

**BEFORE THE NEW YORK STATE JOINT COMMISSION ON
PUBLIC ETHICS**

CHEVRON CORPORATION,

Complainant,

v.

THOMAS P. DINAPOLI,

Respondent.

IN THE MATTER OF AN INVESTIGATION INTO
APPARENT MISCONDUCT BY NEW YORK STATE
COMPTROLLER THOMAS P. DINAPOLI

INTRODUCTION

Chevron Corporation (“Chevron”) files this Complaint in order to urge the New York State Joint Commission on Public Ethics (the “Commission”) 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.* Beginning at least as early as 2003 and continuing to the present, a group of lawyers and consultants, including New York attorney Steven Donziger, have orchestrated a scheme to extort a multibillion-dollar payoff from Chevron in connection with a fraudulent litigation against Chevron in Lago Agrio, Ecuador (the “Lago Agrio Litigation”). That the Lago Agrio Litigation is a fraud, there is no doubt. Federal courts around the United States have found “ample evidence of fraud in the Ecuadorian proceedings.”¹ Indeed, the evidence of

¹ *Chevron Corp. v. Champ*, Nos. 1:10-mc-27, 1:10-mc-28, 2010 WL 3418394, at *6 (W.D.N.C. Aug. 30, 2010) (“While this court is unfamiliar with the practices of the Ecuadorian judicial system, the court must believe that the concept of fraud is universal, and that what has blatantly occurred in this matter would in fact be considered fraud by any court.”); *In re Chevron Corp.*, Nos. 1:10-mc-00021-22 (JH/LFG), slip op. at 3-4 (D.N.M. Sept. 2, 2010) (“The release of many hours of the [*Crude*] outtakes has sent shockwaves through the nation’s legal communities, primarily because the footage shows, with unflattering frankness, inappropriate, unethical and perhaps illegal conduct.”); *In re Chevron Corp.*, No. 10-cv-1146-IEG (WMC), 2010 WL 3584520, at *6 (S.D. Cal. Sept. 10, 2010) (“There is ample evidence in the record that the Ecuadorian Plaintiffs secretly provided information to Mr. Cabrera, who was supposedly a neutral court-appointed expert, and colluded with Mr. Cabrera to make it look like the opinions were his own. Thus, any privilege which existed was waived”); *In re Chevron Corp.*, 749 F. Supp. 2d 141, 167 (S.D.N.Y. 2010) (“[T]here is more than a little evidence that [plaintiffs’ lead U.S. counsel] Donziger’s activities—as several courts already have held in the context of Section 1782 applications against experts involved on the Lago Agrio plaintiffs’ side—come within the crime-fraud exception to both the privilege and to work product protection.”); *In re Chevron Corp.*, 633 F.3d 153, 166 (3d Cir. Feb. 3, 2011) (“[W]e believe that this showing of [plaintiffs’ technical consultant] Villao’s dual employment is sufficient to make a prima facie showing of a fraud that satisfies the first element of the showing necessary to apply the crime-fraud exception to the attorney-client privilege.”); *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 636 (S.D.N.Y. 2011) (“There is ample evidence of fraud in the Ecuadorian proceedings.”); *In re Chevron Corp.*, No. cv-10-2675 (SRC) (D.N.J. June 11, 2010), Hr’g Tr. at 43:23-44:1 (“As far as the Court is concerned, the concept of an employee of a party covertly functioning as a consultant to a court appointed expert in the same proceeding can only be viewed as a fraud upon that tribunal”); *Chevron Corp. v. Page*, No. RWT-11-1942 (D. Md. Aug. 31, 2011) (“So, at the end of the day, regardless of how I get there, and I get there, I get to the same place by at least four or five different routes. This information is very much discoverable. It is no longer privileged, and it is to be produced immediately.”); *In re Chevron*

fraud in the Lago Agrio Litigation has led one of Donziger’s co-conspirators to admit to him in a private communication that, should the fraud be exposed, “apart from destroying the proceeding, all of us, your attorneys, might all go to jail” for their misconduct.²

In furtherance of the scheme, the perpetrators of the Lago Agrio fraud have sought to enlist public figures to help pressure Chevron. Donziger and his associates have targeted Comptroller DiNapoli, and have succeeded in getting his support apparently through an illicit and unethical *quid pro quo* arrangement. Donziger and his associates have given DiNapoli consideration not available to the general public, including large monetary contributions to DiNapoli’s campaign in excess of \$60,000—a move that Donziger himself worried “might not be a great idea.”³ In apparent exchange for this consideration, Donziger and his associates have received the unwavering support of DiNapoli and his office. The timeline attached as [Appendix A](#) to this complaint illustrates the principal actions DiNapoli has taken on behalf of Donziger and his associates, and the contributions that appear to have obtained these actions. DiNapoli has made numerous public statements denouncing Chevron, and has opened the doors of his office to the perpetrators of the Lago

Corp., No. 11-24599-CV, slip op. at 4, 26 (S.D. Fla. June 12, 2012) (“Chevron has obtained mounds of evidence, in multiple § 1782 proceedings, that suggests that the judgment itself was also ghostwritten.”); *Chevron Corp. v. Donziger*, No. 11-cv-00691, slip op. at 97 (S.D.N.Y. July 31, 2012) (“[T]he LAPs’ procurement of the termination of judicial inspections, the adoption of the global assessment, and the appointment of Cabrera all unquestionably were tainted. The secret participation of the LAP team in Cabrera’s activities and its secret drafting of the bulk of Cabrera’s report were tainted as well.”).

² [Ex. 1.](#)

³ [Ex. 2.](#)

Agrio fraud. DiNapoli's attacks on Chevron are made even more inappropriate by his position as trustee of the New York State Common Retirement Fund, which owns hundreds of millions of dollars of Chevron stock.

In sum, Comptroller DiNapoli and his office have aided a fraud apparently in return for money, in the form of campaign contributions, and other consideration. Whether Comptroller DiNapoli subjectively knows the Lago Agrio Litigation is a fraud, or is merely willfully blind to it is immaterial. It is an apparent breach of DiNapoli's ethical and legal responsibilities that this Commission should investigate.

JURISDICTION OF THE COMMISSION

The Commission is authorized by Executive Law Section 94(13)(a) to commence inquiries into possible violations of Public Officers Law Section 74. Pursuant to Executive Law Section 94(17)(c), the Commission is authorized to conduct any investigation necessary to carry out the provisions of Executive Law Section 94. Pursuant to this power and duty, the Commission may administer oaths or affirmations, subpoena witnesses, compel their attendance and require the production of any books or records that it may deem relevant or material.

When the Commission determines there has been a violation, Public Officers Law Section 74(4) authorizes the Commission to assess a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation.

In addition to any penalty contained in any other provision of law, any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of Public Officers Law Section 74 may be fined, suspended or removed from office or employment in the manner provided by law.

FACTUAL BACKGROUND

I. THE FRAUDULENT ECUADOR LITIGATION

The Lago Agrio Litigation concerns oil operations by a subsidiary of Texaco (“TexPet”) in Ecuador from the mid-1960s to 1992. Despite extensive remediation work carried out by Texaco, based on which the Ecuadorian government released the Texaco subsidiary from all claims related to the oil operations, and despite subsequent evidence that the operations cause no harm or risk of harm today, a group of plaintiffs’ lawyers in the United States was determined to sue Texaco (and, subsequently, Chevron) on environmental grounds for their own financial gain. The resulting Lago Agrio Litigation was pervaded by fraud perpetrated by this group of lawyers, including ringleader Steven Donziger. Their fraud includes forged expert reports, intimidation of the judge, and the ghostwriting of the Ecuadorian court’s judgment. The litigation and the fraud are detailed below.

A. Commencement of the Lago Agrio Litigation and Ensuing Fraud

On May 7, 2003, a group of U.S. plaintiffs' lawyers, led by Steven Donziger, caused to be filed a complaint against Chevron in Lago Agrio, Ecuador, alleging that TexPet, a fourth-tier subsidiary of Texaco Inc., caused supposed environmental damage for which Chevron was allegedly responsible as a result of the merger between a Chevron subsidiary and Texaco Inc. in 2001.⁴ But the Lago Agrio plaintiffs' ("LAPs") own experts determined that evidence did not support their claims, so they resorted to fraud and colluding with the court to manufacture fabricated expert reports and then the fraudulent judgment.

