833 F.3d 74
United States Court of Appeals,
Second Circuit.

Chevron Corporation, Plaintiff-Appellee,
v.
Steven Donziger, The Law Offices of Steven R. Donziger, Donziger & Associates, PLLC, Hugo Gerardo Camacho Naranjo, Javier Piaguaje Payaguaje, Defendants-Appellants,
Stratus Consulting, Inc., Douglas Beltman, Ann Maest, Defendants-Counter-Claimants,
Pablo Fajardo Mendoza, Luis Yanza, Frente De Defensa De La Amazonia aka Amazon Defense Front, Selva Viva Selviva CIA, LTDA, Maria Aguinda Salazar, Carlos Grefa Huatatoca, Catalina Antonia Aguinda Salazar, Lidia Alexandra Aguinda Aguinda, Patricio Alberto Chimbo Yumbo, Clide Ramiro Aguinda Aguinda, Luis Armando Chimbo Yumbo, Beatriz Mercedes Grefa Tanguila, Lucio Enrique Grefa Tanguila, Patricio Wilson Aguinda Aguinda, Celia Irene Viveros Cusangua, Francisco Matias Alvarado Yumbo, Francisco Alvarado Yumbo, Olga Gloria Grefa Cerda, Lorenzo José Alvarado Yumbo, Narcisa Aida Tanguila Narváez, Bertha Antonia Yumbo Tanguila, Gloria Lucrecia Tanguila Grefa, Francisco Victor Tanguila Grefa, Rosa Teresa Chimbo Tanguila, José Gabriel Revelo Llore, María Clelia Reascos Revelo, María Magdalena Rodríguez Barcenes, José Miguel Ipiales Chicaiza, Heleodoro Pataron Guaraca, Luisa Delia Tanguila Narváez, Lourdes Beatriz Chimbo Tanguila, María Hortencia Viveros Cusangua, Segundo Angel Amanta Milán, Octavio Ismael Córdova Huanca, Elias Roberto Piyahuaje Payahuaje, Daniel Carlos Lusitande Yaiguaje, Benancio Fredy Chimbo Grefa, Guillermo Vicente Payaguaje Lusitante, Delfín Leonidas Payaguaje Payaguaje, Alfredo Donaldo Payaguaje Payaguaje, Teodoro Gonzalo Piaguaje Payaguaje, Miguel Mario Payaguaje Payaguaje, Fermin Piaguaje Payaguaje, Reinaldo Lusitande Yaiguaje, Luis Agustín Payaguaje Piaguaje, Emilio Martín Lusitande Yaiguaje, Simon Lusitande Yaiguaje, Armando Wilfrido Piaguaje Payaguaje, Angel Justino Piaguage Lucitante, Defendants,
Andrew Woods, Laura J. Garr, H5, Respondents.*

Docket Nos. 14-0826(L), 14-0832(C)
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August Term, 2014
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Argued: April 20, 2015
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Final briefs submitted June 1, 2015
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Decided: August 8, 2016

Opinion

KEARSE, Circuit Judge:

Defendants-appellants Steven Donziger, Donziger & Associates, PLLC, and the Law Offices of Steven R. Donziger (collectively the "Donziger Firm" or "Firm"), and defendants-appellants Hugo Gerardo Camacho Naranjo ("Camacho") and Javier Piaguaje Payaguaje ("Piaguaje"), appeal from a judgment of the United States District Court for the Southern District of New York, Lewis A. Kaplan, Judge, granting certain relief against them in favor of plaintiff-appellee Chevron Corporation ("Chevron"), in connection with an $8.646 billion judgment obtained against Chevron in Ecuador ("Ecuadorian Judgment"), by several dozen named plaintiffs from Ecuador's Lago Agrio area (the "Lago Agrio Plaintiffs" or "LAPs") represented by the Donziger Firm, for environmental damage in connection with 1960s–1990s oil exploration activities in Ecuador by Texaco, Inc. ("Texaco"), whose stock was later acquired by Chevron. The district court's judgment, entered after a bench trial, principally (1) enjoins defendants-appellants from seeking to enforce the Ecuadorian Judgment in any court in the United States, and (2) imposes a constructive trust for Chevron's benefit on any property defendants-appellants have received or may receive anywhere in the world that is traceable to the Ecuadorian Judgment or its enforcement, based on the court's findings that the Ecuadorian Judgment was procured through, inter alia, defendants' bribery, coercion, and fraud, warranting relief against Steven Donziger ("Donziger") and his Firm under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), ***81** 18 U.S.C. §§ 1961-1968, and against all defendants-appellants under New York common law. See Chevron v. Donziger, 974 F.Supp.2d 362 (S.D.N.Y. 2014) ("Donziger"). Without challenging the sufficiency of the evidence to support any of those factual findings, defendants-appellants challenge the district court's judgment, arguing principally that the action should have been dismissed on the ground that Chevron lacks Article III standing, and/or that the judgment should be reversed on the grounds, inter alia, that it violates principles of international comity and judicial estoppel, exceeds any legal authorization for equitable relief, and was entered

without personal jurisdiction over defendants other than Donziger and his Firm. For the reasons that follow, including the absence of challenges to the district court's factual findings, the express disclaimers by the Ecuadorian appellate courts of their own jurisdiction to "hear and resolve" the above charges of corruption, "preserving the parties' rights" to pursue those charges in actions in the United States (Ecuadorian intermediate appellate court clarification order dated January 13, 2012, at 4; see also Opinion of Ecuadorian National Court of Justice at 120 ("preserving the rights and actions of the parties" in "acknowledge[ment of] the lack o[f] jurisdiction to decide whether or not there has been procedural fraud")), and the district court's confinement of its injunction to a grant of in personam relief against the three defendants-appellants without disturbing the Ecuadorian judgment, we find no basis for dismissal or reversal, and we affirm the judgment of the district court.

