

1-1-2012

## Chevron Corporation v. Donziger, 768 F. Supp. 2d 581 (S.D.N.Y. 2011)

Anaeli C. Sandoval

*Washington & Lee School of Law*

Follow this and additional works at: <http://scholarlycommons.law.wlu.edu/jece>

 Part of the [Energy Law Commons](#), [Environmental Law Commons](#), and the [Natural Resources Law Commons](#)

---

### Recommended Citation

Anaeli C. Sandoval, *Chevron Corporation v. Donziger*, 768 F. Supp. 2d 581 (S.D.N.Y. 2011), 4 Wash. & Lee J. Energy, Climate & Env't. 181 (2013), <http://scholarlycommons.law.wlu.edu/jece/vol4/iss1/8>

This Note is brought to you for free and open access by the Law School Journals at Washington & Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Journal of Energy, Climate, and the Environment by an authorized administrator of Washington & Lee University School of Law Scholarly Commons. For more information, please contact [osbornecl@wlu.edu](mailto:osbornecl@wlu.edu).

# *Chevron Corporation v. Donziger*, 768 F. Supp. 2d 581 (S.D.N.Y. 2011)

Anaeli C. Sandoval\*

## *I. Introduction*

*Chevron Corp. v. Donziger*<sup>1</sup> is a claim brought by Chevron in the United States District Court for the Southern District of New York seeking damages and a preliminary injunction of a multibillion-dollar judgment that was entered against Chevron in an Ecuadorian provincial court.<sup>2</sup> This complaint advances claims against fifty-six defendants who fall into four different categories: Steven Donziger and his law firm; Stratus Consulting, Inc. and two of its employees; four Ecuadorian individuals and entities; and indigenous peoples in the Amazonian rain forest (the Lago Agrio Plaintiffs, or “LAPs”).<sup>3</sup> After the Ecuadorian court rendered the judgment in favor of the LAPs, Chevron filed a motion seeking clarification of certain aspects of the decision.<sup>4</sup> Chevron seeks a preliminary injunction in the U.S. court to bar the enforcement of the judgment outside Ecuador pending either the resolution of this complaint on the merits or its prayer for declaratory judgment.<sup>5</sup> The issue is whether “the judgment rendered in 2011, at the conclusion of a law suit begun in 2003, is foreclosed from recognition and

---

\* Class of 2013, Washington and Lee University School of Law.

1. *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581 (S.D.N.Y. 2011) (granting an injunction to bar enforcement of an Ecuadorian judgment outside of Ecuador).

2. *See id.* at 597 (providing some preliminary background information on the status of the case in the District Court).

3. *See id.* at 625 (describing the details of the defendants in this complaint). The Stratus employees consist of Douglas Beltman, an executive vice president, and Ann Maest, a managing scientist. *Id.* The four Ecuadorian individuals and entities, one way or another, have been a part of the original LAPs case in Ecuador—Pablo Fajardo, counsel of record in Ecuador; Amazon Defense Front (ADF), a non-profit organization that represents the interest of the LAPs; Selva Viva, an entity created to provide litigation funds; and Luis Yanza, who helps to lead both organizations. *Id.*

4. *See id.* at 622 (outlining the procedure of filing a motion to seek clarification in Ecuador). During an appeal, Ecuadorian law requires the judgment stayed pending the decision of the intermediate appellate court. *Id.* at 621. Once decided, that decision can be appealed to the Supreme Court of Ecuador by filing a writ of cassation. *Id.* The critical part of this process is that if a judgment is upheld by the intermediate appellate court, it will be enforceable while the writ of cassation is pending before the Supreme Court. *Id.* Even though the party will have the option to request a stay from the intermediate court, if granted, it would be enforceable in Ecuador, but not necessarily outside Ecuadorian courts. *Id.* at 622.

