

# Donziger Says Chevron's RICO Suit Doesn't Stick

By Lance Duroni

Law360, Chicago (February 07, 2014, 7:15 PM ET) -- Attorney Steven Donziger urged a New York federal judge Thursday to throw out [Chevron Corp.](#)'s suit alleging he helped engineer a \$9.5 billion Ecuadorean pollution judgment against the company through fraud, saying Chevron's own law firm has conceded a legal point in a separate case that dooms the suit.

In a response supporting his motion to dismiss the racketeering suit, Donziger said that Chevron's law firm [Gibson Dunn](#) has taken the position in a case before the Second Circuit that the Racketeering and Corrupt Organizations Act doesn't allow injunctive relief to private parties — the exact sort of remedy other lawyers from the firm are seeking on behalf of Chevron against Donziger.

An appeals panel heard the Second Circuit case, *Sykes v. Mel Harris & Associates LLC*, on Friday.

“If the Second Circuit agrees, as it should, then Chevron cannot get the relief it seeks here. We will not attempt to resolve this intramural dispute among Chevron and its lawyers,” the filing said. “And this court shouldn't have to either: This case should come to an end long before.”

According to Donziger, Chevron's suit should be dismissed for the more immediate reason that the company lacks standing to proceed with it.

Chevron made three strategic decisions that together strip it of standing: refusing to challenge its liability for the pollution in Ecuador, dropping its damages claim in order to escape a jury trial and asking for a tailored injunction that only blocks Donziger and his Ecuadorean co-defendants from a cut of the multibillion-dollar judgment, rather than a worldwide anti-enforcement injunction, according to Donziger.

“The arguments can seem complex, but at the end of the day what we're saying is that Chevron has not demonstrated that it satisfies the basic requirements for standing in federal court. Until it can do that the court shouldn't decide anything else — it should decide whether it has jurisdiction,” Deepak Gupta of [Gupta Beck PLLC](#), an attorney for Donziger, told Law360 on Friday.

On Jan. 30, Chevron [blasted Donziger's arguments](#) for dismissal as technical “nonsense,” saying it clearly has standing to pursue injunctive relief against the attorney.

“Chevron seeks an injunction that will, among other things, bar defendants from continuing their extortionate scheme and from threatening Chevron's assets and those of its subsidiaries,” the company said in a brief. “Such an injunction is more than sufficiently likely to deprive defendants of the fruits of their past injuries to Chevron and redress Chevron's future injuries.”

An attorney for Chevron could not be immediately reached for comment Friday.

Donziger filed his motion to dismiss on Jan. 22, the day after [submitting a post-trial brief](#) in the case. A six-week racketeering trial over the Ecuadorean pollution award [concluded in November](#); Judge Kaplan has yet to issue a decision.

The trial centered on the irreconcilable testimony of two former Ecuadorean judges: Nicholas Zambrano, the disputed award's purported author, and Alberto Guerra, who claims he solicited bribes from the Lago Agrio plaintiffs on behalf of Zambrano as part of a scheme that extended to the ghostwriting of the judgment itself.

Chevron claims Zambrano allowed Donziger and the Ecuadorean plaintiffs to ghostwrite the judgment in exchange for a \$500,000 cut of the eventual proceeds, an allegation Zambrano flatly denied on the stand. In addition to the bribery allegations, Chevron has accused Donziger of helping to fraudulently manufacture a report submitted by court-appointed damages assessment expert Richard Cabrera.

The Ecuadorean judgment, which was recently cut in half but otherwise affirmed by Ecuador's high court, concerned claims of environmental damage and death caused by crude oil that was allegedly dumped in the Amazon by Chevron predecessor Texaco Inc. decades ago.

Chevron is represented by Gibson Dunn.

Donziger is represented by Deepak Gupta of Gupta Beck PLLC, Richard Friedman of Friedman Rubin and Zoe Littlepage of Littlepage Booth. He is also appearing pro se. The Ecuadorean defendants are represented by Julio C. Gomez of Gomez LLC.

The case is Chevron Corp. v. Donziger et al., case number 2:11-cv-00691, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Gavin Broady and Andrew Scurria. Editing by Andrew Park.