* * * *

I. BACKGROUND

This appeal is the latest chapter in the litigation against Chevron by residents of the Oriente region of Ecuador, which includes the canton of Lago Agrio, with respect to oil-exploration-related activities in that region from the 1960s into the 1990s by Texaco, whose stock was acquired by Chevron in 2001. In 1964, the Republic of Ecuador ("ROE") had granted to a joint venture—which was then 50%-owned by a subsidiary of Texaco dubbed "TexPet"—a concession to explore for and produce oil in the Oriente (the "Concession"). In the 1970s, Ecuador's state-owned oil company, now known as PetroEcuador, acquired at first a minority, and then a majority, interest in the joint venture. TexPet was the operator of the Concession until the early ***83** 1990s. In late 1989, PetroEcuador took over operation of the Trans-Ecuadoran Pipeline, see Jota v. Texaco, Inc., 157 F.3d 153, 156 n.4 (2d Cir. 1998) ("Jota"); in mid-1990, PetroEcuador took over operation of the Concession drilling operations as well, see id.; Aguinda v. Texaco, Inc., 303 F.3d 470, 473 (2d Cir. 2002) ("Aguinda"). In mid-1992, when the Concession expired, TexPet's interest in the joint venture reverted to PetroEcuador, leaving PetroEcuador as the sole owner and operator of the venture. See Donziger, 974 F.Supp.2d at 386.

> In connection with the termination of TexPet's Ecuadorian operations, TexPet and Texaco in 1993 entered into a Memorandum of Understanding [MOU] with the ROE that provided that TexPet would be released from any potential claim for environmental harm once TexPet performed an agreed-upon remediation in the area in which it had operated. In the Spring of 1995, the parties executed a Settlement Agreement and Scope of Work agreement (the "Settlement Agreement") that laid out specific tasks TexPet was required to complete before its remediation and wind down were complete, whereupon it would be entitled to a release. From 1995 through 1998, ROE inspectors issued 52 actas in which they confirmed TexPet's completion of each task. The final acta—the 52nd Certificate—was issued in September 1998 and stated that TexPet had complied with its obligations under the Settlement Agreement. The final release was signed on September 30, 1998. It stated that TexPet had fully performed its obligations under the MOU and Settlement Agreement and that TexPet was released from all potential claims by the ROE and PetroEcuador.

Id. at 386–87 (footnotes omitted) (emphases added).

In the meantime, a group of Oriente residents, represented by New York City lawyer Donziger, among others, commenced a class action against Texaco in the Southern District of New York in 1993, seeking billions of dollars in damages, as well as certain equitable relief within Ecuador, for alleged environmental damage in Ecuador and injury to the health of the plaintiffs, see Aguinda, 303 F.3d at 473–74. Thus began this conflict, which "must be among the most extensively [chronicled] in the history of the American federal judiciary." Chevron Corp. v. Naranjo, 667 F.3d 232, 234 (2d Cir.) ("Naranjo"), cert. denied, —— U.S. ——, 133 S.Ct. 423, 184 L.Ed.2d 288 (2012); see id. at 234 n.1 (noting that an "underinclusive Westlaw search for Chevron or Texaco & Ecuador & 'Lago Agrio' yield[ed] fifty-six results, all of which deal directly with this litigation"); see, e.g., Jota, 157 F.3d 153 (vacating an unconditional forum non conveniens dismissal of class actions brought against Texaco in New York by, respectively, the Aguinda Oriente residents in 1993 and residents of Peru in 1994); Aguinda, 303 F.3d 470 (approving a forum non conveniens dismissal of the

Oriente residents' 1993 New York action against Texaco, conditioned on Texaco's agreement to submit to personal jurisdiction and waive certain statute of limitations defenses in Ecuador); Chevron Corp. v. Berlinger, 629 F.3d 297 (2d Cir. 2011) (requiring filmmaker, whom Donziger had commissioned to make a documentary film about his Ecuadorian case, to turn over to Chevron hundreds of hours of outtakes, some of which had initially been aired—showing, inter alia, Donziger discussing his litigation strategy and disparaging the Ecuadorian judiciary—but were later deleted at Donziger's insistence); Republic of Ecuador v. Chevron Corp., 638 F.3d 384 (2d Cir. 2011) ("Republic of Ecuador") (affirming refusal to stay treaty-based arbitration proceeding ***84** commenced by Chevron in 2009 alleging, inter alia, ROE's breach of the 1993 Settlement Agreement with TexPet and Texaco and the 1998 release); Chevron Corp. v. Republic of Ecuador, 795 F.3d 200 (D.C. Cir. 2015) (affirming confirmation of an arbitration award of approximately $96 million in favor of Chevron against ROE in a proceeding commenced by Chevron in 2006 for failure to resolve in a timely fashion lawsuits by TexPet against ROE), cert. denied, —— U.S. ——, 136 S.Ct. 2410, 195 L.Ed.2d 780 (2016).

