

**[Translated from the Spanish]**

**TO THE DEPUTY PRESIDENT OF THE PROVINCIAL COURT OF JUSTICE OF SUCUMBÍOS:**

I, Adolfo Callejas Ribadeneira, Counsel of Record for Chevron Corporation in summary oral suit No. 002-2003, brought against my client by María Aguinda et al., respectfully state to you:

**I. MOTION**

Art. 118 of the Code of Civil Procedure authorizes this Court to order the production of any evidence, on its own initiative, that the Court deems necessary in order to determine the truth. Therefore, as I will prove below, in order to avoid greater illegalities and due process violations, the appointment of Richard Stalin Cabrera Vega, P.E., must be held null and void. Cabrera was appointed to conduct the Expert Examination requested by the plaintiffs. I also move to have both the principal report prepared by the expert Richard Stalin Cabrera Vega, P.E., and each of the various supplements thereto, stricken from the record, for each and every reason presented below.

In addition, pursuant to the article cited above, I expressly move that you order that the Expert's Examination requested as evidence by the plaintiffs be re-performed, by appointing one or more experts of your choice from among those appointed by the parties for the judicial inspections that have been conducted, as specifically requested by the joint counsel of record for the plaintiffs, Dr. Alberto Wray, and expressly ordered by the Court in its order issued on October 29, 2003, at 5:55 p.m. Likewise, under the procedural contract that governed the judicial inspections and was also supposed to govern this Expert Examination, each party is to have the right to suggest the name of one expert, and if these experts produce conflicting reports, the Court must appoint settling experts, as was done during the judicial inspections, before the whole evidentiary process turns into a farce, because of the plaintiffs' illegitimate acts.

Furthermore, I move that you order the Clerk of the Court to issue official letters to the state-owned company Petroecuador, instructing it to provide the Court, within the period of time that you allow it, each and every one of the documents in that company's files, related to Compañía Ambiental Minera-Petrolera S.A. ("CAMPET").

I also request that you order the Court Clerk to issue an official notice instructing CAMPET and Richard Cabrera to provide the documentation presented to Petroecuador to obtain his registration as a contractor for that company, as well as any other communication submitted by the expert to Petroecuador, in the name and on behalf of CAMPET, including but not limited to proposals, budgets, etc.

## II. INTRODUCTION

Cabrera has deliberately concealed from the Court and from my client both his interest in CAMPET and the relationship between CAMPET and Petroecuador, which constitutes an undeniable financial conflict of interest that disqualifies him from being appointed as an independent and impartial expert by the Court to conduct the expert investigation.

Long before Cabrera was appointed for the expert investigation, the evidence-gathering process itself had turned into a judicial farce. Initially, the Court ordered a proceeding with two main components: (i) 122 judicial inspections of well sites and production stations were to be conducted pursuant to the Code of Civil Procedure, in which each party would designate an expert, and the Court would appoint settling experts to resolve any discrepancies between the experts appointed; and (ii) the same group of experts were to carry out a “global assessment” to determine the existence and extent of oil-production impacts on the environment, causation and chronology, and any necessary remediation. The parties mutually agreed on protocols to govern the judicial inspection process, which were approved by the Court.

From the very beginning of the Judicial Inspections, the experts suggested by the plaintiffs failed to comply with the agreed protocols and, as a result, produced judicial inspection reports riddled with irregularities that lacked solid scientific support. The plaintiffs’ manipulation of the evidence-gathering phase was further compounded by the court’s refusal to allow Chevron the opportunity to have the settling experts address Chevron’s many objections to plaintiffs’ judicial inspection evidence. The court then essentially terminated the process of judicial inspections prematurely, upon the unilateral request of the plaintiffs and over Chevron’s opposition, following the issuance of the first—and to date only—report by the court’s independent settling experts. In February 2006, after the judicial inspection of a former Consortium site known as Sacha 53, the settling experts issued a report concluding that the plaintiffs had failed to substantiate their claims of environmental contamination, and that TexPet’s remediation was properly performed and met the standards imposed by the Government of Ecuador.

