

ENERGY & ENVIRONMENT

Big Victory for Chevron Over Claims in Ecuador

By CLIFFORD KRAUSS MARCH 4, 2014

Since losing a \$19 billion judgment in an Ecuadorean court three years ago, Chevron has drawn the condemnation of human rights and environmental activists by refusing to pay anything in fines or accept blame for polluting the Ecuadorean rain forest.

The award against Chevron was one of the largest judgments ever imposed by a court for environmental pollution, and it appeared to pit a mighty corporate Goliath against powerless peasants and the principal lawyer who represented

them, Steven R. Donziger, as a brave David.

But on Tuesday, Chevron won a major victory. A federal judge in Manhattan ruled that a two-decade legal effort to punish the company was marred by fraud and corruption, making it increasingly likely that the oil company would be ultimately successful in beating back the legal and financial challenge.

In his nearly 500-page ruling, United States District Judge Lewis A. Kaplan did not dispute that pollution occurred in the Ecuadorean Amazon. But he did support Chevron's complaint that Mr. Donziger, a Manhattan lawyer, and his litigation team engaged in a conspiracy and criminal conduct.

Mr. Donziger and two other representatives are barred by Judge Kaplan "from profiting from the egregious fraud that occurred."

The ruling accepted Chevron's arguments that Mr. Donziger and his associates had ghostwritten a crucial environmental report by an independent expert to the Ecuadorean court deciding the case and even participated in the bribing of the deciding judge.

The decision does not bar enforcement of the Ecuadorean judgment in courts in Canada, Brazil and Argentina where lawyers representing indigenous Amazonian farmers have sued Chevron to seize assets. But legal experts say that the decision should provide Chevron with at least a partial shield unless Judge Kaplan's decision is overruled on appeal.

Judge Kaplan ruled that "an innocent defendant is no more entitled to submit false evidence, to co-opt and pay off a court-appointed expert or to coerce or bribe a judge or jury than a guilty one."

Ralph G. Steinhardt, professor of law and international affairs at George Washington University, said: "It means Chevron is in the clear with a few qualifications. American courts are likely to recognize the impact of Judge Kaplan's order unless and until an appeals court rules otherwise. It may also lead foreign courts to take a second look at the enforceability of the Ecuador judgment."

Mr. Donziger and the Ecuadorean farmers he represents insist that Texaco, before it was bought by Chevron, spilled millions of gallons of toxic wastewater

into waters of the Ecuadorean Amazon in the 1970s and 1980s and left unlined waste pits filled with toxic sludge, ruining the lives and culture of several indigenous groups.

Chevron says that Texaco cleaned up its mess, and that most of the pollution in the Ecuadorean jungle was caused by the Ecuadorean national oil company.

Chevron was originally ordered to pay \$19 billion to the Amazonian farmers by an Ecuadorean court in 2011. But last year the Ecuadorean National Court of Justice, Ecuador's highest court, reduced the fine to \$9.5 billion, although it upheld the original decision despite Chevron's cries of fraud. The Ecuadorean government has strongly supported the case against Chevron.

During the Manhattan trial, Mr. Donziger challenged the legitimacy of the proceeding and repeatedly accused Chevron of engaging in a "well-funded corporate retaliation campaign." He has been consistently supported by influential environmental activists, including Michael Brune, the executive director of the Sierra Club.

Mr. Donziger said in a statement that he would appeal. "This is an appalling decision from a deeply flawed proceeding that overturns a unanimous ruling by Ecuador's Supreme Court," he said. "The decision is full of vitriol, based on paid evidence from a corrupt former judge."

Chevron's star witness was Alberto Guerra, a former Ecuadorean judge who testified that plaintiffs paid him \$1,000 a month to ghostwrite favorable opinions for the presiding judge, Nicolas Zambrano. He also testified that Judge Zambrano told him that Mr. Donziger and his allies promised to pay Judge Zambrano \$500,000 out of the eventual damages as long as he agreed to a favorable verdict.

Mr. Guerra acknowledged taking substantial amounts of money from Chevron. The company paid for the relocation of his family from Ecuador to the United States, and paid for his expenses. He was removed from the bench in 2008 on charges of improprieties.

But on Tuesday, Chevron declared victory, and lawyers said they believed the ruling would hold great weight in foreign courts.

“This decision is a vindication of what we have been saying all along,” said Randy M. Mastro, a lawyer for Chevron. Mr. Mastro said the company was “a victim of a travesty of justice,” adding, “That’s a truth that will now be heard around the world.”

John S. Watson, Chevron’s chief executive, called the ruling “a resounding victory for Chevron and its shareholders” at an appearance at the IHS Energy Cerawee conference in Houston.

Mr. Mastro, a former federal prosecutor, refused to answer questions about whether he has spoken with the Justice Department about the accusations that Mr. Donziger and others were involved in bribery of a foreign judge.

In his testimony to the court Mr. Donziger conceded that he had made mistakes, but he denied involvement in any bribery, witness tampering or fraud.

A former reporter, Mr. Donziger is a Harvard Law School graduate with a knack for public relations. He gained prominence in the film “Crude,” which portrayed him in a favorable light crusading for the Ecuadorean downtrodden.

But Chevron turned the tables on him by gaining access in Judge Kaplan’s court to outtakes of the film that highlighted his unorthodox style. One outtake filmed in an Ecuadorean restaurant showed a consultant telling Mr. Donziger that there was no evidence that contamination had spread from the oil pits. But Mr. Donziger was unpersuaded. “This is Ecuador, O.K.,” he said. “At the end of the day, there are a thousand people around the courthouse; you will get whatever you want. Sorry, but it’s true.”

In his ruling, Judge Kaplan said Mr. Donziger “began his involvement in this controversy with a desire to improve conditions in the area in which his Ecuadorean clients live.” But in the end, he and his associates “submitted fraudulent evidence” and otherwise subverted justice. “If ever there were a case warranting equitable relief with respect to a judgment procured by fraud, this is it.”

A version of this article appears in print on March 5, 2014, on Page B1 of the New York edition with the headline: Big Victory for Chevron Over Claims in Ecuador.