5. *See id.* at 625 (listing the claims asserted by Chevron).

enforcement by virtue of the conditions during that period, not during 1999–2000.”<sup>6</sup>

## II. *The Controversy that Started it All*

This litigation originated with *Aguinda v. Texaco, Inc.*<sup>7</sup> Texaco Petroleum Company (“TexPet”),<sup>8</sup> a subsidiary of Texaco, operated a petroleum concession for a consortium in the Oriente region of eastern Ecuador.<sup>9</sup> The *Aguinda* case was a class action brought by a group of lawyers, including Steven Donziger, on behalf of citizens of the Ecuadorian rain forest.<sup>10</sup> The complaint, which originated in a New York court, alleged pollution of the rain forest and sought equitable relief.<sup>11</sup> While the *Aguinda* litigation was pending in New York, Texaco settled all of the pollution claims with the Republic of Ecuador.<sup>12</sup>

The dismissal of the complaint in the United States seemed to be a problem for the plaintiffs: At the time, Ecuador did not permit class actions or pretrial discovery, making a class action suit of this type impossible to pursue in Ecuador.<sup>13</sup> Around this time, the lawyers, who had brought the original complaint in the United States, worked with Ecuadorian lawyers to draft what would become Ecuador’s Environmental Management Act of

---

6. *Id.* at 616.

7. *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 473 (2d Cir. 2002) (holding that “(1) [the] courts of Ecuador provided adequate alternative forum for citizens’ claims, and (2) [the] balance of private and public interest factors weighed strongly in favor of trial in Ecuadorian courts, warranting conditioned dismissal on forum non conveniens grounds”). When the complaint was originally brought to the New York District Court, Texaco motioned for dismissal on *forum non conveniens* grounds. *Chevron*, 768 F. Supp. 2d at 598. The District Court granted the motion and, the second time around, the Court of Appeals affirmed. *See Aguinda*, 303 F.3d at 470.

8. *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 597 (S.D.N.Y. 2011).

9. *See id.* (laying out the background of Texaco’s former operations in Ecuador).

10. *See id.* (providing information on the original *Aguinda* case).

11. *See id.* at 597–98 (discussing the plaintiffs’ request for billions of dollars to “redress contamination of the water supplies and environment”). In essence, the complaint requested a U.S. court to require Texaco to perform remediation work within Ecuador. *Id.*

12. *See id.* at 598 (detailing the Texaco settlement). In 1994, TexPet entered into a Memorandum of Understanding and, in 1995, signed a settlement agreement with the Republic of Ecuador (ROE) and Petroecuador in which TexPet agreed to perform specified remedial environmental work in exchange for a release of claims by the ROE. *Id.* Three years later, TexPet and ROE signed a final agreement, or the Final Release, in which ROE acknowledged that the Settlement had been fulfilled and “proceeded to release, absolve, and discharge TexPet and related companies, including its successors, ‘from any liability and claims for items related to the obligations assumed by TexPet’ in the Settlement.” *Id.*

13. *See id.* at 599 (discussing what claims the Ecuadorian court made available to the plaintiffs in 1999).

1999 (EMA).<sup>14</sup> The EMA created a new private right of action or damages for the cost of remediation of environmental harms.<sup>15</sup> In 2001, by a reverse triangular merger, Chevron became the holder of one-hundred percent of Texaco's shares.<sup>16</sup> The EMA provided the plaintiffs with a vehicle to sue Chevron and Texaco in Ecuador's court system in 2003.<sup>17</sup> The merger, and the 2003 complaint, began Chevron's involvement with the suit.<sup>18</sup>

### *III. From Past to Present: Unfolding the Procedural History*

In 2003, LAPs sued Chevron and Texaco in Lago Agrio, Ecuador, alleging environmental contamination by TexPet and Texaco in the years up to 1992.<sup>19</sup> The complaint sought "remediation of alleged pollution, . . . demanded judgment requiring that the necessary work be done, and sought health improvement and medical monitoring of the inhabitants be done, at the expense of 'the defendant.'"<sup>20</sup>

Between 2003 and 2011, while the case was being litigated in Ecuador, the Ecuadorian court system experienced an institutional crisis: with the appointment of President Correa, the court system seemed to deteriorate.<sup>21</sup> Since President Correa's re-election in 2008, "judges have been threatened with violence, removed, and/or prosecuted when they ruled against the government's interest."<sup>22</sup> Reports by the World Bank and the U.S. State Department confirmed that Ecuador's judicial branch was no

14. *See* Chevron Corp. v. Donziger, 768 F. Supp. 2d 581, 599–600 (S.D.N.Y. 2011) (providing some background on the EMA of 1999).