There is no merit to the Lago Agrio Litigation. At Chevron's request, many of the world's top toxicologists, epidemiologists, anthropologists, and geoscientists have considered the evidence, including more than 1,500 environmental samples, and have concluded that there is no scientific support for the LAPs' claims. These experts have further concluded that the former petroleum operations present no risk to residents' health, and have not resulted in any significant impact to groundwater, drinking water, biodiversity, or indigenous culture.⁵ The LAPs' own experts reached similar conclusions, and

⁴ [Ex. 3 at ¶ 94.](#)

⁵ The scientists' reports are publicly available in the Ecuadorian court's docket and online at www.chevron.com/ecuador.

have conceded that the oil operations have not impacted soil or groundwater conditions in Ecuador.⁶

Accordingly, the LAPs and their representatives have turned to fraud and manipulation of an Ecuadorian judiciary that Donziger has described as “corrupt” and “weak.” Multiple federal courts in the United States have found the Lago Agrio Litigation to be pervaded by fraud by the LAPs and their representatives.⁷ Judge Kaplan, District Judge of the Southern District of New York, has found that the proceedings in Lago Agrio were “unquestionably . . . tainted.”⁸ However, the fraud worked, at least in Ecuador: the Lago Agrio court issued a judgment against Chevron for compensatory damages totaling \$8.6 billion, plus an additional ten percent of the total to the Amazon Defense Front, an organization associated with the LAPs. Then, notwithstanding the fact that punitive damages are unavailable under Ecuadorian law, the Lago Agrio court awarded the LAPs 100% of this total, a further \$8.6 billion, as punitive damages unless Chevron issued a “public apology” in both the Ecuadorean and United States press, resulting in a total award of \$19 billion.

Donziger described himself as being “at the epicenter of the legal, political, and media activity surrounding the case both in Ecuador and in the

⁶ [See, e.g., Exs. 4.](#)

⁶ [See, e.g., Exs. 5.](#)

⁷ *See* Note 1, *supra*.

⁸ [Ex. 6 at 97.](#)

U.S.”⁹ He further stated that, from the United States, he would continue to find “ways to increase the leverage and . . . cost to Chevron.”¹⁰ As discussed below, Donziger was also at the epicenter of the efforts to enlist the support of the Comptroller in New York.

1. The LAPs Submitted Phony Expert Reports

Near the outset of the Lago Agrio Litigation, the court directed the parties to investigate jointly the conditions at a number of the environmental sites at issue in a procedure known as “judicial inspections.”¹¹ In 2004, the LAPs selected Dr. Charles Calmbacher to act as their expert in charge of their inspection and to report on some of the sites.¹² In early 2005, the LAPs submitted to the court reports under Dr. Calmbacher’s signature that purported to show extensive environmental harm requiring millions of dollars to remediate.¹³ These reports were false and fraudulent. Without Dr. Calmbacher’s knowledge, the LAPs doctored his report to support the LAPs’ claims of environmental damage. When asked whether someone had attached his signature to “his” report, Dr. Calmbacher testified “[t]hat’s correct. I did not reach these conclusions and I did not write this report.”¹⁴ Dr. Calmbacher also

⁹ [Ex. 7 at 4.](#)

¹⁰ [Ex. 8 at 52.](#)

¹¹ [Ex. 9.](#)

¹² [See Ex. 10 at 15.](#)

¹³ [Exs. 11.](#)

¹³ [Exs. 12.](#)

¹⁴ [Ex. 10 at 116:9-10.](#)

testified that he had not found any need for further remediation at any of the sites he had visited and that he did not conclude that the Texaco subsidiary had failed in any of its remediation efforts.¹⁵

2. The LAPs Pressured the Lago Agrio Court into Appointing a Biased “Independent Expert,” and then Ghostwrote His Report

As it became clear that further impartial testing would only undermine their position, Donziger and the LAPs engaged in lobbying efforts to convince the Lago Agrio court to cancel the remaining judicial inspections, including a string of *ex parte* meetings with presiding Judge Yáñez, and the drafting and private brandishing of a civil complaint against him.¹⁶ Donziger wrote in his diary that “the only way the court will respect us is if they fear us. . . . Our issues first and foremost are whether the judge will accept the renuncia [waiver] . . . of the inspections. . . . If it doesn’t happen, then we are in an all-out war with the judge to get him removed.”¹⁷ On March 19, 2007, the Lago Agrio court appointed Richard Stalin Cabrera Vega (“Cabrera”) to make the purportedly “neutral” and “independent” global assessment.

Undisputed evidence, much of it captured in video “outtakes” from a documentary being made in coordination with Donziger and the LAPs, shows

¹⁵ [Ex. 10 at 113:23-25; 115:15-19.](#)

¹⁶ [Ex. 3 at ¶¶ 105-06.](#)

¹⁷ [Id.; Ex. 14 at 55-56.](#)

that the “neutral” Cabrera was secretly handpicked in advance by Donziger and the LAPs’ other representatives to serve the LAPs’ ends, and that Donziger and the LAPs pressured the court into appointing Cabrera. Before Cabrera’s appointment, one of the LAPs’ representatives noted that the judge was “on his heels from . . . charges of trading jobs for sex in the court.”¹⁸ Donziger and the LAPs’ attorneys drafted a complaint against the judge, but before filing it, the LAPs’ attorneys met *ex parte* with the judge to use the threat of the complaint to pressure him to adopt their plan.¹⁹ In their internal correspondence, the LAPs’ attorneys discussed the secret steps they had taken to make “100% sure the judge would [appoint] Richard [Cabrera].”²⁰ After Cabrera was appointed, Donziger stated “all this bullshit about the law and facts . . . but in the end of the day it is about brute force . . . [Cabrera’s appointment] took five months . . . five months of delay . . . and [the judge] never would have done [it] had we not really pushed him.”²¹

The LAPs’ own consultants wrote Cabrera’s report. In December 2006, two months before Cabrera’s appointment, Donziger made this plan clear: “[t]he judge is going to appoint a guy in Ecuador . . . to be the expert, but really . . . we’ll be supporting him with the work—our people, E-Tech, whoever we

¹⁸ [Ex. 13.](#)

¹⁹ *Id.*

²⁰ [Ex. 14 at 12, 54.](#)

²⁰ [Ex. 15.](#)

²¹ [Ex. 15.](#)

choose to use.”²² As Donziger saw it, Cabrera would “ha[ve] to totally play ball with us and let us take the lead while projecting the image that he is working for the court.”²³ On March 3, 2007, two weeks *prior* to the court’s appointment of Cabrera, Donziger and other LAPs attorneys *met with Cabrera* to plan the report.²⁴ At this time, one of the LAPs’ attorneys confirmed that the LAPs’ representatives would write Cabrera’s report: “And here is where we do want the support of our entire technical team . . . of experts, scientists, attorneys, political scientists, so that all of us will contribute to the report—in other words—you see . . . the work isn’t going to be the expert’s. All of us bear the burden.” A representative of Stratus, the consulting firm that would secretly write Cabrera’s report, responded “together?” The LAPs’ attorney confirmed this, to which the Stratus representative replied “but not Chevron,” which drew laughter from the assembled group.²⁵ The meeting concluded with Donziger observing, “[w]e could jack this thing up to \$30 billion in one day.”²⁶

The next day, Donziger made clear to Stratus that everything the LAPs were doing was to be concealed from Chevron, with the “goal [being] that they don’t know shit.”²⁷ When Stratus consultants later told Donziger that there was no evidence that the consortium had polluted the groundwater, Donziger

²² [Ex. 16.](#)

²³ [Ex. 17 at 30.](#)

²⁴ [Ex. 18.](#)

²⁵ [Ex. 19.](#)

²⁶ [Ex. 20.](#)

²⁷ [Ex. 21.](#)

responded “[y]ou can say whatever you want and at the end of the day, there’s a thousand people around the courthouse, you’re going to get what we want.”²⁸ He continued, “this is all for the Court just a bunch of smoke and mirrors and bullshit.”²⁹

Cabrera was under the LAPs’ control. Soon after Cabrera was sworn in, a LAP attorney e-mailed Donziger that he had met with Cabrera and that “everything wa[s] under control. We gave him some money in advance.”³⁰ In addition, Donziger testified that he “might have” told Cabrera that “if he served as the global court expert and the plaintiffs won the case that he would have a job the rest of his life being involved in the remediation.”³¹

Donziger admitted at his deposition that Cabrera had “adopted pretty much verbatim what had been provided to him” by Stratus,³² and that “the general idea” was that Stratus would provide Cabrera the report in a form in which he could submit it directly to the Ecuadorian court.³³ In the end, Donziger provided Cabrera with the report just hours before Cabrera submitted it to the court under Cabrera’s name. Donziger could not name a single change made by Cabrera, and admitted that he does not know if Cabrera ever read the

²⁸ [Ex. 22.](#)

²⁹ *Id.*

³⁰ [Ex. 23.](#)

³¹ [Ex. 24 at 993:12-19.](#)

³² *Id.* at 2433:9-14.

³³ *Id.* at 2253:5-11.

report.³⁴ The ghostwritten report recommended the court hold Chevron liable for billions of dollars in environmental damages.

