

How to Lose Lawsuits and Alienate Future Presidents:

Chevron's Lobbying Efforts on its \$19 Billion Ecuador Judgment Revealed

Chevron Corp. ("Chevron") is currently in default of a \$19 billion civil judgment over environmental contamination left in Ecuador when it operated there under the Texaco brand from 1964 to 1992. Rather than pay the judgment to clean up its mess, Chevron has embarked on a decades-long strategy to first undermine the trial through legal obstruction and political lobbying to now trying to punish the Republic of Ecuador for allowing the class action decision to be rendered in 2011 and now enforced worldwide. What makes Chevron's lobbying on Ecuador so egregious is the company's stated objective to use its political might to force Ecuador's government to effectively terminate the rights and remedies of some of its most impoverished citizens and deny them access to justice. Or, in the words of a member of U.S. Congress, Chevron is "trying to undermine the rule of law" with its lobbying efforts that are seen as "completely abhorrent...[and] little more than extortion". These 'abhorrent' activities include everything from pushing high-placed Ecuadorian officials to quash the case to spending millions of dollars on Capitol Hill so that the U.S. Congress will force Ecuador to capitulate or, at the very least, punish the country by revoking its trade preferences under the *Andean Trade Preferences Act* (ATPA). Chevron spokesman Kent Robertson has even admitted that the company's expensive lobbying efforts to pressure Ecuador would cease immediately "[i]f we were able to call a timeout and make the lawsuit disappear, then this entire issue disappears."¹

Yet rather than achieve any discernible benefit to the company, Chevron's lobbying has thus far backfired, with the judgment already surviving an appeal in Ecuador and in the process of being enforced in Canada, Brazil and Argentina. Given this failure, it is no surprise that the company is again facing shareholder pressure over its nefarious lobbying efforts. The American Federation of State, County and Municipal Employees (AFSCME), on behalf of its 1.6 million members, has re-filed a shareholder resolution for Chevron's 2013 annual meeting calling for the company to publicly disclose its lobbying practices.² In its supporting statement, AFSCME notes that Chevron spent approximately \$22.6 million in 2010 and 2011 on direct federal lobbying in the US, (although this wouldn't include funds spent lobbying the Republic of Ecuador or lobbying through organizations such as the US Chamber of Commerce).

It is also unsurprising that Chevron is opposing the AFSCME resolution³ given its preference to keep its shareholders in the dark on all the money it is spending to fight the Ecuador case and the larger risk the company faces from asset seizures over its refusal to pay the judgment. In the face of this reticence, this report shows the very poor return on investment Chevron's shareholders are getting for the millions of dollars Chevron spends every year lobbying on the Ecuador case. Newly revealed internal Chevron documents and *Wikileaks* diplomatic cables reveal just the tip of the iceberg of Chevron's lobbying campaign in this case, which is already more than enough to support AFSCME's calls for full public disclosure of Chevron's lobbying. The first part of the report uncovers what little is known of Chevron's secret attempts to try to shut down the case while the second part exposes the company's more public (though equally nefarious) attempt to punish Ecuador through the ATPA.

Lobbying for Political Interference in the Lawsuit

Chevron's extensive lobbying campaign to subvert the rulings of various Ecuadorian and U.S. courts contradict the company's claims that it is an advocate of the rule of law, which it also claims as its best defense to enforcement of the Ecuador judgment.⁴ Chevron initially told the US embassy in Quito as much shortly after the case was re-filed in Ecuador when an internal email from the embassy noted that both Chevron and the embassy "are clearly resolved that under no circumstances would we ever interfere in any judicial proceedings."⁵ While Chevron may not have initially sought the assistance of the US Government to undermine the rule of law in Ecuador, it was already seeking to do so with the Republic of Ecuador itself and, when that didn't work, quickly overcame its clear resolve to not seek US interference:

- According to deposition testimony of Chevron's counsel, Ricardo Reis Veiga, Chevron began in 2003 to lobby high level government officials in Ecuador, including the Attorney General and the Minister of Commerce, to try to get Ecuador to assume the liability for any judgment rendered against Chevron and effectively shut down the case. These efforts were resisted despite multiple meetings by Chevron officials and lobbyists in Ecuador.⁶
- Chevron's tactics with the US embassy were then confirmed in a 2006 diplomatic cable leaked to Wikileaks wherein the US ambassador in Quito stated:

