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CONTENT & OPINIONS

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Aguinda v. Texaco: Oil, Pollution, Illness, and the Quest for Justice

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ABSTRACT

The almost twenty five year old case of "*Aguinda v. Texaco"* has been called "the most important environmental case of the 21st century."[1] The study of this particular ongoing dispute is a unique educational opportunity to illustrate and discuss the complexities of international investment and transnational dispute resolution. This article includes a detailed summary of the story to date, as well as study applications that can be used in variety of business courses at both the undergraduate and graduate levels.

KEY WORDS: Aguinda, Texaco, Ecuador, Chevron, oil, pollution, Environmental Management Act, transnational litigation, transnational dispute resolution, global enforcement of judgments, fraud

I. INTRODUCTION

Aguinda v. Texaco has been called "the most important environmental case of the 21st century"[2] and the litigation surrounding the actions of a Texaco subsidiary, Texaco Petroleum Co. (TexPet), in Ecuador has been ongoing for well over twenty years.[3] The events and issues unfolding throughout the lengthy history of this case have been sensational enough to be the subject of a documentary,[4] a book by a *New York Times* Best Selling author,[5] and seemingly garnered coverage in almost every major news or media outlet at one point. As one commentator noted "it's a depressing story. It oozes of corporate irresponsibility, government mismanagement of natural resources, governmental corruption, judicial corruption, and allegations of fraud."[6]

Though the story is indeed a sad one, especially from the standpoint of any impacted Ecuadorians, the study of this particular dispute is a unique educational opportunity to illustrate and discuss the complexities of international investment and transnational dispute resolution.[7] Part II provides an initial overview of the course applications for this case. The case story itself is told in Part III. The story is a relatively complete, yet succinct, overview of the major events and issues in this saga, as providing the detail on each international business or law issue that can be found throughout the literature and news stories would yield a lengthy novel versus a classroom appropriate case study. As there is significant partisan documentation and rhetoric on both sides of the case, the sources cited in Part III are intended to provide as much of an objective view of the facts

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[1] Paul M. Barrett, The Meaning of Chevron's Oil Pollution Case in Ecuador, BLOOMBERG BUSINESSWEEK (July 31, 2013 2:11PM), http://www.bloomberg.com/news/articles/2013-07-31/the-meaning-of-chevrons-oil-pollution-case-in-ecuador.

[2] Paul M. Barrett, The Meaning of Chevron's Oil Pollution Case in Ecuador, BLOOMBERG BUSINESSWEEK (July 31, 2013 2:11PM), http://www.bloomberg.com/news/articles/2013-07-31/the-meaning-of-chevrons-oil-pollution-case-in-ecuador.

[3] See Perry Cooper, Long Road Ahead for Ecuadorians to Enforce $9.5 Billion Judgment Against Chevron, 29 TOXICS L. REP. 1, 3 (Mar. 27, 2014), http://law.wm.edu/faculty/documents/Chevron.pdf.

[4] CRUDE: THE REAL PRICE OF OIL (Entendre Films 2009).

[5] PAUL M. BARRETT, LAW OF THE JUNGLE, (Crown 2014).

[6] Fenner L. Stewart, Comment, Foreign Judgments, judicial trailblazing, and the cost of cross-border complexity: thoughts on Chevron Corp v. Yaiguaje, 34 J OF ENERGY AND NAT. RES. L. 239, 240 (2016).

[7] See Manuel A. Gomez, The Global Chase: Seeking the Recognition and Enforcement of the Lago Agrio Judgment Outside of Ecuador, 1 STAN. J. COMPLEX LITIG. 429, 430 (2013) (stating that "there is hardly a better example…to showcase the intricacies that surround the recognition and enforcement of a foreign judgment").

as possible to attempt to illustrate what has legally happened. Some of the more partisan sources are referenced later for further research and discussion in Part IV within the teaching note.[8]

II. COURSE APPLICATIONS

Boehrer and Linsky note that the use of cases as educational tools is not a new concept, especially in legal education, and dates back over a century.[9] They posit that a good case serves a vehicle for "a rich and lively discussion of the issues that the teacher wants the students to confront."[10] Almost every issue found in a basic international law class or textbook chapter, such as the risks of foreign investment to jurisdictional issues, difficulties of enforcing foreign judgments, especially when international treaties are implicated, and international ethics are present in this saga. As such, the case meets their criterion due to the breadth of topics this case illustrates, which allows the instructor to choose from a multitude of issues that they want students "to confront." Boehrer and Linksy go on to cite research by Bennett and Chakravarthy at Harvard Business School, one of the most recognized institutional names in the use and production of teaching cases, about the elements of an engaging case.[11] In the conclusion of their paper, Boherer and Linsky lay out ten factors that their research revealed as elements of a good case.[12] Of those ten, the following eight principles apply to this case to some degree including that it "tells a story," "is set in the past 5 years," "focuses on an interesting arousing issue," "permits empathy with the central characters," "presents only such issues as working MBA's face," "requires appraisal of decisions already made," "teaches management skill," and the "optimum length is 8 to 15 pages of text."[13] Ultimately, the *Aguinda* case meets the elements of a quality teach case laid out by the four scholars.

This case was originally developed for an online graduate international law course and uses *International Business Law and its Environment* by Schaffer, Augusti, and Dhooge as the primary text.[14] Due to the online modality, this course relies heavily on discussions and application problems, which the case supports very well. The case is read during the first week of class and then students apply it to the related topics arising throughout the semester.[15] When the course was taught face to face, students also viewed and discussed the previously referenced documentary, Crude: The Real Price of Oil.[16] Students find it fascinating to see the differences in the Ecuadorian legal system, from the publicly televised argument in the judge's office, to much of the trial being conducted in the jungle with the judge, attorneys, and spectators standing almost shoulder to shoulder. Because of this unique view of the judicial practices in another country, the author is exploring the copyright possibilities and the technology needed to embed the documentary into the online course.

This case was also recently integrated into an online graduate business law and ethics course where the author was recruited as a consultant. Due to design requirements for that institution, the course utilized the case in a much different manner, as the time allocated for the study of international law and ethics issues was constrained to a single week. The unit objective the case aligned to was for students to "examine the legal and ethical considerations in conducting business internationally." As this course needed multiple group assignments, the instructor would group students (author, again, was just the designer of the course) tasked with writing a paper defending, both legally and ethically, one of the sides in this case, either Chevron or the Ecuadorian people. In addition to utilizing the case itself, the instructor would direct students to further research the case and events, including using some of the more partisan support in their position paper.

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[8] See Part IV(B).

[9] John Boehrer & Marty Linsky, Teaching with Cases: Learning to Question, 42 NEW DIRECTIONS FOR TEACHING & LEARNING, 41, 43 (1990).

[10] Id. at 45.

[11] Id. at 45.

[12] See John B. Bennett & Balaji Chakravarthy, What Awakens Interest in a Student Case, HBS BULLETIN 12-14 (1978).

[13] Id at 13-14.

[14] RICHARD SCHAFFER, FILBERTO AGUSTI & LUCIEN J. DHOOGE, INTERNATIONAL BUSINESS LAW AND ITS ENVIRONMENT (Cengage Learning, 9th ed., 2015).