In the face of this unfavorable result, the plaintiffs intensified their efforts to withdraw from certain site inspections that they themselves had requested and to move directly to a unilaterally-modified version of the global assessment. In January 2007, the Court—in violation of Ecuadorian law and over Chevron’s repeated objections—granted the plaintiffs’ request to waive their remaining judicial inspections, effectively relieving plaintiffs from their burden of proving their claims with credible, scientific evidence. This acceptance by the Court of the motion to waive inspections occurred after the Court had previously denied the plaintiffs’ motions to withdraw from the Judicial Inspections on two occasions, and it reversed course only after receiving an amicus brief in July 2006 in support of the plaintiffs submitted by, among others, Gustavo Larrea (who was then the

campaign manager for presidential candidate Rafael Correa). The decision came just days after President Correa took office and Mr. Larrea became his Minister of Government.

The Court also acceded to the plaintiffs' demand that the global assessment process be put in the hands of a single, Ecuadorian expert, and appointed Cabrera, a Mining Engineer with little or no prior experience in the remediation of oil fields. Mr. Cabrera's appointment and work began around the same time that President Correa began to publicly express support for the plaintiffs in early 2007.

Indeed, as indicated in the previous paragraph, on March 19, 2007, the President of the Court appointed Cabrera to serve as the Court's expert for conducting the Expert's Examination requested by the aforementioned plaintiffs, Cabrera being the only person assigned the task of reporting to the Court on the scope of the alleged environmental impacts allegedly caused by TexPet during its participation in the former Consortium, of which Petroecuador was the majority owner, and over which the Ecuadorian government exercised regulatory authority, and also to report on the scope of any potential remediation, pursuant to the plaintiffs' motion for evidence and what is ordered by the Court.

Under Ecuadorian law, the purpose of the expert's report is to provide the Judge objective and impartial criteria on specific topics that, by their very nature, require a specialized knowledge of certain materials. By virtue of the role that the expert plays as an auxiliary of and collaborator with the Judge, the judicial doctrine of Ecuador universally requires that an expert, in addition to having knowledge of specific technical material, be impartial and have no particular interest in the controversy.<sup>1</sup>

These requirements are included in the procedural rules that govern the appointment and conduct of experts. Pursuant to Article 251 of the Code of Civil Procedure, experts appointed by a court must be of "recognized honesty and probity," to assure the impartiality of the expert report. This rule requires, among

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<sup>1</sup> "[T]he basis for the evidentiary value of the expert's intervention is in: the concrete presumption for the particular case, that the expert is honest, truthful and possibly correct; an honest person; competent in the subject that relates to the fact on which the expert opines; that in addition he has carefully studied the problem submitted to his consideration; has valued the facts or the evidentiary material in the judicial process with efficiency and has issued his opinion over those perceptions and the conclusions arising from the perceptions considering the technical, scientific or artistic rules that he knows and applies for these purposes, in a way that is explained, reasoned and convincing." DEVIS ECHANDIA, Hernando: General Theory of the Judicial Evidence, Volume II, Third Edition, Buenos Aires, 1974, Victor P. de Zavalía, Alberti 835, p. 321.

other things, that the expert be impartial and that he not have any personal interest whatsoever in the matters covered by his report. If he does have such an interest, the required honesty and probity obligate the possible expert to disclose to the Court and the parties any personal interest that he has and that might cause partiality and to disqualify himself and decline to participate.

In the event that an expert fails to reveal to a Judge specific acts or relevant situations that could affect his action, the reports of the expert will lack the probative efficacy required and should be thrown out by the Judge. Professor Devis Echandia, in analyzing the requirements of experts, notes that they can be effective **only if**

***there is no serious reason to doubt their disinterest, impartiality and sincerity.*** On this point, testimony and expert's work are interconnected: relations of friendship and enmity, familiar relations of an expert with the parties, ***financial interests that he may have in the result of the case***; these are motives that question his honesty. The disinterest of an expert in the results of the report and the case are required as a guarantee of his honesty ...<sup>2</sup>

Our courts have thrown out expert witness reports where the expert witness has not performed his or her duties with seriousness and in situations in which their honor, probity, and impartiality have been questioned. For example, the Supreme Court, in a verdict from 1999, excluded an expert's report as biased and exaggerated, as explained by the excerpt below:

THIRD - Both the Judge *a-quo* and the Chamber of the Superior Court of Loja (*Sala de la Corte Superior de Justicia de Loja*) have carefully read the settling expert's report from the Engineer Ivan Delgado Gonzalez (who, according to the appellant, has not been taken into consideration). The report says that in 1991, date of the transaction, the price of land was fixed at S/. 45.000.000,00. This court with well-founded legal reasons, ***throws out the report as biased, simply because it repeats what has been said by the Plaintiffs' expert***, and further, in accordance with Art. 266 subsection two, the expert's report is not obligatory for the Judge, an opinion that is shared by the Second Chamber of Co-Judges of the Supreme Court of Justice (*Segunda Sala de Conjuces de la Corte Suprema de Justicia*.) The court adds that ***this expert went beyond his mandate when he provides that the present value to the land, as of August 29, 1995, the date of his report, is in***

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<sup>2</sup> DEVIS ECHANDIA, Hernando: General Theory of the Judicial Evidence, Volume II, Third Edition, Buenos Aires, 1974, Victor P. de Zavalia, Alberti 835, p. 334.