After the “Cabrera” report was submitted, the LAPs’ representatives tried to keep up the charade. The LAPs “objected” to the report that their consultants had just written for Cabrera, claiming that it was “unjustly favorable to Chevron.”³⁵ Then they ghostwrote “Cabrera’s” responses to their “objections,” with Stratus “clean[ing] up” the language to “sound[] more like [Cabrera] and less like a comment.”³⁶ Stratus then created what it portrayed as an independent peer review of the Cabrera report, which one of the LAPs’ lawyers described as “written in a manner to give the impression that Cabrera was entirely independent and conducted his own research and came up with his own findings.”³⁷

Later, when Chevron began to uncover evidence of their fraud, the LAPs grew nervous about the “Cabrera problem,” and the prospect that the Lago Agrio judgment might rest entirely upon Cabrera’s fraudulent report.³⁸ The LAPs and Donziger then developed a process to “cleanse” the Cabrera report by, for all intents and purposes, submitting it again to the Lago Agrio court under the names of different individuals. These other “experts” were provided

³⁴ [Ex. 24 at 2433:8-14.](#)

³⁵ [Ex. 25.](#)

³⁶ [Ex. 3 at ¶ 66.](#)

³⁷ [Ex. 26 at 1.](#)

³⁸ [Ex. 27.](#)

with the Cabrera report and the data underlying the Cabrera report, and were to “come to the same conclusions as Cabrera.”³⁹ One notable exception was that the new reports purported to support a damages figure of \$113 billion, an increase of nearly \$90 billion from the Cabrera report.⁴⁰

3. The LAPs Intimidated a “Corrupt” Ecuadorian Judiciary

Throughout the Lago Agrio Litigation, Donziger bragged about his plans to secure a favorable judgment through manipulation, political pressure, and intimidation of the Lago Agrio judge. Donziger’s stated goal in orchestrating this campaign was to create a political environment where “no judge can rule against [the LAPs] and feel like he can get away with it in terms of his career.”⁴¹ Donziger accordingly instructed his team to “prepare a detailed plan with the necessary steps to attack the judge through legal, institutional channels and through any other channel [he could] think of.”⁴²

These plans included subjecting the judge to, in Donziger’s words, “pressure, intimidation and humiliation.”⁴³ On the way to an *ex parte* meeting with the judge in 2006, Donziger stated, “[a]nd that’s what we’re doing today. We’re going to let him know what time it is. . . . As a lawyer I never do this.

³⁹ [Exs. 28.](#)

³⁹ [Exs. 29.](#)

⁴⁰ [Ex. 113.](#)

⁴¹ [Ex. 30.](#)

⁴² [Ex. 31.](#)

⁴³ [Ex. 32.](#)

You don't have to do this in the United States. It's dirty."⁴⁴ Donziger on another occasion denigrated the Ecuadorian judiciary as "so utterly weak. The only way that you can secure a fair trial is if you do things like that, like go in and confront the judge with media around and fight and yell and scream and make a scene. That would never happen in the United States or in any judicial system that had integrity."⁴⁵ At another time, Donziger stated that the Ecuadorian courts "make decisions based on who they fear most, not based on what the law should dictate."⁴⁶ Donziger also said, of Ecuadorian judges, "[t]hey're all corrupt! It's - it's their birthright to be corrupt."⁴⁷

Donziger and other LAPs representatives put into practice a plan to make sure that they would be the ones that the Ecuadorian court would "fear the most," by pressuring the court with an "army." At one point, Donziger suggested to another LAPs attorney that they needed to "do more" to "pressure the court" and "take over the court" with demonstrations.⁴⁸ Donziger described the litigation as a "matter of combat" and suggested that the LAPs "make our own private army."⁴⁹ At a June 6, 2007 meeting, Donziger proposed a massive protest around the court that would send a message to the court not to "fuck

⁴⁴ [Ex. 32.](#)

⁴⁵ [Ex. 33.](#)

⁴⁶ [Ex. 34.](#)

⁴⁷ [Ex. 35.](#)

⁴⁸ [Ex. 34.](#)

⁴⁹ [Ex. 36.](#)

with us anymore—not now, and . . . not later, and never.”⁵⁰ In response to this, a representative of Amazon Watch, a supposed non-profit organization allied with Donziger, said “I just want you to know that it’s . . . illegal to conspire to break the law.” Donziger replied, “[n]o law’s been conspired to be broken.”⁵¹ As the conversation continued, another of the LAPs’ representatives waved the camera away as he told Donziger that the “army” could be supplied with weapons.⁵²

When a colleague suggested that the Ecuadorian judge would be killed if he ruled against the LAPs, Donziger replied that the judge “might not be [killed], but he’ll think—he thinks he will be . . . which is just as good.”⁵³

B. The Lago Agrio Judgment Is Itself Fraudulent

Against this backdrop of fraud, coercion, and corruption, the Lago Agrio court handed down a judgment against Chevron totaling \$19 billion. The judgment is fraudulent. The opinion purports to exclude the fraudulent Cabrera report from its consideration, but then relies on it and on the reports of individuals who were hired by the LAPs to “cleanse” the Cabrera report of the appearance of fraud while leaving its spurious conclusions intact.⁵⁴ As alluded to above, this “cleansing” operation was devised by Donziger and lawyers from

⁵⁰ [Ex. 34.](#)

⁵¹ [Ex. 36.](#)

⁵² *Id.*

⁵³ [Ex. 37.](#)

⁵⁴ [Ex. 28;](#)

⁵⁴ [Ex. 24 at 3707:7-15.](#)

U.S. law firms Patton Boggs and Emery Celli in response to growing concerns that the revelation of the Cabrera fraud would spell the end of the case. An August 2010 e-mail, written about a month before a new report was submitted to the Lago Agrio court, explained the “cleansing” operation, saying: “[O]ur new expert 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, but we should think about whether 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 enforcement court elsewhere) might feel comfortable concluding that certain parts of [the] Cabrera [report] are a valid basis for damages.”⁵⁵ The e-mail claimed that the attorneys would try to “find support from other evidence not relied upon by Cabrera,” but it included the very company that authored the Cabrera report, Stratus, in a plan to author the new, “cleansed” reports.⁵⁶

There is also evidence that the LAPs’ representatives ghostwrote all or part of the judgment itself. Text from at least three documents that were drafted by the LAPs’ legal team but never submitted as part of the Lago Agrio court record appears in the Lago Agrio judgment, including one extensive passage that had been copied verbatim.⁵⁷ Further, one expert has concluded that the

⁵⁵ [Ex. 28 at 1-3.](#)

⁵⁶ *Id.* at 2.

⁵⁷ [Ex. 39.](#)

judgment uses a “very idiosyncratic idiolectal style, very different from the one observed in [other] Judgments headed by [Judge] Zambrano,” the supposed author, such that the judgment “cannot have been written by the same author.”⁵⁸

In addition, the timing under which the judgment was issued indicates that the judge who signed the judgment, Zambrano, could not be the judgment’s sole author. In late January 2011, Judge Zambrano told the press that he was reviewing the trial record personally, and that he had approximately 50,000 pages remaining to review.⁵⁹ Just two weeks later, he issued the 188-page, single-spaced judgment.⁶⁰ Experts have confirmed what common sense suggests: Zambrano could not have reviewed the remaining 50,000-page record in such a short span of time, nor could he have reviewed the entire 215,000-page record and drafted the 188-page judgment in the just eight weeks available.⁶¹

C. Multiple U.S. Courts Have Found the Lago Agrio Litigation Tainted

As a result of the fraudulent conduct by the LAPs and their representatives, Chevron commenced an action in the United States District Court for the Southern District of New York asserting RICO and fraud claims

⁵⁸ [Ex. 39 at 14, 17.](#)

⁵⁹ [Ex. 3 at ¶ 3.](#)

⁶⁰ *Id.* at ¶ 4.

⁶¹ *Id.* at ¶ 43.

(among others) against Donziger and other conspirators involved in the Lago Agrio fraud.⁶²

In the New York litigation, District Judge Lewis Kaplan has found that numerous facts regarding the LAPs' fraud are undisputed: "[T]he LAPs' procurement of the termination of judicial inspections, the adoption of the global assessment, and the appointment of Cabrera all unquestionably were tainted. The secret participation of the LAP team in Cabrera's activities and its secret drafting of the bulk of Cabrera's report were tainted as well. Moreover, there are serious questions concerning the preparation of the judgment itself in view of the identity between some portions of the Judgment and the Unfiled Fusion Memo, especially in light of the undisputed pattern of *ex parte* advocacy in the Lago Agrio Litigation and the undisputed instance of the LAP team's coercion of and duress on one of the judges to obtain a desired result."⁶³ Judge Kaplan repeatedly found that the proceedings in Lago Agrio were "tainted by fraud."⁶⁴

A number of other U.S. courts have also found there to have been fraud in the Lago Agrio Litigation. For example, the Southern District of California found that "[t]here is ample evidence in the record that the Ecuadorian Plaintiffs secretly provided information to Mr. Cabrera, who was supposedly a neutral

⁶² *Chevron Corp. v. Donziger*, 11 Civ. 0691 (LAK) (S.D.N.Y.).