[15] The specific questions and assignment details may be found in the Teaching Note in Part IV.

[16] Supra note 3.

The case has also been included in an undergraduate Legal Environment of Business course as an interesting supplementary reading when the class studies the International Law chapter from the text used. Due to the fact that this chapter appears during the last week of the semester, there is not a concurrent dedicated assessment exercise.

III. THE STORY OF AGUINDA V. TEXACO

A. Oil in Ecuador – Prelude to a Conflict

Though petroleum exploration in Ecuador dates back to 1878,[18] this story truly began in 1964 when a fourth level subsidiary of Texaco, Texaco Petroleum Co. (TexPet), and Gulf Oil Co (Gulf),[19] entered into a twenty-eight year agreement with the Ecuadorian government to explore for, and produce, oil across three and a half million acres of land in the northern Oriente region.[20] Though the area was largely overlooked by other oil companies, TexPet struck its first producing well there early in 1967, which spewed almost 3,000 barrels in its first day.[21] With the oil and resultant money flowing, Ecuador modified the terms of the agreement in 1974 and a relatively new law resulted in a state oil company, known as PetroEcuador today, assumed a 25% ownership stake in the venture.[22] During the remaining period of the partnership, TexPet maintained a 37.5% ownership stake in the oil exploration and production venture, with Gulf Oil and PetroEcuador owning the rest. In 1976, Gulf Oil then relinquished its ownership interest to PetroEcuador in exchange for $82.1 million.[23] Though Texaco became the minority owner, they remained the principal operator until 1990,[24] when TexPet transferred operational control to Petroamazona, a subsidiary of PetroEcuador.[25] In 1992, TexPet relinquished its ownership stake leaving PetroEcucador as the 100% owner and operator going forward.

B. The Ecuadorian Fallout Comes to the United States

In 1993, just a year after TexPet's exit from Ecuador, a class action lawsuit, *Aguinda v. Texaco*, was filed in the Southern District of New York against the parent company, Texaco, Inc. The complaint alleged, generally, that Texaco's "negligent, reckless, intentional and outrageous acts" have caused "property damage, personal injuries, increased risk of cancer and other diseases."[26] Specifically, they alleged that Texaco engaged in such damaging activities as the spilling of an estimated 16.8 million gallons of oil from the pipelines it built and maintained, discharging toxic wastes in open pits, burning oil wastes in open pits without adequate temperature and pollution controls, and spreading oil on the roads.[27] The plaintiffs claimed that all of these

[18] CHEVRON, INC. History of Texaco and Chevron in Ecuador, https://www.texaco.com/ecuador/en/history/background.aspx (last visited Jan. 24, 2017).

[19] See Aguinda v. Texaco, 303 F.3d 470, 473 (2nd Cir. 2001).

[20] Gomez, supra note 4, at 15.

[21] Id. at 16.

[22] See Luciene J. Dhooge, Aguinda v. ChevronTexaco: Mandatory Grounds for the Non-Recognition of Foreign Judgments for Environmental Injury in the United States, 19 J. OF TRANSNAT. L. & POL'Y 1,5 (Fall 2009) (citing Republic of Ecuador v. ChevronTexaco Corp., 376 F. Supp. 2nd 334, 340 (S.D.N.Y. 2005).

[23] Id. at 5 (citing Judith Kimerling, Indigenous Peoples and the Oil Frontier in Amazonia: The Case of Ecuador, ChevronTexaco and Aguinda v. Texaco, 38. N.Y.U. J. INT'L L. &. POL'Y 413, 420 n.17 (2006)).

[24] Id. at 5 (citing Republic of Ecuador, 376 F. Supp. 2nd at 340-41).

[25] Id.

[26] Complaint, Aguinda v. Texaco, Inc., 93 CV 7527 1, 3 (S.D.N.Y. Nov. 3. 1993).

[27] Id. at 23-26.

practices violated both industry and international standards[28] and sought compensatory and punitive damages, litigation costs, and equitable relief.[29]

Texaco moved to dismiss the suit based largely on the doctrine of *forum non conveniens,* arguing that Ecuador was a more appropriate forum.[30] For such a dismissal, the court stated that "a defendant must demonstrate (1) that there exists an adequate alternative forum[31] and (2) that the ordinarily strong presumption of favoring the plaintiff's chosen forum is overcome by a balance of the relevant factors of private and public interest weighing heavily in favor of the alternative forum."[32] Regarding the first prong, the plaintiffs argued that Ecuador's jurisdiction would be inadequate due to the country not recognizing tort claims or class actions and certain procedural difficulties with claims of this type.[33] The court found that these arguments unpersuasive, as section 2241 of the Ecuadorian Civil Code expressly provides for tort actions,[34] most nations do not allow class actions,[35] and certain procedural hurdles regarding the requirement of preliminary administrative agency action existed in the United States as well.[36] Regarding the second prong, Judge Rakoff based his analysis on the public and private interest factors laid out initially by the U.S. Supreme Court in *Gulf Oil Corp. V. Gilbert*.[37] "The 'private interest' factors include the relative ease of access to sources of proof, the cost of obtaining attendance of willing witnesses, the availability of compulsory process for obtaining attendance of unwilling witnesses, the possibility of viewing the relevant premises and other such practical concerns."[38] Given the location of the damage and the location of the relevant parties, the balance weighed in favor of Ecuador on this factor.[39] "The "public interest" factors include the local interest in the controversy, court congestion, avoidance of any unnecessary problems in application of foreign law, and avoidance of imposing jury duty on residents having no relationship to the controversy."[40] Here again, the factors weighed heavily in favor of Ecuadorian jurisdiction.[41] The court further explained that "the notion that a New York jury (which plaintiffs demanded) applying Ecuadorian law (which likely governs here) could meaningfully assess what occurred in the Amazonian rainforests in Ecuador in the 1960's and early 1970's is problematic on its face."[42] Following eight years of pre-trial actions in the United States, the motion to dismiss was granted on May 30, 2001, with Judge Rakoff summarily stating that "the record overwhelmingly establishes that these cases have everything to do with Ecuador and nothing to do with the United States."[43] It is also worth noting that the decision was influenced by Texaco agreeing to submit to jurisdiction in Ecuador.[44] The plaintiffs immediately appealed to U.S. Court of Appeals for the Second Circuit, which affirmed the decision on August

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[28] Id. at 23.

[29] Id. at 36-37.

[30] Aguinda v. Texaco, Inc., 142 F. Supp. 2d 534, 536 (S.D.N.Y. May 30, 2001).

[31] Id. at 538 (citing DiRienzo v. Philip Servs. Corp., 232 F.3d 49, 56 (2d Cir. 2000); Evolution Online Sys., Inc. v. Koninklijke PTT Nederland N.V., 145 F.3d 505, 510 (2d Cir. 1998); PT United Can Co. v. Crown Cork & Seal Co., 138 F.3d 65, 73 (2d Cir. 1998)).

