



## Chevron Charges Opposing Attorney with Fraud in Landmark Lawsuit

After nearly 20 years of defending itself against charges that its drilling operations in the Amazon jungle in Ecuador caused all manner of environmental damage, pollution, and disruption and dissolution of the cultures of the natives in the area, Chevron Corporation decided to go on the offensive. On Tuesday, October 22, Chevron, the 11th-largest corporation in *Fortune* magazine's Global 500, [sued Steven Donziger](#), the leading attorney in a series of lawsuits going back to 1993, for fraud and bribery used to obtain a \$19-billion damage award against Chevron from an Ecuadorian judge.



A spokesman for Chevron, Morgan Crinklaw, said the federal court in New York must rule in favor of the company because "we believe that any jurisdiction that observes the rule of law will find that the [Ecuadorian] judgment is illegal and unenforceable because it's a product of fraud."

While the trial is expected to last several weeks, key testimony from Donziger himself will be used by Chevron to prove its case and disallow the huge judgment. That testimony, according to another Chevron attorney, Ted Boutros, will show that the case against Donziger will prove to be "one of the most egregious litigation frauds in history."

The case had its genesis just after Donziger graduated from Harvard Law School in 1991, along with classmate and fellow basketball player Barack Obama. Looking for work, Donziger was invited by another classmate, Cristobal Bonifaz, to join him in filing a lawsuit against Texaco for allegedly causing environmental damage near the Ecuadorian town of Lago Agrio stemming from oil-drilling activities dating back to 1967. After visiting the area in person, Donziger realized he could [satisfy two longings](#) by joining Bonifaz in suing Texaco: He could indulge his desire to promote the environmental movement, and he could make himself wealthy in the process.

Patrick Radden Keefe, in a lengthy exposé of Donziger in the *New Yorker* in 2012, traced Donziger's trail from Lago Agrio in 1993 to the U.S. District Courthouse in New York in May 2011 when Judge Lewis Kaplan demanded that Donziger release all his personal records to Chevron as it built its case against him. It's been downhill for Donziger ever since.

Texaco began exploring for oil in the Amazon rain forest in 1964 and joined with Gulf Oil a year later. They "hit a gusher" in 1967 and began full-on production in 1972. Within two years, the Ecuadorian government had a 25-percent interest in the Texaco/Gulf consortium, and by 1976 it was a majority owner. Texaco saw the handwriting on the wall, transferred management of the consortium to Ecuador's national oil company CEPE (now called Petroecuador) in 1990, and departed for good in 1993, leaving Petroecuador as the sole owner and operator.

That was the year that Donziger and friends (obtaining 30,000 signatures from natives in the area) filed



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a class-action lawsuit in New York. When that case was thrown out (for improper venue — the alleged misbehavior occurred in Ecuador, not New York) Donziger refiled the suit there in 2003.

Chevron, which had acquired Texaco in 2001, referred the court to an agreement it signed with Ecuador holding itself harmless in exchange for some remediation of the environmental damage. The company maintains that not only is Petroecuador now responsible for the balance of remediation, but is wholly responsible for any environmental damage incurred since then.

This hardly deterred Donziger, who pressed on using funds he obtained from Burford Capital, a litigation venture capital company, in exchange for a partial interest in any settlement. Christopher Bogart, CEO of Burford, bought his line, and committed to putting in \$15 million of his investors' money. On October 31, 2010 Burford cut a check to Donziger for \$4 million as the first "tranche" in exchange for a 1.5-percent stake in any recovery from Chevron, which was to rise to 5.5 percent once Donziger had received the full \$15 million.

As Keefe noted in his article:

In recent years, certain hedge funds have started investing in class-action lawsuits, providing up-front capital to cover the expenses of a case in exchange for an equity share in a successful outcome. These arrangements are unregulated and controversial.

But for Donziger they presented a crucial opportunity to keep the litigation alive. He offered investors a high-risk, high-reward proposition. The judgment could run to billions of dollars, he said, with attorneys' fees making up roughly a third of that figure.

