

▶ LETTER TO THE EDITOR

Chevron GC 'Omits Critical Facts' About \$9.5B Judgment in Environmental Case, Plaintiffs' Lead Attorney Says

THE RECENT SPEECH by Chevron General Counsel Hewitt Pate on the Ecuador environmental case ["Chevron GC: 'I'm Confident We're Right' in Epic Case," Daily Report, Dec. 11, 2014] omits critical facts related to the company's \$9.5 billion liability. Mr. Pate fails to explain that Chevron's "lifetime of litigation" strategy in Ecuador seeks to evade a court order that the company remediate a horrendous ecological disaster that is harming thousands of vulnerable people.

Beginning in the 1960s, Chevron (operating through Texaco) engaged in decades of drilling and waste disposal practices in Ecuador that ravaged the pristine rainforest environment and decimated five indigenous groups.

A top Texaco executive, Rodrigo Perez Palares, admitted during trial that the company had systematically discharged 15 billion gallons of benzene-laden formation waters into rivers and streams relied on by the indigenous communities for their drinking water, bathing and fishing. The company also abandoned hundreds of toxic waste pits that continue to contaminate soils and groundwater.

Several peer-reviewed studies confirm extraordinarily high rates of childhood leukemia and other cancers in the region. The clean-up cost imposed is relatively modest; BP's liability for the far smaller Gulf [of Mexico] spill is five times higher.

Given the overwhelming evidence, it was not surprising that two separate appellate courts in Ecuador (including the nation's Supreme Court) unanimously affirmed the finding of liability after de novo reviews of the facts and law as required by the country's civil law system. In all, eight separate appellate judges rejected Chevron's complaints that its due process rights were violated.

Mr. Pate's so-called proof that a "bribe"

occurred is not credible. The allegation comes from a former judge (Alberto Guerra) who had been removed from the bench for corruption. In an initial meeting, a Chevron lawyer handed over to Mr. Guerra \$20,000 in cash from a suitcase even though at the time he was earning only \$500 monthly. Chevron ultimately agreed to pay Mr. Guerra \$2 million and relocated his entire family to the U.S., where he received a housing allowance, health care, a car and an immigration lawyer.

Lured by the promise of more payouts, Mr. Guerra changed his story multiple times as facts rendered his prior claims implausible. Key corroborative evidence, such as his personal diary, mysteriously went missing.

Faced with Chevron's bad faith in Ecuador—the company threatened judges with jail and inundated the court with motions—the case took eight years to reach decision. That was after Chevron spent nine years seeking to move the matter to Ecuador after the villagers originally filed their claims in New York in 1993.

Chevron submitted 14 sworn affidavits in the U.S. praising the fairness of Ecuador's courts and promised to accept jurisdiction there. Yet when the evidence mounted during the ensuing trial, Chevron announced it would not pay up even if it lost. The company also stripped its assets from the country and threatened indigenous leaders with a "lifetime of litigation" if they persisted.

The recent findings of a U.S. trial judge in what has become the central feature of Chevron's demonization campaign—a civil RICO lawsuit targeting me—resulted from a one-sided proceeding that is under appeal. Judge Lewis A. Kaplan suggested Chevron bring the case and then openly disparaged the villagers and their counsel. Chevron's Mr. Pate had so little regard for his own evidence that

the company dropped damages claims on the eve of trial to avoid a jury.

At Chevron's request, Judge Kaplan excluded the extensive scientific evidence that provided the basis for decision in Ecuador. After the trial and without notice to the parties, he unilaterally amended Chevron's complaint to favor the company. In 2011, a federal appellate court unanimously reversed Judge Kaplan when he tried to block enforcement of the judgment anywhere in the world. In my opinion, the RICO proceeding was part of a well-financed retaliation campaign designed by Chevron to silence its critics.

Consider the implications of the RICO decision for the rule of law. A U.S. trial court tried to overturn a final de novo decision by a foreign nation's Supreme Court on questions involving that foreign nation's laws. It mattered not that Ecuador is a U.S. ally and commercial trading partner—or that Chevron recently won two civil lawsuits against the state oil company in the same judicial system.

One might imagine the uproar here if a trial judge from a foreign court tried to act as the final appellate arbiter over our Supreme Court, as Judge Kaplan has done to Ecuador. It bears mention that more than 35 international law scholars from nine countries and 17 U.S. civil society organizations have filed briefs urging reversal of the decision.

Chevron also has played different jurisdictions against each other in a litigation version of three-card monte. After agreeing to jurisdiction in Ecuador, Chevron sold its remaining assets there so it would be judgment-proof. Realizing it was likely to lose in Ecuador, Chevron returned to the same U.S. court where it had tried to block the original case to seek a bailout of its decision to go to Ecuador.

Because of Judge Kaplan's latest ruling,

the U.S. is now at least temporarily off limits to the villagers for collection purposes even though it is Chevron's home country. As a result, the villagers have been forced by Chevron to collect their debt in other jurisdictions, such as Canada. But Chevron claims that its assets there cannot be seized because they are held by a wholly owned subsidiary. But Chevron operates outside the U.S. only through wholly owned subsidiaries. Under Chevron's convoluted theory, the villagers never will be able to collect the first dollar on their judgment anywhere in the world. That is a mockery of the rule of law.