**his view S/. 135.000.000,00, 27 times more than that of the S/. 5.000.000,00 on the date of the contract.** This number has the obvious intention of impressing the judge of the enormity of the injury. For this reason, the report is censured and the settling expert, Engineer Ivan Delgado Gonzalez, is warned because the expert's analysis has to be carried out on the date of the injury and not at any other time. In addition, **the expert's report does not include any technical or commercial reference** to explain to the Judge why on the date of the contract (October 1991) the land had a value of S/. 10.000,00 per square foot, which means that the value assigned by the expert could have been greater or less, **and as a result, the expert criteria becomes subjective and this Court refuses to accept the report as such.** (emphasis added.)

My client has recently learned that when the Court appointed Mr. Cabrera as a possible expert, he had—and continues to have to this date—an extensive undisclosed financial interest in an Ecuadorian company with a direct financial interest in the result of this case. In fact, Cabrera is the co-founder, majority shareholder, general manager, and legal representative of ***an oil remediation company known as the CAMPET company that is registered to do business with Petroecuador and is well situated to directly profit from any remediation work that might eventually be ordered by the Court on the basis of the Cabrera Report.***

This business interest in the remediation company CAMPET, undisclosed by Cabrera, and its registration in Petroecuador, mean that he could obtain incalculable advantages in current and future deals through Petroecuador's numerous remediation contracts, as a result of his slanted and biased report absolving Petroecuador from any liability, despite the fact that this state-owned company was the majority owner of the former Consortium and has had exclusive control in the oil fields since 1992 and has been the operator since 1990.

The discovery and disclosure of Cabrera's secret financial interest in an issue intimately related to his expert report exceeds even the intentional misconduct shown in his enormously exaggerated calculations of the cost of the remediation recommended in this report, as well as his recommendation that the Court order my client to pay to Petroecuador hundreds of millions of dollars. The foregoing is clearly illegal, unlawful, and in violation of the law that required Cabrera to recuse himself from his appointment as expert and to inform the Court and the parties of the existence of the CAMPET company, in which he has had a considerable financial interest since the date of his appointment as expert by this Court, an interest that he continues to hold to date, and the inevitable direct conflict of interest that his relationship with CAMPET resulted in with respect to the Expert Examination that he was supposed to perform. Therefore, it is surprising that he has not disqualified himself. Now that this conflict has come to light, the appointment of Mr. Cabrera, which my client challenged at the appropriate time

for other equally valid reasons, must be declared null and void, and I insist that the principal report and any additions to and clarifications of that report issued at various times by Cabrera at the parties' request, be stricken from the record.

### **III. CABRERA HAS PREPARED A REPORT THAT PLACES HIM A POSITION TO BENEFIT PERSONALLY FROM THE RESULT OF THIS CASE**

Cabrera has deliberately concealed from the Court and my client the undeniable financial conflict of interest that disqualifies him as an independent expert appointed by the Court to conduct the Expert Examination.