15. *See id.* (providing a more detailed description of the EMA and the reasons for its adoption).

16. Reverse triangular mergers prevent undeveloped liabilities from flowing into an acquiring corporation. *See id.* at 600 n.40. Since the corporation is kept alive, it is responsible for its own liabilities. *See id.* Keepep, Inc., a subsidiary of Chevron, merged with and into Texaco. *Id.* at 600. Keepep's stock, owned directly and indirectly by Chevron, was converted into new shares of Texaco, which lead to Chevron holding one-hundred percent of Texaco's shares. *Id.* Since Texaco was the surviving corporation, Texaco remained responsible for its own liabilities. *Id.*

17. *See id.* (discussing the court's inference as to why the EMA was drafted and enacted).

18. *See id.* (discussing the theory under which Chevron would assume Texaco and TexPet's liabilities).

19. *Id.* (describing the 2003 complaint against Chevron and Texaco). The complaint alleges that Texaco was responsible for the activities of TexPet and, because of the 2001 merger, Chevron is responsible for Texaco and TexPet liabilities. *Id.*

20. Chevron Corp. v. Donziger, 768 F. Supp. 2d 581, 600 (S.D.N.Y. 2011).

21. During this period, then-President Gutierrez replaced 27 of the 31 judges of the Supreme Court with new justices. *Id.* at 617. In 2005, he declared a state of emergency and removed all of the Supreme Court justices, leaving Ecuador without a Supreme Court for just shy of a year—all while the LAPs' case was pending in Ecuador. *Id.*

22. *Id.* at 618.

longer acting impartially, as they were subject to constant threats and pressures.<sup>23</sup>

The Lago Agrio court issued its multibillion-dollar judgment against Chevron in February 2011.<sup>24</sup> The court held that Texaco was responsible for damages caused during its time of operation in Ecuador and, because of the merger, that liability passed to Chevron.<sup>25</sup> The value of the judgment surpassed \$18 billion dollars.<sup>26</sup> Upon the Lago Agrio court issuing the judgment, Chevron filed a motion seeking clarification of the decision.<sup>27</sup>

Under Ecuadorian law, parties have three days from when the clarification is issued to file an appeal.<sup>28</sup> During the time the clarification is pending, the judgment will not be enforceable in Ecuador's courts.<sup>29</sup> Lack of enforceability of the judgment in Ecuador, however, does not mean the same for courts outside of Ecuador.<sup>30</sup> With the conjecture that LAPs would pursue enforcement of the judgment outside the courts of Ecuador, Chevron took the preventive measure of seeking an injunction in the New York District Court.<sup>31</sup> Based on the LAPs' Enforcement Plan, Chevron's assumptions were warranted.<sup>32</sup>

#### A. The Enforcement Plan

---

23. See *id.* at 620 (providing the results of both reports); World Bank, Worldwide Governance Indicators for Ecuador, available at [http://info.worldbank.org/governance/wgi/sc\\_country.asp](http://info.worldbank.org/governance/wgi/sc_country.asp); U.S. Dep't of State, Country Reports on Human Rights Practices, 2007, 2008, and 2009, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136111.htm>.

24. See *Chevron*, 768 F. Supp. 2d at 620 (discussing the Lago Agrio's judgment against Chevron in 2011).

25. See *id.* at 620–21 (adding to the court's conclusion that "(1) it was competent to hear the complaint, [and] (2) the settlement between the ROE and TexPet and Texaco did not bind the LAPs").

