

GIBSON DUNN

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Client: 19624-00020

February 15, 2013

VIA ELECTRONIC MAIL

Garland D. Murphy IV
Smyser Kaplan & Veselka
Bank of America Center
700 Louisiana, Suite 2300
Houston, Texas 77002

Re: *Chevron v. Donziger, et al.*, Case No. 11-CIV-0691-LAK

Dear Land:

I write on behalf of Chevron Corporation regarding the “pre-inspection videos” that you identified in your discovery requests, and that you produced with bates numbers LAP0000669 to LAP0000718. According to your colleague Larry Veselka, your firm acquired these videos after Amazon Watch obtained them from an “anonymous” source and gave them to Pablo Fajardo. On February 8, 2013, I requested that you provide additional information about how your firm acquired these videos, because Chevron believes that they were obtained improperly. You refused to provide the requested information.

These videos are Chevron’s property, and are confidential documents and/or protected litigation work product. Chevron demands that you provide detailed information about how your firm acquired these videos and your actions with respect to them, including: 1) who specifically provided these videos to you; 2) when you came into possession of them; 3) who at your firm initially obtained them; 4) what information was conveyed to you about them; 5) who has viewed them; 6) whether you shared them with others, and if so, who; 7) whether you have sought or obtained an ethics opinion with respect to your receipt and use of these videos; and 8) any other relevant information. In addition to providing this information, Chevron demands that you promptly return the improperly obtained videos and all copies of them by sending them to my attention at the above address.

Please be advised that, as counsel of record for your clients in this matter, you have an ethical duty to comply with these instructions. See *Knitting Fever, Inc. v. Coats Holding Ltd.*, No. 05CV1065(DRH)(MLO), 2005 WL 3050299, at *3-4 (E.D.N.Y. Nov. 14, 2005) (where counsel obtained an adversary’s materials through undisclosed sources and opposing counsel demanded the return of the materials and detailed information about their receipt, counsel “had a clear ethical responsibility to... either follow [opposing counsel’s]

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instructions with respect to the disposition of the documents or refrain from using them pending a ruling by the Court.”); *see also* N.Y. Rule of Prof'l Conduct R. 1.15(c)(4). Failure to do so may result in sanctions or disqualification. *Burt Hill, Inc. v. Hassan*, No. Civ.A. 09-1285, 2010 WL 419433, at *9 (W.D. Pa. Jan. 29, 2010) (holding that sanctions beyond the return of privileged materials were necessary, as “[t]here appears no way of preventing a litigant who has obtained his opponent’s privileged and/or confidential materials from claiming that the materials were received through an ‘anonymous’ source.”); *Maldonado v. New Jersey*, 225 F.R.D. 120 (D.N.J. 2004) (disqualifying counsel for failing to notify and return privileged documents that its client received anonymously).

Please confirm that you will provide the requested information, and return improperly obtained videos immediately, while Chevron evaluates its remedies in connection with this matter.

Sincerely,

/s/ *Ethan D. Dettmer*
Ethan D. Dettmer

EDD/bas

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