⁶³ *Chevron Corp v. Donziger*, 11 Civ. 0691, slip op. at 97 (S.D.N.Y. July 31, 2012).

⁶⁴ *See, e.g., Chevron Corp v. Donziger*, 11 Civ. 0691, slip op. at 91 (S.D.N.Y. July 31, 2012).

court-appointed expert, and colluded with Mr. Cabrera to make it look like the opinions were his own.”⁶⁵ The Western District of North Carolina stated that “[w]hile this court is unfamiliar with the practices of the Ecuadorian judicial system, the court must believe that the concept of fraud is universal, and that what has blatantly occurred in this matter would in fact be considered fraud by any court. If such conduct does not amount to fraud in a particular country, then that country has larger problems than an oil spill.”⁶⁶ Many other courts have followed suit.⁶⁷

II. DINAPOLI’S INVOLVEMENT

In the face of the voluminous and public evidence of fraud throughout the Lago Agrio Litigation, DiNapoli has been complicit in using his position to facilitate the extortionate scheme against Chevron. He has taken repeated public action on behalf of the LAPs, including supporting shareholder proposals, publishing statements and letters critical of Chevron, lobbying other government officials to support the LAPs, and repeatedly urging Chevron to “settle” the Lago Agrio Litigation by handing the LAPs a big payoff. What is more, DiNapoli and his staff at the Office of the State Comptroller (“OSC”) have coordinated these actions with the perpetrators of the Lago Agrio fraud.

⁶⁵ *In re Applic. of Chevron Corp.*, 2010 WL 3584520, at *6 (S.D. Cal. Sept. 10, 2010).

⁶⁶ *Chevron Corp. v. Champ*, Nos. 1:10-mc-27, 1:10-mc-28, WL 3418394, at *6 (W.D.N.C. Aug. 30, 2010).

⁶⁷ See Note 1, *supra*.

At best, DiNapoli has taken these actions without due investigation of the facts behind the Lago Agrio Litigation, which would have revealed the fraud.

The apparent reason for DiNapoli's actions is simple: the perpetrators of the Lago Agrio fraud (Donziger and his associates) have given DiNapoli tens of thousands of dollars in campaign contributions and other consideration not offered to the general public. Such an exchange is an apparent breach of DiNapoli's ethical and legal duties as a state government official. As comptroller, DiNapoli cannot have financial interests that conflict with the exercise of his duties, cannot use his office to gain an advantage for himself at the expense of the public, and cannot give the appearance that he may be improperly influenced in the exercise of his duties. Here, it appears that he has violated each of these obligations.

Moreover, DiNapoli's actions are an apparent breach of his fiduciary duties as sole trustee and manager of the New York State Common Retirement Fund (the "Fund").⁶⁸ As such, he "is directly accountable for the performance, oversight and management of the Fund,"⁶⁹ a fund that as of September 30, 2012, held 6,956,194 shares of Chevron stock valued at approximately \$800 million.⁷⁰ It is worth noting that since DiNapoli took office in 2007, Chevron's stock has significantly outperformed the Fund as a whole, with an annualized total

⁶⁸ [Ex. 114.](#)

⁶⁹ [Ex. 115.](#)

⁷⁰ [The New York State Common Retirement Fund's holdings in Chevron and the overall performance of the Fund from 2007 to 2012 are summarized in the chart attached as Appendix B.](#)

shareholder return (“TSR”) of 8%, compared with a 2.9% TSR for the Fund as a whole and a 1.1% TSR for the Fund’s domestic and international equity portfolio. Attacking Chevron at the behest of the LAPs and Donziger does not serve the Fund’s beneficiaries.

The consideration that the LAPs offered to DiNapoli and the benefits that DiNapoli bestowed on the LAPs are detailed below.

A. Benefits to DiNapoli from the LAPs’ Representatives

Through discovery and independent investigation, Chevron has uncovered evidence that the LAPs’ representatives, including Donziger and his cohorts, offered substantial campaign donations and other benefits to DiNapoli and his staff in an apparent attempt to entice DiNapoli to pressure Chevron to give the LAPs a payoff for the fraudulent Lago Agrio Litigation.

Since at least 2003, Donziger has targeted the New York Comptroller to assist the LAPs in applying pressure on Chevron.⁷¹ This campaign began under Comptroller Hevesi, who resigned in disgrace in conjunction with a criminal plea agreement, and continued after DiNapoli was appointed as Comptroller Hevesi’s replacement.⁷² On the day DiNapoli was appointed as Hevesi’s replacement in February 2007, Donziger wrote, “the advantage of a guy like this is that he is political, meaning, if we show him how he can look good going

⁷¹ [Ex. 40.](#)

⁷² [See Ex. 116.](#)

after [C]hevron, he might be even more likely to help us.”⁷³ Further documents demonstrate that the LAPs’ enticed DiNapoli to take action on their behalf not merely by “show[ing] him how he [could] look good,” but apparently through large campaign donations, and offers of trips and celebrity access.

1. Campaign Donations by the LAPs’ Representatives and Their Associates to DiNapoli

On January 9, 2009, Donziger contributed \$2,000 to DiNapoli.⁷⁴ The circumstances are telling. On January 8, 2009, Donziger e-mailed his associate Andrew Woods with the subject line “issue w checks” in which he informed Woods that “[w]e are delivering a bunch of checks to DeNapoli [sic] today,” but “I am worried that this might not be a great idea.”⁷⁵ Nonetheless, he further instructed Woods to “[g]et checks from Fed Ex sent to my house from [Donziger’s ally Ben] Barnes. Inside should be 2 or more checks in amount of 2,000 each. . . . Go to closet and get out that plastic box w all my checks in it. Find my personal check book (the little one) and write a check to DiNapoli 2010 and sign my name. However, call me before you u do this – I am worried this might not be a great idea. . . . Take checks to [DiNapoli’s] office and

⁷³ [Ex. 41.](#)

⁷⁴ See NYS Board of Elections Financial Disclosure Report for Thomas DiNapoli, January 2009 Periodic, available at <http://www.elections.state.ny.us>. James Sharp and Ben Barnes both represented Allen Stanford, who was subsequently convicted of perpetrating a \$7 billion fraud on investors. See Ex. 117.

⁷⁵ [Ex. 2.](#)

deliver them personally. Call me beforehand and I'll tell you how to play it.”⁷⁶

Donziger’s subsequent “summary” of completed tasks reported: “DiNapoli contributions are on the counter.”⁷⁷

Also on January 9, 2009, Ben Barnes—the “Barnes” to whom Donziger referred above—also contributed \$2,000 to DiNapoli’s campaign,⁷⁸ and James Sharp, a Washington, D.C. attorney with connections to Barnes, also made a contribution to DiNapoli of \$2,000.⁷⁹ Barnes’s wife contributed an additional \$2,000 on March 9, 2009.⁸⁰

Barnes has strong ties to Donziger, which is apparent from the coordinated timing of his contribution and Donziger’s instructions to his associate, Woods. Indeed, it was Barnes’s associate who instructed Donziger how to make his January 9, 2009, contribution to DiNapoli.⁸¹ As Donziger put it, Barnes “is assisting us in various activities related to the Lago Litigation.”⁸²

Donziger’s associate Orin Kramer also made significant donations to DiNapoli during this same period. Orin Kramer is a former chairman of the

⁷⁶ [Ex. 2.](#)

⁷⁷ [Ex. 42.](#)

⁷⁸ [Ex. 118.](#)

⁷⁹ *Id.*

⁸⁰ [Ex. 119.](#)

⁸¹ [Ex. 43.](#) On January 5, 2009, Susan Martin at the Ben Barnes Group, e-mailed Donziger an invitation to a campaign fundraiser for DiNapoli at the Regency Hotel in New York City, requesting that Donziger complete the attached contribution form and that the LAPs’ U.S. co-counsel and financier of the litigation Joseph Kohn “do the same thing.” *Id.* The requested contribution amounts for this event ranged from \$1,000 to \$10,000. *Id.* In addition, the invitation urged attendees to “make best efforts to send contributions on or before January 8th so we may count them toward the crucial 2008 financial filing.” *Id.*

⁸² [Ex. 24 at 1629:22-24.](#)

