. TPH the Court discusses the TPH sample and sampling methodology disagreement between the parties ("grab sample" vs. "sample homogenization" ["compositing"]) (102-104); defendants produced four times as many samples as plaintiffs, lowering the overall percent of TPH samples < 1,000 ppm to 80% (102); plaintiffs' samples showed only 38% < 1,000 ppm while defendants' samples showed 88% < 1,000 ppm (102); defendants defended the homogenization technique as correct (103); plaintiffs measured TPH in mg./kg., while defendants split TPH into gas (GRO) and diesel (DRO) (104); every Concession field shows similar TPH concentrations (104); the Court lists TPH samples taken by various experts at various fields to show that TPH ranges are very similar for all samples sites (including RAP sites and non-RAP sites) "which gives us certainty that environmental conditions are similar in all of the sites, even if they have been covered by the [earlier] remediation work mentioned and regardless of whether they have been abandoned since then or are in operation." (105-06); "based on the results obtained from a representative number of all the sites operated by TexPet, it

is possible to deduce predictable results for the rest of the sites not considered in the sample." (106).

Benzine	14 site samples (plaintiffs and defendants) reflect benzene, the most powerful carcinogenic substance found in the site samples (107);
Toluene	10 samples (plaintiffs and defendants) show toluene contamination (108);
PAHs	54 samples between 1.1 and 3,142 mg./kg. (108)-(109);
Mercury	cites to several inspection results (109);
Lead	samples show excessive lead levels (109)-(110);
Cadmium	151 results between 1 and 316 mg./kg. (110);
Chromium VI	108 samples between 0.42 and 87 mg./kg (111);
Barium	widely reported in defendants' sampling; not listed as a carcinogen because not extensively studied, however the court finds it hazardous in the concentrations shown in the sampling (111)-(112).

b. Contaminants In Water (112)-(119)

41. Surface water the Court is "disturbed" by difference in findings of parties' respective experts with respect to effects on water (112); but the findings of Court's appointed expert, Jorge Bermeo, agree with those of plaintiffs' experts (112). However, Pérez Pallarez published in 2007 that TexPet had dumped 15.8 billion gallons of production water (containing BTEX, TPH and PAH) from 1972 – 1990 (113); this allows the Court to presume that the dumping caused a negative impact on surface waters being used for human consumption (113); TexPet 's defenses to this are discussed and dismissed by the Court (113)-(115); the Court discusses Bermeo's findings of mercury and bioaccumulation of hydrocarbons in fish tissue "way above the maximum levels for water" because of dumping (115)-(116).

42. Ground water the Court finds that some of the samples show that hydrocarbons leached through pit bottoms, showing that the soil was not impermeable and that pits are a potential source of groundwater contamination (117); plaintiffs claim that buried oil does not weather or volatilize (118); Michael Martinez, TexPet's Manager, was warned by a TexPet engineer Granja in a 1976 memo that seepages of oil from wells were contaminating nearby streams (119); the Court does not find defendant's expert rebuttal to be credible (119).

43. Third party liability (PetroEcuador) Defendants blame a third party, PetroEcuador, for disposing of produced water in the same manner and for spills from wells it was operating (119)-(122); Gerardo Barros also testified to PetroEcuador's polluting practices (122); the Court excludes harm caused by third parties from this lawsuit for 3 reasons (123): (1) PetroEcuador is not a party and cannot defend itself here; (2) no monetary claim has been made against PetroEcuador in this proceeding and no harm caused by it will be attributed to TexPet or reparable in this judgment; and (3) TexPet's liability for the harm it caused is not extinguished by new harm caused by another person (123)-(124).

44. Court's conclusions on environmental harm (1) TexPet's operating practices were the same at all Concession sites they operated; (2) there are 7.392 million cubic meters of contaminated ground areas; (3) the surface water used for human consumption has received 16 billion gallons of formation water from TexPet dumping, which is a significant impact; and (4) there exist risks of leaks from the pits that could affect the groundwater (125).

