

Desperate To Evade Justice, Chevron Resorts To Scorched-Earth Legal Attacks in Ecuador & United States

Chevron's 11th Hour Assault

In August 2009, an Ecuadorian court was preparing to rule on a multi-billion environmental lawsuit brought by indigenous groups in the Amazon rainforest against Chevron for extensive oil contamination. In an effort to head off an anticipated adverse judgment, Chevron unveiled secretly recorded videos that purported to show the sitting judge taking a bribe. Within two hours of the videos' release, the news media reported the allegations. Yet, like all of Chevron's attacks, the bribery charge did not hold up to [scrunity](#). To this day, Chevron [lawyers](#) continue to say the judge agreed to take a bribe, but as the [news media](#) reported later, the judge did not discuss or accept a bribe on the videos.

This 11th hour assault on the court wasn't the first or last desperate effort by Chevron to derail the 18-year-old lawsuit. Since 1993, when the case was first filed, Chevron has trumped up charges to distract from the overwhelming evidence of its own culpability and fraudulent conduct, both in Ecuador and in the United States. It is this evidence that convinced [Patton Boggs](#), one of the top law firms in the world, and [Smyser Kaplan & Veselka](#) to join and lead the plaintiffs' efforts to prove their case.

Chevron's Intentional Contamination

Texaco, which Chevron bought in 2001, [decimated the Ecuadorian rainforest](#) intentionally by using substandard drilling practices during three decades of oil exploration. The Ecuadorians sued Texaco in 1993 in the Second District Court of New York. Texaco argued the lawsuit should be tried in Ecuador and submitted 14 affidavits attesting to the fairness of the court system. Before the lawsuit was moved to Ecuador, Chevron bought Texaco and appeared before the Second Circuit Court of Appeals as ChevronTexaco, promising to accept Ecuadorian jurisdiction in the case, if the court transferred the lawsuit to the South American country for trial.

Under these conditions the Second Circuit agreed, and the lawsuit was re-filed in Ecuador in 2003. Not long after, Chevron changed its tune, accusing the court of bias. Ironically, Chevron returned to the same U.S. court in 2010, asking it to declare the entire Ecuadorian judiciary system corrupt and incapable of rendering justice, *even before the Ecuador court ruled*. In February 2011, the Ecuadorian court ruled against Chevron, holding it accountable for \$18 billion in damages.

Chevron Resorts To Unprecedented Attacks

In U.S. courts across the country, Chevron has tried to discredit the lawsuit by challenging the preparation of an expert report, but that charge has dissipated largely because some [U.S. judges](#) and legal experts have acknowledged that the plaintiffs followed Ecuadorian court procedures.

Another attack, involving outtakes from the documentary *Crude*, is right out of the [playbook](#).

of Chevron's law firm, Gibson Dunn, hired for the sole purpose of discrediting the case and draining the plaintiffs' resources by harassing and, in some instances, [intimidating the plaintiffs' lawyers and experts](#). In over 30 discovery lawsuits filed in nine different jurisdictions, Chevron has misled federal judges about its own misconduct and filed with courts an [inaccurate translation](#) and comments [taken out of context](#) from the [film](#) and various depositions, in an effort to discredit Ecuador's courts.

A pro-Chevron, U.S. judge, [Lewis Kaplan](#), did not allow arguments on the lawsuit's merits and consistently ruled in Chevron's favor, showing a clear bias for the oil giant. See [here](#) for more details. Not all the [federal judges](#), however, have allowed Chevron's motions without questioning the company's tactics. One said that Chevron was "making a mountain out of molehill" and another that its legal strategy was "spiraling out of control." Additionally, Gibson Dunn has lost two cases involving malicious prosecution charges the law firm brought against a [lawyer](#) who once represented the plaintiffs and against another filmmaker in a different case. Chevron and the other client, Dole, have been ordered to pay [legal fees](#).

Chevron Loses Again

In February 2011, a few days before the Ecuador ruled, Judge Kaplan enjoined the Ecuadorians and their lawyers from enforcing the judgment anywhere in the world. The Ecuadorians argued Kaplan had [no jurisdiction over them](#) and Ecuador's court system. In September 2011, the Second Circuit Court of Appeals agreed, vacated the injunction and, for all practical purposes, halted Chevron's scorched-earth legal attacks in the U.S. In January 2012, Ecuador appellate court [upheld the \\$18 billion judgment](#). Chevron has one last appeal.