In 2003, following the affirmance of a forum non conveniens dismissal of the Aguinda case, the Lago Agrio Plaintiffs—Camacho, Piaguaje, and 46 other named plaintiffs residing in or near Lago Agrio—represented by the Donziger Firm, sued Chevron in Ecuador, seeking to hold it responsible for extensive environmental damage allegedly caused by Texaco in the area covered by the Concession (the "Lago Agrio Litigation" or "Lago Agrio Chevron case"). The action was brought for the benefit of some 30,000 indigenous residents of the area, and the complaint requested that any money awarded for performance of the requested remediation—plus an additional 10%—be paid to the Frente de la Defensa de la Amazonia ("ADF") for its use in performing ordered remediation. See Donziger, 974 F.Supp.2d at 391–92. Thus, the LAPs sought to have "any and all sums recovered" in the action controlled by the ADF. Id. at 392. The ADF was formed in 1993 by Donziger and Luis Yanza, his closest friend in Ecuador, to support the Aguinda litigation; the ADF was controlled by Donziger and Yanza. See, e.g., id. at 398–99.

In February 2011, the trial court in Ecuador entered a judgment in favor of the LAPs awarding $8.646 billion in compensatory damages, plus $8.646 billion in punitive damages unless Chevron issued an apology, for a total of $17.292 billion ("Lago Agrio Judgment" or "Initial Judgment" or "Judgment"). The punitive damages aspect of the award was eventually eliminated on appeal (see Part I.E.2. below), leaving the judgment against Chevron, as modified, at $8.646 billion (the Ecuadorian Judgment).

The present action was commenced by Chevron in 2011 against Donziger, his Firm, and the named Lago Agrio Plaintiffs, including Camacho and Piaguaje (referred to in the district court and this opinion as the "LAP Representatives"), alleging that the LAPs procured the Lago Agrio Judgment by a variety of unethical, corrupt, and illegal means, including: making secret payments to industry experts who would submit pro-LAPs opinions to the court while pretending to be neutral; announcing multi-billion-dollar remediation cost estimates while knowing them to be without scientific basis; persuading an expert to sign blank pages that were then submitted to the court with opinions he did not authorize; employing extortion to coerce an Ecuadorian judge to curtail inspections of alleged contamination sites after the experts began to find pro-Chevron conditions at other such sites; using the same extortionate means to coerce that judge to appoint, as a supposedly neutral expert court adviser, an expert who was bribed to submit—as his own opinion—a report written by the LAPs; and providing ex parte to another judge—or to whoever wrote the $17.292 billion Lago Agrio Judgment—material that is not part of the record for inclusion in that judgment.

Chevron originally sought damages and a global injunction forbidding enforcement of the Lago Agrio Judgment. Initially, the district court bifurcated the case and granted Chevron's request for a global preliminary injunction, citing New York's Uniform Foreign Country Money-Judgments ***85** Recognition Act (the "Recognition Act"), N.Y. C.P.L.R. §§ 5301–5309 (McKinney 2008). That injunction was reversed by this Court in Naranjo, on the ground that the Recognition Act allows a judgment debtor to challenge a foreign judgment's validity only defensively, in response to an attempted enforcement. See 667 F.3d at 240. We declined to address other issues in this action, such as claims of lack of personal jurisdiction and "the parties' various charges and counter-charges regarding the Ecuadorian legal system and their adversaries' conduct of this litigation." Id. at 247 n.17.

After our decision in Naranjo, Chevron waived its claims for damages, and the case was tried to the court without a jury.

* * * *

II. DISCUSSION

On appeal, Donziger, his Firm, and/or the LAP Representatives contend principally ***120** that the district court's judgment should be vacated and the case dismissed for lack of federal jurisdiction on the ground that Chevron lacks Article III standing; that Chevron, in light of positions taken in earlier litigation, is estopped from challenging any Ecuadorian judgment; that the equitable relief granted by the district court was foreclosed by our decision in Naranjo and, in any event, is unauthorized by RICO or common law; and that the district court's judgment violates principles of international comity. The LAP Representatives also argue that the district court lacked personal jurisdiction over any defendant other than Donziger and his Firm, and that any corrupt conduct by Donziger in Ecuador should not be attributed to the LAPs. For the reasons that follow, we are unpersuaded, and we affirm the judgment of the district court.

