

5-16-2014

## Chevron Uses Deep Pockets to Win Ecuador Legal Battle

Lauren Carasik

*Western New England University School of Law, Carasik@law.wne.edu*

Follow this and additional works at: <http://digitalcommons.law.wne.edu/media>

 Part of the [Law and Society Commons](#)

---

### Recommended Citation

Lauren Carasik, Chevron Uses Deep Pockets to Win Ecuador Legal Battle, ALJAZEERA AMERICA (May 16, 2014), <http://america.aljazeera.com/opinions/2014/5/chevron-patton-bogsecuadorstevendonzigerenvironmentaljustice.html>

This Editorial is brought to you for free and open access by the Faculty Publications at Digital Commons @ Western New England University School of Law. It has been accepted for inclusion in Media Presence by an authorized administrator of Digital Commons @ Western New England University School of Law. For more information, please contact [pnewcombe@law.wne.edu](mailto:pnewcombe@law.wne.edu).

# Chevron uses deep pockets to win Ecuador legal battle

*Amazon residents set back in mismatched litigation with US oil giant, but fight for justice continues*

May 16, 2014 2:30AM ET

by [Lauren Carasik](#) [@LCarasik](#)

On May 7, Patton Boggs, a prominent Washington law and lobbying firm, withdrew from an effort to enforce a \$9.5 billion Ecuadorean court order against U.S. oil giant Chevron. Patton Boggs represented 48 Amazon residents in a long-running suit for health and environmental damages resulting from the dumping of 18 billion gallons of toxic wastewater in Ecuador's northern Lago Agrio region.

As part of the settlement, in exchange for Chevron's dropping a fraud claim against the firm, Patton Boggs [agreed to pay](#) the oil company \$15 million, to provide documents and assign 5 percent of the profits to Chevron if the plaintiffs prevailed and to express regret for involvement in the case. The Ecuadorean plaintiffs, who first heard about the firm's withdrawal in the press, condemned the "betrayal," vowing to [explore legal options](#) to nullify all or parts of the settlement.

The firm's sudden concession has been trumpeted as another legal and public-relations victory for Chevron. While the energy multinational may have indeed won a high-profile legal scuffle, the Amazonian farmers' battle for justice is far from over. Besides, the withdrawal appears to be more about Patton Boggs' survival than any commentary on the validity of the suit it had so vigorously and effectively promoted.

The settlement [removes an impediment](#) to Patton Boggs' ongoing talks of a merger with global law firm Squire Sanders that is deemed critical to its solvency. But the firm's abandonment of its clients and its promised cooperation with Chevron may tarnish its stellar reputation as unimpeachable advocates.

Steven Donziger, a New York–based attorney who has represented the Ecuadorean plaintiffs since the 1990s, argues that Patton Boggs’ remorse and public rebuke of clients in the process of withdrawal breach its obligations under New York’s ethical rules for lawyers. The Ecuadoreans have also alleged that the agreement threatens attorney-client confidentiality and burdens them with the task of objecting to the release of privileged information despite the fact that Patton Boggs’ withdrawal left them without representation in New York. Chevron’s demand for documents appears to target the financial details of the litigation, the counsel who aided the Ecuadoreans and others who could assist in enforcement of the court’s judgment. Chevron could also use the information to deter cooperation with efforts to recover the plaintiffs’ claims.

### **Circuitous litigation**

Chevron’s triumph is the latest twist in a transcontinental legal battle spanning more than two decades. Ecuadoreans first sued the company for pollution caused by its predecessor, Texaco, in New York in 1993. After eight years of circuitous litigation in the U.S., a district court judge dismissed the suit in 2001, agreeing with Chevron that the proper venue for hearing the case was Ecuador, where the courts would be better equipped to handle the trial. The plaintiffs filed suit in Ecuador in 2003. After years of legal wrangling and delay, in 2011 [Judge Nicolás Zambrano Lozada issued a landmark verdict](#), awarding \$19 billion in damages to the plaintiffs, which was later reduced by half on appeal in 2013. Chevron had no assets in Ecuador, forcing the plaintiffs to seek enforcement of the judgment elsewhere. Chevron now alleges that the Ecuadorean legal system, which it once argued was the appropriate venue, is too corrupt to be trusted.