Five decades after it entered Ecuador, Chevron has yet to pay anything to the people it harmed. It has launched dozens of retaliatory discovery lawsuits in at least 25 federal courts against consultants for the communities, their financial supporters, environmental groups, and even shareholders who have questioned company strategy.

In contrast to Chevron's model of perpetual litigation, BP quickly set aside \$20 billion to compensate its victims immediately after its Gulf spill. Chevron's approach—the company has used at least 60 law firms and 2,000 lawyers on the case—unfairly delays justice and casts a leading American corporation in the role of ogre on a global scale.

Chevron's cycle of litigation over litigation must end. It is long past time for taxpayer-funded courts around the world to ensure they are not used by a large oil company to improperly pound its litigation adversaries into submission. After more than two decades in court, the indigenous communities devastated by Chevron's man-made calamity deserve a final resolution of their claims without delay.

Steven Donziger
New York

CALENDAR OF EVENTS

JAN. 15

Breakfast: "Selling and Communication Skills for Lawyers." Speaker: Joey Asher. Sponsored by the Atlanta Bar Association Sole Practitioner/Small Firm Section. 7:30-9 a.m. at the Buckhead Club. Register at www.atlantabar.org or call 404-521-0781.

JAN. 15

Breakfast: "Federal Trade Secrets Legislation." Co-sponsored by the Atlanta Bar Association Intellectual Property and Labor & Employment Law Sections. 7:30-9 a.m. at the Buckhead Club. Register at www.atlantabar.org or call 404-521-0781.

JAN. 15

Breakfast: "Real Estate Litigation: The Dirt on Litigating a Real Estate Claim." Sponsored by the Atlanta Bar Association Real Estate Section. One CLE hour. 7:30-9 a.m. at Arnall Golden Gregory. Register at www.atlantabar.org or call 404-521-0781.

JAN. 16

Seminar: "Speaking to Win: The Art of Effective Speaking for Lawyers." Speaker: Steve Stark. Sponsored by the Institute of Continuing Legal Education in Georgia. 7:30 a.m.-3 p.m. at the State Bar of Georgia Conference Center, 104 Marietta St. N.W., Atlanta. Register at www.iclega.org or call 770-466-0886.

JAN. 16

Live Statewide Satellite Broadcast: "Jury Trial." Cosponsored by the Institute of Continuing Legal Education in Georgia and the state bar's General Practice and Trial Law Section. Six CLE hours including 1 ethics, 1 professionalism and 6 trial practice. 8:15 a.m.-4:30 p.m. Register at www.iclega.org or call 770-466-0886.

JAN. 20

PLI Webcast: "Advanced Deposition Techniques." Three CLE hours. 9 a.m.-noon at the Atlanta Bar Association. Register at www.atlantabar.org and view more information at www.pli.edu.

JAN. 21

Panel discussion: The Ebola crisis. Experts to speak on government power to detain or quarantine patients, consent and privacy issues, travel restrictions, experimental drugs and similar issues. Sponsored by University of Georgia School of Law. 12:30-1:30 p.m. in the Larry Walker Room, Rusk Hall, UGA School of Law, Athens.

JAN. 22

Seminar: "ADR in the Workers' Compensation Arena." Cosponsored by the Institute of Continuing Legal Education in Georgia and the state bar's Workers' Compensation Law Section. Six CLE hours including 1 ethics, 1 professionalism and 3 trial practice. 7:30 a.m.-3 p.m. at State Bar of Georgia Conference Center, 104 Marietta St. N.W., Atlanta. Register at www.iclega.org or call 770-466-0886.

JAN. 22

Statewide Satellite Rebroadcast: "Jury Trial." Cosponsored by the Institute of Continuing Legal Education in Georgia and the state bar's General Practice and Trial Law Section. Six CLE hours including 1 ethics, 1 professionalism and 6 trial practice. 8:15 a.m.-4:30 p.m. Register at

www.iclega.org or call 770-466-0886.

JAN. 22

Sole Practitioner/Small Firm Section Networking Luncheon. Sponsored by the Atlanta Bar Association Sole Practitioner/Small Firm Section. Noon-1:30 p.m. at Gordon Biersch. Register at www.atlantabar.org or call 404-521-0781.

JAN. 22

Labor & Employment Law Section Happy Hour. Sponsored by the Atlanta Bar Association Labor & Employment Law Section. 5:30-7:30 p.m. at The Lawyers Club. Register at www.atlantabar.org or call 404-521-0781.

JAN. 23

Seminar: "Defense of Personal Injury Case." Cosponsored by the Institute of Continuing Legal Education in Georgia and the state bar's General Practice and Trial Law Section. Six CLE hours including 1 ethics, 1 professionalism and 6 trial practice. 7:30 a.m.-3 p.m. at the State Bar of Georgia Conference Center, 104 Marietta St. N.W., Atlanta. Register at www.iclega.org or call 770-466-0886.