* * * *

D. The RICO-Based Rulings Against Donziger

Chevron asserted RICO claims against Donziger and others (not including the LAPs), alleging that, in orchestrating the frauds, extortions, and briberies leading to the entry of the $17.292 billion Lago Agrio Judgment, Donziger conducted the affairs of an enterprise through a pattern of racketeering ***132** activity, in violation of 18 U.S.C. § 1962(c), and conspired to do so, in violation of § 1962(d). Section 1964 of RICO (quoted more fully in subpart 2 of this Part II.D.) provides in part that the federal courts have "jurisdiction to prevent and restrain violations of section 1962 of this chapter by ... imposing reasonable restrictions on the future activities ... of any person," 18 U.S.C. § 1964(a) (emphases added), and that "[a]ny person injured in his business or property by reason of a violation of section 1962 ... may sue therefor ... and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee," id. § 1964(c). Although Chevron withdrew its request for damages, it sought equitable relief under RICO for its injuries resulting from Donziger's violations of §§ 1962(c) and (d). The district court, noting that either damages or equitable relief under RICO "are available only to those persons injured by reason of the defendant's predicate acts" and that the predicate acts must be "both the factual and the proximate cause of the injury," Donziger, 974 F.Supp.2d at 601 (internal quotation marks omitted), found that Chevron had established all of the elements of its RICO claims.

The court found that there was a RICO "enterprise" consisting of "the LAP team and its affiliates," which included

> Donziger, ... the U.S. and Ecuadorian lawyers, including Kohn[and] Patton Boggs ..., Yanza, the ADF, and Selva Viva, ... the investors who gave money to finance the operation, usually in exchange for shares of any recovery, ... the LAPs' public relations, media, and lobbying arms, [and] ... the LAPs' technical people, including Stratus, Beltman, Maest, Russell, Calmbacher, ... [and] Quarles.

Donziger, 974 F.Supp.2d at 576. Although not finding that each member of the enterprise committed acts of racketeering activity, the court found that these persons or entities were "associated in fact for the common purpose of pursuing the recovery of money from Chevron via the Lago Agrio litigation, whether by settlement or by enforceable judgment, coupled with the exertion of pressure on Chevron to pay." Id.

The district court found that Donziger had committed—and conspired with at least Fajardo and Yanza to commit—numerous indictable acts that fell within the RICO definition of racketeering activity in 18 U.S.C. § 1961(1), see, e.g., Donziger, 974 F.Supp.2d at 576–99, 601, including **extortion** in violation of 18 U.S.C. § 1951 (affecting interstate or foreign commerce "in any way or degree," by "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right" or "attempt[ing]" to do so); **wire fraud** in violation of 18 U.S.C. § 1343 (communicating or foreseeably causing communication "by means of wire ... in interstate or foreign commerce," of "writings," etc., in furtherance of a "scheme or artifice to defraud, or [to] obtain[ ] money or property" by way of "false or fraudulent pretenses, representations, or promises"); **money laundering** in violation of 18 U.S.C. § 1956 (transmitting or transferring funds "from a place in the United States to or through a place outside the United States ... with the intent to promote the carrying on of specified unlawful activity," defined to include "activity constituting an offense listed in section 1961(1) of [18 U.S.C.]"); **obstruction of justice** in violation of 18 U.S.C. § 1503 ("corruptly ... endeavor[ing] to influence, obstruct, or impede, the due administration of justice" in "any court of the United States"); and **violations of the Travel Act**, 18 U.S.C. § 1952 (using "any facility in ***133**

interstate or foreign commerce" in furtherance of, or with the intent to promote unlawful activity such as "bribery ... in violation of the laws ... of the United States," including the Foreign Corrupt Practices Act ("FCPA"), which makes it unlawful for a United States citizen or national to, inter alia, "offer, pay[ ], [or] promise to pay ... any money, or ... anything of value to ... any foreign official for purposes of ... influencing any act or decision of such foreign official," 15 U.S.C. § 78dd–2(a)). The district court found that

> [a]mong the predicate acts that Chevron has proved are (1) multiple extortionate acts including, among others, (a) the ghostwriting of the Judgment and the promise of $500,000 to Zambrano for signing it, and (b) the ghostwriting of the Cabrera Report upon which the author(s) of the Judgment relied for the pit count that underlies more than $5 billion of the damages award, as well as the false portrayal of Cabrera as a neutral, impartial and independent expert, and the payments and other inducements to Cabrera to ensure that he "played ball," (2) multiple acts of wire fraud in furtherance of fraudulent schemes with respect to all of the foregoing, (3) money laundering to promote racketeering acts, including with respect to the ghostwriting of the Cabrera Report by Stratus and payments to Cabrera, and (4) violations of the Travel Act to facilitate violations of the anti-bribery provision of the FCPA by payments to Cabrera.

Donziger, 974 F.Supp.2d at 601 (emphases added). In addition, referring to the findings described in Part I.B.11. above, the court found that

> Donziger and the LAPs' U.S. counsel submitted the deliberately misleading Fajardo Declaration first to the court in Denver and then to many other courts throughout the country, including this one. The LAPs' American lawyers-including Donziger—were involved in drafting the declaration. They debated extensively the extent to which it would reveal the truth about the LAPs' "contacts" with Cabrera. And they decided that Fajardo rather than Donziger should sign it for fear that Donziger, a U.S. resident and thus subject to compulsory process, would be deposed.FN1470 Finally, the declaration, as discussed earlier, was misleading at best.
>
> FN1470. PX 1316 (May 3, 2010 Email from [Patton Boggs partner] E. Westenberger to others) ("This is why we struggled with who would sign the declaration. If Steve [Donziger] signs, he will most certainly be deposed. Same for any other counsel in the US. We figured that with [Fajardo], they likely would not slow down the process by deposing him.").
>
> Donziger's conduct with respect to the Fajardo Declaration was obstruction of justice, plain and simple. The declaration was drafted while the Stratus Section 1782 proceeding was pending, as Donziger was acutely aware. Its purpose—in Donziger's words—was to "prevent Stratus' role relative to the Cabrera report from coming out." Donziger was involved in the communications as to what it would and would not say. He knew that it was false or misleading. His conduct was intended to "impede ... the due administration of justice," and it fell squarely within the federal obstruction of justice statute.