[32]Id. (citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-57, 70 L. Ed. 2d 419, 102 S. Ct. 252 (1981), reh'g denied, 455 U.S. 928, 71 L. Ed. 2d 474, 102 S. Ct. 1296 (1982); Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-10, 91 L. Ed. 1055, 67 S. Ct. 839 (1947); DiRienzo, 232 F.3d at 56-57; PT United Can Co., 138 F.3d at 73-74.).

[33] Id. at 539-545.

[34] Id. at 541.

[35] Id. at 541.

[36] Id. at 542-543.

[37] Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (Mar. 10, 1947).

[38] Aguinda, 142 F. Supp. 2d 534, 548.

[39] Id.

[40] Id. at 551.

[41] Id.

[42] Id. at 546 (quoting language from Memorandum Order, Aguinda v. Texaco, 2000 WL 122143 at *1 (Jan. 21, 2000)).

[43] Id. at 537.

[44] Id. at 538.

16, 2002, on the condition that Texaco also agree to not pursue a statute of limitations defense that might ordinarily be at its disposal.[45]

C. Other Important Events During Litigation - The Release of TexPet and a Change in Ownership for Texaco

In 1995, with the litigation still pending in New York, TexPet entered into an agreement with PetroEcuado and the Ecuadorian Government to remediate some of the affected areas in the region. As a part of the Remedial Action Plan (RAP), TexPet became responsible for cleaning up 133 pits dug near the wells that housed a mixture drilling muds, formation water, and oil,[46] as well as seven oil spill areas within the production area.[47] This total roughly correlated to TexPet's ending ownership percentage of 37.5%. This still left 264 pits with potential issues assuming all others were appropriately cleaned up. By 1997, TexPet completed their remediation at a cost of approximately forty million dollars. The remediation efforts seemingly met the requirements of the RAP and the final release was signed on September 30, 1998 by TexPet, PetroEcuador, Petroproduccion and, most importantly, the Minister of Energy and Mines acting on behalf of the Ecuadorian government.[48] This approval released TexPet from further liability in this matter according to the terms of the RAP.

A second major event during the U.S. litigation that would impact the storyline involved the change in ownership of Texaco. After previously failing to agree to terms in 1999, Chevron agreed in October of 2000 to acquire Texaco in a 36 billion dollar deal.[49] By the time regulators approved the deal in September of 2001, the deal was valued at over $46 billion. Texaco shareholders would receive .77 shares of stock in the new Chevron Texaco for every share of Texaco stock it held.[50]

D. Back to Where it All Began

In 2003, the case, commonly called the Lago Agrio litigation, was refiled in Ecuador.[51] Though the players for the plaintiffs remained virtually the same, including the original lead plaintiff Maria Aguinda Salazar, Chevron became the named defendant after acquiring Texaco roughly two years earlier. The plaintiffs now sued under the newly adopted Ecuadorian Environmental Management Act (EMA) of 1999, which allows individuals to bring direct actions like this for the first time in Ecuador, but damages may only be awarded that benefit the community and not individual plaintiffs directly.[52] According to Law of the Jungle author, Paul Barrett, the plaintiff's team actually helped draft this law as the case proceeded in New York.[53] Chevron sought dismissal of the suit claiming that the retroactive application of this law was not in accordance with Ecuadorian law, the court did not have jurisdiction over Chevron, the lapse of the statute of limitations,[54] and the 1998 RAP release, but the case as allowed to proceed.[55] The trial process was filled with seemingly endless motions, appeals and evidence to try to bolster each side's case, resulting in over two hundred thousand pages of court records.[56]

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[45] Aguinda v. Texaco, 303 F.3d 470, 480 (2nd Cir. 2001).

[46] Supra note 4 at 27.

[47] Id. at 56.

[48] See TEXACO, TEXPET'S REMEDIATION AND REVEGETATION OF OILFIELD PITS IN THE ECUADORIAN AMAZON, https://www.texaco.com/ecuador/docs/texaco_ecuador_remediation_en.pdf (last visited Jan. 25, 2017).

[49] See Andrew Ross Sorkin & Neela Banerjee, Chevron Agrees to Buy Texaco for Stock Valued at $36 Billion, N.Y. TIMES, Oct, 16, 2000, http://www.nytimes.com/2000/10/16/business/chevron-agrees-to-buy-texaco-for-stock-valued-at-36-billion.html.

[50] See Michael Davis, FTC Approves Acquisition of Texaco by Chevron, HOUSTON CHRON., Sept. 8, 2011, http://www.chron.com/business/article/FTC-approves-acquisition-of-Texaco-by-Chevron-2054018.php.

[51] Complaint, Aguinda v. Chevron Corp., No. 002-2003 (Super. Ct. of Nueva Loja, May 7, 2003) (Ecuador).

[52] See Manuel A. Gomez, The Global Chase: Seeking the Recognition and Enforcement of the Lago Agrio Judgment Outside of Ecuador, 1 STANFORD J. LITIG. 429,436-437 (June 2013); Id. at note 37.

[53] Barrett, supra note 4, at 74.

[54] It should be noted that Chevron itself was not the named party during the 2nd Circuit decision dismissing the case in the U.S., thus trying to avoid the condition of waiving their statute of limitations defense cite in note 40.

[55] Gomez, supra note 49, at 437-438.

[56] Id. at 438 (citing Aguinda v. Chevron Corp., No. 002-2003 (Super. Ct. of Nueva Loja, Feb. 14, 2011) (Ecuador) judgment at 35, 40).

Ultimately, the biggest points of contention became the validity of the expert reports and the evidence samples gathered. The most critical and controversial was the report of the independent expert, Richard Stalin Cabrera Vega, who recommended in 2008 that the various environmental damages totaled $27 billion.[57]

As the Lago Agrio litigation played out, another major storyline in this saga developed with the filming of the documentary Crude: The Real Price of Oil.[58] The documentary, done by Joseph Berlinger,[59] seemingly attempted to capture the story of the Ecuadorian pollution and contained many candid looks at the judicial process in Ecuador as the case progressed. The film also illustrated the new political support for the Lago Agrio litigation with a filmed visit in 2007 to the pollution sites by newly elected President Rafael Correra.[60] Though desperately needed, the Lago Agrio cause lacked governmental support prior to Correra's election.[61]

The Ecuadorian plaintiffs ultimately prevailed on February 14, 2011, as Judge Nicolas Zambrano ruled against Chevron in a 188 page decision.[62] The judgment ordered Chevron to pay roughly $8.6 billion in compensatory damages to cover the estimated environmental damages and an additional $8.6 billion in punitive damages if it did not publicly apologize within fifteen days.[63] In addition, Chevron had to pay another $864 million to the Amazon Defense Front (ADF), as the ten percent available to the plaintiffs directly under the EMA.[64] This stood out as unusual given that the ADF was not a named plaintiff.[65] The initial compensatory damages were "intended for groundwater and soil remediation, the restoration of native flora, fauna, and aquatic life, the implementation of a potable water system, a healthcare system and the rebuilding of ethnic communities and cultures."[66]

E. Challenges in Enforcing the Lago Agrio Ruling

Though the plaintiffs claimed an initial victory with the Ecuadorian verdict, significant enforcement hurdles stood in their path. As one scholar noted, "a final verdict marks an important milestone in the lifecycle of a court case, but it is by no means the end of the journey."[67] This proved especially true here since TexPet had long since ceased operations and Chevron did not "have any refineries, storage terminals, oil wells or other properties that could be seized to pressure the company to pay."[68] As a result, the plaintiffs were forced to stave off legal challenges by Chevron and to seek enforcement elsewhere, which proved to be quite difficult.

