

Chevron's Setbacks in US Courts Over the Ecuador Litigation

Amazon Defense Coalition
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In February 2011, Chevron lost a long-running legal battle in Ecuador when a court found overwhelming evidence that the company deliberately dumped billions of gallons of toxic waste into the Amazon rain forest from 1964 to 1992, decimating indigenous groups and farmer communities and causing an outbreak of cancer that has killed or threatens to kill tens of thousands of people. The trial court in Sucumbiós province in Ecuador – the venue where Chevron fought to have the case litigated – reviewed more than 220,000 pages of record evidence, 106 expert reports, and testimony from dozens of witnesses before finding liability and imposing damages in the amount of more than \$19 billion. The trial itself lasted eight years, largely due to Chevron's delaying tactics. Rather than abide by the court's decision, Chevron stripped its assets from Ecuador and launched a series of collateral attacks against the judgment – including the filing of more than 20 discovery actions in U.S. federal court that were used primarily to harass the rainforest communities and exhaust their limited resources.

Most interesting is that Chevron has suffered a series of devastating setbacks in those same U.S. courts, seriously weakening its legal position and undermining its fabricated claim that the judgment in Ecuador was procured by fraud. Chevron public relations representatives and lawyers regularly present the false claim that a number of U.S. courts have “found” that there was “fraud” in the litigation in Ecuador, when in fact there has never been such a finding.¹ To the contrary, 18 different U.S. trial courts have specifically rejected Chevron's attempts to obtain rulings that the Ecuador judgment was a product of “fraud” or was somehow illegitimate. Worse for Chevron, all four U.S. appellate courts to hear issues related to the Ecuador litigation have rejected Chevron's claims, as has the Supreme Court of the United States.

These rulings are discussed below.

Rulings Against Chevron In “Fraud” Lawsuit Against Plaintiffs

The crown jewel of Chevron's U.S.-based legal strategy to avoid paying the Ecuador judgment was completely destroyed in 2012 when a three-judge panel of the Second Circuit Court of Appeals in New York unanimously vacated a U.S. trial court's global injunction that purported to block enforcement of the Ecuador judgment. In finding the injunction was illegal under U.S. and international law, the appellate panel also halted Chevron's efforts to seek a declaration from Judge Lewis A. Kaplan that the Ecuador judgment was not enforceable. The appellate court ruled that the Ecuadorian rainforest communities “*may seek to enforce that judgment in any country*”

¹ Note: When Chevron made this assertion to one journalist who included it in his story, the publication was forced to run a retraction once it realized it had been misled, stating that while “[a]n earlier version of this article quoted a Chevron spokesman as saying that eight federal courts had found the Ecuadorean plaintiffs had committed fraud. In fact, the courts issued crime-fraud exception findings during discovery. Chevron's fraud allegations against the Ecuadorean plaintiffs remain unproven.” See Adam Klasfeld, *Chevron Sanctioned for Abusive Discovery Tactic*, Courthouse News Service, Dec. 7, 2011, at <http://www.courthousenews.com/2011/12/07/42040.htm>.

*in the world where Chevron has assets.*² Chevron immediately appealed this ruling to the Supreme Court using high-powered Ted Olson and solicited supportive briefs from several pro-business groups it helps fund, including the National Association of Manufacturers and the US Chamber of Commerce. On October 9, 2012, the Supreme Court summarily rejected Chevron's appeal request without providing any reasons – as strong a rebuke as one could imagine for the oil giant's litigation position in US courts.

Back in the Second Circuit, Chevron's legal strategy has been further weakened when Judge Kaplan – who had been openly biased in favor of Chevron – gutted the oil giant's concocted "fraud" lawsuit against the Ecuadorians and their counsel. Kaplan dismissed two of Chevron's fraud claims outright, dismissed a portion of a third fraud claim and dismissed Chevron's unjust enrichment claim against the plaintiffs.³ More remarkable about Kaplan's dismissal of these claims was that he did so assuming (as required by law) that all of Chevron's outrageous allegations against the plaintiffs were true.