3. Other Types Of Harm (125)-(154)

45. There is a negative impact on: (1) human health (125)-(152) and (2) indigenous communities' cultural identity and integrity (152)-(154).

46. Human health studies (125)-(138) the right to health is a universal and fundamental human right (126); this right is especially linked to the right to human dignity, non-discrimination and equality (126); defendant claims infant mortality in the oil region is similar to that in the rest of Ecuador (126); the Court conducts a lengthy discussion of the fact that disease and mortality in the Concession area is underreported (lack of data) because of a "bias" — the virtual absence of the State in this area (127); that these people do not have either comparable health services or tap water, and thus have both undiagnosed illnesses and a greater reliance on natural water sources, making the "official statistics" on which TexPet relies (i.e., no higher disease incidence here) biased (127)-(129); but other comments in the reported statistics do mention elevated ecological impacts of oil drilling with out risk analysis (128); the statistics show that 19% of Amazon people use rivers, lakes or ditches for potable water, compared with 5.7% elsewhere in Ecuador (129). The Court focuses on "non-contagious chronic diseases" as the subject of this lawsuit (129); defendant claims the disease incidence is caused by poverty alone, but the Court finds that there is another common denominator, contamination, that exacerbates the problems of poverty (130); Judge credits Jorge Bermeo's studies on fish tissue, which show TPH values well above permissible values for water, as well as ATSDR publications indicating toxicity of hydrocarbon compounds (130)-(131); the Court discusses the pre-litigation Yana Curí Report which opines on studies showing the impact of oil on animal and human health, including exposure to BTEX and PAH compounds (131)-(133); the Court credits this report because it compares the Amazon population with similar population not exposed to oil, its results are statistically significant, it uses data on both humans and animals, and its results are consistent with the results expected from exposure to oil (134); Court also discusses study "Cancer in Ecuadorian Amazon," which compared oil provinces with other provinces and found

a significantly higher incidence of cancer in former (140% for men and 163% for women), which provided "statistical data of highest importance to … this ruling" and "will be considered to establish causation." The Court agrees with the report's conclusion pointing "to the data as suggesting [but not by itself necessarily proving] a link between the risk of contracting cancer, and living in cantons with a long history of oil-related activities." (134)-(135) Court notes that all the evidence generally lines up to suggest a causality factor, including "the consistency with other investigations that relate chemical compounds in oil to cancer." (135); Court reviews Dr. San Sebastían's peer reviewed publication and agrees that it only provides a "suggestion" of cancer causation, not a proof (136); Court discusses Pallares/Yépez survey, "Texaco's Legacy" containing several reported instances of health problems, which the Court accepts as a valid survey, but not as formal testimony rendered before a competent judge (136)-(137); another field study by Bejarano interviewed 1,017 families in the region, of which 957 claimed to be severely affected and complained of oil contamination of their water sources (137)-(138); the Court will not accept this survey as proof of causation, as one of the authors had been hired by the Front, and the Judge therefore questioned his impartiality, but will consider its contents along with the other evidence (138); the Court notes that the case issues involve epidemiological (public health) disease causation, not individual disease causation, and thus will only evaluate the environmental injury to the public health for purposes of reparation of the environment (138).

47. Human health interviews at judicial inspections (139)-(154): pursuant to article 245 of the Code of Civil Procedure (139); the Court quotes from interviews of residents which took place at the judicial inspections, all of whom testify to oil contamination and its effect on them, their families, their crops and their livestock (139)-(144); Court: "these statements will be considered with the value they deserve and in accordance with the rules of sound judgment, and