1. Actions in Ecuador

Though Chevron had no notable assets, the plaintiffs still had a fight in Ecuador to ensure that the verdict remained viable on appeal for potential global enforcement. Chevron appealed the verdict in Ecuador on March

[57] Id. at 439.

[58] Supra note 3.

[59] Supra note 4 at 121-123.

[60] Id. at ch 14.

[61] Supra note 4 at 125.

[62] Aguinda v. Chevron Corp., No. 002-2003 (Super. Ct. of Nueva Loja, Feb. 14, 2011) (Ecuador) [hereinafter Lago Agrio verdict].

[63] Gomez, supra note 49, at 441.

[64] Id.

[65] Id. at note 72.

[66] Id. at 441 (citing Lago Agrio verdict, supra note 36 at 178,179, 181-184).

[67] Id. at 429.

[68] Joe Carroll & Karen Gullo, Chevron's $17 Billion Ecuador Judgment May Be Unenforceable, Analysts Say, BLOOMBERG, Feb. 15, 2011, http://mobile.bloomberg.com/news/2011-02-14/chevron-to-appeal-adverse-judgment-in-ecuador-pollution-case.html (quoting Mark Gillman, an analyst at Beckmark Co.) (last visited Jan. 25, 2017).

9, 2011, less than a month after the initial decision,[69] but the court denied the appeal in January of 2012.[70] It was at this moment that the Lago Agrio plaintiffs actually earned the right to seek enforcement of the Lago Agrio judgment, as trial decisions in Ecuador truly become official once confirmed on appeal.[71] Unrelenting, Chevron then exercised their right for review with the National Justice Court of Ecuador (NJCE), which in November of 2013 did strike the potential punitive damages of $9.5 billion,[72] holding that there was no legal basis to fine Chevron for not apologizing, but allowed the verdict to stand otherwise.[73]

2. Actions in the United States

In a preemptive move to block potential enforcement of any verdict in the United States, Chevron had filed suit against the plaintiffs' lead attorney, Steven Donziger, two weeks prior to the pronouncement of the Lago Agrio decision. Their case for non-enforcement was based on his alleged fraudulent activities under the Racketeering Influenced and Corrupt Organizations Act (RICO).[74] In March of 2011, the District Court granted a preliminary injunction against enforcement,[75] but Chevron's victory was short lived, as the U.S. Court of Appeals for the Second Circuit vacated the injunction in September.[76]

Finally, in 2014, the quest to collect on the Ecuadorian verdict in the United States suffered a serious blow. In a nearly 500 page opinion, District Judge Kaplan ruled that the award was unenforceable in the United States due to findings of fraud on the part of Steven Donziger.[77] The court did point out the good initial intentions of Donziger[78] and that Chevron might even be liable for the pollution in Ecuador, but that the tactics employed by Donziger and the rest of the plaintiff's team were so egregious that it would be an injustice to allow enforcement in the United States.[79] The court found that Donziger and his associates submitted fraudulent evidence, coerced a judge to select an "impartial" expert that was selected by Donziger's team, paid a Colorado firm to write the expert's report, misled U.S. courts to prevent these revelations from coming to light, essentially wrote the final Ecuadorian verdict themselves, and promised $500,000 to the judge in return for the verdict they wanted.[80] Some of the evidence for the allegations was actually gathered from the outtakes of the movie Crude.[81] Ironically, the movie made to help Donziger's case[82] turned out to be part of his undoing.

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[69] Gomez, supra note 49, at note 79 (citing Chevron's Memorandum in Support of Request for Appeal dated Mar. 9, 2011).

[70] Id. at 443.

[71] Id.

[72] Id. at 441. This is the amount of the compensatory damages plus ten percent authorized by the EMA.

[73] See Alexandra Valencia, Chevron Appeals to top Ecuador Court in Pollution Case, REUTERS, Dec. 23, 2013, http://www.reuters.com/article/2013/12/23/us-chevron-ecuador-idUSBRE9BM0V020131223 (last visited Jan. 25, 2017) .

[74] See Press Release, Chevron, Chevron Files Fraud and RICO Case Against Lawyers and Consultants Behind Ecuador Litigation (Feb. 1, 2011), http://www.chevron.com/chevron/pressreleases/article/02012011_chevronfilesfraudandricocaseagainstlawyersandconsultantsbehindecuadorlitigation.news.

[75] See Dan Levine and Braden Reddall, U.S. Judge Halts Damages Enforcement Against Chevron, REUTERS (Mar. 7, 2011), http://www.reuters.com/article/2011/03/08/chevron-ecuador-idUSN0723703920110308 (last visited Jan. 25, 2017).

[76] See Press Release, Chevron, Chevron Statement on United States Second Circuit Court of Appeals Order (Sept. 19, 2011) , https://www.chevron.com/Stories/Chevron-Statement-on-United-States-Second-Circuit-Court-of-Appeals-Order.

[77] See Mica Rosenberg, Chevron wins a round in U.S. suit against lawyer in Ecuador case, REUTERS (Apr. 25, 2014), http://www.reuters.com/article/2014/04/26/us-chevron-ecuador-appeal-idUSBREA3P00220140426 (last visited Jan. 25, 2017).

[78] See Opinion, Chevron v. Donziger 11 Civ. 0691 1, 2 (Mar. 3, 2014).

[79] Id. at 4.

[80] Id. at 2.

[81] Barrett, supra note 4, at 183-184

[82] Id. at 179 (quoting Judge Kaplan as saying that Crude was "a piece of theatre deliberately designed to win over audiences to the plaintiffs' side and to facilitate the Lago Agrio litigation.")