In a separate ruling, Kaplan denied for a second time Chevron's attempt to attach the assets of the plaintiffs and their representatives. In this ruling, Kaplan was not required to assume Chevron's facts were true and thus revealed significant doubts about Chevron's ability to succeed on the merits of its claims. Kaplan stated "***Chevron on the present record has not established that it is likely to prevail on its claim***" that funds spent to defend the case in Ecuador would be recoverable in the fraud case,⁴ essentially eviscerating the company's ability to recover damages. Kaplan also noted that the Ecuadorian defendants have raised a serious question "concerning whether and to what extent Chevron may recover under RICO for injuries sustained...as a result of events that occurred beyond the boundaries of the United States."⁵

Rulings Against Chevron in Discovery Motions

Another key component of Chevron's U.S. legal strategy is to tie up the plaintiffs and their counsel in a series of discovery lawsuits designed to obtain privileged documents. But even in this area, in a country where discovery is always liberally interpreted, several courts have dealt Chevron a series of devastating setbacks.

Chevron alleged that its fabricated evidence of "fraud" should permit courts to order the production of privileged documents from the plaintiffs. Given that the evidentiary standard for discovery in the U.S. is quite low, a ruling in Chevron's favor on this point would not constitute a ruling that fraud actually occurred – a finding that could only be established after a full-blown trial. However, even with the relaxed U.S. discovery standard, U.S. trial courts have specifically **rejected** Chevron's fraud allegations, as detailed below:

² *Chevron Corp. v. Naranjo*, 667 F. 3d 232

³ *Chevron Corp. v. Steven Donziger, et al.*, 11 Civ. 0691 (LAK) (S.D.N.Y. 2012) Online: http://blog.internationalpractice.org/wp-content/uploads/2012/05/chevron-v-donziger_rico-opinion.pdf

⁴ *Chevron Corp. v. Steven Donziger, et al.*, No. 11 Civ. 0691(LAK).

⁵ *Ibid.*

1. In the District of Vermont, a judge conducted a review of Chevron’s so-called “fraud” evidence and concluded “*the Court is satisfied that no evidence of fraud, false pretenses or undue influence appears.*”⁶
2. In the District of Massachusetts, the court rejected Chevron’s claims and also noted “*that several other district courts have expressly denied the applicants’ requests to invoke the crime-fraud exception* with respect to other respondents.”⁷
3. Another ruling in Massachusetts rejected Chevron’s claims and found that Chevron “*has not shown Respondent engaged in or intended any criminal or fraudulent activity.*”⁸
4. In Ohio, a court threw out Chevron’s fraud allegations against one of the plaintiff’s experts, ruling “*there is no factual basis for Chevron’s assertion that Mr. Barnthouse was involved in any alleged ongoing fraud.*”⁹
5. In Tennessee, a court found that Chevron’s allegations were “*quickly spiraling out of control*” and rejected the attempt to obtain discovery via the “fraud” claims.¹⁰

In addition to various trial court rulings against Chevron’s “fraud” claims, seven other courts declined Chevron’s request for discovery for various procedural reasons or on other grounds.¹¹ In the handful of cases where trial courts accepted Chevron’s allegations (always without even holding an evidentiary hearing), federal appellate courts reversed or vacated each of the decisions:

1. In New York, the federal appellate court vacated or stayed three trial court rulings favoring Chevron on discovery motions.¹²
2. In Philadelphia, a separate federal appellate court reversed a ruling where a trial judge ordered documents to be turned over to Chevron. The court stated that “[t]he circumstances supporting [Chevron’s] claim of fraud largely are allegations and *allegations are not factual findings.*”¹³ The appeals court further chastised Chevron’s attacks on the Ecuador courts telling the oil giant:

“Though it is obvious that the Ecuadorian judicial system is different from that in the United States, *those differences provide no basis for disregarding or disparaging that system.* American courts, though justifiably proud of our system, should understand that other countries may organize their judicial systems as they see fit.”

⁶ *Chevron Corp. v. Allen*, No. 2:10-mc-00091, Dkt. 38 at 13 (D. Vt. Dec. 2, 2010)

⁷ *Chevron Corp. v. Bonifaz*, No 10-mc-30022, Dkt. 47 at 20-21 (D. Mass. Dec. 22, 2010)

⁸ *Chevron Corp. v. Shefftz*, No. 10-mc-10352-JLT, Dkt. 45 (D. Mass. Dec. 7, 2010)

⁹ *Chevron Corp. v. Barnthouse*, No. 1:10-mc-00053, Dkt. 36 at 21 (S.D. Ohio Nov. 26, 2010)

¹⁰ *Chevron Corp. v. Quarles*, No. 3:10-cv-00686, Dkt. 108, Order at 2 (M.D. Tenn. Sept. 21, 2010)