together with the other evidence submitted by the parties." (144) The Court notes that these interview statements are both consistent with each other and unrebutted by contrary interview statements, which "leads us to think that the suffering mentioned in these statements is real." (144) The Court cites TexPet's attorney Callejas as to the proper three-point method of determining health risks from environmental contamination, and notes that all three points are present here: (1) source of contamination, (2) exposure pathway(s) to a receiver, and (3) the existence of a receiver (145)-(146); the Court says that reparation for damage to flora and fauna has been alleged, but that loss of livestock has not been claimed as monetary damages (147); Court reviews interviews involving loss of farm animals (148)-(152); Court concludes from this that "the wild, domestic and farm animals exposed to substances derived from the oil industry were adversely affected, to the detriment of the productive capacity and quality of food of the people." (152) Court finds there can be no compensation for loss of lands due to damage to the environment, because no ownership of lands was proven (152); but the destruction of their ecosystem also destroyed their "good life" — the culture and customs of these people, who lived off the land (153); it is only the cultural harm suffered by the indigenous peoples caused by forced displacement that can be considered as resulting from the environmental damage (154).

48. (154)-(174) TENTH: Causation

1. Harm To Soil And Waters

49. Ecuadorian legal standard is "wrongful creation of unjustified risk from a dangerous condition" (154); the Court looks at 4 factors:

50. **First**, TexPet's practice created a known risk of danger in generating hazardous waste into the ecosystem (154)-(158); Court cites the engineering testimony at the Guanta Station (155)-(158) to show that an emulsion of crude, gas and production water came out of the

wells into the production station, which was built as a three-phase separator but mostly operated as a two-phase separator, and the crude had a great deal of gas and water in it.

51. **Second**, TexPet's practices show that the risks of danger were unnecessary and could have been avoided, because the decanting pits in which the production water was deposited (for removal of solids) were unlined and uncovered (158); the supposed impermeability of the ground is not an answer, as migration and seepage from the decanting pits has already been established (158); defendants claim that depositing production water in the unlined decanting pits was universal practice around the world, but plaintiffs dispute that, leaving it to the Judge to decide (159); Court finds an unbiased opinion in the 1962 book "Primer of Oil and Gas Production" by A.P.I. and T.C.Brink (of Texaco Inc.), which warned that: "Extreme care must be exercised in handling and disposition of produced water not only because of possible damage to agriculture, but also because of the possibility of polluting lakes and rivers which provide water for drinking as well as for irrigating purposes." (160)-(161); this article, while not law, is evidence of the state of the technology in 1962 (161); in 1980 a Texaco District Superintendent, D.W. Archer, advised Rene Bucaram, the Consortium's general manager, stated that the current unlined decanting pits were adequate and replacing them with lined pits would be uneconomic (161)-(162); Court finds that lined pits were feasible, but not used by TexPet for purely economic reasons (162); also, Texaco owned a 1972 Patent Application for an improved method of re-injecting production water into the oil reservoir (162)-(163); from all of this the Court finds that at that time effective technological measures were available to avoid having to dump formation waters onto the ground (164); indeed, the Supreme Decree granting the Concession relied on the fact that Texaco "has all the necessary technical and economic resources to carry out an efficient exploration in the hydrocarbon field." (164)

later, article 41 of the 1974 Regulations required the operator to take all appropriate measures to prevent harm or danger to persons, property, natural resources, etc." (165) "[T]he system implemented by Texaco for treatment of its waste did not eliminate or manage the risks in a manner that was adequate or sufficient, but rather economical." (165) TexPet thus created a risk that could have been avoided. (166)

52. **Third**, TexPet's dumping of 15.8 million gallons of formation water directly into the ecosystem after only simple decantation, as acknowledged by Pérez Pallarez, constitutes a definite legal harm for which it was solely responsible.