In July 2003, Cabrera and two others formed a company in Ecuador called *Compañía Ambiental Minera-Petrolera S.A.* ("CAMPET"). Cabrera is still a shareholder of this company, in which he holds the majority ownership interest. See **Exhibit 1** (Decision No. 003 [approving the articles of incorporation and the bylaws of the CAMPET company]). According to official records, on August 25, 2003, Mr. Cabrera was appointed General Manager of the CAMPET company, and on May 16, 2006 he was reappointed the company's Legal Representative. See **Exhibit 13** (certificate from the Commercial Registrar of the Canton of Quito confirming that Mr. Cabrera has served as General Manager of CAMPET since 2003) and **Exhibit 2** (letter of May 16, 2006, in which Cabrera was appointed General Manager and Legal Representative of CAMPET, and his acceptance). It can be seen from the foregoing that Cabrera was the General Manager and Legal Representative of CAMPET for all the time that he was conducting the Expert Examination and preparing the report that he filed on April 1, 2008. In addition, due to the fact that Petroecuador's current "list of registered vendors" refers to Mr. Cabrera as CAMPET's "Legal Representative," we must assume that he also continues to hold his position to this date. CAMPET's activities include the "control and cleanup of hydrocarbon spills and the installation of geomembranes," and it has been registered to offer this sort of service to Petroecuador since 2004. See **Exhibit 3**. According to the certificate issued by the Superintendency of Companies, CAMPET is still an active company, whose corporate purpose is "to provide technical, economic and financial services in the field of Geology, the Environment, Oil, Mining, Electronics, Construction and Civil Engineering Work." See **Exhibit 14**. In addition, CAMPET's principal place of business is located at the same address found on Mr. Cabrera's résumé, and CAMPET's and Cabrera's telephone numbers are the same. See **Exhibit 1** and **Exhibit 4** (Certificate of Swearing-in of Mr. Cabrera as Expert, dated June 13, 2007, which includes his résumé).

Cabrera's relationship with CAMPET constitutes an obvious conflict of interest that was deliberately and improperly concealed. Cabrera has demonstrated a complete lack of ethics and probity by having recommended to the Court that it order the execution of an enormous soil remediation project for US \$2.740 billion dollars, at a cost of approximately US \$489 per cubic meter of soil. This exaggerated "estimate" is equivalent to *30 times more* than the US \$15.71 dollars per cubic meter that Petroecuador has paid when it has remediated oil

production sites. Therefore, the remediation contracts, if there are any in this lawsuit, could be among the most lucrative ever seen. Due to his interest as a shareholder and his relationship with CAMPET, Cabrera might have obtained personal benefits from his judicial recommendations in the following manner:

The remediation company in which Mr. Cabrera owns stock could participate in, and be awarded, the contracts resulting from his own recommendations, and, therefore, Cabrera could obtain direct profits from the excessively expensive “make-work” remediation proposed by him to the Court in his report. Due to this direct interest in his relationship with the CAMPET company, Cabrera’s personal financial interest in the result of this lawsuit constitutes a financial incentive to recommend (and he did in fact recommend) an area and volume of remediation, inflated several times, at costs that bear no relationship whatsoever to the real costs. These facts constitute an obvious conflict of interest, no matter how we look at them.

This also explains why, in his supposedly “independent” and impartial report, Cabrera took every opportunity to ingratiate himself with Petroecuador: He sought to excuse Petroecuador from its contractual obligations to remediate the pits that it agreed to remediate in 1995. (Cabrera Report, pages 24-25 and 43). He excused the pollution by Petroecuador since 1990 by saying that “Petroecuador had to operate all of the infrastructure existing in the Concession area, as it had received it from Tex Pet,” and, therefore, it is not liable for its own acts. (Cabrera Report, page 24). He attributes unconfirmed complaints of cancer and diseases to the oil pollution and admits that Petroecuador did cause pollution, but then he summarily discards as innocuous the more than 19 years that Petroecuador has been polluting. (Cabrera Report, page 31). Cabrera also ignored his obligation to limit his report to the issues on which the Court asked him to opine, which were the issues alleged in the complaint; instead, Cabrera unilaterally “analyzed” and recommended billions of dollars in damages for alleged “unjust enrichment,” growth and reintroduction of forest plant life, and of the claims for “the increase in cancer cases,” none of which had been part of this lawsuit before the Cabrera report. In what constitutes the *coup de grace*, Cabrera not only absolves Petroecuador from its contractual obligations and its liability for its own acts, he recommends that my client pay US \$375,000,000 to improve Petroecuador’s infrastructure. (Cabrera Report, pages 45-46). As evidenced in the Cabrera report, it can well be said that nobody has done more for Petroecuador than he has. There can be no doubt that Cabrera could think that Petroecuador will return the favor when it awards contracts to the company in which he owns stock.

