

# Chevron, Donziger Trade Final Pleas In \$9.5B RICO Trial

By **Andrew Scurria**

Law360, New York (January 22, 2014, 4:00 PM ET) -- Attorney Steven Donziger made a final push Tuesday against [Chevron Corp.](#)'s epic racketeering suit, arguing that a New York federal court lacks authority to impede the \$9.5 billion Ecuadorian pollution judgment he is accused of engineering through fraud because a favorable order won't redress Chevron's complaints.

Both sides submitted dueling post-trial reply briefs Tuesday following the [conclusion](#) in November of six weeks of acrimonious, conflicting testimony over the legitimacy of the award. Donziger's centered around claims that Chevron had forfeited standing due to its post-trial decision to alter the terms of the injunction it is requesting from U.S. District Judge Lewis A. Kaplan in such a way that a favorable ruling will not redress the suit's alleged injuries.

The brief characterized Chevron's requested relief as having shifted from a worldwide anti-enforcement injunction prohibiting newly filed actions aimed at freezing Chevron's assets around the world to a tailored "anti-collection" order divesting Donziger and his Ecuadorian co-defendants of any financial stake in the judgment and funneling their allegedly tainted proceeds into a trust.

Chevron supposedly changed its request in order to head off concerns over international comity principles in the inevitable Second Circuit appeal of Judge Kaplan's decision that led the appeals court to reverse an anti-enforcement injunction in the suit once before, according to the brief.

But the purported anti-collection order would not redress Chevron's alleged injuries in having to defend foreign enforcement proceedings, Donziger said, and following the brief's reasoning, would not redress any injury since no court has yet enforced the judgment.

"Although Chevron has never had standing to bring this lawsuit, whatever argument it might have had for standing before dropping its damages claim and before articulating its requested equitable relief is now gone — and with it, so too is this court's authority over the dispute," the brief said.

Chevron countered that the relief it seeks would obviate the “real and immediate threat of continuing injury” from pending international enforcement suits and would not inappropriately force other nations to follow U.S. law on enforceability or preclude foreign courts from deciding whether the judgment should stand.

The defense also reiterated its argument that the Racketeer Influenced and Corrupt Organizations Act does not support such injunctive relief separate from monetary damages, which Chevron abandoned before trial. Judge Kaplan, though, has indicated that he believes the Second Circuit has not decided whether RICO offers such an option.

However Judge Kaplan rules, the case is destined for a bruising appellate fight, and there is still uncertainty over what effect a U.S. court injunction will have on the pending actions in foreign jurisdictions. In making its case for a RICO injunction, Chevron stressed throughout trial that the alleged scheme comprised U.S.-based lawyers and targeted an American company, and cited a litany of relevant RICO predicate accusations that include extortion, obstruction of justice, witness tampering, money laundering, and mail or wire fraud.

The crux of 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 Ecuadorian 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 & Crutcher LLP](#).

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.

--Editing by Philip Shea.