53. And **fourth**, the interviews confirm the causation of this harm by TexPet (166)-(169); the interviewees described the overflowing storage tanks, the burning of crude oil in ditches, the contamination of rivers and water supplies, spraying of excess oil on the ground (167)-(169); Court refers to statement of William Powers as to problems of excess salinity of formation water and prohibitions of its disposal in the U.S. because of contamination of drinking water. (169) Finally, Court cites Ecuadorian laws and regulations prohibiting this practice. (169)

2. Harm To Health

54. The "substantial factor" theory requires analysis of two elements: Elements: (1) reasonable medical probability and (2) the showing of the substance as a substantial factor in the harm alleged (170); Application: (1) it is more probable than not that exposure to TexPet's effluents would have produced an adverse health impact, and (2) TexPet's discharges have been a substantial factor since the adverse health effects were foreseeable because the substances had a known potential for harm and the ailments found were perfectly consistent with that harm (170); there are scientific bases for reasonably linking the claims concerning health made by

inhabitants of the region with the oil contamination that derives from TexPet's activities as the Consortium operator (171).

3. Cultural Impact

55. The Court has noted that the environmental impacts found above also forced changes in indigenous cultures based on their social system, their culture and their existence in a close bond with nature, thus causing an adverse cultural impact on them (171); the Court finds that changes in indigenous peoples lives were partially caused by defendant's activities, but other causative factors (such as migration and colonization) were also involved (172); the affected people have had to modify their culture and way of life due to the impact on the ecosystem caused by TexPet (174).

56. (174)-(175) ELEVENTH: Fault This is a case based on objective (no fault) liability, so an analysis of liability is unnecessary (174); it is not necessary to prove that actions were taken with wrongful intent or negligence (175); nevertheless, even if fault were not presumed here from TexPet's risky activities, its failure to prevent known avoidable harm to plaintiffs clearly constitutes grossly negligent conduct. (175)

57. (175-176) TWELFTH – The 1995 Remediation Agreement and Release The Court finds the earlier remediation to be irrelevant to this lawsuit, noting that even some of the supposedly remediated areas has been found to be polluted (176); also, plaintiffs were not signatories to that contract.

58. (176)-(184) THIRTEENTH – Calculation of Damages

Groundwater cleanup:	$600 Million
Soils:	$5.4 Billion
Native fauna and flora:	$200 Million

Bringing in potable water:	$150 Million
Healthcare system	$1.4 Billion
Public health plan	$800 Million
Cultural restoration	$100 Million

59. (185)-(186) FOURTEENTH: Punitive Damages The Court imposes a punitive penalty equivalent to additional 100% of the aggregate values of the reparation measures, which is adequate for exemplary and dissuasive purposes; this civil penalty 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.

60. (186)-(188) FIFTEENTH: Trust To be set up in amount of judgment in Ecuador, with Amazon Defense Fund as beneficiary.

II. Clarification of First Instance Judgment Dated May 4, 2011 (C-1367)

A. The Court First Clarifies How It Had Made Certain *Factual* Determinations That Appear In The Judgment

61. (2) Merger The Court clarifies that it did not use defendant's default to find that Chevron was the merger successor to Texaco, but decided the issue on the merits. The Court was entitled to apply Ecuador's Corporations Act to the merger because it is entitled to use analogous law where there is no specific law on point. (3)-(4) The Court also relied on statements of Texaco and Chevron representatives that a "merger" had taken place, as well as the identity of the two companies in respect of "formal issues."

62. (4)-(5) The Court did not say that the entire merger was fraudulent or done with the intent to avoid liability, but only that in the context of this case the plaintiffs were led to believe by the statements of Texaco's and Chevron's representatives that the transaction was a "merger."

63. (4) Signatures on the complaint The Court clarifies that the complaint had been ratified by those whose signatures are claimed to be missing, and that many plaintiffs were illiterate and could not sign their own names; also, since this was a representative filing, Ecuadorian law would in any event have allowed a single person to sign for the entire group of affected individuals.

64. (6)-(7) Objections to certain documents received into evidence The Court clarifies and adheres to its earlier rulings admitting into evidence and ascribing evidentiary weight to certain witness statements, documents and translations objected to by Chevron's attorneys.

65. (7)-(8) Chevron as "Operator" of the Consortium The Court clarifies and confirms the correctness of its finding that the Consortium activity "was operated exclusively by Texpet … from its start until 1990."