Cabrera includes in his report an extremely inflated and scientifically unsupportable figure of US \$5,980,000,000 for the remediation work in the former Concession area and blames the alleged damage on Chevron and TexPet. This inflated figure of the alleged cost of a remediation cannot be rationally justified as if it were a judicial remediation plan, but it is understandable in the light of Cabrera’s previously concealed financial incentive in

recommending an exaggerated remediation. The foregoing explains why in his report:

- Cabrera asserts that 891 pits, including 803 at oil wells and 88 at production stations, require remediation. (Cabrera Report, page 17). However, Petroecuador mentions only 214 pits of this type. (Hinchee Comments on Remediation, page 2).
- Cabrera exaggerates the volume of dirt that must be remediated in each pit by including a halo of 50 percent around each pit and assuming that all of the area must be remediated to a depth of five meters. (Supplementary Cabrera Report, page 18). Therefore, the volume of 5,060 m<sup>3</sup> per pit used by Cabrera is 2.8 times higher than the average of 1,810 m<sup>3</sup> of dirt per pit that Petroecuador has remediated. (Hinchee's Remediation Comments, page 2).
- Cabrera determined a cost of US \$489 to remediate one cubic meter of dirt. (Supplementary Cabrera Report, page 18). It has been reported that Petroecuador's cost is US \$15.71 per cubic meter of dirt. (Hinchee's Remediation Comments, page 2).
- Using these exaggerated figures of dirt and cost, Cabrera calculates that the total remediation of the soils would cost approximately US \$3,080,000 per pit. (Supplementary Cabrera Report, page 18). However, Petroecuador has in fact remediated pits at an average cost of US \$85,000 per pit. (Hinchee's Remediation Comments, page 2).
- Cabrera calculated US \$3,230,000,000 for the hypothetical remediation of groundwater. (Supplementary Report. Cabrera, pages 53-54). However, the data in the record and in the Cabrera report do not indicate any impact on the groundwater. Cabrera admits that the plaintiffs' sampling was faulty and that the sampling by the defendants, using correct methodology, does not show any impacts. (Cabrera Report, pages 21-22). Cabrera himself took only five samples, and these contained only detectable quantities of TPH, which certainly came from muddy dirt and not from the groundwater. (Connor Groundwater Comments, page 8). The other samples on which Cabrera bases his report must have been taken by third parties after Cabrera's field work was completed and taken by those third parties to an uncertified laboratory; therefore, they are neither scientifically nor legally valid. (Douglas Analytical Data Comments, pages 1-4). In addition, Cabrera acknowledged that he cannot "determine the cost of cleaning the groundwater." (Supplementary Report. Cabrera Report, page 12)".
- Asserting that it is "obvious that all of the contaminants that were released into the environment before June 1990 continue to be TexPet's exclusive responsibility," Cabrera attributes all of the imagined remediation costs to

Chevron. (Cabrera Report, page 24). In doing so, he ignores the fact that Petroecuador was the majority owner of the Consortium, that the Ecuadorian State and Petroecuador later released TexPet from any liability for environmental impacts resulting from the Consortium's operations, and that Petroecuador is responsible for the remediation of approximately two-thirds of the pits dug by the Consortium, as well as for all post-1992 operations. (Hinchee's Remediation Comments, page 2).

- Cabrera asserts that Chevron is responsible for all of the pollution in the former concession area, while, at the same time, he acknowledges that the exclusive operator of the former concession area has been since 1990, and is, Petroecuador, and that it subsequently "dumped wastes into unlined trenches," "dumped produced water into rivers and creeks," "discharged gases into the air" and caused "spills of crude oil," and all of this has "contributed to pollution," but in spite of all of this, Cabrera says that my client is the only one responsible for the current environmental conditions in the area of the former consortium. (Cabrera Report, pages 24-25).
- Although Cabrera does not admit it, he holds my client responsible for the pits built by Petroecuador after the Consortium ceased to exist. Although the number is not necessarily exact, expert Barros, appointed by the Court, determined that the Consortium built 632 pits up to 1990. (Barros' Comments, page 11). However, Cabrera includes 917 pits in his calculations on remediation. Therefore, at least 285 of the pits that Cabrera included in his report were built by Petroecuador after it took over operations in 1990 or simply do not exist.
- Cabrera calculates the cost of renovating all of Petroecuador's production infrastructure in the former area of the former concession at US \$375,000,000. (Cabrera Report, page 6). However, Petroecuador is the owner of this infrastructure and has profited enormously from it in the last 20 years. (Infrastructure Comments, Connor, page 2).

In short, Cabrera has drawn up a report, which was required by law to reflect independence and impartiality, with a plan for a supposed remediation that is exorbitantly expensive and apparently aimed at generating work, which, if ordered, will have the potential to generate an enormous amount of money for Cabrera, through his interest as the majority shareholder in CAMPET.