Donziger, 974 F.Supp.2d at 594 & n.1470 (other footnotes omitted) (quoting Donziger deposition testimony and 18 U.S.C. § 1503 (emphases ours)).

***134** The district court noted that "[n]umerous emails were sent in furtherance of these schemes." Donziger, 974 F.Supp.2d at 590 n.1443. It found that many of the wires at issue were interstate; and a number were sent to or from the United States—for example, the emails from Stratus's Beltman to Donziger, Fajardo, and others, with respect to Stratus's ghostwriting of the Cabrera Report, see id. at 590 & n.1443. The dozens of emails referred to in Part I of this opinion are but a small percentage of those in the trial record; with regard to the preparation of the Cabrera Report alone, "Donziger and Stratus personnel exchanged hundreds of emails," id. at 440 & n.439. And moneys funding the LAPs' team's corrupt activities were wired, for example, from Gibraltar to New York to Ecuador. See id. at 591–92. The court found that

> the fact that certain of Donziger's wrongful efforts to force Chevron to pay took place in Ecuador is of no moment. While Donziger's activities in Ecuador were important, they in many respects were merely tools. Regardless of

> where the conduct creating the threat took place, the plan was hatched and run from the United States and its object was a multi-billion dollar payment from Chevron, a U.S. based company.

Id. at 588.

> [T]he evidence at trial established that Donziger, a New York lawyer and resident, here formulated and conducted a scheme to victimize a U.S. company through a pattern of racketeering. That pattern included substantial conduct in the United States—e.g., the bulk of Donziger's overall supervision of the entire operation; much of Donziger's fund raising activity; the ghostwriting of the Cabrera Report, which occurred mainly in Boulder, Colorado, and was supervised by Donziger from New York; much of the pressure and lobbying campaign designed to injure Chevron's reputation and impact its bottom line and its stock price, a campaign micromanaged by Donziger that employed many U.S. public relations advisors and lobbyists; the making of Crude by a New York-based and recruited film maker; and the improper efforts to ward off discovery through U.S. courts of what really had taken place with Cabrera, Stratus, and the LAPs. Much of the funding came principally from Kohn in Philadelphia and Burford [Capital, a litigation finance firm], which operated at least partly in the United States. Absent the U.S. activity, there would have been no scheme. Even had there been one, it would have been doomed to failure, without that activity.

Donziger, 974 F.Supp.2d at 574.

The district court found that these acts constituted a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5) (requiring at least two acts of racketeering activity occurring within 10 years of each other). Donziger's acts of wire fraud, bribery, obstruction of justice, and money laundering were committed as part of an at-least "five-year effort to extort and defraud Chevron" into paying a huge sum of money; and it was likely that the "demonstrate[d] criminal activity ... w[ould] continue into the future," especially "in view of the defendants' failure thus far to achieve their goal." Donziger, 974 F.Supp.2d at 599.

There is no challenge to the sufficiency of the evidence to support any of these findings.

Donziger makes other challenges to the district court's granting of relief to Chevron under RICO. In addition to arguing that the District Court Judgment should be set aside on international comity grounds (which we reject for the reasons ***135** set out in Part II.F. below), he contends that Chevron failed to establish a quantifiable, redressable injury, and that proximate causation was lacking by reason of the intervention of the Ecuadorian appellate decisions between the racketeering-activity-induced initial Lago Agrio Judgment and Chevron's $8.646 billion judgment debt; and he argues that RICO does not authorize the granting of equitable relief to private plaintiffs. We reject each contention.

1. RICO Injury and Causation

[22]After Donziger promised Judge Zambrano $500,000 from the proceeds of a judgment in favor of the LAPs, Judge Zambrano entered the Lago Agrio Judgment, which had been written by the LAPs' team, against Chevron for $8.646 billion in damages (plus $8.646 billion in punitive damages, which was thereafter eliminated by the National Court because Ecuadorian law does not authorize the imposition of punitive damages). Thus, Chevron has an $8.646 billion judgment debt. The imposition of a wrongful debt constitutes an injury to one's business or property.

After the Ecuadorian Appeal Division affirmed that Judgment, attachments were placed on Chevron assets, including its intellectual property rights in Ecuador, which the district court found are worth between $15 and $30 million. Attachments were also placed on the funds in Chevron's Ecuadorian bank accounts, and on the approximately $96 million Chevron had been awarded in arbitration against the ROE. The LAPs also brought enforcement actions in Argentina, Brazil, and Canada. Donziger's contention that Chevron has suffered no injury from these attachments, on the ground that the assets have not yet been transferred, is frivolous. The nature of an

attachment is to prevent the asset's owner from using or disposing of his property as he wishes. That incursion into the owner's property rights constitutes injury. There is no serious question that Chevron has suffered injury in its business or property.