Donziger appealed to the Second Circuit, but on August 8th, 2016, the panel unanimously ruled that they found "no basis" to overturn the judgement and affirmed the ruling of the District Court.[83]

3. Global Enforcement of the Ecuadorian Decisions

As the plaintiffs knew that enforcement in the U.S. faced serious challenges, they also sought to enforce their award globally in an effort to find a friendly jurisdiction where Chevron possessed assets. Thus far, they have commenced actions in Argentina, Brazil, and Canada. Global enforcement is never an easy task,[84] which has proven true here. In Argentina, the plaintiff's claimed an early victory in November 2012, when a trial court froze the assets of Chevron's Argentine subsidiaries.[85] That victory was short lived, as on June 4, 2013, Argentina's Supreme Court of Justice vacated the judgment of the trial court with costs.[86] The prospects do not look good going forward as their Attorney General in early 2016 has recommended non-enforcement in light of the fraud verdict in the U.S.[87] The plaintiffs also tried to seek enforcement in Brazil when they filed with the Superior Tribunal of Justice in June of 2012.[88] Information on the proceedings has been relatively scarce, but in May of 2015, the Brazilian Prosecutor also recommended that enforcement of the verdict not be recognized due to the findings of fraud in the U.S.[89]

The one country where plaintiffs have seen some success, at least procedurally, is Canada, which "has been recognized as a favourable jurisdiction for the recognition and enforcement of foreign judgments."[90] The plaintiffs filed the initial enforcement action in May of 2012.[91] In May of 2013, Superior Court Justice Brown "found that Ontario courts had jurisdiction over the case against Chevron but still granted a stay in the action, concluding that Chevron Canada Ltd.'s assets were not directly owned by San-Ramon, California based Chevron Corp."[92] On appeal, a three judge panel unanimously decided in December of 2013 that the action could proceed.[93] In April of 2014, the Supreme Court of Canada (SCC) then agreed to hear Chevron's appeal of the Ontario Court of Appeal's decision.[94] As with most cases before the Supreme Court in the United States, the issues before the SCC did not go to the merits of the specific case, but focused on the procedural aspect of jurisdiction.[95] The court ultimately held that Ontario courts could assert jurisdiction, despite Chevron not having assets in the province, stating that "in today's globalised world and electronic age, to require that a

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[83] Jessica Karmasek, Second Circuit rules for Chevron, agrees $9.5 billion judgment against oil giant was product of fraud, racketeering, LEGAL NEWS LINE (Aug. 9, 2016 1:20PM), http://legalnewsline.com/stories/510989090-second-circuit-rules-for-chevron-agrees-9-5-billion-judgment-against-oil-giant-was-product-of-fraud-racketeering (last visited Jan. 25, 2017).

[84] See Gomez, supra note 49, at 455-463, discussing the complex legal issues in enforcement of foreign judgements with an emphasis on Brazil and Argentina.

[85] Perry, supra note 2 at 2.

[86] Aguinda Salazar v. Chevron Corp., Sup. Ct. of Arg. 253 XLIX at 5 June 4, 2013 (English Translation), http://www.scribd.com/doc/146306585/Argentine-Supreme-Court-Ruling-English-Translation-in-Aguinda-v-Chevron-Lifting-Embargo-that-had-been-obtained-against-Chevron-in-attempted-enforce (last visited Jan. 16, 2017).

[87] See Roger Parloff, Fortune, Here's why Ecuador's $9.5 Billion Judgement Against Chevron is Headed to Canada (Sept. 11, 2016).

[88] See Eduardo Garcia, Ecuador Plaintiffs Target Chevron's Assets in Brazil, REUTERS (June 27, 2012), http://www.reuters.com/article/2012/06/28/us-ecuador-chevron-idUSBRE85R01I20120628 (last visited Jan. 25, 2017).

[89] See Ted Folkman, Lago Agrio: Update on the Brazillian Enforcement Proceedings, LETTERS BLOGATORY (May 21, 2015), https://lettersblogatory.com/2015/05/21/lago-agrio-update-on-the-brazilian-enforcement-proceeding/.

[90] Be-Nazeer Damji, Lago Agrio Transnational Enforcement of Judgments, INTL. ASS'N OF DEF. COUNS. COMM. NEWSL. (Intl. Ass'n.of Def. Couns., Chicago, IL) May 2014, http://www.iadclaw.org/assets/1/19/International_May_2014.pdf.

[91] Gomez, supra note 49, at 449 (citing Plaintiff's Statement of Claim at Yaiguaje v. Chevron, No. CV-12-454778 (Can. Ont. Super. Ct. J. Sept. May 30, 2012)).

[92] Jeff Gray, Ontario Court Revives Chevron Amazon Pollution Case, THE GLOBE AND MAIL (Dec. 17, 2013, 12:33PM), http://www.theglobeandmail.com/report-on-business/international-business/latin-american-business/ontario-court-revives-chevron-amazon-pollution-case/article16003269/ (last visited Jan. 25, 2017).

[93] Id.

[94] See John Spears, Supreme Court to Hear Chevron Appeal of Ecuador Environmental Case, THE STAR (Apr. 3, 2014), http://www.thestar.com/business/2014/04/03/supreme_court_to_hear_chevron_appeal_of_ecuador_environmental_case.html.

[95] Stewart, supra note 5, at 243.

judgment creditor wait until a foreign debtor is present and has assets in the province before a court can find that it has jurisdiction in recognition and enforcement proceedings would be to turn a blind eye to current economic reality."[96] The case resumed in September of 2016 in the Ontario Superior Court of Justice to hear motions for dismissal by both Chevron Corporation and Chevron Canada, a subsidiary.[97] It will get even more complicated if the case advances, as Chevron Corporation itself possesses no assets in Ontario to directly satisfy any judgment enforcement.[98] Chevron Canada does have assets, but it will be difficult to hold a subsidiary, with no legal ties to TexPet at the time of the pollution, liable for the Ecuadorian verdict, unless they decide to pierce the corporate veil.[99]

F. Chevron Limiting Exposure

In addition to vigilantly trying to block the enforcement of the Lago Agrio verdict, Chevron has aggressively sought to try to limit its exposure ahead of any potential payment of damages. Even before the Lago Agrio verdict came down, they filed a claim against Ecuador for a violation of a bilateral investment treaty between the U.S. and Ecuador.[100] They also began a campaign of pursuing those who financially supported the plaintiffs' case in an effort to cut off lines of support and limit some financial exposure that will be discussed in part 2.

1. International Arbitration under the U.S-Ecuador Bilateral Investment Treaty (Treaty)

Though not directly related to the Lago Agrio litigation, Chevron and Texaco filed a claim against Ecuador in 2006 before the Permanent Court of Arbitration (PCA) for delays in failing to rule on cases before Ecuadorian courts involving the companies' commercial interests.[101] One of the key provisions of the treaty granted investors the ability to submit their dispute to binding arbitration in accordance with the methods laid out in the treaty.[102] In its final award, nearly five years after the claim was filed, the tribunal held Ecuador liable in the amount of approximately $96 million plus pre and post award interest.[103] Ecuador's first unsuccessful attempt to have the award set aside occurred in the Netherlands (the Hague) in 2012.[104] Ecuador also unsuccessfully appealed in the U.S. Court system, as on June 6, 2016, the U.S. Supreme Court denied review of a 2015 decision by the U.S. Court of Appeals for the D.C. Circuit which had upheld the award owed to Chevron.[105] Citing the need to "fulfill our international obligations," the Ecuadorian Central Bank ultimately paid $112 million (award plus interest) just over a month later.[106]

In September of 2009, Chevron filed its second claim against Ecuador before the PCA, which was directly related to the Lago Agrio litigation this time.[107] The first major decision came in the first interim award issued on January 25, 2012, stating that Ecuador must "take all measures at its disposal to suspend or cause to be suspended the enforcement and recognition both within and without Ecuador of that Lago Agrio judgment."

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[96] Chevron v. Yaiguaje, 2015 SCC 42 (Can).

[97] Parloff, supra note 79.

[98] Stewart, supra note 5, at 243.

[99] Id.