New Jersey State Investment Council, which is a part of New Jersey’s Department of the Treasury. Kramer is also closely affiliated with Donziger and the LAPs—as Donziger testified that “[h]e is a friend of mine.”⁸³ In October of 2009, Kramer attended a “Toxitour” in Ecuador with Barnes, which Donziger had organized.⁸⁴ Kramer apparently was assigned tasks by Donziger that were part of the LAPs’ strategy to pressure Chevron, including “create strategy to galvanize shareholders;” “State AG investigations/Jerry Brown;” “NY investigation;” and “SEC investigation.”⁸⁵ Kramer also advised Donziger on key aspects of case strategy, at one point urging him to hire a “major law firm” to represent the LAPs and force Chevron into settling.⁸⁶ Donziger confided Kramer’s involvement to his associates, stating “I have a guy, Orin Kramer, who runs the New Jersey state pension fund who visited Ecuador . . . He is willing to call several public and private pension funds with large holdings in Chevron.”⁸⁷ Donziger later asked his associate Andrew Woods to write a memo to Kramer regarding Chevron key shareholder dates and resolutions.⁸⁸ Kramer also invested \$150,000 as a financial backer of the Lago Agrio Litigation.⁸⁹ Like Barnes and Donziger, Kramer has donated heavily to

⁸³ [Ex. 24 at 208:19-29.](#)

⁸⁴ [Ex. 44.](#)

⁸⁵ [Ex. 45.](#)

⁸⁶ [Exs. 46.](#)

⁸⁶ [Exs. 47.](#)

⁸⁷ [Ex. 48.](#)

⁸⁸ [Ex. 49.](#)

⁸⁹ [Ex. 24 at 206-09;](#)

[Ex. 50](#)

DiNapoli. Between November 11, 2008, and January 30, 2012, Kramer contributed \$55,000 to DiNapoli spread over eight separate donations.⁹⁰ The last of these came shortly after DiNapoli issued a press release urging Chevron to settle the case. Kramer also donated \$1,500 to Alan Hevesi, DiNapoli's predecessor, who resigned in disgrace and pleaded guilty to criminal charges related to his misuse of the Comptroller's office.⁹¹

While making public statements advocating on behalf of the LAPs, at no time did DiNapoli disclose his financial ties to their enterprise.

2. Offers of Celebrity Access

Donziger and the LAPs also attempted to use the prospect of contact with celebrities to influence DiNapoli and his staff. For example, on August 22, 2007, an Amazon Watch employee contacted Julie Gresham and others at the OSC to try to set up a meeting between Comptroller DiNapoli and Sting and his wife, Trudie Styler.⁹² The Amazon Watch employee followed up on September 11, 2007, to "see if [OSC staff] would be available anytime this week to talk about future [Chevron] shareholder work" including "opportunities re. [sic] Trudie/Sting."⁹³ It is unclear from the documents in Chevron's possession whether DiNapoli did meet with Sting.

⁹⁰ [Exs. 126-131.](#)

⁹¹ [Ex. 120.](#)

⁹² [Ex. 51.](#)

⁹³ [Ex. 52.](#)

3. Offers of Partisan Trips to Ecuador

The LAPs and their allies also offered DiNapoli and OSC staff trips to Ecuador to “learn” about the LAPs’ litigation against Chevron. In March 2004, an OSC staffer, Julie Gresham, accepted an invitation from the LAPs to visit Ecuador as a representative of the “New York State Common Retirement Fund.”⁹⁴ Gresham was a prominent OSC staffer with respect to the Lago Agrio Litigation. Donziger called Gresham “the implementer” in Comptroller Hevesi’s office.⁹⁵ Donziger also noted that he had had drinks with Gresham on at least one occasion.⁹⁶ Gresham’s trip was paid for by the State of New York at a cost to the taxpayers of at least \$1,000 plus airfare.⁹⁷ On the trip, she met with “community members involved in the law suit [*i.e.*, the LAPs], . . . the Judge on the case, [and] Ecuadorian government officials.”⁹⁸ In other words, she heard only from individuals who backed the LAPs but not from Chevron. Following the trip, Gresham’s involvement was widely publicized by the LAPs’ representatives,⁹⁹ and Donziger referred investors to Gresham as a reference.¹⁰⁰

Pleased with the results of their actions under the previous Comptroller’s administration, the LAPs made similar offers of trips to DiNapoli and his staff.

⁹⁴ [Ex. 53.](#)

⁹⁵ [Ex. 54.](#)

⁹⁶ [Ex. 55.](#)

⁹⁷ [Exs. 56.](#)

⁹⁷ [Exs. 57.](#)

⁹⁸ [Ex. 53.](#)

⁹⁹ *See, e.g., Id.*

¹⁰⁰ [Ex. 58.](#)

In February 2010, a representative of the Rainforest Action Network reached out to Pat Doherty, another senior staffer at the OSC, “to schedule a trip to Ecuador for [him].”¹⁰¹ Apparently, Doherty was somewhat nervous about the cost, and the Rainforest Action Network representative assured him that there is “precedent for this at NY State – [an Amazon Watch staffer] connected with Julie Gresham shared that when she traveled to Ecuador . . ., NY State did, in fact, pay for the trip. Everything ex[cep]t for ancillary expenses were covered.”¹⁰² The representative continued “[w]hat do you think? A spring trip to the Amazon?”¹⁰³ It is unclear if Doherty took up the offer.

In June 2011, Amazon Watch invited Comptroller DiNapoli to visit Ecuador in person for another partisan “fact finding” mission. Mitch Anderson, the Amazon Watch representative, first noted that “[i]t was a pleasure to meet you at your offices in May.” Anderson went on to thank DiNapoli for his “gracious show of support for [the LAPs’] decades-old pursuit of a just solution to their plight” and “for [DiNapoli’s] resolve in pressing Chevron to abandon its antagonistic position.”¹⁰⁴ The itinerary for the proposed trip included meetings with the LAPs and inspections of the “impact of Chevron/Texaco’s operations on [the LAPs’] territory, health and culture.”¹⁰⁵ No Chevron representatives

¹⁰¹ [Ex. 59.](#)

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ [Ex. 60.](#)

¹⁰⁵ *Id.*

were included in the itinerary. The itinerary did not consist solely of supposed fact-finding. The itinerary also provided for trips to view “a natural salt lick where wild parrots and macaws congregate”; opportunities to see “monkeys, calman, [and] jungle owls”; “R&R” at an “eco-lodge” in a “pristine rainforest”; and canoe rides.¹⁰⁶ It is unclear from the documents in Chevron’s possession whether DiNapoli accepted.

4. Offers of Political Benefits

The LAPs have also offered DiNapoli the lure of winning political points for supporting the “little guy” in a fight against a large energy company, and for supposedly supporting the environment. In fact, the day DiNapoli was appointed Comptroller Donziger wrote, “if we show him how he can look good going after [C]hevron, he might be even more likely to help us.”¹⁰⁷ Donziger and the LAPs’ representatives’ communications with the Comptroller and his staff again and again portray the suit between the LAPs and Chevron in David and Goliath terms.¹⁰⁸

Comptroller DiNapoli’s article for the *Huffington Post* is a good example of the polemicized language that came to dominate his treatment of the issue. For the LAPs, he referred to the “voices of the residents of Lago Agrio, or ‘Sour

¹⁰⁶

Id.

¹⁰⁷

Ex. 41.

¹⁰⁸

See, e.g. Ex. 61.

Lake’ in Spanish” agonizing about their “hometown” and “farmland.”¹⁰⁹ By contrast, DiNapoli portrayed Chevron as a heartless polluter that “disposed of nearly 16 billion gallons of hazardous waste in the most indiscriminate ways . . . thereby creating hundreds of real-life ‘sour lakes’ of toxic effluent in the Amazon.”¹¹⁰ In short, DiNapoli has become a mouthpiece for the LAPs to gain political advantage for himself. DiNapoli apparently did so either without investigating the facts underlying the public statements he was making or by turning a blind eye to them.

The Comptroller’s other public statements also parrot LAP talking points about the supposed environmental “Chernobyl” caused by Texaco. DiNapoli borrowed lines from the LAPs in his public statements, including equating the Lago Agrio situation to the Exxon *Valdez* oil spill,¹¹¹ discussing the types and extent of supposed disease and pollution,¹¹² and more. Had DiNapoli investigated these claims before making them, he would have learned that they are false.¹¹³

B. DiNapoli’s Public Actions in Support of the LAPs

DiNapoli and his team at the OSC have repeatedly come out in public attacking Chevron through newspaper articles, shareholder statements, and

¹⁰⁹ [Ex. 62.](#)

¹¹⁰ *Id.*

¹¹¹ [Id.; Ex. 122.](#)

¹¹² [Exs. 62-64.](#)

¹¹³ Relevant reports are publicly available in the Ecuadorian court’s docket and online at www.chevron.com/ecuador.

other actions. Each of these actions was taken in close coordination with the perpetrators of the Lago Agrio fraud (Donziger *et al.*), and in furtherance of those perpetrators' goals (forcing Chevron to give the LAPs a big payoff in connection with the fraudulent Lago Agrio Litigation).