#### **IV. ECUADORIAN LAW REQUIRES CABRERA TO DISCLOSE HIS CONFLICT OF INTEREST AND TO DISQUALIFY HIMSELF IN THE CASE**

Current law requires Cabrera to completely and honestly disclose his relationship with the CAMPET company, as has been demonstrated in this motion, and, therefore, to disqualify himself from participating in the lawsuit. If this conflict of interest had been revealed at the appropriate point in the proceeding, this would

have necessarily have prevented his appointment in the first place, because the Court would not have been permitted to appoint an expert with such a conflict of interest, completely lacking impartiality. Cabrera failed to act with “honesty and probity” and failed to disclose his economic interest in CAMPET, which invalidates his appointment, his reports, and all additions thereto and clarifications thereof.

If he did not voluntarily recuse himself from participating in the case, Cabrera at least had the obligation to completely and truthfully disclose the fundamental conflict of interest arising from his relationship with the CAMPET company. (See *Code of Civil Procedure*, Arts. 251 and 256). The Code requires an expert to satisfy all of the requirements established in it, to take an oath, and to perform honestly and with integrity, which includes being forthright and honest in all of his actions. The fact that Cabrera has not disclosed his personal financial interest in the CAMPET company is inconsistent with these requirements. Cabrera’s conflict of interest, and his failure to disclose it, prevents him from being of “recognized good reputation and probity” and prevents him from performing his duties “in compliance with laws and regulations.” *Id.* (**Art. 251** (*Ex: 255*)).- **[Requirements for being an expert]**.- The persons appointed must be of legal age, of recognized honesty and probity, having sufficient knowledge of the subject on which they are to report, and who preferably reside at the location where the proceeding will be conducted or in which the lawsuit is being tried. **Art. 256** (*Ex 260*)).- **[Requirements for serving in the position of expert]**.- To serve in the position of expert, the appointee must accept such and swear that he will perform such faithfully and lawfully). If Cabrera had at least disclosed this conflict of interest fully and at the proper time, instead of keeping it secret, it would have been clear to the Court that Cabrera had a personal interest in this lawsuit, because it is directly related to his business or affairs, and that would have prevented the Court from appointing Cabrera as the expert for the Expert Examination, in order to ensure the transparency of such evidence. The disclosure by Cabrera of his conflict of interest would have allowed my client to request that he be recused. A fact or circumstance that prevents an expert from performing his duty can be claimed by a party to recuse an expert. The lack of honesty and probity resulting from Cabrera’s conflict of interest is one of those facts or circumstances. Therefore, in accordance with Article 879 of the Code of Civil Procedure, Cabrera should have disclosed his conflict of interest and recused himself from accepting his appointment as an expert. As the result of Cabrera’s failure to disqualify himself, or even to disclose his conflict of interest, Chevron was denied an opportunity, from the outset of this Expert Examination proceeding, to oppose Cabrera’s appointment and ensure that a fair and impartial expert’s report was issued.

On the contrary, instead of satisfying the requirements of the Code of Civil Procedure and declining to act as an expert, or at least disclosing his conflict of interest, Cabrera did just the opposite. Not only did he *not* disclose his relationship with the CAMPET company, he also affirmatively stated to the Court, untruthfully, that there were no grounds for disqualification or conflict of interest

that might prevent him performing his work as an “independent” expert appointed by the Court. Cabrera also deceived the Court when he accepted his appointment as an expert, which necessarily involved an explicit acknowledgment of what his obligations to the Court would be as an impartial expert, which Cabrera deliberately ignored and which he could not have done in good faith, given his interest in the remediation company CAMPET.

