

**PCA CASE No. 2009-23**

**IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS, SIGNED 27 AUGUST 1993 (THE “TREATY”) AND THE UNCITRAL ARBITRATION RULES 1976**

**BETWEEN: -**

- 1. CHEVRON CORPORATION (U.S.A.)**
- 2. TEXACO PETROLEUM COMPANY (U.S.A.)**

*The Claimants*

**- and -**

**THE REPUBLIC OF ECUADOR**

*The Respondent*

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**PROCEDURAL ORDER NO. 45**

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**The Arbitration Tribunal:**

**Dr. Horacio A. Grigera Naón;  
Professor Vaughan Lowe, QC;  
V.V. Veeder QC (President)**

1. The Tribunal refers to the Claimants' application by letter dated 10 August 2016 to add, as the Claimants' Exhibit C-2540, the judgment of the Second Circuit dated 8 August 2016 affirming the judgment of the US District Court for the Southern District of New York dated 4 March 2014 (Exhibit C-2135). The Tribunal also refers to the Parties' subsequent submissions by letters dated 16 and 18 August 2016.
2. Subject to what follows, the Tribunal has decided to admit this new exhibit as a document in these arbitration proceedings.
3. First, the Tribunal notes that the legal issues and the respondent parties in these US proceedings remain materially different from the Respondent and the legal issues before this Tribunal. Accordingly, for want of sufficient privity under international law, there can be no issue estoppel or *res judicata* applicable to these arbitration proceedings arising from the decisions and results of these US legal proceedings. Further, the Tribunal notes that the Second Circuit decided that its judgment "does not invalidate the Lago Agrio Judgment, and it does not prohibit any of the judgment creditors – including the LAP Representatives – from taking action to enforce the [Lago Agrio] Judgment outside of the United States" (p. 114 of the judgment).
4. Second, the Tribunal notes that no new factual or expert evidence was adduced by any party before the Second Circuit. As evidence of disputed factual or expert issues before this Tribunal, the Second Circuit's judgment can therefore add nothing to what was already adduced in evidence before the US District Court.
5. Third, the Tribunal confirms its understanding that the Parties are agreed that all evidence adduced before the US District Court in these US proceedings and filed in this arbitration is to be treated as evidence adduced in this arbitration.
6. Lastly, the Second Circuit refers to an amicus brief submitted by Ecuador (see pp. 3 & 87 of the judgment). That brief is also debated in the Respondent's letter dated 16 August 2016 (p. 2) and the Claimants' letter dated 18 August 2016 (p. 4). The Tribunal requests the Parties to submit a copy of that brief to this Tribunal. The Tribunal notes the Parties' differences over this document; but it is unable to follow that debate without seeing the text of the amicus brief.
7. The Parties have raised other differences in their correspondence. For the time being, at least, the Tribunal does think it appropriate to address them here.

**PLACE OF ARBITRATION: THE HAGUE, THE NETHERLANDS**

**DATE: 29 AUGUST 2016**

**FOR THE TRIBUNAL:**

*Dr. Horacio A. Grigera Naón*

*Professor Vaughan Lowe QC*

*V.V. Veeder QC (President)*