In confidence, he noted that his personal fee alone could amount to two hundred million dollars. Eventually, a fund called Burford Capital, which is based in the Channel Islands, made a multimillion-dollar investment in the case...

After "arranging" for the Ecuadorian court to claim that Chevron now owes \$19 billion in damages dating back to 1967, Donziger was dismayed to learn that Chevron found a U.S. court to disallow it. Following the "election" of hard-core communist Rafael Correa as president of Ecuador in 2006, Donziger knew this was his opportunity. On the day Correa took over, Donziger told some friends, "There is no way under an administration led by this man that Chevron could ever get away with what it usually does here, which is bribes, backdoor meetings and manipulation of government power."

Donziger pressed his case against Chevron and in 2008 he found a willing accomplice in one Richard Cabrera, a geological engineer, who delivered to the court a report that found that Chevron was now responsible for some \$27 billion in damages. When Chevron protested, Donziger found an environmental consulting firm in Boulder, Colorado called [Stratus Consulting](#) to endorse Cabrera's report as "sound, reasonable and consistent with approaches used in other environmental-damage cases."

The only problem is that Donziger not only had influence with the court but helped write Cabrera's report, which was later blessed by Stratus. Enter Randy Mastro, a partner at [Gibson, Dunn & Crutcher](#), the same firm hired by Walmart in 2010 to quench a major employment lawsuit. Later, Walmart officials referred to GD&B's attorneys as their "lifeboat lawyers."

Mastro spent some time with Keefe after the firm had been hired by Chevron and he quickly did what every highly paid, smart corporate litigator does: He began to investigate Donziger's claims. Most of them didn't hold water. And there were enough discrepancies and unanswered questions that Mastro



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went to court to see if he could get some more background to help Chevron defend itself. Donziger was forced to divulge some 500 hours of video that Donziger's friend Joe Berlinger left on the cutting room floor after producing *Crude*, a propaganda piece about Chevron's alleged rape of the Amazon.

The revelations from that disclosure led to the court ordering Donziger to give up all of his personal notes and files on the Chevron sting — some two hundred thousand pages worth — which led to further disclosures of manipulation and deceit. Donziger was so infatuated with himself and so sure of his case against Chevron that he even allowed himself to be interviewed by Mastro.

As Keefe noted, the more Mastro learned about Donziger the less he liked him, and he took his findings to Judge Kaplan:

In the course of several hearings, Judge Kaplan exhibited a palpable dislike for Donziger. He described him as “the field general of a political and media offensive,” and seemed to take umbrage at what he called the “flat-out admissions by Donziger that what’s going on in Ecuador is mud wrestling, not bona-fide litigation.”

Excessive hubris and confidence in obtaining his \$200 million from a potential Chevron settlement is likely to cost Donziger. Even his liberal friends fear that his big mouth has sealed his doom. One of those Donziger has befriended, Sarah Leah Whitson of Human Rights Watch, said, “Knives are effective for cutting through many things. But sometimes you can slice your own finger.”

Donziger is getting precious little help from the opposition in the Chevron case. One juicy bit [is a letter](#) that Chevron is likely to read in court from Bogart, the CEO at Burford who now regrets sending Donziger that \$4 million. The letter was addressed to Donziger and his team in September 2010:

We believe that you and particularly your U.S. representatives engaged in a multi-month scheme to deceive and defraud [us] in order to secure desperately needed funding, all the 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.

There is little doubt about the outcome of the trial. Chevron will be vindicated while Donziger will be shunned by the environmentalists he thought he was helping on his way to getting rich. It's probable that the main reason the trial is going to stretch to two weeks (or longer) is that it will take that long just to wade through all the deceit, lies, and fraud that Donziger built up over the years in his effort to “greenmail” Chevron.

*A graduate of Cornell University and a former investment advisor, Bob is a regular contributor to The New American magazine and blogs frequently at [www.LightFromTheRight.com](http://www.LightFromTheRight.com), primarily on economics and politics. He can be reached at [badelman@thenewamerican.com](mailto:badelman@thenewamerican.com).*



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