26. See *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 621 (S.D.N.Y. 2011) (breaking down the multi-billion dollar judgment granted by the Lago Agrio's court).

27. See *id.* at 622 (detailing the next steps Chevron took after the Ecuadorian judgment was awarded).

28. See *supra* note 4 and accompanying text.

29. See *Chevron*, 768 F. Supp. 2d at 622 (discussing the appellate remedies offered to Chevron in Ecuador).

30. See *id.* at 622 ("[A] stay in Ecuador would not necessarily stay proceedings outside Ecuador.").

31. See *id.* at 626 (outlining the proceedings to date).

32. See *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 622–24 (S.D.N.Y. 2011) (discussing the LAPs' enforcement plan).

Before the judgment was rendered in Ecuador, ADF<sup>33</sup> issued a press release stating, “if the plaintiffs win a judgment against Chevron in Ecuador’s courts, they plan to move ‘expeditiously’ to seize Chevron’s assets in the U.S. and other countries.”<sup>34</sup> The purpose of the enforcement plan is to “seek to enforce the judgment ‘quickly, if not immediately, on multiple enforcement fronts in the United State and abroad.’”<sup>35</sup> From an action this widespread, the LAPs hope to gain enough leverage against Chevron to obtain a favorable settlement on a pre-judgment basis.<sup>36</sup> Chevron filed this motion in the United States seeking preliminary injunction to bar the defendant’s from enforcing the judgment outside of Ecuador since it may be possible for LAPs to enforce the judgment in courts all over the world,<sup>37</sup> even while Chevron’s motion seeking clarification is pending in Ecuador. The multiplicity of suits would put a strain on Chevron to litigate the enforceability of the Ecuadorian judgment in multiple proceedings.<sup>38</sup> As the court expressed, this strain would make Chevron vulnerable to LAPs’ enforcement plan and threaten Chevron with irreparable harm.<sup>39</sup> In addition, the court determined the threat of harm that Chevron faces is imminent and warrants the motion for preliminary injunction.<sup>40</sup>

---

33. ADF is a non-profit organization and a defendant to the complaint filed in the United States by Chevron. *Id.* at 621.

34. *Id.* at 623 (quoting a press release issued by Amazon Watch and Frente de la Amazonia on September 24, 2009).

35. *Id.*

36. *See id.* (“Assets may be attached by way of an *ex parte* proceeding . . . making that an extremely attractive option for obtaining leverage early in a case.”).

37. *See id.* (discussing the extent of Chevron’s operations).

38. *See Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 638 (S.D.N.Y. 2011) (discussing whether Chevron’s case was appropriate for declaratory relief).

39. *See id.* at 627 (outlining the four different injuries that Chevron risks with the LAPs’ enforcement plan). Chevron would be subjected to (1) “the coercive effect of multiple proceedings and the risk of asset seizures and attachments,” (2) “the cost, distractions and other burdens of defending itself in multiple *fora*, probably simultaneously,” (3) “asset seizures and attachments” that “would disrupt Chevron’s business and harm its reputation and its goodwill,” and (4) the inability to retrieve funds from the LAPs if the judgment is ultimately deemed invalid. *Id.*

40. *See id.* at 629 (conveying the urgency of granting Chevron’s motion for preliminary injunction). Chevron’s motion for clarification is currently pending with the court in Ecuador. *Id.* However, once the court renders the clarification, Chevron will only have three days to file an appeal to the Intermediate Appellate Court in Ecuador. *Id.* It seems a fair assumption, based on all the information presented and the condition of the judicial system in Ecuador, to conclude that the court of appeals will affirm the provincial court’s decision leaving the judgment enforceable everywhere. *Id.*