66. (8) Petroecuador's operation of the Consortium The Court clarifies that it has used a time divide to allocate the respective responsibility of Texpet, as initial Operator of the Consortium through 1990, from the responsibility of Petroecuador, as later Operator, and has not awarded damages for the latter, only for the former.

67. (8) No reliance on Cabrera's Report The Court clarifies that it has reviewed all the materials submitted by Chevron on the alleged Cabrera fraud, and that it "decided to refrain entirely from relying on Expert Cabrera's Report," which accordingly has "no bearing on the decision." The "complaint requested redress for all damage, and that was what was ordered in the judgment."

68. (8)-(9) Imposition of Sanctions The Court clarifies that its punitive damages award against Chevron, which would be nullified by Chevron's timely apology, was based on "universal principles of law" and took into consideration "the severity of the wrong committed by Chevron and its misconduct during these proceedings, which are both of a severity never before seen in Ecuador."

69. (10)-(11) Post-Judgment reassertion of defenses overruled in the Judgment The Court addresses Chevron's post-Judgment motion to dismiss the complaint on a number of grounds previously asserted by Chevron as defenses and earlier covered in detail by the Court in its Judgment, "so there is no need to elaborate."

70. (11) Failure to designate further settling experts: The Court clarifies that it was able to review the parties' conflicting expert reports and derive a good understanding of the issues, and then to make findings based on its review of the "abundant information" underlying the reports. The Court's appointment of more settling experts was therefore unnecessary.

71. (11)-(12) Failure to discuss the settling experts' reports on the Sacha 53 well: The Court clarifies that it read the settling experts' reports on Sacha 53 but found them unhelpful, as they merely summarized the reports of the parties' experts, which the Court studied. Therefore, the Court found it unnecessary to refer to the settling experts' reports in its Judgment.

72. (12)-(14) Consideration of the testimony of Chevron's witnesses: The Court clarifies that it "did in fact consider the testimony of all the noteworthy individuals" who testified at Chevron's request. The Court discusses in some detail some of its determinations as to the respective credibility of Chevron's expert witnesses, who testified largely on the basis of documents, and "the dozens of testimonies of the residents … which are consistent and relate a similar story." "It is precisely the humility of these individuals, who even though they are not experts or doctors or Ph.D.s, do share a single history and a single condition as victims, which cannot be feigned or fabricated…." However, the Court also notes that "the testimonies of the residents are also backed by the scientific evidence contributed to the record regarding the presence of elements that are hazardous to health, and that arose from the defendant's activities."(13)

73. (13)-(14) Governmental oversight and control: The Court clarifies its earlier finding that, in a high risk activity such as oil production, mere compliance with (a) governmental oversight and (b) government rules and regulations (even where such compliance could be shown) does not absolve a person from civil liability for failing to take "all necessary measures to avoid harm."

74. (14) Health impacts from Texpet operations: The Court clarifies that it has taken into account all the expert reports on health issues and cancer incidence, keeping in mind that many of them merely collected information "from official sources without a presence in the

field." It considered the report of Expert Barros, but not his observations regarding the health of the residents. The Court notes that the cost of remediation of Shushufindi 89, for which Petroecuador is liable, was not covered by the Judgment.

75. (14)-(15) Groundwater contamination The Court clarifies that it found groundwater contamination on the basis of public documents and laboratory analysis of pit soil samples, and that Chevron's experts lacked credibility. It also noted that it considered Dr. Allen's expert report as a cost reference, not as a damages valuation report.

76. (15) "Technical content" of the expert reports The Court clarifies that the "technical content" of the expert reports on which it relied in forming its own conclusions on liability did not include the experts' subjective conclusions, but rather the objective analytic laboratory data and the description of the technical processes in the documents attached to those reports.

77. (15)-(16) Cost of remediation of pits constructed by Texpet The Court expands its discussion in the Judgment of its determination of (a) the size of the Texpet pits and (b) that those pits had been constructed by Texpet and not by PetroEcuador.