[100] See Fernando Cabrera Diaz, Tribunal finds Ecuador in breach of BIT for its judiciary's slow handling of Texaco lawsuits, INVESTMENT TREATY NEWS (April 8, 2010), https://www.iisd.org/itn/2010/04/07/tribunal-finds-ecuador-in-breach-of-bit-for-its-judiciary-s-slow-handling-of-texaco-lawsuits/.

[101] Id.

[102] Investment Treaty, Ecuador-U.S., Art. VI, Aug. 27, 1993, S. Treaty Doc. No. 103-15 (1997).

[103] Final Award, Chevron Corp. v. Repub. of Ecuador, UNCITRAL Arb., PCA Case No. 2007-2, at 141-42 (Aug. 31, 2011).

[104] See Gomez, supra note 49, at 447.

[105] See Lawrence Hurley, U.S. top court rejects Ecuador challenge to Chevron arbitration award, REUTERS (June 6, 2016), http://www.reuters.com/article/us-usa-court-chevron-idUSKCN0YS1G6 (last visited Jan. 25, 2017).

[106] Ecuador pays $112 million award to Chevron - central bank, REUTERS (July 23, 2016), http://www.reuters.com/article/ecuador-chevron-idUSL1N1A908V (last visited Jan. 25, 2017).

[107] See Claimants Notice of Arbitration, Chevron Corp. v. Repub. of Ecuador, UNCITRAL Arb. PCA Case No. 2009-23, (Sept. 23, 2009), http://italaw.com/cases/documents/1748.

[108] On September 17, 2013, the panel made its fifth ruling in the case, finding unanimously that the relief sought in the judgment against Chevron in Ecuador was extinguished by the Texaco settlement with the Ecuadorian government in 1998, as Chevron was deemed a "releasee" under that agreement.[109] As a result, if the Lago Agrio plaintiffs ultimately prevail in the enforcement of the Ecuadorian award, Ecuador should have to indemnify Chevron for any losses they incur based on the terms of the Bilateral Investment Treaty between the nations.[110] As in the first dispute, these rulings were appealed to the District Court of the Hague. On January 20, 2016, the Court denied Ecuador's claims that the PCA lacked jurisdiction and its decisions were against public policy.[111] Though the challenges are probably not over, the ultimate rulings in the PCA, the Netherlands, U.S. Courts, and payment by Ecuador in the first major arbitration dispute between Chevron and Ecuador make for a pretty convincing case that Chevron should be indemnified if forced to pay somewhere.

2. Chevron on the Offensive

Over the last several years, Chevron aggressively pursued those involved with the case and/or stood to benefit from any damages Chevron might have to pay. In May of 2014, Chevron settled with the major law firm of Patton Boggs, whereby Chevron agreed to release any claims against the firm in exchange for them withdrawing from the case, agreeing pay a $15 million settlement, and forfeiting any of the five percent of the profits they would receive from the case if Chevron pays somewhere.[112] The next year Chevron settled with the principal funder of the lawsuit, James Russell DeLeon. In return, he agreed to withdraw his support from the lawsuit and assign his 7% stake in the outcome to Chevron.[113] Chevron also settled a few months later with Woodford Litigation Funding, Ltd, a U.K. based investment firm, whereby they also agreed to withdraw their support of the case and assign any monetary benefits that they were entitled to from the proceeds of the case to Chevron.[114] A fourth settlement occurred in September of 2015, when they settled with the H5 firm in return for withdrawing their support and assigning their 1.25% interest in the outcome to Chevron.[115] Finally, the most recent domino to fall was a company called Amazonia that was formed by Donziger to manage the proceeds that were supposed to come from the lawsuit.[116] In a default judgment, the Supreme Court of Gibraltar enjoined the company from actions relating to the lawsuit and awarded $28 million in damages, largely attorney fees, to Chevron.[117]

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[108] First Interim Award on Interim Measures, Chevron Corp. v. Repub. of Ecuador, UNCITRAL Arb. PCA Case No. 2009-23 at 16 (Jan. 25, 2012), http://www.italaw.com/sites/default/files/case-documents/ita0173.pdf.

[109] See First Partial Award on Track 1, Chevron Corp. v. Repub. of Ecuador, UNCITRAL Arb. PCA Case No. 2009-23 at 45 (Sept. 17, 2013), http://italaw.com/cases/documents/1748.

[110] Roger Parloff, Chevron wins major arbitration victory, FORTUNE (Sept. 18, 2013 5:03 PM), http://features.blogs.fortune.cnn.com/2013/09/18/chevron-wins-major-arbitration-victory/.

[111] See Michael I. Krauss, 2016 was a Really Bad Year for Lawfare Against Chevron, FORBES (Jan. 3, 2017), http://www.forbes.com/sites/michaelkrauss/2017/01/03/2016-was-a-really-bad-year-for-lawfare-against-chevron/#734d3d4c2ff6 (last visited Jan. 25, 2017).

[112] See Jennifer Smith, Law Firm Patton Boggs and Chevron Reach Accord in Ecuador Dispute, Wall Street J. L. Blog (May 7, 2014, 1:04PM), http://blogs.wsj.com/law/2014/05/07/law-firm-patton-boggs-and-chevron-reach-accord-in-ecuador-dispute.

[113] See Press Release, Chevron, Financial Backer of Fraudulent Ecuador Litigation Withdraws, Settles (Feb. 15, 2015), https://www.chevron.com/stories/Financial-Backer-of-Fraudulent-Ecuador-Litigation-Withdraws-Support-Settles.

[114] See Press Release, Chevron, Another Key Funder of Fraudulent Ecuador Litigation Against Chevron Withdraws Support (May 4, 2015), https://www.chevron.com/stories/Another-Key-Funder-of-Fraudulent-Ecuador-Litigation-Against-Chevron-Withdraws-Support.

[115] See Press Release, Chevron, H5 Settles With Chevron Over Ecuadorian Lawsuit (Sept. 3, 2015), https://www.chevron.com/stories/h5-settles-with-chevron-over-ecuadorian-lawsuit.

[116] See Paul M. Barrett, Chevron Wins $28 Million Judgment in Latest Pollution Case Twist, BLOOMBERG (Dec. 16, 2015, 9:00AM), https://www.bloomberg.com/news/articles/2015-12-16/chevron-wins-28-million-judgment-in-latest-pollution-case-twist (last visited Jan. 25, 2017).

[117] Id.

G. Conclusion - What We Know and What We Still Don't

In reviewing the pictures of oil covered ponds and nasty black muck that sticks to one's clothing or body available in a quick internet search, exploration and production operations in Ecuador obviously caused extensive pollution, environmental damage, and possibly, if not likely, major negative health effects on the Ecuadorian people. What we do not know is if anyone will be held liable and whether the Ecuadorian people will ever get justice and be able to live without this pollution and illness that likely stems from it. Despite twenty-three years of litigation, the case of the Ecuadorian people against Chevron is still not over, as potentially viable enforcement actions continue in Canada, the arbitration proceedings before the PCA remain, and new forums for enforcement could and/or may be brought into the picture.[118] Presently, Chevron clearly holds the momentum, as enforcement seems only to be a slim possibility in Canada, presently the last known opportunity. Even if Chevron pays, it appears that Ecuador must indemnify them based on the PCA rulings to date. This case demonstrates that nothing should be taken for granted, thus Chevron's continued vigilant pursuance of absolution on every front. As the likelihood of any payment by Chevron continues to diminish, the question will be whether the Ecuadorian government will step in and clean up the remaining mess, or will the Ecuadorian people continue to live with pollution and illness?