## B. Justice Kaplan's Opinion

### 1. Recognition and Enforcement of Judgments

In *Hilton v. Guyot*,<sup>41</sup> the Supreme Court of the United States expressed a limit toward the recognition and enforcement of foreign country money judgments.<sup>42</sup> In that case, the court indicated that enforcement and recognition may be denied “where the party resisting enforcement shows that there was: ‘prejudice in the [rendering] court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect.’”<sup>43</sup> In the present case, the court applied the federal Declaratory Judgment Act<sup>44</sup> and New York’s Uniform Foreign Country Money-Judgments Recognition Act<sup>45</sup> to determine whether or not it would recognize and enforce the Ecuadorian judgment.<sup>46</sup>

In reference to whether Ecuador provided Chevron with an impartial tribunal, the court evaluated all of the evidence before it, including Ecuador’s judicial structure and stability during the period the case was pending.<sup>47</sup> There was documentation and affirmation that Ecuador’s judicial system had been influenced by corruption and political interference.<sup>48</sup> In addition, the corruption seemed to increase with President Correa’s election.<sup>49</sup> The President seemed to have control over the Ecuadorian courts

---

41. *Hilton v. Guyot*, 159 U.S. 113 (1895) (concluding that international judgments should be upheld unless obtained by fraud).

42. *Id.* at 114.

43. *Chevron*, 768 F. Supp. 2d at 632 (quoting *Hilton v. Guyot*, 159 U.S. 113, 123 (1895)). The Third Restatement supports the view that even if a judgment was rendered in a court with an impartial tribunal, the recognition and enforcement may be denied if “the judgment was obtained by fraud.” RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 482(2)(c) (2011).

44. 28 U.S.C. § 2201(a).

45. N.Y. C.P.L.R. §§ 5301–09 (McKinney 2012).

46. *See Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 630 (S.D.N.Y. 2011) (explaining how the state and federal statutes would be applicable).

47. *See id.* at 633–34 (detailing the court’s analysis of Chevron’s claim that Ecuador does not provide impartial tribunals).

48. *See id.* at 635 (noting that numerous independent commentators were quoted in the Alvarez Report discussing Ecuador’s troubled legal system).

49. *See id.* at 634 (elaborating on Ecuador’s judicial system and President Correa’s impact on it).

with some evidence that judges have been threatened and pressured to favor the government's interest.<sup>50</sup> His influence on Ecuador's judicial system seems correlative with his expressed interest in LAPs.<sup>51</sup> The court determined that "Chevron thus is likely to prevail on its contention that the Ecuadorian judgment in this case 'was rendered under a system which does not provide impartial tribunals or procedure compatible with the requirement of due process of law . . . .'"<sup>52</sup>

In regards to the Ecuadorian judgment being procured by fraud, the court found that the LAPs had submitted a forged expert report to the Ecuadorian Court.<sup>53</sup> It was also determined that the LAPs' effort in "cleansing"<sup>54</sup> the original report was also fraudulent.<sup>55</sup> This evidence was sufficient to cast serious doubts as to the merits of the judgment as well as the Ecuadorian proceedings.<sup>56</sup>

## 2. Claim for Preliminary Injunction

Chevron is ultimately contesting the Ecuadorian judgment and sought a preliminary injunction to bar the enforcement of the judgment outside Ecuador. As the Supreme Court has said:

The purpose of a preliminary injunction is merely to preserve the relative position of the parties until a trial on the merits can be held. Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.<sup>57</sup>

---

50. *See id.* at 633–34 (providing examples of recent cases where President Correa's influence and pressure was evident).

51. *See id.* at 634 (discussing President Correa's explicit support for the LAPs lawsuit against Chevron).

52. *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 636 (S.D.N.Y. 2011).

53. *See id.* (explaining how counsel for the LAPs had a ghostwriter prepare a report that it submitted to the court in Ecuador as evidence of Chevron's environmental impact on the rain forest). Counsel also misrepresented to the court its relationship with the ghostwriter. *Id.*

54. *Id.*

55. *See id.* at 636–37 (discussing how the "cleansed" reports relied heavily upon the initial Cabrera report which itself was tainted).

56. *See id.* at 634 ("[I]t is reasonable to infer, at least at this preliminary stage, that this is the type of highly politicized case that has not received, and will not receive, fair and impartial treatment in the Ecuadorian courts.").