[23]The district court also permissibly found that Chevron's legal fees—those already expended to uncover Donziger's wrongful conduct and those being spent and soon-to-be-spent to defend against enforcement proceedings—constituted further injury to Chevron. See Donziger, 974 F.Supp.2d at 553, 638. "[L]egal fees may constitute RICO damages when they are proximately caused by a RICO violation." Stochastic Decisions, Inc. v. DiDomenico, 995 F.2d 1158, 1167 (2d Cir.), cert denied, 510 U.S. 945, 114 S.Ct. 385, 126 L.Ed.2d 334 (1993).

Donziger, under his retainer agreement with the LAPs, "is entitled to be paid (a) 6.3 percent of all amounts collected in respect of the Lago Agrio litigation, plus (b) any arrearages in his monthly retainer, plus (c) reimbursement for expenses." Donziger, 974 F.Supp.2d at 602 (footnotes omitted). Thus, if the $8.646 billion Ecuadorian Judgment debt is collected, Donziger is to be paid $544,698,000, plus arrearages and expenses. The district court found that

> [a]ll of the property that Donziger now has and which he hereafter may receive as a result of the Judgment are and will be the products of the Judgment obtained in consequence of his predicate acts of racketeering. To the extent he has been enriched by property taken from Chevron, Chevron has lost that property as a proximate consequence of those predicate acts. Moreover, to the extent the Judgment is enforced in the future, Donziger will be enriched further at Chevron's expense ***136** to the extent of 6.3 percent of the property thus obtained.

Id. (emphases added). The procurement of such moneys from a RICO plaintiff through acts of racketeering activity constitutes injury to the plaintiff's property.

Although Donziger also contends that any injury to Chevron from the Judgment cannot be redressed, the constructive trust that the District Court Judgment imposes on Donziger for the benefit of Chevron, requiring that he pay to Chevron all sums he has received or will receive that are traceable to the Lago Agrio Judgment, provides partial compensation. The fact that Chevron will not be compensated fully does not provide a basis for Donziger to retain proceeds from the Judgment that resulted from his corrupt conduct.

We find no greater merit in Donziger's contention that his racketeering activity was not the proximate cause of Chevron's injury on the theory that the Ecuadorian appellate decisions broke the causal chain. Although Donziger repeatedly refers to the decision of the Appeal Division as a "substitute judgment of the appellate court" (Donziger brief on appeal at 68; see also id. at 2, 4, 38, 72, 73, 99), "substitute" is a label unsupported by substance. The fact is that the Appeal Division, aside from acknowledging an error with respect to mercury levels (and finding it harmless), did not alter the Lago Agrio Judgment in any way.

Nor is there any finding in the Appeal Division's Opinion to show that the Division's own examination of the record led it—independently—to find Chevron liable for the sums awarded in the Lago Agrio Judgment. The Division noted that there were more than 220,000 pages of documents in the Lago Agrio Litigation record (see Appeal Division Opinion at 2); in reviewing Judge Zambrano's decision, the Division wrote a 16–page opinion—much of which was devoted to rejecting the arguments of Chevron that it was not subject to suit in Ecuador. Only some five pages of the opinion were devoted to the merits of the action, and only one of them refers to any specific part of the record (see id. at 11 (collecting 16 pages of the 220,000–page record)). Aside from acknowledging, on that page, some of the errors in the Judgment, which it found harmless, the Division stated no findings of its own.

Instead, most of that five-page section of the Appeal Division's opinion, much of which is quoted in Part II.A.2. above, extensively described the manner in which Judge Zambrano adjudicated the case (see Appeal Division Opinion at 10-13), and approved his approach and his decision as an exercise of "sound discretion" and an application of "coherent and ... good legal-logical judgment" in reaching "reasonable conclusions" (id. at 12–13). Thus, "[t]he Division consider[ed]" that Judge Zambrano's "analysis.... [wa]s the appropriate one" (id. at 12); the Division "d[id] not find reasons to modify what was ordered in the lower court's judgment" (id. at 12–13); the Division found it "appropriate to confirm the monetary amounts established as proportions of compensation and indemnization" (id. at 13); and except for acknowledging (and finding harmless) Judge

Zambrano's error with respect to mercury levels, the Division "ratified" Judge Zambrano's decision "in all its parts" (id. at 16).

The district court concluded that the decision of the Appeal Division was "not truly the 'independent action[ ] of [a] third ... part[y],' " Donziger, 974 F.Supp.2d at 601 (quoting Hemi Group, LLC v. City of New York, 559 U.S. 1, 15, 130 S.Ct. 983, 175 L.Ed.2d 943 (2010)), and that it therefore did not break the chain of causation between the racketeering activity of the LAPs' team and Chevron's existing $8.646 ***137** billion judgment debt. We see no error in that conclusion, given the contents and focus of the Appeal Division's own opinion.

2. The Availability of Equitable Relief Under RICO

Donziger contends that the District Court Judgment against him should be overturned on the ground that RICO does not authorize the granting of equitable relief to a private plaintiff. We disagree.