In addition to hopefully getting a resolution on the "justice" question for the people, this case certainly merits further monitoring and discussion in academia, law and policy making, and the corporate world due to the lessons that can be learned and potential precedents that could be established in transnational dispute resolution and enforcement. Stephen Kass already identified five areas where lessons could/should be learned from this case, including: those for our U.S. Court system and possibly retaining jurisdiction in a case such as this, the consequences of lapses of professional ethics, practicing corporate responsibility, improving global judicial independence, and improvements for U.S. treaty language.[119] Of particular interest moving forward is the present enforcement action in Canada, which has seen its share of criticism. Lisa Rickard, President of the U.S. Chamber Institute for Legal Reform, said the action of the Canadian Supreme Court to date "establishes a dangerous precedent in the growing practice of 'tort tourism.'"[120] Though this case is obviously a tragic one for the Ecuadorians caught in the middle, hopefully business leaders and politicians will use these potential lessons to avoid a situation like this in the future.

[118] Gomez, supra note 49, at 430-431.

[119] See Stephen L. Kass, Lessons from Lago Agrio Environmental Pollution Case, NEW YORK LAW JOURNAL (Sept. 15, 2011), http://www.clm.com/publication.cfm?ID=344.

[120] Lisa Rickard, Canada's top court sets dangerous precedent in Chevron case, FINANCIAL POST, (Sept. 28, 2015), http://business.financialpost.com/fp-comment/canadas-top-court-sets-dangerous-precedent-in-chevron-case. See also Stewart, supra note 5, at 245 (questioning the decision to allow the case to proceed as a possibly over simplistic interpretation of transnational dispute resolution).

TEACHING NOTE

A. Usage in a Graduate International Law Class

As mentioned previously, this case is utilized throughout the semester for application problems and discussions. Overall, the class contains six application and six discussion assignments for a total of twelve assignments. The case is in five of the twelve assignments, but could be embedded more if desired due to the wide range of topics. Each specific use of the case is identified below.

1. In Homework #1, which covers Chapters 1 and 2 of the text,[121] the students read the case and answer the following questions, accounting for about forty percent of the assignment grade:

a. *Two major political risks are exposure to foreign laws and foreign courts. How did these risks impact Texaco/Chevron?*

Chevron, somewhat unexpectedly, was exposed to a new foreign law with the passage of the EMA,[122] which served as the basis for the Lago Agrio litigation. The exposure to foreign courts resulted in a process that substantially deviated from normal expectations and, by many accounts, appears to have resulted in a biased judgment.[123]

b. As documented in the book, Law of the Jungle, the relationship between TexPet and the Ecuadorian government evolved significantly over time, almost always to TexPet's detriment. By the end of the venture, TexPet's paid an 87% tax rate and had already lost 25% of its ownership stake before losing it all.[124] What international investment problem(s) does this sound like? Why didn't TexPet push back harder or sue in U.S. courts over the problems that were occurring?

This action by the Ecuadorian government seems akin to a progressive confiscation, as they took more and more and TexPet received little, if anything, new in return each time. This slowly resulted in a complete nationalization of the oil industry in Ecuador.

Ultimately, TexPet had little negotiating power. If they wanted to make money, they had to do it by Ecuador's rules. The fact that foreign companies are not able to make the rules becomes a major risk in international investment. As a sovereign nation, Ecuador can choose who can operate within its borders and the manner in which they operate. Suing in the U.S. would not have been successful, even with a seemingly valid legal claim, due to the Act of State Doctrine.

c. In Part III (F)(1), it states that Ecuador "should" have to indemnify Chevron if enforcement of the verdict is successful somewhere. Why the word is "should" utilized, and not "must," since the arbitration ruling held Ecuador liable?

This question ties to a previous discussion of whether international law truly exists, as the principle of international law largely relies on voluntary compliance with treaties that countries ratified. In this case, no agency exists that could force Ecuador to make payment.

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[121] Schaffer, et. al., supra note 12.

[122] As discussed in the case, supra note 50, the plaintiffs supposedly helped draft the law while the case was pending in New York .

[123] Supra note 74.

[124] Barrett, supra note 4, at 25.

d. In relation to the previous question, the case stated that Ecuador paid the damages from the first PCA case in order to "fulfill our international obligations."[125] Why might this have been a wise decision? What would be the down side if they wouldn't pay, as they are a sovereign entity? Explain.

If Ecuador failed to do so, they would have breached their treaty obligations and could suffer other economic and political fallout globally. Evidence of a failure by a country to live up to their promises could limit organization membership, treaty possibilities, possible sanctions, and lost investment opportunities to name a few of the risks.

2. In Homework #2 that covers Chapters 3 and 4, the students are asked the following questions that account for approximately twenty-five percent of the assignment grade.

a. Discuss why the plaintiffs would not want to initially file the lawsuit in their home country and why the defendants did not want to be sued in theirs.

This plays into a discussion of the advantages of U.S. Courts discussed on pages 60 and 61 of the present text edition.[126] These include the right to jury trial, an impartial judge, extensive discovery, contingency fees, and substantive law differences. The latter, along with potentially large damages awarded in U.S. Courts, are the biggest reasons why the case was brought in the U.S. initially and not in Ecuador.

b. In the wake of the events surrounding this litigation, Michael Goldhaber described Chevron experiencing "forum shopper's remorse"[127] due to the very forum they wanted to go to turning on them. Should this be a situation of "watch out what you ask for" or should Chevron be able to fight the Lago Agrio verdict legitimately? Explain your position.

Answers will vary considerably and should be judged based on sound support for one's position.

c. Though the doctrine of comity was not specifically mentioned in the case, where could it be seen?

The text discusses that comity "allows the courts of one country to recognize the laws and court decrees of another or to defer hearing a case that is more appropriate for hearing in the courts of another country."[128] Judge Rakoff applied comity in 2001 when he dismissed the case on the basis of *forum non conveniens*, deciding that Ecuadorian courts were the more appropriate forum. The U.S. Courts later did not apply the doctrine when it blocked the enforcement of the 2011 Ecuadorian decision. This action illustrates that comity can have its limits.

3. In Discussion #2, which covers Chapters 3 and 4 of the text, the following case related question is asked.

It was noted in the book, Law of the Jungle, that the case could have likely been settled for as low as $140 million around the year 2000.[129] Should Texaco have? Why didn't they settle then or later? Discuss in light of Chapter 3 principles.

Answers will vary and are judged based largely on substantive thought and analysis.

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[125] Supra note 99.

[126] Schaffer, et. al. supra note 12.