Cabrera then aggravated his improper conduct when he expressly and repeatedly asserted his impartiality, his absence of partiality and his independence. For example, in June 2007, upon being sworn in, Cabrera stated under oath that there were no grounds for disqualification or conflict of interest, and he swore to faithfully comply with his obligations impartially and independent of any of the parties. See **Exhibit 4** (Certificate of Swearing-in of Expert Cabrera, dated June 13, 2007). In addition, he stated to the Court that he had performed his work with absolute impartiality, honesty, transparency, and professionalism, and he explicitly rejected complaints by my client that he was a biased expert. See **Exhibit 5** (Filing by Cabrera dated October 11, 2007). Throughout the entire time that he was performing his duties, Cabrera repeatedly reaffirmed that he was performing his work with complete impartiality, transparency, and honesty. See **Exhibits 6, 7 and 8** (Filings by Cabrera dated October 31, 2007, November 6, 2007 and November 9, 2007, in which he requests a period of 30 days and characterizes his investigation as “impartial”); see also **Exhibit 9** (Appendix 2 to filing by Cabrera dated February 2, 2009, which asserts that the investigation by Cabrera had been done impartially). Cabrera expressly asserted that his purpose in this lawsuit was to serve as an impartial and objective adviser to the Court. See **Exhibit 11** (Filing by Cabrera dated October 20, 2008). In fact, Cabrera went as far as to assert that suggestions by the parties about where samples should be taken would interfere with his purported (but nonexistent) “impartiality.” See **Exhibit 10** (Filing by Cabrera dated December 11, 2007). As recently as March 4, 2009, Cabrera continued to insist that he had performed his work impartially and objectively, without any desire to affect or benefit any of the parties, and asserted that there should be no doubt about the validity, objectivity, impartiality and transparency of his work. See **Exhibit 12** (Filing by Cabrera dated March 4, 2009).

In short, Cabrera repeatedly deceived the Court by asserting that he was impartial, when in fact he knew that he had a significant personal monetary interest and therefore could profit, directly and indirectly, from the orientation that he gave the contents of the report that he had been entrusted to prepare independently. The entire report is discredited because Cabrera did not disclose his conflict of interest and did not recuse himself. The only way to keep Cabrera’s lack of honesty and personal business from affecting the rest of this lawsuit is to strike both the principal report and the supplements and clarifications thereto, as they have again been discredited by the foregoing proof of Cabrera’s lack of transparency, impartiality, and probity.

**V. THE CONFLICT OF INTEREST NOT DISCLOSED BY CABRERA IS CONVINCING PROOF AND SHEDS LIGHT ON OTHER EVIDENCE SHOWING THAT HE WAS PREJUDICED AGAINST MY CLIENT AND THAT HE DID NOT PERFORM HIS WORK IMPARTIALLY**

In this case, the Court should not and cannot follow the contents of the report prepared by an expert who had a hidden conflict of interest, particularly when this conflict of interest is added to the other circumstantial evidence of partiality and collusion that my client has previously and repeatedly alleged to this Court, by multiple unsuccessful motions aimed at obtaining additional information about Cabrera's work, and its allegations of the existence of multiple fundamental errors that Cabrera has committed in his report.

See the filings by my client on:

- May 10, 2007, at 5:20 p.m.; May 21, 2007, at 8:25 a.m.; May 27, 2007, at 8:25 a.m. and May 30, 2007, at 2:05 p.m. [initial objections to the expert selection process in which Cabrera was appointed];
- July 2, 2007, at 5:00 p.m. [objections to Cabrera's work plan because he was trying to exclude Chevron from the process];
- July 6, 2007, at 9:50 a.m. [request made for an impartial observer to supervise inspections by Cabrera];
- July 6, 2007 at 5:30 p.m. [objection to Cabrera's refusals to allow Chevron access to the sites];
- July 12, 2007, at 3:00 p.m. [objection to Cabrera's refusals to allow Chevron access to the sites];
- July 13, 2007, at 5:00 p.m. [repeated request to have impartial observer present];
- July 17, 2007 at 3:10 p.m. [objection to Cabrera's conflict of interest, already rejected, because of his apparent connections with the ADF];
- July 31, 2007, at 3:35 p.m. [repeated request for impartial observer];
- August 30, 2007, at 9:40 a.m. [photographic documentation of constant consultations among Cabrera, plaintiffs' lawyers and ADF activists];
- September 4, 2007, at 4:40 p.m. [motion to order Cabrera to provide Chevron with prior notice of future judicial inspections];
- October 4, 2007, at 5:15 p.m. [general objections to Cabrera's entire expert report];