"We were surprised that Varela [Chevron's lobbyist], in contrast to other Chevron reps we have met in the past, requested no USG [US Government] intervention in the case. *In previous meetings, Chevron reps have suggested that the USG pressure the GOE [Government of Ecuador] to assume responsibility for the environmental damage in the areas once operated by Chevron.*"⁷

- By 2008, Chevron was back at pressuring Ecuador to end the case in full knowledge of the US embassy according to another Wiki-leaked communiqué from the U.S. Ambassador in Ecuador:

"Meanwhile, Chevron had begun to quietly explore with senior GOE officials whether it could implement a series of social projects in the concession area *in exchange for GOE support for ending the case*".⁸

- In 2011, after the multi-billion judgment was issued, reports surfaced that Chevron had proposed the idea of a \$500 million "donation" to a major conservation initiative in Ecuador in exchange for the Government of Ecuador quashing the case.⁹

As previously stated, this evidence of Chevron's backdoor attempts to get direct government interference in the case is undoubtedly just the tip of the iceberg of Chevron's efforts but at least shows a prolonged campaign aimed at two separate governments. What is also apparent is the refusal of the Government of Ecuador to meet Chevron's malicious demands, which seemingly resulted in Chevron's very public efforts to punish Ecuador through lobbying to end the country's trade preferences in the US.

Using the ATPA to Punish Ecuador and its People

Not trusting that offering backroom political favors would suffice to derail the indigenous Ecuadorians' lawsuit through extra-judicial means, Chevron has moved its campaign into the open using the biggest stick it could to bludgeon Ecuador into submission. This stick was the ATPA.

The ATPA was enacted in 1991 to help the Andean countries (Ecuador, Bolivia, Colombia, and Peru) diversify their economies in an attempt to fight against drug production in the four nations by making certain products from these nations duty-free (i.e. fresh-cut flowers and vegetables). Ecuador estimates the ATPA is directly responsible for roughly 300,000 jobs in the country, a not insignificant number for an impoverished nation.¹⁰ The vulnerability of the ATPA is that U.S. Congress must renew the trade preferences annually upon the recommendation of the U.S. Trade Representative (USTR). Despite having no pecuniary interest in the ATPA – it does not cover petroleum products and Chevron doesn't have a competitive market position on fresh-cut flowers – Chevron has aggressively lobbied both the USTR and members of Congress to cease renewing the ATPA as a way to punish Ecuador over the class action lawsuit its citizens brought and won against the company. Yet far from advancing the company's interests in the Ecuador litigation, the impropriety of Chevron's lobbying has resulted in a backlash from the members of Congress and civil society groups.¹¹ The ineffectiveness of the company's lobbying has not deterred it. In fact, despite years of failing to have Ecuador's ATPA privileges revoked, Chevron remains committed to throwing good money after bad.

- The company has been lobbying to revoke Ecuador's membership in the ATPA since at least as early as 2003 (the same year the company claimed to the US embassy to not seek judicial interference).

Chevron's ongoing lobbying on ATPA, which had grown beyond just the Ways and Means Committee, began to first attract backlash in 2006 when then-Senator Barack Obama and Senator Patrick Leahy wrote to the USTR about their concerns that "Chevron is reportedly lobbying Members of Congress and your office to use the leverage of the Andean Free Trade Agreement to pressure Ecuador to dismiss the case." The Senators urged the USTR to reject these efforts and stated their firm believe that the 30,000 Ecuadorian plaintiffs "deserve their day in court."¹²

- Chevron dismissed these concerns and continued to lobby senior officials in Bush Administration to revoke Ecuador's ATPA privileges under the stated belief of one Chevron lobbyist in a 2008 interview to *Newsweek* that: "We can't let little countries screw around with big companies like this – companies that have made big investments around the world."¹³
- Chevron's 2008 lobbying roster was indeed a veritable force to protect a big company from the screwing around of a little country like Ecuador with high-priced lobbyists working for the company such as:
 - former Senate majority leader Trent Lott;
 - former Democratic Senator John Breaux;
 - Wayne Berman, a top fund-raiser for John McCain;

