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The Chevron Shakedown Exposed

Plaintiffs' 'experts' are repudiating their own claims in the Ecuador case.

When plaintiffs lawyers attack, corporations usually settle to avoid the astronomical costs of litigation. One happy exception is Chevron, which chose to fight an environmental tort shakedown in Ecuador. The result has been a tragicomic parade of malfeasance and outright fraud, much of which is now being revealed by the plaintiffs' own consultants and partners.

Many of the details will be on display starting Tuesday in a federal court in Manhattan, where Chevron is suing plaintiffs lawyer Steven Donziger for fraud under the federal Racketeer Influenced and Corrupt Organizations Act (RICO). Readers may recall that this story started in 1993, when Mr. Donziger and a legal pack sued Texaco (later merged with Chevron) in federal court for allegedly failing to clean up oil pits it had drilled in the 1970s.

When the court ruled that the trial didn't belong in the U.S., plaintiffs lawyers refiled the charges in Ecuador in 2003. Actress Daryl Hannah came forth with oil on her hands to allege the degradation of the rain forest by an American multinational, and the plaintiffs attorneys chronicled their exploits in a documentary appropriately called "Crude."

Texaco had already agreed with the government of Ecuador to clean up its portion of the sites that had been drilled in cooperation with state oil company PetroEcuador, and had been absolved of all liability. But the plaintiffs plowed ahead anyway, setting up a conga line of dubious experts and legal shenanigans to demand \$113 billion.

One of the supposedly independent experts was Ecuadorian geologist Richard Cabrera, whose estimates of the environmental damage formed the basis of the case against Chevron, and ultimately the 2011 decision of an Ecuadorian court to award the plaintiffs \$18

billion. Chevron refused to pay and filed a RICO action in federal court in the Southern District of New York seeking to have the Ecuador verdict ruled "fraudulent" and "unenforceable."

That Cabrera report, we now know, was heavily guided by plaintiff consultant and Colorado-based environmental firm, Stratus Consulting. Now Stratus is among the former plaintiff allies fessing up. The company has acknowledged that its contribution to the report was science fiction, and it admitted that the company had ghostwritten the Cabrera report as though it were the expert's independent judgment.

"At no time while working on the Ecuador Project did I see any data supporting a finding of groundwater contamination from TexPet operations away from the pits," Stratus Managing Scientist Ann Maest explained in sworn declarations related to the RICO case. Stratus Vice President Douglas Beltman added that he is "not aware of any scientific data that shows that any adverse health effects are caused by contamination from petroleum operations in the Oriente" and "I disavow any and all findings and conclusions in all of my reports and testimony." Mr. Cabrera has been silent on the matter since the trial.

In its sworn declaration in federal court, Burford Capital, a hedge fund that provided litigation financing to the plaintiffs through the law firm Patton Boggs, also laid out its knowledge of what CEO Christopher Bogart called the "fraud and misconduct" that "seems to have permeated" the Ecuador litigation. While the lawyers assured Burford that it was OK under Ecuadorean law for the plaintiffs to have contact with Mr. Cabrera, Mr. Bogart says his firm was never told of the "wholesale ghostwriting" of the report, let alone plaintiffs' concern they would "go to jail" if their operations came to light.

In a 2011 letter to plaintiffs and lawyers terminating their funding arrangement, Burford called the plaintiffs' operation a "multi-month scheme to deceive and defraud in order to secure desperately needed funding . . . while concealing material information and misrepresenting critical facts in the fear that we would have walked away had we known the true state of affairs."

So how did the plaintiffs come by that big verdict in 2011? According to the sworn statement of Ecuadorian Judge Alberto Guerra, when the Cabrera report fell apart, the plaintiffs offered the Ecuadorian judge on the case, Nicolas Zabranco, \$500,000 of any judgment against Chevron on the condition that they help write the decision. Chevron says legal discovery conducted in U.S. federal court as part of the Ecuador litigation has shown that about a third of the pages of Judge Zabranco's opinion contain verbatim text from the plaintiffs' private documents.

Chevron filed a claim against Patton Boggs on May 10 alleging misdeeds including fraud, civil conspiracy and malicious prosecution. Patton Boggs has denied any wrongdoing. The plaintiffs are now forum shopping around the globe to find a court that will enforce the Ecuadorian court's unjust verdict. In another setback, a Canadian judge this spring refused to hear an enforcement action, saying the plaintiffs had to seek enforcement in the U.S.

That's already a tough climb when eight federal courts in the U.S. have ruled that the trial behind the Ecuador verdict was riddled with fraud. A RICO judgment against Mr. Donziger in this week's trial could also make the verdict unenforceable in the U.S. Congratulations to Chevron for refusing to roll over and exposing these all too typical legal abuses.