B. The Court Next Clarifies How It Had Made Certain *Legal* Determinations That Appear In The Judgment

78. (16): Jurisdiction of the Court; Jurisdiction of the Judge; Reverse triangular Merger; Piercing the corporate veil. (17): Application of Ecuadorian law as well as analogous principles of international law. (17)-(18): Selection of Texpet's pits to be remediated.

79. (18)-(19): Court's use of expert reports The Court clarifies that the expert reports were helpful, even though contradictory in conclusion, and that it weighed the evidence admitted into the record "using the rules of sound judgment," and assessed evidentiary weight and witness credibility "rationally and applying the rules of logic." "What the judge has done is to consider

parts of the various expert reports that were submitted by the experts who acted in the judicial inspections" but omitting "their conclusions concerning the culpability or liability of the defendant or of third persons, while the results of the laboratory analytical examinations have generally been attached to the reports."

80. (19)-(20): Authority for imposition of punitive damages The Court clarifies that plaintiffs were not required to seek punitive damages in their complaint, since the bases for awarding punitive damages all occurred during the trial and therefore after the complaint had been filed. The Court points out that its award of punitive damages was not expressly authorized by Ecuadorian law proper, but rather implicitly authorized by the stark conduct of Chevron and its attorneys, Article 18 of the Civil Code and by "universal principles of law and science."

81. (20): Calculation of amounts of damage The Court clarifies that it calculated the different classifications of damages based on the parties' expert reports and their submissions of economic criteria at the Court's request. "It is clarified and reaffirmed that [with the sole exception of punitive damages] the judgment has not granted more than what was requested in the complaint, since the complaint requested a series of specific aspects in addition to the remediation of all the environmental damage."

82. (21): Inability to cross-examine certain expert witnesses The Court clarifies that both sides, which includes Texpet, submitted expert reports from persons who never appeared before the Court or the other sides' attorneys for interrogation or cross-examination. Since Texpet had no problem submitting this type of expert testimony, it cannot be heard to complain that plaintiffs did the same. In any event, the Court did not fully accept the expert report of plaintiffs' expert, Dr. Barnthouse, and its damages findings were considerably lower than the recommendations of that report.

83. (21)-(22): Use of circumstantial evidence The Court clarifies that it has used both direct and circumstantial evidence where appropriate and necessary. In the area of health, the data are largely circumstantial, but have been given value. There, the Court applied "sound judgment to weigh the evidence contributed to the record, differentiating the particularities of each study, but analyzing them as a whole, until the sum of the evidence ma[de] it possible to form a conviction of the existence of an excess of cancer deaths." In the case of the videotapes of Cabrera, that is also circumstantial evidence; however, since Cabrera's opinions have not been considered, any repercussions of the videotaped evidence must be pursued, not in this case, but elsewhere, and "the rights of the parties to do so have been left intact."

84. (22): Use of witness statements as evidence The Court clarifies that it quite properly took the witness statements and made them part of the file, and that it did not consider the witness statements to be mere speculation. Chevron, whose attorneys were in attendance when the witnesses spoke, had the right to cross-examine them, and by so doing "exercise an effective defense," although it chose not to do so.

85. (22): Extension of prescriptive period to sue Chevron voluntarily agreed to waive the prescriptive period in order to allow the case to be dismissed by a foreign court for refilling in Ecuador. Hence, it cannot dismiss this action for plaintiffs' failure to bring it within what otherwise would have been the prescriptive period under Ecuadorian law.

86. (23): Texpet's RAP expenditures The Court clarifies that Texpet's expenditures under the 1995 Settlement Agreement and the resulting RAP have no bearing on this case and cannot be considered.

87. (23): Removal and remediation The Court clarifies that it ordered both that Texpet "remediate damages' and also "remove and properly treat the contaminated materials." Both

were requested in the complaint and they are not mutually exclusive. A health program to redress the damage to public health is what the Judgment contemplates.