- Mickey Kantor and Carla Hills, former U.S. Trade Representatives themselves hired to lobby their former agency;
 - former U.S. ambassador to Ecuador Peter Romero; and
 - Brian Pomper, former staff director for Senator Max Baucus.
- Yet for all the money spent on its all-star roster, Chevron lobbying on the ATPA was again assailed in 2009 by not less than 30 Members of Congress who wrote multiple letters to the USTR protesting Chevron's tactics and affirming their beliefs that "***U.S. trade agreements will not be used as leverage to interfere in private claims progressing through Ecuador's legal process...the tens of thousands of indigenous residents of Ecuador who have brought this case deserve their day in court...the USTR should not interfere in an ongoing judicial matter...***"¹⁴ In a separate letter a group of Senators also chastised Chevron and called on the USTR to "***allow the legal proceedings in Ecuador to take their course without any undue intervention from the U.S. government.***"¹⁵
 - Chevron's lobbying against Ecuador attracted further public scrutiny when the subject was brought before the Ways and Means Subcommittee whereby Congresswoman Linda Sanchez of California told the committee that Chevron is "trying to leverage our trade policy in order to get a lawsuit dismissed that is currently pending before the Ecuadorean court. It is a way of trying to undermine the rule of law, and I just find that completely abhorrent. It's shocking."¹⁶ In a press release following the testimony, Congresswoman Sanchez stated that Chevron's lobbying effort "looks like little more than extortion. ***Apparently, if it can't get the outcome it wants from the Ecuadorian court system, Chevron will use the U.S. government to deny trade benefits until Ecuador cries uncle.***"¹⁷

Even after the election of President Obama in 2008 (who is on record taking issue with Chevron's lobbying tactics – see above) Chevron has continued to spend millions trying to get the ATPA revoked.

Conclusion

Chevron's ongoing efforts to illicitly squash the Ecuador case and, simultaneously, punish the Government of Ecuador and 300,000 jobs of its citizens for allowing this case to move forward cry out for clear shareholder accountability. Given the limited success of these efforts, Chevron's shareholders deserve to know what funds have been and are currently being spent lobbying on this lawsuit and which officials in Chevron have authorized this strategy. The AFSCME shareholder resolution will thus shed some much needed sunlight on Chevron's dirty campaign around this case which, as the title of this report indicates, has thus far only achieved in ten years and untold millions a lost \$19 billion judgment and an alienated President of the United States.

Endnotes

¹ <http://www.politico.com/news/stories/1109/29560.html>

² The resolution is available in Chevron's 2013 Proxy Statement on page 78, available here:
<http://www.chevron.com/documents/pdf/Chevron2013ProxyStatement.pdf>

³ *Ibid.*

⁴ See, e.g., <http://business.financialpost.com/2012/05/31/chevron-canada-hit-with-giant-18b-suit-over-decades-old-ecuador-oil-accidents/> ('Chevron does not believe that the Ecuador judgment is enforceable in any court that observes the rule of law')

⁵ 2003 - CVX-RICO-4380629

⁶ November 8, 2006 deposition of Ricardo Reis Veiga in *The Republic of Ecuador et al. v. Chevron Corporation et al.*

⁷ <http://wikileaks.org/cable/2006/03/06QUITO705.html#> (emphasis added)

⁸ <http://wikileaks.org/cable/2008/04/08QUITO323.html> (emphasis added)

⁹ http://www.huffingtonpost.com/mitch-anderson/chevrons-ecuador-end-run-_b_1156876.html

¹⁰ <http://www.ustr.gov/trade-topics/trade-development/preference-programs/andean-trade-preference-act-atpa>

¹¹ Including submissions in 2010 to the USTR from the Sierra club (<http://chevrontoxico.com/assets/docs/sierra-club-letter-to-ambassador-kirk.pdf>) and the United States Conference of Catholic Bishops (USCCB) (<http://chevrontoxico.com/assets/docs/USCCB-letter-to-ambassador-kirk.pdf>) decrying Chevron's attempts to improperly subvert the legitimate Ecuador judgment through political pressure.

¹² <http://chevrontoxico.com/assets/docs/obama-letter.pdf>

¹³ <http://www.thedailybeast.com/newsweek/2008/07/25/a-16-billion-problem.html>

¹⁴ <http://chevrontoxico.com/assets/docs/20091214-atpa-letter.pdf>

¹⁵ <http://chevrontoxico.com/assets/docs/ustr-senators-letter.pdf>

¹⁶ <http://www.politico.com/news/stories/1109/29560.html>

¹⁷ http://lindasanchez.house.gov/index.php?option=com_content&task=view&id=477&Itemid=32