

Chevron Wins Appeal Over \$9.5B Ecuador Oil Pollution Tab

Law360, New York (August 8, 2016, 1:02 PM ET) -- The Second Circuit on Monday upheld a lower court's conclusion that a \$9.5 billion oil pollution judgment against [Chevron](#) in Ecuador was fraudulently produced and could not be enforced, the latest development in the long-running dispute.

Attorney Steven Donziger, who represented the so-called Lago Agrio plaintiffs in the lawsuit filed in Ecuador, had urged the appeals court to U.S. District Judge Lewis A. Kaplan's March 2014 [finding](#) that the 2013 judgment was the product of "egregious fraud." Chevron Corp. had sued Donziger for allegedly bribing the Ecuadorean court and ghostwriting the judgment it issued.

A Second Circuit panel said in a published opinion that it had no basis for overturning Judge Kaplan's decision, which panned the judgment stemming from a lawsuit alleging Texaco Inc. dumped crude oil into the Amazon rainforest during a decadeslong oil-drilling operation, giving the region's inhabitants cancer and destroying natural resources. Chevron acquired Texaco's liability when it bought the company in 2001.

The opinion noted the Ecuadorean judgment was for \$8.646 billion, but Chevron and representatives for the Lago Agrio plaintiffs told Law360 that including attorneys' fees, whistleblower awards and other costs brought the final judgment up to \$9.5 billion. Donziger, for his part, has pegged Chevron's current liability at \$11 billion.

The panel noted that Donziger and Hugo Camacho Naranjo and Javier Piaguaje Payaguaje, two plaintiffs representing indigenous Ecuadorean communities, didn't challenge the sufficiency of the evidence to support Judge Kaplan's findings that the judgment was obtained through "fraud, coercion and bribery." It also noted Ecuadorean appellate courts passed on considering the corruption allegations and expressly allowed them to be contested in U.S. courts and that Judge Kaplan's limited injunction against Donziger and the so-called Lago Agrio plaintiffs of any interest in the underlying Ecuadorean litigation didn't disturb the underlying judgment.

"We have considered all of the arguments of Donziger and the [Lago Agrio] representatives on this appeal and have found in them no basis for dismissal or reversal," the panel stated.

The Second Circuit rejected Donziger's argument that Chevron lacked standing to challenge the Ecuadorean judgment, saying its initial complaint alleged fraudulent and corrupt conduct by Donziger and others, plausibly alleged that a judgment against Chevron would be traced to those actions and that the case wasn't mooted by the appeals court's 2012 overturning of a broader, worldwide anti-enforcement order.

The appeals court also rejected arguments that the district court's ruling violates international comity principles and wrongly sought relief against Donziger, Naranjo and Payaguaje, saying it only prevented three men from enforcing the judgment in U.S. courts, leaving them and other Lago Agrio plaintiffs free to seek enforcement in other courts around the world.

"This decision, which is consistent with the findings of numerous judicial officers in the United States and South America, leaves no doubt that the Ecuadorian judgment against Chevron is the illegitimate and unenforceable product of misconduct," Chevron vice president and general counsel R. Hewitt Pate said in a statement Monday. "Chevron is pleased that the truth has prevailed over fraud and corruption."

Representatives for Donziger and the Lago Agrio plaintiffs said they were “shocked” by the Second Circuit’s ruling and would consider all of their legal options. Meanwhile, they vowed to continue efforts to enforce the pollution judgment in parallel litigation in Canadian courts

“Never before has a U.S. court allowed someone who lost a case in another country to come to the U.S. to attack a foreign court’s damages award,” Deepak Gupta, who represents Donziger, said in a statement Monday. “The decision hands well-heeled corporations a template for avoiding legal accountability anywhere in the world. And it throws the entire international judgment-enforcement framework out the window.”

Chevron has pegged the value of the pollution judgment at \$9.5 billion.

U.S. Circuit Judges Amalya L. Kearse, Barrington D. Parker Jr. and Richard C. Wesley of the Second Circuit.

Chevron is represented by Theodore B. Olson, Randy M. Mastro, Andrew E. Neuman, Caitlin Halligan and William E. Thomson of [Gibson Dunn](#).

Donziger is represented by Deepak Gupta and Jonathan E. Taylor of [Gupta Wessler PLLC](#), Gregory A. Beck, and Justin Marceau and John Campbell of the University of Denver Sturm College of Law.

Naranjo and Payaguaje are represented by Burt Neuborne of the [New York University School](#) of Law.

The case is Chevron Corp. v. Donziger, case number [14-826](#), in the U.S. Court of Appeals for the Second Circuit.

--Editing by Rebecca Flanagan.