¹¹ See, e.g., *Chevron Corp. v. Wray*, No. 10-mc-00371, Dkt. 78 at 20-21 (D.D.C. Nov. 30, 2010); *Chevron Corp. v. Stratus*, No. 1:10-cv-00047, Dkt. 262 at 9 (D. Colo. Oct. 1, 2010); *Chevron Corp. v. 3TM Consulting*, No 10-mc-00134, Dkt 12 (S.D. Tex. April 5 2010); *Chevron Corp. v. Picone*, No 10-cv-02990, Dkt 28 (D. Md. Nov 24 2010); *Chevron Corp. v. Rourke*, No 10-cv-02989, Dkts 34-35 (D. Md. Nov 24 2010); *Chevron Corp. v. Scardina*, No 10-cv-00549, Dkt 34 (W.D. Va. Nov 24 2010); and *Chevron Corp. v. Kohn, Swift & Graf, P.C.*, No. 10-mc-00208, Dkt 50 at 15 (E.D. Pa. Dec. 21 2010)

¹² *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 636 (S.D.N.Y. Mar. 7, 2011) (expressly vacated by the Second Circuit); *Chevron Corp. v. Salazar*, No. 11-civ-3718, 2011 WL 3424486, at *3 (S.D.N.Y. Aug. 3, 2011) (vacated in its entirety and dismissed by the Second Circuit);

¹³ *In re Application of Chevron Corp.*, 650 F.3d 276 (3d Cir. 2011)

3. During oral arguments before the Fifth Circuit Court of Appeals (another federal appellate court based in New Orleans), Judge Benavides scolded Chevron for throwing “these words about massive fraud and, uh, all this hyperbole... *you're making a mountain out of a molehill.*”¹⁴
4. The federal appellate court in Washington, D.C. dealt another setback to Chevron when it reversed a lower court decision that allowed the oil giant access to documents from a prominent consulting group for the Amazon rainforest communities that sued the company.¹⁵
5. Most recently, the Fifth Circuit Court of Appeals again rejected Chevron’s arguments in reversing and vacating a ruling prohibiting the Republic of Ecuador’s discovery request from two of Chevron’s paid experts in the Ecuador trial in connection with the arbitration proceedings between the parties. Judge Edith Jones, in writing for the three-judge bench, also took Chevron to task for having “deliberately taken inconsistent positions” across different courts in the litigation.¹⁶

As the above examples have shown, not only is Chevron misleading the public with its constant claims that “seven federal courts have already made fraud findings related to the plaintiffs’ lawyers’ scheme”¹⁷ but, in fact, the majority of courts to have heard these trumped-up fraud claims have either rejected them outright, refused to address them or overturned them on appeal. Federal judges are already catching onto the true objective of Chevron’s collateral attacks¹⁸ and the many in the media are cutting through the company’s spin.¹⁹ As goes the media, so to will public opinion, which is already turning on Chevron over its recent disasters in Brazil, Nigeria and even its home refinery in Richmond, CA. Worse still for the company, Chevron’s strategy of using U.S. courts to avoid paying the \$19 billion judgment will be further compromised when courts in enforcement countries – where actions are already underway in Canada, Brazil and Argentina (where \$2 billion of Chevron’s strategic assets are frozen) – see the legal reality of the oil giant’s position in the U.S. and the many courts who are refusing to find any fraud in Ecuador despite Chevron’s army of lawyers trying to convince them otherwise.

¹⁴ *Chevron Corp. v. 3TM Int’l, Inc.* No. 10-20389 (5th Cir.) at 34-35

¹⁵ *Chevron Corp. v. Weinberg Group* No. 11-7097 (D.C. Cir. Ct of Appeal) 12 June 2012. Online: <http://lettersblogatory.com/wp-content/uploads/2012/06/Weinberg.pdf>

¹⁶ *Republic of Ecuador v. John Connor; Chevron; Republic of Ecuador v. GSI Environmental*. No. 12-20122 cons. w/ No. 12-20123 (5th Cir.) at 12. Online: <http://chevrontoxico.com/assets/docs/2013-02-13-ecuador-v-connor-decision.pdf>

¹⁷ See, e.g., “Chevron Statement on Ecuador Judgment Enforcement Action” 27 June 2012, at www.chevron.com/chevron/pressreleases/article/06272012_chevronstatementonecuadorjudgmentenforcementaction.news

¹⁸ See, e.g., *supra* note 7 (“several other district courts have expressly denied the applicants’ requests to invoke the crime-fraud exception”); and *supra* note 14 (“you’re making a mountain out of a molehill.”)

¹⁹ *Supra* note 1 (“Chevron’s fraud allegations against the Ecuadorean plaintiffs remain unproven”)