88. (23): Both restoration of the environment and supplementary measures are required The Court clarifies that not all the environment can be restored to its natural state. Where that is impossible or impractical, "supplementary measures and mitigation measures" will be required, and they are not mutually exclusive.

89. (23)-(24): Remedial health plan implementation The Court clarifies that the implementation of the health program shall be accomplished by a specialized health institution, which shall develop a remediation plan within the guidelines and monetary limits of the Judgment.

90. (24): Damage to persons The Court clarifies that "damage to persons" as used in the Judgment means damage to the health and culture of persons in general, which directly results from the environmental damage.

91. (24): Remedy as exceeding what was requested in the complaint The Court clarifies that the various remedies ordered in the Judgment are all in response to the complaint's prayer for remediation of "environmental damage," and are thus within the scope of the complaint.

III. First Instance Appellate Court Decision Dated Jan. 3, 2012 (C-991)

92. (1): The Court first denies Plaintiffs' appeals contesting the trial court's failure to assess damages against Texpet for: (A) certain economic losses, (B) loss of the tribes' ancestral lands and (C) spraying the roads with crude oil. [It returns to this discussion in its FOURTH section.] Then the Court turns to Chevron's claimed errors of the trial court.

93. (1): FIRST The Court first establishes it competence to hear the appeal.

94. (1): SECOND The Court affirms the trial court's competence and assertion of its *in personam* jurisdiction over Chevron on the basis of Chevron's "consent" to trial in Ecuador.

95. (1)-(2): THIRD The Court points out in prefatory fashion that in both courts Chevron "has been the instigator of incidents that have resulted in obstruction of the judicial process," and cites numerous examples.

96. (2)-(3): THIRD [which should have been labeled FOURTH]: The Court reviews the trial court's denial of Chevron's "obstructive" repetitive petitions and finds that they "cannot be considered 'denial' or 'lack of jurisdictional guarantees.'" At both court levels, Chevron "bloated the case" with superfluous filings and made numerous requests for evidence, almost all of which the trial court granted. Chevron has also inappropriately claimed that the 1998 release was an "act of government" releasing it from liability to Plaintiffs, and has filed "insolent" accusations against the Ecuadorian judiciary for supposedly "disparate treatment," rather than adhering to "the natural spaces in which the defendant understood it was appropriate to defend itself and to be heard in the case."

97. (3)-(4): FOURTH The Court affirms the trial court's denial of these additional damages on the ground that, while they were addressed in the trial court proceedings, they were

either without legal merit or never appropriately quantified in the record.("… there is no evidence in the record that estimates the magnitude of the damage….").

98. (4)-(13): FIFTH The Court addresses in detail and rejects Chevron's claim that the trial court lacked competence in this case or *in personam* jurisdiction over Chevron. The Court notes Chevron's legal position in the U.S. Second Circuit court, including its preference for trial in Ecuador as "more convenient" than a trial in New York. (4)-(6) The Court then addresses properly deemed Texaco's "successor" by virtue of the merger and Chevron's public statements explaining the effect of the merger. (7)-(9) Next, the Court analyzes Plaintiffs' New York and Ecuadorian complaints, and agrees with the assessment of the New York Second Circuit that the two sets of plaintiffs and their two complaints are virtually identical. (9) Next, the Court finds that Article 2236 of the Civil Code sections covering contingent damages does not exclude environmental damages. Article 2214 of the Civil Code also provides a damages remedy for environmental injury. Thus, the Civil Code provides for all the damages awarded by the trial court. (9)-(10).

99. (10): The Court discusses and affirms the trial court's denial of Chevron's claim of "nullity" because of alleged "due process" violations and points out that Chevron has mounted a vigorous defense over the eight years that the trial has lasted, and the trial court generally accepted Chevron's numerous submissions into the record. The trial court considered Chevron's argument on the "forged complaint signatures," and then correctly rejected that argument. With respect to Chevron's allegations of fraud or corruption on behalf of Plaintiffs or their counsel, the Court has no competence to consider these claims, which appear to be pending in other fora.