[24]Neither the Supreme Court nor this Court has decided the question of whether RICO authorizes a court to award equitable relief to a private plaintiff. See, e.g., RJR Nabisco, Inc. v. European Community, ––– U.S. ––––, 136 S.Ct. 2090, 2111 n.13, 195 L.Ed.2d 476 (2016); Scheidler v. National Organization for Women, Inc., 537 U.S. 393, 411, 123 S.Ct. 1057, 154 L.Ed.2d 991 (2003) ("NOW II"); Trane Co. v. O'Connor Securities, 718 F.2d 26, 28–29 (2d Cir. 1983) (expressing doubt as to the availability of such relief to RICO private plaintiffs). Of the two federal Courts of Appeals that have decided the issue, the Seventh Circuit has found such relief authorized, see National Organization for Women, Inc. v. Scheidler, 267 F.3d 687, 695 (7th Cir. 2001) ("NOW I"), reversed on other grounds, 537 U.S. 393, 123 S.Ct. 1057, 154 L.Ed.2d 991 (2003), and the Ninth Circuit has found it unauthorized, see Religious Technology Center v. Wollersheim, 796 F.2d 1076, 1088-89 (9th Cir. 1986), cert. denied, 479 U.S. 1103, 107 S.Ct. 1336, 94 L.Ed.2d 187 (1987). Other Circuits that have addressed the issue obiter have expressed divergent views. See, e.g., NOW I, 267 F.3d at 695 (collecting cases). We conclude that a federal court is authorized to grant equitable relief to a private plaintiff who has proven injury to its business or property by reason of a defendant's violation of § 1962, largely for the reasons stated by the Seventh Circuit opinion in NOW I.

The three relevant subsections of RICO § 1964 provide as follows:

> (a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; [or] imposing reasonable restrictions on the future activities ... of any person, ... making due provision for the rights of innocent persons.
>
> (b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions ... as it shall deem proper.
>
> (c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee....

18 U.S.C. § 1964 (emphases added).

[25]We read subsection (a) of § 1964 as expansively authorizing federal courts to exercise their traditional equity powers:

> "When Congress entrusts to an equity court the enforcement of prohibitions contained in a regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purposes. As ... long ago recognized, 'there is inherent in the Courts of Equity a jurisdiction to ... give effect to the policy of the legislature.' Clark v. Smith, 38 U.S. (13 Pet.) 195, 203, 10 L.Ed. 123."

***138** United States v. Sasso, 215 F.3d 283, 289 (2d Cir. 2000) (quoting Mitchell v. Robert DeMario Jewelry, Inc., 361 U.S. 288, 291–92, 80 S.Ct. 332, 4 L.Ed.2d 323 (1960)). Accordingly, "unless a statute expressly, 'or by a necessary and inescapable inference, restricts the court's jurisdiction in equity,' we will infer that 'all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction.' " United States v. Sasso, 215 F.3d at 289 (quoting Porter v. Warner Holding Co., 328 U.S. 395, 398, 66 S.Ct. 1086, 90 L.Ed. 1332 (1946)); cf. De Beers Consolidated Mines, Ltd. v. United States, 325 U.S. 212, 218–19, 65 S.Ct. 1130, 89 L.Ed. 1566 (1945) (reasoning that Sherman Act's grant of jurisdiction "to prevent and restrain violations of th[at] act" carried with it "power ... traditionally exercised by courts of equity" (internal

quotation marks omitted)).

As we read § 1964, subsection (a) gives the federal courts jurisdiction to hear RICO claims and sets out general remedies, including injunctive relief; subsection (b) makes it clear that the court, on the application of the Attorney General, has authority to grant temporary injunctive relief even before there is a final adjudication; and subsection (c) provides a private right of action for any person injured in his business or property by reason of a violation of § 1962. We agree with the Seventh Circuit's view that subsection (a) is not simply a jurisdictional section but rather is a section that "grant[s] district courts authority to hear RICO claims and then ... spell [s] out a non-exclusive list of the remedies district courts are empowered to provide in such cases." NOW I, 267 F.3d at 697. Subsection (a) itself neither states that any category of persons may not obtain relief that is within the powers granted to the federal courts nor specifies the persons in whose favor the courts are authorized to exercise the powers there granted. In our view, this means that Congress did not intend to limit the court's subsection (a) authority by reference to the identity or nature of the plaintiff.

The limitations as to who may obtain certain other types of relief are, as we interpret § 1964, spelled out in subsections (b) and (c). Thus, because subsection (b) states that "[t]he Attorney General" may seek restraining orders "[p]ending [a] final" adjudication, we view such interim relief as available only to the United States, not to a private person.

In contrast, we interpret § 1964(c) as not authorizing awards of treble damages or attorneys' fees to the United States. Subsection (c) allows awards of that type of relief to a "person," a term defined as "any individual or entity capable of holding a legal or beneficial interest in property," 18 U.S.C. § 1961(3). And while the United States is capable of owning property, the term "person" in RICO is used in § 1964 to apply both to potential plaintiffs (subsection (c)) and to potential defendants (subsection (a)). As there is no indication that that word was meant to have differing meanings in the same section, and as there is no indication that Congress intended RICO to waive the United States's sovereign immunity—as would be required for the United States to be a defendant—we have concluded that the United States does not come within the RICO definition of "person." See United States v. Bonanno Organized Crime Family of La Cosa Nostra, 879 F.2d 20, 21–27 (2d Cir. 1989) (affirming dismissal of the government's action brought under § 1964(c)). Thus, subsection (c) excludes the federal government from those to whom a court may award treble damages and attorneys' fees.