57. *Id.* at 596 (quoting *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)).

Using the Supreme Court's explanation of preliminary injunction as guidance, the court granted Chevron's motion.<sup>58</sup> The court determined that the culmination of evidence significantly threatened Chevron with imminent irreparable harm.<sup>59</sup> Sufficient documentation was provided to cast serious doubts as to the impartiality of the Ecuadorian tribunal and the procurement of fraud of the Ecuadorian judicial system.<sup>60</sup> The court concluded that the evidence presented was ample to meet the burden of granting a motion for preliminary injunction.<sup>61</sup>

### C. Future Implications

Multiple actions have taken place since the New York District Court granted Chevron's motion for preliminary injunction. First, in January 2012, the Ecuadorian intermediate court affirmed the judgment from Ecuador's provincial court.<sup>62</sup> This means that, in Ecuador, clarification was given, Chevron appealed the judgment to the intermediate court, and judgment was affirmed.<sup>63</sup> This means that currently, LAPs can enforce the judgment all over the world, including Ecuador.<sup>64</sup> Second, in accordance with the motion for preliminary injunction that was granted by the New York District Court, LAPs appealed to the United States Court of Appeals, Second Circuit.<sup>65</sup> On January 26, 2012, the Court of Appeals reversed the district court's motion and remanded the case with instruction to dismiss.<sup>66</sup> The Court of Appeals explained that Chevron relied on New York's Uniform Foreign Country Money-Judgments Recognition Act to support its preliminary injunction motion.<sup>67</sup> The Recognition Act is not applicable to a

---

58. See *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 660 (S.D.N.Y. 2011) (explaining that, even though the court granted Chevron's motion for preliminary injunction, it did so against all defendants except Stratus Consulting, Inc., Douglas Beltman, and Ann Maest).

59. See *id.* at 626–29 (providing the court's analysis in determining how and why Chevron is threatened with immediate and irreparable injury).

60. See *supra* note 47 and accompanying text.

61. See *supra* note 58 and accompanying text.

62. See *Chevron Corp. v. Naranjo*, 667 F.3d 232, 234 (2d Cir. 2012) (providing some of the most recent developments of the case in the Ecuadorian courts).

63. See *id.* at 237 (noting that the Ecuadorian intermediate court upheld the trial court's ruling on Jan. 3, 2012).

64. See *id.* at 246 (stating that the LAPs can seek enforcement of the Ecuadorian judgment in any jurisdiction where Chevron has assets).

65. See *id.* at 234 (providing the basis for the LAPs' appeal and the Court's evaluation of that appeal).

66. See *id.* (reversing the order and remanding the case to the lower court).

67. See *id.* at 237–42 (discussing Chevron's initial action in the lower court and providing an explanation for the Uniform Foreign Country Money-Judgment Recognition Act).

preemptive suit by a putative debtor.<sup>68</sup> Since LAPs' counsel has not initiated enforcement of the judgment in New York, or in any other court, the Act does not permit Chevron to file a preemptive suit.<sup>69</sup> As of this latest decision, Chevron will have to wait until LAPs' counsel initiates enforcement of the judgment before seeking preliminary injunction under New York's Uniform Foreign Country Money-Judgments Recognition Act.<sup>70</sup> In attempting to use all of the tools at its disposal, Chevron has also tried to block the lawsuit by appealing to an arbitration tribunal in The Hague.<sup>71</sup>

Assume that Chevron's attorneys cannot find a loophole for the courts to affirmatively grant a preliminary injunction, or they decide to play defense and let LAP's counsel make the first move. If LAPs tries to enforce the Ecuadorian judgment in the United States, the question then becomes whether Chevron's motion for preliminary injunction would be granted. The court in *Chevron Corp. v. Naranjo*<sup>72</sup> did not answer this question.<sup>73</sup> However, current case law exists to support a decision in Chevron's favor.<sup>74</sup>

First, as the *Naranjo* court pointed out, "the burden may be on the would-be judgment-creditors themselves to establish that the judgment was not the procured from an inadequate judicial system."<sup>75</sup> This means that, if LAP's counsel decided to enforce the foreign judgment, they would have the burden of proving that the mandatory exceptions to New York's Uniform Foreign Country Money-Judgment Recognition Act did not apply.<sup>76</sup>

In addition to LAPs bearing this burden, there is case law that seems to support the court in granting the preliminary in Chevron's favor: In

---

68. *Id.*

69. *See id.* at 234 (summarizing the court's reasoning in deciding to vacate the injunction).