Donziger often used ostensibly independent entities such as activist groups Amazon Watch, Trillium Asset Management ("Trillium"), and the Rainforest Action Network to seek action against Chevron by the Comptroller. Indeed, these third parties were Donziger's chief means of communicating with and influencing the Comptroller's office as far back as 2004. At that time, Donziger noted that the OSC "might want to keep a safe distance from these nasty trial lawyers," referring to Donziger and the LAPs' other attorneys.¹¹⁴ Accordingly, Donziger "turned the matter [*i.e.* interfacing with the Comptroller and his staff] over to [his] friends from Amazon Watch."¹¹⁵ Trillium also worked with Donziger and in support of the LAPs for nearly a decade, with one principal goal being to "build internal pressure" at Chevron to settle the Lago Agrio Litigation by giving the LAPs a big payoff.¹¹⁶ Donziger also provided funding to the Rainforest Action Network, which in turn interfaced with the Comptroller and assisted in the campaign to pressure Chevron.¹¹⁷

¹¹⁴ [Ex. 54.](#)

¹¹⁵ *Id.*

¹¹⁶ [See Exs. 40.](#)

¹¹⁶ [See Exs. 65.](#)

¹¹⁷ [Ex. 66.](#)

At no time during these actions did DiNapoli disclose that he and his office had received any of the above consideration in connection with the LAPs' enterprise, or that his public actions were coordinated with Donziger behind closed doors. Nor did DiNapoli have any basis for parroting the LAPs' talking points in his public statements. DiNapoli either did not investigate the basic "facts" underlying his public statements, in which case he was willfully blind to the LAPs' fraud, or he purposefully ignored the overwhelming evidence of the LAPs' wrongdoing.

1. 2007 Letters to President Jimmy Carter and Senator Sam Nunn

DiNapoli's first actions to support the LAPs were in 2007, just months after he first took office. At that time, the Lago Agrio Litigation had been proceeding for some time, and Donziger attempted to ramp up the pressure on Chevron by causing threatening letters to be sent to Senator Sam Nunn, a Chevron board member, and attempting to force a "mediation" of the case. Comptroller DiNapoli's staff participated in these efforts. On May 9, 2007, a "shareholder group" that included the OSC and Trillium sent a letter to The Carter Center seeking to have former President Jimmy Carter invite former Senator Sam Nunn for a meeting. The stated goal was to initiate a process whereby President Carter "might begin . . . to resolve Chevron's substantial

environmental exposure in Ecuador”, *i.e.*, pressure Chevron into giving the LAPs a multibillion-dollar payoff.¹¹⁸

Donziger—the chief perpetrator of the Lago Agrio fraud—was “fully informed” in advance of the attempt to reach out to President Carter,¹¹⁹ and was involved in coordinating this action with DiNapoli’s office. On July 16, 2007, Donziger offered to help prepare Gresham from the OSC (and others) for the potential meeting with Chevron and Sam Nunn. Donziger stated “[t]hese people at Chevron are experts at ‘misdirection’ on the science and I can help you prepare for their anticipated arguments.”¹²⁰

On or about August 3, 2007, Senator Nunn rejected the invitation to mediate the dispute.¹²¹

On August 16, 2007, Donziger urged the investor group (including the OSC) to keep up the pressure on Chevron. He e-mailed the group “suggest[ing that] you consider a follow up letter to Nunn pressing the point.” Donziger also proposed the insertion of legal language and other threats into the letter. According to Donziger, “[j]ust sending such a letter will have a positive effect as [Nunn] will turn it over to in house counsel and it will be yet another pressure point on the management.”¹²²

¹¹⁸ Ex. 67.

¹¹⁹ Ex. 68.

¹²⁰ Ex. 69.

¹²¹ Ex. 70.

¹²² *Id.*

On October 25, 2007, the Fund and other investors sent a follow-up letter to Senator Nunn as Donziger had suggested. The investor group called on Chevron to consider “alternatives” to continuing to contest the Lago Agrio Litigation—in other words, settling just as Donziger wished.¹²³ Although the signatories claimed to have no “formal connection to the plaintiffs” in the Lago Agrio Litigation, the repeated discussions with Donziger demonstrate that statement is at best a half-truth.

2. May 2008 Shareholder Resolution

On May 28, 2008, Comptroller DiNapoli caused the Fund to co-sponsor a Chevron shareholder resolution for the LAPs’ benefit.¹²⁴ The stated goal of this resolution was for Chevron to prepare a report “regarding the policies and procedures that guide Chevron’s assessment of host country laws and regulations with respect to their adequacy to protect human health, the environment and the company’s reputation.”¹²⁵ In his transmittal letter to Chevron, DiNapoli made references to the Lago Agrio Litigation, leaving little doubt that this resolution had as its goal pressuring Chevron to pay off the LAPs.¹²⁶ Indeed, the resolution itself referenced the Lago Agrio Litigation.¹²⁷

¹²³ [Ex. 71](#)
¹²⁴ [Exs. 72.](#)
¹²⁴ [Exs. 73.](#)
¹²⁵ [Ex. 72.](#)
¹²⁶ *Id.*
¹²⁷ [Ex. 74.](#)

This resolution was the brainchild of Trillium, which was backed by Donziger. Trillium authored the statement and provided a draft to the OSC for review on November 13, 2007, just a week before the Comptroller’s co-sponsorship statement was due.¹²⁸ DiNapoli wasted little time, and sent his formal approval and co-sponsorship of the statement just three days later on November 16, 2007.¹²⁹ The resolution was defeated by a vote of Chevron’s shareholders.¹³⁰

3. November 2008 Letter to Chevron’s Board

On November 17, 2008, DiNapoli urged Chevron to “settle” with the LAPs. DiNapoli wrote to Chevron and proceeded to question Chevron’s defense of the LAPs’ claims and the adequacy of Chevron’s securities disclosures.¹³¹ DiNapoli also disagreed with Chevron’s “actions in litigating this case” and argued that Chevron should admit liability, instead of “protracting the legal proceedings.”¹³² DiNapoli relied on the (now shown to be fraudulent) report of “court-appointed expert, Professor Richard Cabrera,” in urging Chevron to pay off the LAPs.¹³³

Chevron responded to DiNapoli on December 17, 2008. In its letter, Chevron explained that “[Chevron’s] strategy is to defend the company against

¹²⁸ [Ex. 75.](#)

¹²⁹ [Ex. 76](#)

¹³⁰ [Ex. 77.](#)

¹³¹ [Ex. 78.](#)

¹³² *Id.*

¹³³ *Id.*

a lawsuit which has no legal or factual merit and which is an attempt to extort money from the company and its shareholders through a false smear campaign, fraudulent damage reports, and illegal collusion between the government and the attorneys for the [LAPs].” Chevron attached a multi-page memorandum further detailing the fraud committed by the LAPs and their attorneys.¹³⁴ As of at least that point, DiNapoli was on notice of the fraud being committed in Lago Agrio. However, he continued to take actions for the LAPs’ benefit.

4. May 2009 Shareholder Resolution

On May 27, 2009, Comptroller DiNapoli caused the Fund to co-sponsor another Chevron shareholder resolution for the LAPs’ benefit.¹³⁵ The stated goal of this resolution was, as in 2008, for Chevron to prepare a report “regarding the policies and procedures that guide Chevron’s assessment of host country laws and regulations with respect to their adequacy to protect human health, the environment and the company’s reputation.”¹³⁶ According to the resolution, “Chevron’s record to date demonstrates a gap between its international environmental aspirations and its performance.”¹³⁷ In short, the proposal called for implicit recognition that Chevron was to blame in Lago Agrio. As support, the resolution relied upon the fraudulent Cabrera report and

¹³⁴ [Ex. 79.](#)

¹³⁵ [Exs. 80.](#)

¹³⁵ [Exs. 81.](#)

¹³⁶ [Ex. 80.](#)

¹³⁷ *Id.*

the false Lago Agrio Litigation allegations.¹³⁸ The resolution was defeated by a vote of Chevron’s shareholders.¹³⁹

5. May 2011 Shareholder Resolution

On May 25, 2011, Comptroller DiNapoli directed the Fund to co-sponsor another Chevron shareholder resolution for the LAPs’ benefit.¹⁴⁰ The stated goal of this resolution was to appoint an environmental “specialist” to Chevron’s board.¹⁴¹ The resolution adopted the discredited damage assessments of the Cabrera report, claiming that “a court-appointed expert in the Ecuadorian litigation has recommended that Chevron be held liable for up to \$27.3 billion in damages.” It further stated that Chevron had to act “in order to restore trust” with respect to “the adverse impact of its operations.” Once again, the proposal adopted the LAPs’ position and blamed Chevron. The resolution was defeated by vote of Chevron’s shareholders.¹⁴²

As before, the resolution was filed in conjunction with Donziger ally Trillium, which co-signed on the resolution.¹⁴³ Comptroller DiNapoli’s office also provided edits to and he personally signed off on a shareholder solicitation

¹³⁸

Id.

