

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHEVRON CORPORATION,

Plaintiff,

-against-

11 Civ. 0691 (LAK)

STEVEN DONZIGER, et al.,

Defendants.
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ORDER

LEWIS A. KAPLAN, *District Judge.*

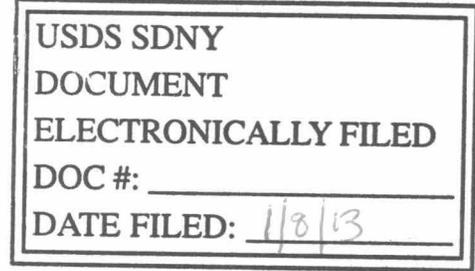
The amended complaint at various points refers to the Lago Agrio litigation or related matters as “sham” litigation. During argument of Chevron’s objections to various document production requests, the LAP Representatives and/or the Donziger Defendants sought to justify certain requests as pertinent to their attempt to meet Chevron’s contention. Chevron responded that it would clarify what it meant to convey by the “sham” allegations, clearly stating that it did not intend “to retry the Lago Agrio case” here.

In a joint status report filed January 4, 2013, Chevron clarified its position with respect to the “sham” allegations, stating:¹

Chevron intends to prove that the Lago Agrio litigation was pursued in a corrupt and fraudulent manner—as directed and substantially executed from the United States—that took advantage of an Ecuadorian judiciary lacking independence and able to be corrupted. Defendants fabricated what they claimed were expert findings and corruptly manipulated the weak Ecuadorian judicial system to give the false impression those findings were “independent” when they were no such thing. For example, Defendants ghostwrote the court expert’s global damages report, and went to great lengths to hide that fact, because the court expert (Cabrera) was supposed to be “neutral” and “independent;” and in other instances (*e.g.*, Calmbacher), the Defendants made expert submissions that were the product of forgery and unauthorized editing to give the opposite impression of those experts’

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Dkt. 705, at 3-4.

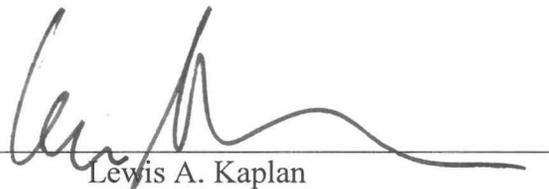


actual findings. Defendants' misconduct in the propagation of this litigation includes acts of fraud, blackmail, intimidation, bribery, and ghostwriting in Ecuador and the United States. In short, Chevron's case is not about whether there is any good-faith dispute among scientists about environmental conditions in the Oriente or TexPet's operations there from the 1960s to the 1990s, but rather, about fraud, extortion, and corruption so deep in the manner of prosecuting that it fundamentally denied Chevron due process and a fair trial. Chevron has been injured because, among other things, the threatened and then actual judgment used to extort Chevron resulted from a corrupt process that included the secret ghostwriting of the judgment itself using Defendants' confidential internal work product. Chevron will prove that Defendants then used that fabricated and fraudulent record they created in Ecuador to extort Chevron in the United States by touting the supposedly "independent" findings of experts and the court there that, in reality, were the product of fraud, ghostwriting, and corruption. Chevron does not intend here to relitigate the environmental conditions existing in the Oriente or the relative, substantive merit of scientists' expert opinions on that subject. In that regard the discrete inquiry here will be whether the judgment's findings have any support untainted by fraud in the record that existed before the Ecuadorian court at the time the judgment was issued.

Under Fed. R. Civ. P. 16(c)(2) and (d), the Court has ample authority to formulate and simplify the issues, avoid unnecessary proof, and otherwise to facilitate the just, speedy and inexpensive disposition of the action. In light of Chevron's representation, the references in the amended complaint to the Lago Agrio litigation being a "sham" shall be construed as asserting that it was a sham in the sense or senses described above and shall not be construed as making any assertions with respect to the environmental conditions existing in the Oriente in the 1960s to the 1990s or the relative, substantive merit of scientists' expert opinions on that subject.

SO ORDERED.

Dated: January 8, 2013

A handwritten signature in black ink, appearing to read 'Lewis A. Kaplan', is written over a horizontal line.

Lewis A. Kaplan
United States District Judge