Chevron's Tests Showed Contamination

Importantly, Chevron's attacks never focused on the voluminous evidence of contamination at the oil giant's former oil sites. Illegal levels of toxins have been found in the vast majority of over 64,000 [samples](#) tested during the trial by the court, the plaintiffs and by Chevron itself. In fact, [Chevron's tests](#) alone prove the plaintiffs' case, despite the company's efforts to keep the toxic levels as low as possible. Chevron's manipulation of the [evidence](#) explains, in part, the company's reluctance to debate the science in U.S. courts. Chevron has yet to explain why it 1) took many samples far away from oil sites; 2) [undercounted](#) hydrocarbons in its samples, the key measure of toxins; and 3) knowingly used an inappropriate test to verify the mid-1990s' Texaco [remediation](#). And, finally, Chevron has not explained why its key Ecuadorian operative, Diego Borja, said the company ["cooked"](#) evidence and replaced [contaminated samples](#) with clean ones before submitting them to the court.

The Phony Remediation

Perhaps the biggest fraud Chevron has committed is its cover-up of Texaco's phony remediation. In both U.S. and Ecuador courts, Chevron argues a remediation agreement between the government of Ecuador and Texaco absolves the company of all responsibility. Chevron's key defense quickly falls apart upon careful inspection: 1) the agreement released only government claims in exchange for the remediation of a small number of oil sites, not third-party, individual claims, such as the plaintiffs; and 2) hundreds of samples from the so-

called “remediated” sites show high levels of contamination. The cleanup never happened; its verification was [fraudulent](#).

Chevron’s Misconduct

Chevron’s flimsy defense has forced the company to resort to any number of legal maneuvers and dirty tricks in an attempt to spotlight issues that have no relevance to the underlying facts of the lawsuit. Chevron has accused the plaintiffs of all sorts of nefarious activity, but it is Chevron officials who have engaged in a racketeering scheme to cover up its unlawful activity. Here are just a few examples:

- Chevron partnered with a convicted American drug trafficker and its own contractor – known as the company’s “dirty tricks” operative in Ecuador -- to mount a sting operation to entrap the judge hearing the case in a bribery plot, planned by Chevron. Within a few months, the scheme was discredited and forgotten, but not before Chevron used the secretly recorded “bribery” videos to justify an international arbitration claim against the government of Ecuador, effectively locking out the plaintiffs from arguments before the tribunal should it agree to hear the [claim](#).
- Chevron continues to lobby the U.S. government to cancel Ecuador’s trade preferences in retaliation for the lawsuit, leading U.S. Congresswoman Linda Sanchez to characterize Chevron’s lobbying campaign as ["extortion"](#) and remark that Chevron was experiencing a [backlash](#) from its efforts in Congress.
- Chevron offered money to a U.S. [journalist](#) to spy on the plaintiffs and faked a positive [newscast](#).
- Chevron paid Ecuadorian military officials to [concoct](#) a “security” threat against Chevron lawyers and convinced the judge to delay the trial.
- Chevron also publicly denounced two Ecuadorians after they won the world’s most prestigious environmental [award](#) – the Goldman Award - for their work on the case; took out [ads in Ecuadorian media](#) accusing the court of corruption; lied to reporters about alleged [forgeries](#); has harbored three of its Ecuadorian employees in the U.S. to evade official investigations in Ecuador related to their misconduct; and filed over a 100 [motions](#) in a short time frame in Ecuador to delay the judgment while the company mounts its attack in the U.S.

The plaintiffs have adhered to every court order in the U.S. and in Ecuador, including the one that sent the trial from a U.S. district court to Lago Agrio, Ecuador, in 2002. That court agreed with Chevron’s argument that Ecuador was a fair and proper forum. Now the same U.S. court has characterized Ecuador’s courts as corrupt. Meanwhile, the Ecuadorians, living with and dying from the contamination, are suffering and hoping for a final and just decision soon that will result in a full and complete cleanup of the contamination that Chevron left behind.