



Daily Journal photo

John Kecker of Kecker & Van Nest LLP in San Francisco

SF litigator signs off Chevron case

Attorney for plaintiffs' counsel complains federal judge bends to oil giant's every whim

By Fiona Smith
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Famed San Francisco litigator John Kecker is throwing in the towel in a case fighting Chevron, but he's not going quietly.

In a motion seeking to withdraw as counsel for Steven Donziger, whom Chevron accuses of fraudulently winning an \$19 billion verdict against the company over pollution in Ecuador, Kecker lashed out at Chevron and the judge.

Chevron Corp. and its lawyers from Gibson, Dunn & Crutcher LLP have inundated the defense with "chicken shit" discovery motions, and U.S. District Judge Lewis A. Kaplan in New York has let the case get completely out of control, said Kecker, name partner at Kecker & Van Nest LLP, in a telephone interview with the Daily Journal.

"I've never seen a judge treat an oil company ... like a widow or orphan — everything they want they get," Kecker said in the interview. "It's like getting pecked to death by ducks."

Donziger has racked up \$1.4 million in unpaid fees, and he can no longer work for free under the current conditions, Kecker told the court.

"This is an extraordinary case, which has degenerated into a Dickensian farce," Kecker wrote in his motion. "Through scorched-earth litigation, executed by its army of hundreds of lawyers, Chevron is using its limitless resources to crush defendants and win this case through might rather than merit ... Encouraged by this court's implacable hostility to Donziger, Chevron will file any motion, however meritless, in the hope that the court will

In that case, residents of the Ecuadorian jungle sued Texaco, which was later bought by Chevron, in 1993 accusing the company of failing to clean up oil contamination from its operations in the country's Amazon rainforest. Chevron claims it cleaned up its portion of the pollution years ago and the fault now lies with Ecuador's state-run oil company. In 2011, an Ecuadorian judge disagreed, found the San Ramon-based company liable for

personal diary.

"The evidence of fraud is so overwhelming that it's not surprising that the lawyers would be looking for a way out," said Kent Robertson, a Chevron spokesman. "Chevron's actions in responding to the scheme have been both proper and proportionate to the magnitude of the extortion being attempted against the company and its shareholders. There are 19 billion reasons to fight back."

Kaplan must approve Kecker's request to withdraw, which was made as the case heads to trial in October. Kaplan could not be reached for comment.

Motions to withdraw as counsel and motions to recuse are routine, but the language of Kecker's filing is very unusual, said Laurie L. Levenson, a former federal prosecutor and a professor at Loyola Law School.

"Part of this is an expression of frustration," Levenson said. "Part of this is because he can't afford to represent Donziger anymore and part of this is making a record for a future appeal in this case if there is one."

The motion can also be a way to put pressure on the court to rein in Chevron, said Rex R. Perschbacher, a professor at UC Davis School of Law.

"It's an effort of persuasion to the court that the litigation is out of control ... and I think it's an admirable piece of advocacy."

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use it to hurt Donziger."

"Donziger does not have the resources to defend against Chevron's motion strategy," Kecker continued, "and his counsel should not be made to work for free to resist it."

To see the case through trial will cost between \$6 million and \$10 million dollars, according to Kecker, who said he estimates that is roughly how much Chevron is paying its attorneys every month in the case. *Chevron v. Donziger*, CV11-691 (S.D.N.Y., filed Feb. 1, 2011).

Chevron sued Donziger, accusing him and several Ecuadorian co-defendants of fraud and conspiracy in the behemoth lawsuit Donziger helped mount in Ecuador.

the clean-up and ordered them to pay \$19 billion.

For years, the New York-based attorney Donziger has been the leading force in the case and Chevron accused him and others of ghostwriting the independent expert's report used in the case and of fabricating pollution evidence. Chevron is challenging the legitimacy of the case before the Permanent Court of Arbitration at the Hague and is fighting the plaintiffs' efforts to enforce the judgment in Argentina, Brazil and Canada.

In its investigation into Donziger, Chevron has sought and obtained a huge amount of information via court order including Donziger's files from the Ecuador case and his