

# Kluwer Arbitration Blog

## Chevron's Explosive Filing on Collusion between Plaintiffs and the Ecuadorian Court-Appointed Expert

Roger Alford (General Editor) (Notre Dame Law School) · Wednesday, August 4th, 2010

The ongoing saga regarding Chevron's legal travails in Ecuador took an interesting twist this week. As I reported earlier, Chevron has secured key outtakes of the movie *Crude* that appeared to show alarming collusion between the plaintiff lawyers and the Court-appointed expert. According to pleadings filed yesterday pursuant to 28 U.S.C. 1782, the outtakes include some amazing communications caught on tape. The purpose of the filing was to secure the court's assistance with additional discovery of *Crude* outtakes to facilitate the arbitration and secure preservation of all relevant evidence "related to the fraudulent 'Global Expert' scheme as documented in the *Crude* documentary and the outtakes produced to date." (p. 21).

The film outtakes include some choice excerpts of a March 3, 2007 meeting that included plaintiffs' counsel (Steve Donziger and Pablo Fajardo), plaintiffs' experts (Charlie Champ, Ann Maest, Dick Kamp) and the soon-to-be court-appointed expert, Richard Cabrera. The apparent purpose of the meeting between the plaintiffs and Cabrera was to develop a plan for the drafting of the independent expert's report that Cabrera would write as Special Master for submission to the Ecuadorian court. According to Chevron's filing, the tapes include some pretty damning evidence.

For example, Plaintiff lawyer Fajardo tells the assembled group—which includes the soon-to-be court-appointed expert Richard Cabrera— that the court-appointed expert is going to "sign the report and review it. But all of us [the plaintiff lawyers and experts] ... have to contribute to the report." Toward the end of the meeting Donziger brags: "We could jack this thing up to \$30 billion ... in one day." (p. 2). Fajardo says that the team must "[m]ake certain that the expert constantly coordinates with the plaintiffs' technical and legal team" and the plaintiffs' team must "support the [court-appointed] expert in writing the report." (p. 8). "Our entire technical team ... of experts, scientists attorneys, political scientists, ... will contribute to that report—in other words—you see ... the work isn't going to be the expert's." (p. 9).

In clarifying what role the plaintiffs and defense counsel will have in drafting the court-appointed expert report, Fajardo confirms that it will be written "together" with the plaintiffs. The idea of Chevron having a role in drafting the court-appointed report was met with collective laughter. (p. 9). Donziger proposes the plaintiffs establish a "work committee" to present a "draft plan" for the report and then says to the soon-to-be court-appointed expert, Richard Cabrera, "and Richard, of course you really have to be comfortable with all that." (p. 11).

The next day, in a lunch meeting with just the plaintiffs' lawyers and plaintiffs' experts, one

expert, Charlie Kamp, said “Having the perito [Cabrera] there yesterday in retrospect ... that was bizarre.” Donziger replies, “Don’t talk about it” and tells the camera crew “And that’s off the record.” (p. 12). In responding to concerns from their own experts that there was not evidence of groundwater contamination, Donziger replies, “This is all for the Court just a bunch of smoke and mirrors and bullshit.” (p. 12). That’s right, Donziger is caught on tape saying that the evidence he is gathering for inclusion in the court-appointed expert report about groundwater contamination is just smoke and mirrors and bullshit.

I would rarely advise our readers to read a court filing they don’t have to, especially during the summer recess. But this one is explosive.

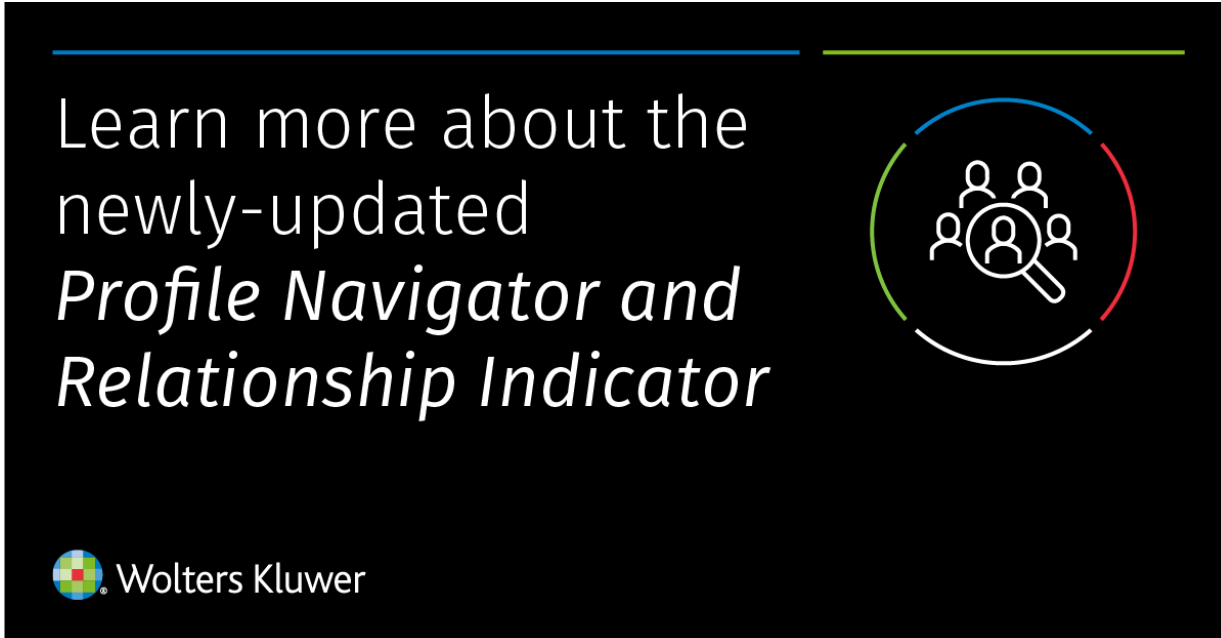
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