¹³⁹ [Ex. 82.](#)

¹⁴⁰ [Exs. 83.](#)

¹⁴⁰ [Exs. 84.](#)

¹⁴¹ [Ex. 84.](#)

¹⁴² [Ex. 85.](#)

¹⁴³ [Ex. 83.](#)

issued by Trillium, which was circulated to Chevron shareholders in an effort to induce them to vote for the resolution.¹⁴⁴

6. May 2011 Investor Statement and Press Release

On May 25, 2011, a group of Chevron shareholders led by DiNapoli and the OSC, and including Trillium, released an “Investor Statement” regarding Chevron and the Lago Agrio Litigation. In the statement, DiNapoli, Trillium, and other shareholders pushed Donziger’s plan, and again attempted to use the Comptroller’s financial and political clout to pressure Chevron into settling the Lago Agrio Litigation. The timing of the statement was odd as Chevron had just won a global stay of enforcement of the Lago Agrio judgment.¹⁴⁵

Nonetheless, the statement opposed Chevron’s continuing to fight the fraud committed in Lago Agrio by DiNapoli’s supporters. DiNapoli and the other shareholders denigrated Chevron’s remediation efforts, and stated that Chevron “displayed poor judgment” in “failing to negotiate a reasonable settlement prior” to the fraudulent judgment in Lago Agrio being entered. DiNapoli then “call[ed] upon Chevron to reevaluate whether endless litigation . . . is the best strategy . . . or whether a more productive approach, such as

¹⁴⁴ Ex. 86.

¹⁴⁵ See *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581 (S.D.N.Y. 2011), preliminary injunction vacated, *Chevron Corp. v. Naranjo*, 2011 WL 4735022 (2d Cir. Sept. 19, 2011).

reaching an equitable negotiated settlement” would be better.¹⁴⁶ Again, this was in line with the LAPs’ and Donziger’s plans.

DiNapoli and the OSC publicized the statement in a contemporaneous press release entitled, “DiNapoli to Chevron: Resolve Amazon Lawsuit.”¹⁴⁷ According to the release, “DiNapoli and other investors called on the company to promptly negotiate a reasonable settlement” to the Lago Agrio Litigation. According to DiNapoli—despite the evidence that had emerged of the LAPs’ shocking fraud— “[i]t’s time for Chevron to face reality.”¹⁴⁸ DiNapoli continued (incorrectly): “The effects of this horrific, uncontrolled pollution of the Amazon rainforest are still being felt today. . . . More legal proceedings will only delay the inevitable.”¹⁴⁹ Chevron had already provided DiNapoli with information demonstrating these statements to be false.¹⁵⁰

The May 2011 investor statement was the design of Donziger and his allies. Trillium, Donziger’s ally,¹⁵¹ was the principal drafter of the investor statement with assistance from staff at the OSC.¹⁵² Trillium was also responsible for soliciting investors to co-sign the statement.¹⁵³ In addition, representatives of Amazon Watch, another Donziger ally, met with DiNapoli on

¹⁴⁶ [Ex. 121.](#)

¹⁴⁷ [Ex. 122.](#)

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ [Ex. 79.](#)

¹⁵¹ [See Exs. 54.](#)

¹⁵¹ [See Exs. 65.](#)

¹⁵² [Ex. 87.](#)

¹⁵³ [Ex. 88.](#)

May 18, the week before the statement was issued.¹⁵⁴ The meeting took place even though the OSC was informed by a former Trillium analyst that Donziger was behind funding for Amazon Watch.¹⁵⁵

7. September 2011 *Huffington Post* Article

On September 26, 2011, DiNapoli published an article in the *Huffington Post* that set forth what are the LAPs' arguments. The article was entitled "What Chevron Owes the People of Lago Agrio." In the article, DiNapoli called Lago Agrio an "industrial cancer zone" with "poisoned farmland and heavily polluted waterways and burdened with elevated rates of disease." According to DiNapoli, it was "more likely than ever" that Chevron would be held liable for this supposed damage. DiNapoli noted that "[s]ince taking office as New York State Comptroller four years ago, [he] ha[s] asked Chevron's board of directors to settle the marathon litigation" and he renewed his call for the company to "negotiat[e] a fair settlement."¹⁵⁶ Two days later, a Spanish version of the same article was published in Ecuador's government-owned *Ecuador Inmediato* online newspaper.¹⁵⁷

¹⁵⁴ Exs. 89.

¹⁵⁴ Exs. 90.

¹⁵⁵ Ex. 66.

¹⁵⁶ Ex. 62.

¹⁵⁷ Ex. 123.

As before, DiNapoli’s “facts” were wrong, as Chevron had already demonstrated to the OSC.¹⁵⁸ In addition, DiNapoli made no mention of the fraud in Lago Agrio, which had by this time come to light.

8. May 2012 Shareholder Resolution

On May 30, 2012, Comptroller DiNapoli once more had the Fund co-sponsor a shareholder resolution supporting the LAPs, largely identical to the one the OSC had co-sponsored with Trillium the previous year.¹⁵⁹ This resolution again called for an environmental “specialist” to be appointed to Chevron’s board.¹⁶⁰ The resolution cited the Ecuadorian court’s fraudulent judgment holding Chevron liable for “\$8.6 billion in damages arising from widespread contamination of Amazonian land and water resources by Texaco,” but this time omitted mention of the fraudulent Cabrera report. The resolution was defeated by a vote of Chevron’s shareholders.¹⁶¹

9. May 2012 Shareholder Statement and Press Release

On May 12, 2012, DiNapoli and a group of Chevron shareholders published an investment letter “on Chevron and Ecuador” as they had in 2011. Again, the letter supported the LAPs’ preferred “settlement” solution. According to the letter, Chevron’s “options to evade” the (fraudulent) Lago Agrio Litigation had “greatly narrowed,” thus DiNapoli and the shareholders

¹⁵⁸ [Ex. 79.](#)

¹⁵⁹ [Exs. 91.](#)

¹⁵⁹ [Exs. 92.](#)

¹⁶⁰ [Ex. 92.](#)

¹⁶¹ [Ex. 93.](#)

called again on Chevron to reach “an equitable settlement” with the LAPs.¹⁶² In a press release accompanying the May 2012 letter, DiNapoli again echoed the LAPs’ position that “Chevron’s actions are hurting . . . the indigenous people of the rainforest.”¹⁶³

C. Lobbying Other Government Agencies, Officials and Public Institutions

In addition to the public statements that DiNapoli has made pressuring Chevron to give the LAPs a payoff, he and his staff have privately lobbied other government agencies to join in the LAPs’ cause. The OSC reached out to several public and private institutions on behalf of the LAPs including the Pennsylvania Treasury Department (in conjunction with Amazon Watch and Trillium),¹⁶⁴ the North Carolina Treasury (which wanted to discuss “Chevron and political spending” and to meet with DiNapoli),¹⁶⁵ the New York City Comptroller (from which Pat Doherty joined the OSC), Haverford College,¹⁶⁶ and potentially other “pension funds.”¹⁶⁷

It appears that DiNapoli and the OSC were also involved in efforts that ultimately proved unsuccessful to press then New York State Attorney General Andrew Cuomo to target Chevron as a means of putting pressure on Chevron.

¹⁶² [Ex. 124.](#)

¹⁶³ [Ex. 125.](#)

¹⁶⁴ [Exs. 94-96](#)

¹⁶⁵ [Ex. 97.](#)

¹⁶⁶ [Ex. 98.](#)

¹⁶⁷ [Ex. 99.](#)

Karen Hinton, who is Donziger’s and the LAPs’ spokeswoman,¹⁶⁸ was paid \$10,000 per month as part of that effort.¹⁶⁹ Donziger also met with Barnes, his ally and a contributor to DiNapoli, to ask Barnes to meet with DiNapoli to pressure Cuomo.¹⁷⁰ Hinton later told Donziger that the “[i]nformation has been sent to dinapoli [sic]. Next step is for him to read it and decide if he will ask Andrew [Cuomo]. Ben [Barnes] said it sounded like he would do it. Then, I’m sure he will have to write a letter, etc.”¹⁷¹ In a subsequent e-mail, Donziger related “DeNapoli [sic] info/instructions for Ben,” including that DiNapoli call the Attorney General’s office “or write a letter, requesting assistance on the Chevron disclosure matter to enable [the Attorney General] to write a letter to Chevron seeking more information.”¹⁷² Consistent with these efforts, a February 26, 2009, task list prepared by Hinton included “[g]et [the Attorney General] to write a letter to Chevron. Working with Barnes to get NY State Comptroller to ask AG’s office to write a letter of concern to Chevron. Ben to meet with DiNapoli the week of March 2nd to discuss.”¹⁷³ The Attorney

¹⁶⁸ [Ex. 100.](#)

¹⁶⁹ [Ex. 101.](#)

¹⁷⁰ [Ex. 105.](#)

¹⁷¹ [Ex. 102.](#)

¹⁷² [Ex. 103.](#)

¹⁷³ [Ex. 104.](#)

General's office, after sending a short letter to Chevron, ultimately did the right thing, deciding not to pursue any further investigation of Chevron.