Patton Boggs’ decision came just two months after New York District Court Judge Lewis Kaplan ruled against Donziger and his team in a related 2011 legal action filed by Chevron. On March 4, Kaplan found that Donziger violated the Racketeer Influenced and Corrupt Organizations Act (RICO), a federal law used to prosecute organized crime bosses. The judge held that Donziger engaged in a pattern of fraud and corruption to secure the judgment, including ghostwriting a critical environmental impact report and bribing an Ecuadorean judge. But Kaplan

ignored credible evidence of Chevron's malfeasance, including [efforts to corrupt witness testimony](#) in the U.S. proceeding and unethical conduct such as [attempts to entrap a judge](#) during the litigation in Ecuador.

Donziger alleges that [Kaplan encouraged Chevron to file the suit](#), evinced clear bias against the Ecuadoreans during the trial — he called them the “so-called plaintiffs” — and showed palpable hostility toward him from the outset. The judge gave Chevron unprecedented access to Donziger's private communications, including his personal journal, and forced a filmmaker to turn over more than 500 hours of [outtakes from a documentary](#) on the lawsuit. These disclosures provided a lens into Donziger's thoughts, including unflattering and unfiltered musings about trial and public-relations strategies that are rarely made public, and provided ample fodder to vilify him. Conversely, Donziger had no access to the machinations in the inner sanctum of Chevron or its counsel, Gibson Dunn. But a 2009 [internal memo](#) written by Chevron employee Chris Gidez explained the company's long-term strategy to demonize Donziger, who [admitted to making mistakes](#) in the case but nonetheless denied the accusations against him.

### **Chevron's bid to embolden transnational corporations to use their deep pockets to thwart justice underestimates the tenacity and resourcefulness of their opposition.**

Chevron employed [60 law firms and 2,000 legal professionals](#), systematically depleting its adversaries' resources, intimidating experts and witnesses, and demonizing and discrediting individuals involved in the suit. The oil firm went after not only the Ecuadorean plaintiffs and their advocates but against corporate capitulation to the demands of those seeking to exploit their deep pockets. “We're going to fight this [until hell freezes over](#) — and then we'll fight it out on the ice,” then–Chevron spokesman [Donald Campbell told](#) the Global Post in 2009.

Patton Boggs is not the first to retreat from the legal battlefield in the face of Chevron's aggressive tactics. In May 2013, the San Francisco–based law firm of Kecker & Van Nest [filed a motion to withdraw](#) because Donziger was unable to pay mounting legal fees, already in arrears by \$1.4 million. But it did so

reluctantly, lamenting that the case had “degenerated into a Dickensian farce” and that “Chevron is using its limitless resources to crush defendants and win this case through might rather than merits.”

But the Ecuadoreans are not yet out of options. In 2012 the Second Circuit Court of Appeals vacated Kaplan’s worldwide injunction against collecting the Ecuadorean judgment. Enforcement actions are still pending in Canada, Argentina and Brazil, where Chevron has ample assets to cover the judgment. Donziger and his supporters are convinced that the legal flaws in Kaplan’s RICO decision cannot withstand scrutiny.

Chevron’s bid to embolden transnational corporations to use their deep pockets to thwart justice underestimates the tenacity and resourcefulness of their opposition. Donziger and the Ecuadoreans have suffered a series of devastating setbacks in this mismatched battle. But Chevron faces protests, and on Jan. 23, 41 nongovernmental organizations from around the world issued a statement denouncing the company’s aggressive conduct, arguing that it creates “a dangerous precedent and represent[s] a growing and serious threat to the ability of civil society to hold corporations accountable for their misdeeds around the world.”

If the energy giant squanders hundreds of millions of dollars and the clean reputation it has worked hard to burnish and ultimately loses this fight, the cautionary tale will be for the Goliath of the story instead of the impoverished and marginalized Ecuadoreans.

*Lauren Carasik is a clinical professor of law and the director of the international human rights clinic at the Western New England University School of Law.*

*The views expressed in this article are the author’s own and do not necessarily reflect Al Jazeera America’s editorial policy.*