

Business News Americas

Interviews: Sylvia Garrigó/Kent Robertson, Attorney/Media relations advisor/Chevron

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By Randy Woods

Ecuador is a headache for Chevron even though the California-based multinational no longer operates in the South American country. Chevron is embroiled in a long-standing legal battle in the new OPEC-member country, with US trial lawyers teaming up with NGOs and activists against the US oil major.

The case stems back decades, when Ecuador's state oil company Petroecuador led an E&P project with partner Texaco Petroleum (Texpet), which years later merged into Chevron. The Petroecuador-Texpet partnership resulted in total crude production of 1.7Mb, with Texpet - which stopped operating in the country in 1992 - taking 5% of the financial proceeds.

Ecuador's government in 1999 enacted a new environmental statute that allows any Ecuadorian resident to file a collective suit for environmental reparations. As a result, plaintiffs filed suit against Chevron in 2003, alleging environmental damage under the Texpet project.

Although Texpet had a minority stake in the project, plaintiffs allege it did substandard work and made the major decisions about project technology and methodology. Chevron argues the government and Petroecuador are unwilling or unable to shoulder their responsibility for the project's environmental liabilities.

The lawsuit has raged on, heating up in recent years as the executive branch weighs in and both sides speak out in public.

In this interview, BNamericas speaks with Chevron lead attorney on the case Sylvia Garrigó and company media relations advisor Kent Robertson about the company's strategy in

Ecuador and the case's repercussions in the region.

Editor's note: For the sake of balance, we will run an interview at a later date with a representative for the plaintiff.

BNamericas: It looks like the cards are stacked against you in this case. What is your strategy going forward?

Robertson: The cards do seem to be increasingly stacked against us. For the first couple years of the trial, things were going pretty well. But what we've seen here lately is a confluence of the interests of an NGO and those of American trial lawyers. You've also got the interjection of the executive branch in Ecuador. So you've got the weight of all three forces bearing down on the judge.

Garrigó: What can we do? First and foremost, we're defending ourselves in court because we're creating a record to demonstrate we're not getting a fair and impartial trial and that there are external influences on the judge that don't permit him to act in an independent and objective manner.

Our second strategy is to have the public and opinion leaders and US constituents made aware of the fact the process has been completely corrupted, that the expert analysis also is corrupt. Eventually, any judgment that comes out of the court system in Ecuador, if it continues on this track, is also going to be a product of this fraud and corruption. As such, if there is a political agenda against the company in Ecuador and an adverse judgment is issued, that political agenda will only have effect in

Ecuador. In other words, the judgment will not be enforceable outside Ecuador. No court that adheres to due process, adheres to the rule of law and looks at this judgment to determine whether it was based on legitimate evidence, will enforce it.

BNamericas: In other words, if Chevron stays out of Ecuador, it won't have to pay the fine or adhere to the ruling.

Garrigó: Exactly. Luckily, we don't do any business or have any assets there to be exposed.

BNamericas: What other options are open to you? Can't you take this to international arbitration?

Garrigó: It's an option and a right we have. And yes, we are considering that, to take it to ICSID.

Robertson: We do have to work through the in-country process first. We have to exhaust our options there, which still will take several years.

BNamericas: I read in a Wall Street Journal article that plaintiff lawyer Steven Donziger said there is "a way out of this for everybody and I'm confident there's a sweet spot." Is there?

Garrigó: No, there isn't. When people ask us, is there a way to settle this case, our first reaction is, well, we've already settled. We conducted a US\$40mn remediation project that not only was agreed upon with the government but supervised and approved by the government and Petroecuador. That resulted in full and complete final immunity for Tecpet and its affiliates against any claims resulting from its participation in the consortium.

We think we are unjustly being accused of environmental impacts caused by the fact that Petroecuador, our former partner, did not remediate its fair share of the consortium area, and during its 17 years of operations caused a tremendous amount of environmental impact that it has not remediated. We're the scapegoat, the deep pockets, to fund the environmental neglect and the breach of contract by Petroecuador.

Our second response is that we have a fiduciary obligation to our shareholders to defend the company against lawsuits like this, especially frivolous and fraudulent lawsuits like this. The worse it gets, the more conviction we have to take this to a point where we set the record straight and defend the company.

