Brief Analysis of Second Circuit Decision in Chevron RICO Case

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The RICO proceeding, from start to finish, is an illegitimate collateral attack on a foreign judgment. The case is about an Ecuadorian judgment now being enforced by Ecuadorian creditors in Canada; there has never been any basis for New York courts to weigh in. Effectively, a US company sought the protection of its favorable home country courts by convincing them to intervene in an Ecuadorian-Canadian process. This is unprecedented in U.S. jurisprudence.

In light of this and the realities of litigating against a large multinational oil company, the Ecuadorians never invested significant resources in resisting the RICO trial proceeding. It was clear from the outset that it would be impossible to win given the bias of Judge Kaplan; prominent lawyer John Keker called the proceeding a "Dickensian farce". Donziger represented himself *pro se* for much of the RICO case, going up against hundreds of lawyers from Chevron who spent huge sums of money to try to demonize him and in the process intimidate other lawyers and advocates who were helping the affected Ecuadorian communities. The Second Circuit decision reflects this disparity, reading like a default judgment and simply reciting Chevron’s facts and rubber-stamping the deeply flawed trial court decision. In our opinion, the appellate panel abdicated its responsibility to independently review the trial court decision.

In stark contrast to Judge Kaplan and the Second Circuit panel, Canada's courts will put what we believe are Chevron’s false claims of "fraud" to the test. There, Chevron will have to explain away computer forensic evidence that shows that the Ecuador trial judge wrote the judgment on his office computer, saving it incrementally

hundreds of times before releasing it. That evidence destroys Chevron’s claim the judgment was written by the plaintiffs. There was no mention of this issue in the Second Circuit opinion, which instead recites the fabricated story of the paid Chevron witness Guerra who claimed the judgment was written by the plaintiffs and later given to the judge. Chevron will also have to deal with the massive and undisputed evidence that it dumped billions of gallons of toxic waste in Ecuador’s rainforest – evidence that Judge Kaplan refused to hear.

The Second Circuit opinion is only a victory for Chevron if Canadian courts lie down and defer entirely to the findings of US courts that improperly inserted themselves in the judgment enforcement process to protect a US company. We have far too much respect for Canadian courts to believe they will defer to U.S. courts under any circumstances, much less when the trial proceeding reflected extreme judicial bias and a refusal to evaluate the evidence in a fair manner. Canadian courts, including the country's Supreme Court, have shown zero inclination to defer in this manner thus far.

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