[127] See Howard M. Erichson, The Chevron-Ecuador Dispute, Forum Non Conveniens, and the Problem of Ex Ante Inadequacy, 1 J. Stan. J. Complex Litig. 417 at 421 (2013) (quoting Michael D. Goldhaber, Forum Shopper's Remorse, CORP. COUNSEL at 63 (April 2010).

[128] Schaffer et. al., supra note 12, at 79.

[129] Barrett, supra note 4, at 71.

4. Discussion #4, which corresponds with Chapter 20 (Environmental Law), contains just one lengthy post, but it ties to the case as well.

Question #3 on page 589 is great for beginning to frame some of the issues related to environmental regulations and responsible business practices. Consider the situation in our Aguinda v. Texaco case where Texaco could essentially determine their own level of environmental responsibility due to only four lines in the contract addressing environmental responsibilities and no government agencies to monitor compliance.[130] *What responsibilities do you have in making the choice of where you manufacture and how you operate with regards to the environment? How do you think environmental issues should be handled globally? Do you think the prospects for international regulation of the environment is a reality? These questions are just a starting point for a response/reaction to environmental standards and responsibilities internationally. You may feel free to make your own policy statement or express your concerns with regards to the environment. I am going to leave this open to an extent, but I want to see depth of thought and expression (this does not mean a 20 page manifesto) with regards to issues presented either in those questions above, the materials for Chapter 20, and the case. Your response should at least one page in length single spaced minimum. Make this original post by Saturday and you must continue the discussion by responding to at least two other class members by (insert due date).*

5. In Homework #4, the following question is asked that is worth fifty percent of the assignment grade:

In your discussion assignment, I asked you to reflect broadly in light of case on environmental responsibilities in conducting business globally. Now, I want you to discuss/argue some specific points relevant to our case. As we read, Texaco was given a release by the government after agreeing to remediate 37.5% of the operation sites, despite operating 100% of the sites for many years. This release was based solely on the clean-up of the sites itself, which cost approximately forty million dollars, and did not require waterway remediation or providing health care to those who may have been afflicted by the pollution.[131] *Texaco did settle some other lawsuits with local municipalities and organizations for approximately seven million dollars.*[132]

a. *Does Texaco, now Chevron, owe more to the Ecuadorian people or does the responsibility now lie with the Ecuadorian governments who made the deals?*
b. *What about the fact that they knew they could have built much more environmentally friendly pits for what is now about twelve million dollars and chose not to?*[133]
c. *Does it change your position knowing one author's research estimated that the Ecuadorian government made 23.5 billion dollars from Texaco's operations and Texaco made just 1.6 billion?*[134]
d. *What about the fact that the plaintiff's team made a promise to the Ecuadorian government that the government, through Petroecuador, would not be implicated?*[135]

Explain your answers substantively in an approximately one page, single spaced response. Both legal and ethical viewpoints should be discussed.

[130] Id. at 28-29.

[131] Id. at 56.

[132] Id. at 56-57.

[133] Id. at 29.

[134] Id. at 25.

[135] Id. at 107.

B. Graduate Law and Ethics Course

As mentioned in Part II, the portion of this class devoted to International Business was approximately one week. However, the university also needed a group assignment, thus the case was utilized in the following manner. The same approach has been done on a smaller scale (individual assignment) in the course above in the past as well.

Now that you have read the more objective version of the story in the case, it is time to argue who is right. You will be put into groups, as determined by the instructor, and tasked with writing a persuasive paper that supports either the position of Texaco, which is now Chevron, or the Ecuadorian people. You may not believe in the case of the side you are assigned to support, but sometimes lawyers are put in a position where they have to argue a case they don't truly believe in as well.

This persuasive position paper should support not only the legal obligations, but also the ethical ones as well in light of class concepts to date. As this has been a high profile case fought for over 20 years, it presents the opportunity for significant precedent for corporate legal and ethical responsibilities internationally. With so much at stake, there has been considerable news and scholarly writings about the case and the issues it raises. There have also been many opinion pieces, some of which are likely biased from each of the two sides.

Some possible partisan websites to consider when preparing for your paper include:
Plaintiffs (Ecuadorian Citizens):
http://chevrontoxico.com/
http://www.chevroninecuador.com/
http://stevendonziger.com/
Defense (Chevron/Texaco):
http://www.chevron.com/ecuador/
http://www.theamazonpost.com/

Requirements: Write a paper of approximately 4 to 6 pages in which you argue your position. You are free to support your position from the partisan sources, but your argument will be more powerful if you can find more objective support as well. Your paper must be typed, double spaced, grammatically correct, and include proper internal citations and references at the end in APA format.

C. Other Potential Extensions of the Case

1. Watch Crude: The Real Price of Oil[136]

As discussed in the case, the documentary became a prominent part of the storyline of the case. If time is available, have students watch this documentary, or at least selected segments, to provide a better context of the situation in Ecuador and the circumstances surrounding the Ecuadorian lawsuit. Seeing the situation can further set the context. The entire documentary lasts 104 minutes, but selected scenes can be shown to illustrate desired points.[137] Some elements to consider in viewing this documentary and judging the case may be:

a. *Discuss the perspective of the documentary and does it capture the whole story? Does it change your perception in light of the fact that 70% of the budget for the documentary came from a Harvard Law classmate of Donziger's and some from his own money as well?*[138]

[136] Supra note 3.

[137] Generally, the class sees Chapters 1-5, 8-10, and 14, which takes 30-45 minutes. If more time is available, chapters 18-21 have also been shown.

[138] Barrett, supra note 4, at 123.

b. *Have the students watch for and discuss the differences in the operations of the legal system in Ecuador and the United States, such as conducting judicial proceedings in the field and the issues around the attorney's actions, including the scene where they go to the judge's office. Does this affect the way you view the case and the impartiality of the Ecuadorian court system?*
c. *Do you feel differently about the case overall having seen some of the issues versus reading about it?*

2. Read Law of the Jungle by Paul M. Barrett[139]

The book is a highly informative and reasonably quick read time wise given its length. Obviously, it covers the whole story in far more detail than the case, given that it is 266 pages without footnotes. Reading and discussing the book allows the opportunity to explore in more depth the procedural, ethical, and social responsibility issues that the case did not have room for given the "good case" parameters discussed in Part II. I have not incorporated the reading of the book into my classes, but some of the questions above are pulled from it to expand the discussion of the case issues.

3. Lessons Learned Discussion/Activity

In the second paragraph of the conclusion, the case cites an article by Stephen Kass whereby he discussed five key areas where lessons could/should be learned from the complex history of the litigation.[140] One could have the students brainstorm and explain what the takeaway lessons might be. This could either be an assignment or discussion activity. One could also start with Kass' list as starter points and have the students describe or discuss the potential lessons and issues from what they know having read the case. If they read the book, that would deepen the discussion.

4. Where Are We Now? - Research

As of the time of the submission, the case is still ongoing. As the conclusion noted, the situation in Canada is particularly worth watching moving forward. Students could be assigned to "finish the story" the case started or at least update it to where it stands. The potential parameters are quite broad and should be tailored by each instructor.

[139] Id.

[140] Kass, supra note 111.