BNamericas: So if you never have to adhere to the ruling on this case, why would these US trial lawyers go to all this trouble to build this lawsuit?

Garrigó: Their expectation is that once something adverse does come up, there's a lot of negotiation room between zero and billions.

BNamericas: What happened to your request to dismiss the case?

Robertson: As best we can tell, it's been collecting dust.

Garrigó: Technically, the judge doesn't have to rule on this type of a motion until he's ready to issue a judgment. He could make it part and parcel of his judgment. There's really no procedural deadline at this point for the judge to rule and respond on this, even though our request was to rule on it as soon as possible.

Robertson: Meanwhile, another part of the case is proceeding. We've gone from the evidence collection process in the case - what we consider to be phase one - into what's being described as damage assessment - phase two of the trial. It's kind of a leapfrog event: Having plaintiffs prove the case basically has been taken off the table. The trial now has become pretty much just a damage evaluation without due process that would lead to that assessment.

Garrigó: And not that a damage assessment has been ordered by the court, which is the fundamental problem we have. There was an evidence collection process, which the plaintiffs asked the judge to abort. On two occasions, the judge denied the request on the grounds that such a request is tantamount to relieving them of their burden of proof. After a series of judicial actions against the judge in Quito and public humiliation through the press, the third request was granted.

What eventually happened is that the judge ordered the second phase to occur through more fieldwork and the preparation of what is called the regional report. The judge made a specific order to the expert nominated for this work to answer certain areas of inquiry - environmental and health impact, etcetera - but the judge did not order a damage assessment.

This expert, unfortunately, is working in partnership with the NGO leading the plaintiff's case. The expert's work plan, instead of following the judge's orders, basically aimed to do fieldwork to find contamination caused by Texaco - Texpet actually - and to make a damage evaluation. We've presented a series of motions to the judge declaring the work is not only biased but out of the scope of the court order.

But as you probably can imagine, the hands of the judge are pretty much tied. He really is in a political straightjacket and it's very dangerous for him to disqualify this expert, as he should, or seriously admonish the expert and tell him that what he's doing is in violation of court orders.

As you've seen in all the recent press releases and statements the NGO and plaintiffs have made, they make it very clear this report is going to be a public indictment of Texaco and a damage assessment.

BNamericas: When do you expect that report to be out?

Robertson: In coming weeks.

BNamericas: As this gets uglier, could it get political? The executive is weighing in on the issue and President Correa is good friends with President Hugo Chávez of Venezuela, where Chevron does have operations. Couldn't this cause problems for you in other countries in Latin America?

Robertson: You're absolutely right, it has already become political. When was the last time you saw the executive branch of government holding a joint press conference

with an NGO and American trial lawyers while there was a civil proceeding going on? It's virtually unprecedented and there's no hiding the collaboration.

Does this have ramifications outside of Ecuador? It's too soon to know. But part of what we're doing right now is building a rock-solid case that demonstrates a judgment coming out of Ecuador isn't going to pass the sniff test.

BNamericas: In the bigger picture, does this have an impact on how Chevron views doing business in Latin America?

Robertson: No, this really has been an aberration. Chevron has activities in 180 countries right now. When you look at the pieces as a whole, you don't see anything like this anywhere.

But what we are starting to see is a trend emerging in Latin America. We're starting to see more of a pattern of the US plaintiffs bar exporting its tactics and its focus to Latin America, frankly taking advantage of systems that haven't seen the volume or the tactics before which don't have the checks and balances built into the systems yet. That's something all multinationals need to take note of.

Garrigó: This is a very unholy alliance between US class action lawyers, who have made business out of suing multinationals and reaching large settlement agreements, a court system that does not have the same filters and processes to ensure the rule of law and legitimate evidence are considered and a very aggressive and in our opinion unethical NGO that has launched a very widespread media campaign and propaganda full of lies.

We think this kind of scenario, in addition to the factors we just mentioned with the political support, makes it impossible for us to get a fair and impartial trial. This model I think is being exported to other countries and probably will proliferate if an adverse ruling comes out of Ecuador.