70. *See id.* at 245 (concluding that a plaintiff must instead "wait for the putative judgment-creditor to bring an enforcement action").

71. *See* Patrick Radden Keefe, *Reversal of Fortune*, THE NEW YORKER, Jan. 2012 (providing a third-party perspective on the history of this case and assessing whether Donziger has taken the litigation too far).

72. *Chevron Corp. v. Naranjo*, 667 F.3d 232 (2d Cir. 2012) (holding that there was no basis under New York's Uniform Foreign Country Money-Judgments Recognition Act for an injunction until Ecuadorian judgment-creditors affirmatively sought to enforce their judgment in a court governed by New York or similar law).

73. *See id.* at 241 (stating that the court explicitly holds "no opinion" as to whether Ecuadorian courts comport with the international standards of fairness and legitimacy required by international comity).

74. *See, e.g.,* *Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307 (S.D. Fla. 2009).

75. *Naranjo*, 667 F.3d at 241 n.15.

76. *See id.* ("[T]he burden may be on the would-be judgment-creditors themselves to establish that the judgment was *not* the procured from an inadequate judicial system").

*Osorio v. Dole Food Co.*,<sup>77</sup> Nicaraguan citizens tried to enforce a \$97 million judgment under the Florida Uniform Out-of-Country Foreign Money-Judgments Recognition Act in the United States District Court.<sup>78</sup> The Nicaragua citizens had worked on banana plantations for twelve years during which they were exposed to an agricultural pesticide.<sup>79</sup> The judgment was rendered by a trial court in Nicaragua under Special Law 364 enacted by the Nicaraguan legislature in 2000.<sup>80</sup> The American court concluded that “the legal regime set up by Special Law 364 and applied in this case does not comport with the ‘basic fairness’ that the ‘international concept of due process’ requires.”<sup>81</sup> Taking the facts that surround Ecuadorian court’s decision—including evidence of fraud, illegal activities, and lack of due process—and applying the court’s analysis in *Osorio*, I would propose that any court would grant Chevron’s motion for preliminary injunction.

Even still, international comity is important for preserving an international system of justice.<sup>82</sup> When courts render decisions in cases involving foreign country money judgments, especially when they entail multibillion-dollar judgments and intense media coverage, they must tread lightly so as not to disrupt the United States’ relationship with other countries. In a case such as this, where there is evidence of fraud and illegal activities surrounding the judgment, courts should read the exceptions to the Uniform Foreign Country Money-Judgments Recognition Act liberally and prevent recognition and enforcement of suspect foreign judgments within its own borders. This type of decision will help promote foreign courts to consider international due process in making their decisions, which would further international comity.

---

77. *Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307 (S.D. Fla. 2009) (denying recognition of a Nicaraguan judgment because (1) the Nicaraguan court lacked jurisdiction, (2) the Nicaraguan court violated international concepts of due process so as to mandate non-recognition of judgment, (3) due process violations warranted non-recognition on public policy grounds, and (4) evidence demonstrated that Nicaragua lacked impartial tribunals).

78. *Id.*

79. *Id.*

80. *See id.* at 1314–15 (discussing Nicaragua’s Special Law 364).

81. *Id.* at 1345.

82. *See Chevron Corp. v. Naranjo*, 667 F.3d 232, 242–44 (2d Cir. 2012) (discussing the court’s opinion of international comity and the critical role it plays in New York’s Uniform Foreign Country Money-Judgments Recognition Act).