There is also evidence that the OSC may have been involved in efforts to induce the Securities and Exchange Commission to investigate Chevron. On May 31, 2011, activist Simon Billenness e-mailed the OSC and Amazon Watch to arrange a conference to discuss "how to press the SEC to move forward with [an] investigation [of Chevron]," and how to bring additional "pressure on Chevron to settle the case."¹⁷⁴

D. Meetings and Coordination between DiNapoli and His Staff and the LAPs

In addition to coordinated public statements and actions by DiNapoli and his staff and the LAPs, there has been a high degree of private coordination between the OSC and the LAPs' representatives, including Donziger. During these repeated and continual contacts, Donziger attempted (apparently successfully) to influence DiNapoli to act against Chevron. For example, Donziger hosted conference calls for OSC personnel to "brief" them regarding the Lago Agrio Litigation,¹⁷⁵ and provided the OSC with anti-Chevron propaganda. One memo distributed in 2007 characterizes evidence submitted by Chevron in Ecuador as "shameful and part of the company's scientific

¹⁷⁴ [Ex. 106.](#)

¹⁷⁵ [Ex. 107.](#)

fraud.”¹⁷⁶ Donziger omitted the LAPs’ fraud from this message. And as discussed above, Donziger was in contact with the OSC in connection with the outreach to Senator Sam Nunn.

Donziger’s proxies at Amazon Watch and Trillium have also been in continual contact with DiNapoli’s staff through calls and meetings. The subject of these contacts has uniformly been anti-Chevron, pro-LAPs. For example, on October 7, 2011, Trillium, on behalf of Amazon Watch, sent a communication to several Chevron shareholders, including the Comptroller’s office. The e-mail was sent to provide “questions to ask [Chevron]” at an upcoming meeting about the Lago Agrio Litigation. The topics included Chevron’s supposed “inventing fraud,” “undermining the First Amendment,” “Toxic Legacy,” and, ironically, “Using Political Influence to Undermine Rule of Law.”¹⁷⁷ As a further example, on April 5, 2010, Maria Ramos of the Rainforest Action Network e-mailed the OSC, Trillium, Amazon Watch and others with questions and news clippings that brought to light how the LAPs had forged expert reports in the Lago Agrio Litigation. Ramos stated that “we” (which included the OSC) need to “wrest as much as we can from this weakening hand” and “frame this as a victory and pull[] in Ecuador.”¹⁷⁸

¹⁷⁶ [Ex. 108.](#)

¹⁷⁷ [Ex. 109.](#)

¹⁷⁸ [Ex. 110.](#)

E. Delayed and Incomplete Responses to Chevron’s FOIL Requests

In light of growing evidence of an apparent *quid pro quo* agreement between the Comptroller’s office and the LAPs, Chevron made a Freedom of Information Law (“FOIL”) request to the OSC on October 7, 2011.¹⁷⁹ Chevron sought documents that would help shed further light on the extent of the ties between the LAPs and the Comptroller’s office. The OSC dragged out the proceedings for nine months and produced only some of the documents responsive to Chevron’s request.¹⁸⁰ The OSC has withheld at least 1,000 pages of responsive documents—if not far more.¹⁸¹

Based upon the above evidence, Chevron believes that the withheld documents may evidence further potential misconduct by the Comptroller’s office. Chevron respectfully directs the withheld documents to the Commission’s attention.

NEW YORK PUBLIC OFFICERS LAW

DiNapoli’s conduct has apparently violated multiple provisions of New York law, summarized below, and calls for an official investigation.

¹⁷⁹ [Ex. 111.](#)

¹⁸⁰ [Ex. 112.](#)

¹⁸¹ *Id.*

I. SECTION 74(2)

Section 74(2) of the New York Public Officers Law prohibits New York State officials from having “any interest, financial or otherwise . . . which is in substantial conflict with the proper discharge of [their] duties in the public interest.” As trustee of the Fund, which owns hundreds of millions of dollars of Chevron stock, DiNapoli owes a duty to act for the benefit of the Fund and his fiduciaries. Likewise, as a state official, he has a responsibility to act for his constituents, not for any particular advocacy group.

DiNapoli has apparently breached those duties by having interests that conflict with the proper discharge of his duties. DiNapoli’s actions have been taken for the LAPs’ benefit and not for the benefit of his fiduciaries or constituents, and he has apparently done so in exchange for illicit benefits received from the LAPs. Specifically, as discussed in the Complaint, the LAPs and their representatives have made direct financial contributions to DiNapoli’s campaign, and have offered DiNapoli and his staff trips to Ecuador, celebrity access and political benefits. In an apparent *quid pro quo* exchange, he has used his public office to take action against Chevron that was expressly intended to pressure Chevron into giving the LAPs a payoff in connection with the Lago Agrio Litigation. DiNapoli’s advocacy has come despite clear evidence and findings by U.S. federal courts that the Lago Agrio Litigation has been pervaded by fraud committed by the LAPs and their representatives. Moreover, DiNapoli’s statements have been based upon information provided to him by

the LAPs, which investigation by the Comptroller's office would have shown to be false. These actions do not benefit either the citizens of the State of New York or the beneficiaries of the Fund, which holds hundreds of millions of dollars of Chevron stock. They serve to benefit only DiNapoli's private interests and the LAPs.

II. SECTION 74(3)(d)

Under Section 74(3)(d), no official "should use or attempt to use his or her official position to secure unwarranted privileges . . . for himself . . . including, but not limited to, the misappropriation to himself . . . of the property, services or other resources of the state for private business or other compensated non-governmental purposes."

DiNapoli has apparently misused his official position as Comptroller and trustee of the Fund, which holds a significant investment in Chevron, to secure unwarranted privileges for himself by supporting private, non-governmental business. DiNapoli has used his office to support the LAPs' fraudulent (and private) scheme to pressure Chevron into giving the LAPs a payoff in connection with the Lago Agrio Litigation. In doing so, DiNapoli and his office have apparently misused state resources, such as employee time and state equipment, as well as DiNapoli's elected office and position as trustee of the Fund. In an apparent exchange for this support, DiNapoli and his office have secured privileges for themselves including tens of thousands of dollars in

campaign donations, offers of trips to Ecuador, celebrity access, and political benefits that are unwarranted.

III. SECTION 74(3)(f) AND 74(3)(h)

Under Section 74(3)(f), a state official “should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties.” Likewise, Section 74(3)(h) provides that a state official “should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.”

DiNapoli has by his conduct “give[n] reasonable basis for the impression” that he can be “improperly influence[d]” in the performance of his official duties, and his conduct has raised suspicion that he is likely to be engaged in acts that are in violation of his public trust. DiNapoli has given reason to believe that his support for the LAPs is the apparent result of illicit consideration, including tens of thousands of dollars, given to his campaign by the LAPs’ representatives. The Lago Agrio Litigation has been shown to be a fraud, yet DiNapoli continues to support the LAPs’ goal of forcing Chevron to give the LAPs a multibillion-dollar payoff in connection with the Lago Agrio Litigation. DiNapoli has done so without disclosure of his financial and other ties to the LAPs, or apparently thorough investigation of the (baseless) claims against Chevron. Moreover, as described above, DiNapoli’s course of conduct is in conflict with the public interest.

IV. SECTION 74(4)

Section 74(4) of the Public Officers Law provides: “In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law.” It provides further that for intentional violations of certain subsections, such as Section 74(3)(d), violators “shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation.”

DiNapoli’s apparent violation of his public trust appears to be intentional as evidenced by the fact that he has taken action to benefit the LAPs and to attack Chevron in an apparent exchange for benefits received from the LAPs. Such conduct is an apparent violation of other sections of the Public Officers Law and could not be anything other than an intentional violation. Indeed, DiNapoli took all, or most, of his public actions against Chevron and for the LAPs’ benefit after having been put on notice by Chevron that the Lago Agrio Litigation is a fraud and that there is no support for the LAPs’ (and DiNapoli’s) position. Yet DiNapoli continued to take action in support of the LAPs and adverse to the interests of his fiduciaries and constituents in apparent pursuit of his own private interests.

CONCLUSION

Chevron believes that the evidence marshalled and evaluated by multiple federal courts, and found in public records including the OSC's own documents, leads to the inexorable conclusion that DiNapoli's actions have apparently violated several New York State laws governing the ethics of public officials. Chevron respectfully submits that this matter warrants the Commission's immediate consideration and a thorough investigation.

As an attorney admitted to the practice of law before the courts of the State of New York, I hereby affirm under penalty of perjury that I have read this complaint against Comptroller DiNapoli in its entirety, including any additional pages, and that to the best of my knowledge and based on information and belief, believe it to be true.


David Grandeau