- October 9, 2007, at 5:25 p.m. [motion to remove Cabrera, once again pointing out his close ties with the ADF and the plaintiffs];
- October 16, 2007, at 8:40 a.m. [motion to remove Cabrera and strike his work to date];
- October 20, 2007, at 4:30 p.m. [request that the Court order Cabrera to submit all documents that he has received from third parties];
- October 20, 2007, at 5:12 p.m. [repeated objection to Cabrera's partiality and close relationship with the plaintiffs];
- December 5, 2007, at 5:34 p.m. [motion to remove Cabrera as expert, due to his close relationship with the plaintiffs];
- December 10, 2007, at 8:22 p.m. [request made to compel Cabrera to answer questions raised by Chevron];
- December 13, 2007, at 2:15 p.m. [motion again made to have Cabrera removed due to his relationship with the plaintiffs];
- April 18, 2008, at 4:25 [repeated motion to remove Cabrera for lack of neutrality and his relationship with the ADF];
- June 4, 2008, 5:05 p.m. [repeated motion to remove Cabrera for lack of neutrality];
- September 15, 2008, at 2:14 p.m. and exhibits [objections to Cabrera's overall report];
- October 14, 2008, at 11:08 a.m. [motions regarding fundamental error with regard to Cabrera];
- October 14, 2008, at 8:32 a.m. [objections to answers by Cabrera to questions raised in Chevron's comments on his expert's report];
- October 28, 2008, at 3:48 p.m. [motion to compel Cabrera to answer Chevron's questions];
- November 7, 2008, at 4:58 p.m. [objection to Cabrera's partiality requesting his removal];
- February 10, 2009, at 5:35 p.m. [additional objections to the Cabrera report];
- April 4, 2009, at 2:21 p.m. [Objections to supplementary report by Cabrera]; and

- May 14, 2009, at 4:14 p.m. [motion against expert Cabrera based on fundamental error].

**PETITIONS:**

The documentary evidence and each and every one of the foregoing considerations demonstrate the undisclosed financial and professional relationship and interest that expert Cabrera had and still has with and in the CAMPET company, thereby proving the existence of an unacceptable and irreparable conflict of interest, which has irrevocably discredited and disqualified his expert's report and has affected judicial integrity, thereby causing obvious irreparable harm to my client, leaving it clearly defenseless and showing the existence of a recurrent denial of justice, which have guided the course of this lawsuit to illegally and illegitimately credit the claims not only of the plaintiffs but also of Mr. Cabrera. Therefore, I respectfully move that this court, at the appropriate time in this proceeding, strike Cabrera's principal report, as well as any supplements and clarifications thereof.

Pursuant to Art. 118 of the Code of Civil Procedure, I hereby move that you consider ordering *sua sponte* the production of any additional evidence that you consider necessary to clarify the facts of which I have complained, including, but not limited to, opening an investigation to prove the fundamental mistakes that Cabrera made in his reports, which mistakes were alleged at the appropriate time by my client and which were rejected by your predecessors, in clear violation of procedural rules and the law.

Finally, I move that if you deem it appropriate to do so, you order the commencement of the appropriate legal actions aimed at punishing the unethical and unlawful conduct of the expert Richard Stalin Cabrera Vega.

## **EXHIBITS**

To prove the allegations made herein, I attach the following documents:

**EXHIBIT 1:** Decision No. 003 of the Superintendency of Companies approving the formation of the company CAMPET COMPAÑÍA AMBIENTAL MINERA-PETROLERA S. A. and duly certified articles of incorporation

**EXHIBIT 2:** Letter appointing Cabrera General Manager and Legal Representative of CAMPET, and his acceptance.

**EXHIBIT 3:** List of services that CAMPET can offer Petroecuador by virtue of its being registered as an authorized service provider.

**EXHIBIT 4:** Certificate of Swearing-in of Cabrera as Expert, dated June 13, 2007, which includes his résumé.

**EXHIBIT 5:** Filing by Cabrera dated October 11, 2007

**EXHIBIT 6:** Filing by Cabrera dated October 31, 2007.

**EXHIBIT 7:** Filing by Cabrera dated November 6, 2007.

**EXHIBIT 8:** Filing by Cabrera dated November 9, 2007.

**EXHIBIT 9:** Appendix 2 to the filing by Cabrera dated February 2, 2009, which asserts that Cabrera's investigation was done impartially.

**EXHIBIT 10:** Filing by Cabrera dated December 11, 2007.

**EXHIBIT 11:** Filing by Cabrera dated October 20, 2008.

**EXHIBIT 12:** Filing by Cabrera dated March 4, 2009.

**EXHIBIT 13:** Certificate from the Commercial Registrar of the Canton of Quito confirming that Cabrera has served as General Manager of CAMPET since 2003

**EXHIBIT 14:** Superintendencia of Companies showing current registration of CAMPET

I respectfully request that you grant my petitions herein, because if you do so, justice will be done.

On behalf of the defendant, as his duly appointed attorney.

DR. IVAN ALBERTO RACINES E.

ATTORNEY  
BAR REGISTRATION NO. 6459 – C.A.P.