100. (11)-(12): The Court considers Chevron's claim that certain data considered by the trial judge was not in the record, and the Court, "having reviewed the detail, it was found that

the data that the first instance judge considered is in the record." The Court then cites a number of laboratory analyses from the various expert reports and judicial inspections, finding a few immaterial mistakes but substantially supportive of the trial court's findings. The Court addresses the trial court's findings as supported by the evidence as a whole, filtered through the logic and sound judgment of the trial judge. The Court holds that the trial court's finding of mercury contamination was based on a misreading of data, and reverses that finding; however, it concludes that that error is immaterial in terms of the damages awarded.

101. (12): The Court agrees with the trial court's determination that "this is a case of strict civil liability" under Ecuadorian civil law because of the known dangers inherent in crude oil drilling and production, to which dangers Texpet responded by failing to take necessary precautionary measures.

102. (13): As regards the rest of Chevron's petition for nullification of the Judgment, "it is observed in the first place that the petition for partial nullity of the proceeding is based on arguments or incidents that have been thoroughly addressed in the judgment, without there being new elements to consider."

103. (13)-(14): SIXTH The Court notes its displeasure with some of the statements of Judge Kaplan, which it feels are "inappropriate in light of the conditions and requirements of mutual respect due between States."

104. (14)-(15): SEVENTH The Court discusses some examples of what is considers to have been Chevron's "abusive" and "overtly aggressive and hostile attitude" in its violation of established rules of procedure governing the conduct of litigants in civil proceedings. Indeed, the court felt that its overlooking such behavior "would be an example setting a disastrous precedent for other litigants."

105. (15)-(16): EIGHTH The Court rules that punitive damages should be placed in a separate trust managed by the trustees responsible for administering the compensatory damages awarded.

IV. Clarification of First Instance Appellate Decision Dated Jan. 13, 2012 (R-299)

106. Chevron requested clarification and amplification of the Court's January 3, 2012 decision in eight respects, most of which are immaterial to this proceeding; however, the Court's response to two of those requests are summarized below.

107. (1)-(2): The Court's response to Chevron's fourth request The Court clarifies the terms of the non-monetary "symbolic reparation" contained in the contingent punitive damages award. The Court confirms that the public apology requested will not have any *res judicata* effect on other matters outside the present litigation. Chevron "may clarify that it is making the publication by judicial order and that it does not imply recognition of any obligation nor ulterior, civil not criminal responsibility."

108. (3)-(4): Chevron's accusations regarding trial court's preparation of its judgment The Court clarifies that it has considered Chevron's "accusations with respect to irregularities in the preparation of the trial court judgment," and has found it to be speculative and non-probative. Specifically, the Court clarifies that it has determined for itself that the findings made by the trial court are all supported by filed evidence duly accepted into the record. "[A]ll of the samples, documents, reports, testimonies, interviews, transcripts and minutes, referred to in the judgment, are found in the record without the defendant identifying any that is not – the defendant's motions simply show disagreement with the reasoning, the interpretation and the value given to the evidence…." The Court "understands that [defendant] is not alleging that the judgment has been sustained on evidence foreign to the record. Therefore, starting by considering that only the

evidence legally produced is deemed authentic in trial about the facts in dispute, and that which must be in the record, it is concluded that the appealed judgment is based on legally presented evidence, that is, in the record." The Court also points out that Chevron presented "a considerable amount of information" to the trial court judge" which "was not introduced into the record" but which "was known and studied by the lower court judge."

109. (4): U.S. discovery of Plaintiffs' attorney's files The Court notes that Chevron has had access to large amounts of Plaintiffs' attorney's case files and correspondence through U.S. proceedings, and states that any secret assistance given to the trial court judge would undoubtedly have come out in those documents. The Court reiterates that allegations of fraud are subjects for other investigatory or criminal agencies, but not for speculation by a civil court.