While subsections (b) and (c) limit the categories of plaintiffs to which the relief they respectively specify may be granted, ***139** we do not interpret those subsections as limiting the authorized relief to the types they mention, i.e., as excluding relief that the federal courts are authorized to grant under subsection (a). To read the subsections after subsection (a) as limiting the nature of the relief that may be granted to the persons identified in those subsequent subsections would mean that although the Attorney General can be granted an injunction "[p]ending" the final adjudication of the case, she could not get any other relief such as a permanent injunction. The most sensible reading of subsection (b), in our view, is that the interim relief identified in that subsection is available only to the United States, which is relief in addition to that which it may be granted under subsection (a). By parity of reasoning, we read subsection (c) as meaning that only a "person" may sue for money damages, but that that right is in addition to the relief that the court has power to grant under subsection (a). As the Seventh Circuit stated, the sentence in subsection (b) that

> "[t]he Attorney General may institute proceedings under this section" is ... the equivalent of the first clause in § 1964(c), which says "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court[ ]...." Neither one addresses what remedy the plaintiff may seek. [ ] Given that the government's authority to seek injunctions comes from the combination of the grant of a right of action to the Attorney General in § 1964(b) and the grant of district court authority to enter injunctions in § 1964(a), we see no reason not to conclude, by parity of reasoning, that private parties can also seek injunctions under the combination of grants in §§ 1964(a) and (c).

NOW I, 267 F.3d at 697 (quoting 18 U.S.C. §§ 1964(b) and (c)).

As the NOW I decision noted, the interpretation of § 1964 as authorizing the grant of equitable relief to private plaintiffs is consistent with Congress's intent "to 'encourag[e] civil litigation to supplement Government efforts to deter and penalize the ... prohibited practices. The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, "private attorneys general," dedicated to eliminating racketeering activity.' " NOW I, 267 F.3d at 698 (quoting Rotella v. Wood, 528 U.S. 549, 557, 120 S.Ct. 1075, 145 L.Ed.2d

1047 (2000)); cf. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 492 n.10, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985) ("Indeed, if Congress' liberal-construction mandate is to be applied anywhere, it is in § 1964, where RICO's remedial purposes are most evident.").

In sum, under the reading of the statute that we find most logical, subsection (a) of § 1964

> grants the district courts jurisdiction to hear RICO claims and also sets out general remedies, including injunctive relief, that all plaintiffs authorized to bring suit may seek. Section 1964(b) makes it clear that the statute is to be publicly enforced by the Attorney General and it specifies additional remedies, all in the nature of interim relief, that the government may seek. Section 1964(c) similarly adds to the scope of § 1964(a), but this time for private plaintiffs.

NOW I, 267 F.3d at 696 (emphases added).

Given this interpretation, we reject Donziger's contention that equitable relief is not available to Chevron under RICO.

Nor can we agree that such relief is unavailable because the amount that the Ecuadorian Judgment will actually cost Chevron is unsure. Statements that a RICO private plaintiff cannot recover without showing an injury that is "quantifiable," ***140** see McLaughlin v. American Tobacco Co., 522 F.3d 215, 227 (2d Cir. 2008), are relevant in cases in which the plaintiff seeks treble damages, for in order for the court to "treble" an amount, the factfinder must first know the amount; but such statements generally focus on whether the cause of action has accrued. See, e.g., Bankers Trust Co. v. Rhoades, 859 F.2d 1096, 1106 (2d Cir. 1988) (finding § 1964(c) damages claim unripe because "it is impossible to determine the amount of damages that would be necessary to make plaintiff whole" "until it suffers the injury" (emphasis added)), cert denied, 490 U.S. 1007, 109 S.Ct. 1643, 104 L.Ed.2d 158 (1989). Similarly, the occurrence of the injury is the focus of statements that the private plaintiff in a RICO action must show injury that is "clear and definite." E.g., First Nationwide Bank v. Gelt Funding Corp., 27 F.3d 763, 768 (2d Cir. 1994), cert denied, 513 U.S. 1079, 115 S.Ct. 728, 130 L.Ed.2d 632 (1995). But Chevron's injury is in part its liability on an $8.646 billion judgment obtained through a pattern of racketeering activity; that injury, affecting its net worth, is clear and definite. The inability to predict whether that entire amount will be collected from Chevron does not affect the amount of the liability imposed. And the difficulty in calculating the amount of money damages that would be needed to redress the entire loss is a common basis for the granting of equitable relief. See, e.g., Register.com, Inc. v. Verio, Inc., 356 F.3d 393, 404 (2d Cir. 2004).

In sum, we reject Donziger's contention that RICO does not authorize the granting of equitable relief to a private plaintiff that has proven injury to its business or property by reason of a defendant's violation of § 1962.

* * * *

CONCLUSION

We have considered all of the arguments of Donziger and the LAP Representatives on this appeal and have found in them no basis for dismissal or reversal. The judgment of the district court is affirmed.