

March 28, 2008

RUMBLE IN THE JUNGLE

Chevron and a group of locals are fighting out perhaps the most high-profile environment lawsuit in the world in a tiny courtroom deep in the Ecuadorean jungle.

Clare Bolton reports

The actress Darryl Hannah hit the headlines in June when she was photographed in the Ecuadorean Amazon with a hand covered in oil. She had been invited there by Amazon Watch, a non-governmental organisation, to examine the environmental damage caused by oil production.

“We went to see oil pits that are obviously still open and still being used and we saw pits that were left and supposedly remediated, but just covered up with dirt... if you just disturb the soil a little bit, all this oil comes up,” she said in an interview with the website treehugger.com. “It’s spilling into the streams, running directly into the water source and it’s just horrifying.”

The NGO that invited Hannah to Ecuador blames Chevron for the damage. They are supporting a class action lawsuit from local people against the multinational being played out in a tiny courtroom in Lago Agrio, deep in the Amazon rainforest, just kilometres from the Colombian border. That lawsuit is perhaps the most high-profile environmental case going on in the world today.

There is one element of the case not in dispute – that the damage to the Ecuadorean jungle is severe, and that it is having a devastating effect on the way of life of local communities.

At dispute is responsibility. Texaco – which was acquired by Chevron in 2002 – has not operated in Ecuador since 1990, and when it did so it was in partnership with PetroEcuador. The US company completed a US\$40 million government-approved clean-up operation of its part of the consortium area in 1998, and was subsequently released from liability by the government of Ecuador. It says that PetroEcuador has caused the harm, both by failing to remediate its part of the consortium area and by continuing to spill since Texaco left.

The plaintiffs say that Texaco dumped 18 billion gallons of toxic waste in its 28 years in Ecuador, leaving behind an area three times the size of

Manhattan polluted with more than 600 open toxic waste pits. They claim the company used substandard environmental controls, and bears a moral and legal responsibility for cleaning up the mess now there.

Many in Ecuador are convinced Chevron should pay up. The most prominent of these is the president, Rafael Correa, who has given his backing to the plaintiffs’ case. During one visit to the area, he called for the world to “be the witness of the atrocities caused by Texaco”. He has offered state support to the plaintiffs for gathering evidence, and has urged criminal indictment for the officials who approved Texaco’s oil remediation programme. But previous presidents have supported Chevron, leading plaintiffs to say Correa’s opinion merely begins to redress the balance.

Given Ecuador’s political instability in recent years and what is at stake – the health of one of the world’s most important natural environments – this case is not only high profile but very emotive. There is also all but no middle ground between the two parties, with accusations of unethical tactics, extrajudicial pressure and moral turpitude flying back and forth. So where is the law underlying the political and media furor?

According to Chevron, all but absent. They are publicly calling the case a judicial farce, saying they are being denied due process, a fair and transparent trial, and their right to fight the allegations in a legitimate way. Chevron’s Silvia Garrigo puts the case for the defence, over the page.

The plaintiffs, meanwhile, insist these claims of judicial farce are nothing but another tactic, especially given Chevron’s insistence for 10 years that the case should be heard in Ecuador. Lawyer for the plaintiffs Steven Donziger rebuts Chevron’s arguments on page 19.

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In 1964, the Texaco Petroleum Company (Texpet) began oil exploration and production in Ecuador in a joint concession with the state-owned oil company. Oil was discovered three years later, and Texpet continued as operator of the consortium for the next 23 years. By 1977, PetroEcuador had become the majority owner of the consortium with a 62.5 per cent stake, and took both operational and actual control in 1990. Texpet's interest in the consortium was not renewed in 1992.

In 1994, Texpet signed a memorandum of understanding with the government and PetroEcuador about remediation that reflected, among other things, its minority stake in the concession and PetroEcuador's intent to continue operating. The resulting remediation plan was carried out between 1995 and 1998, and later that year the ministry of energy and mines and PetroEcuador approved the remediation works and released Texpet, Texaco and all subsidiaries and successors from future liabilities and obligations relating to the government's claims.

The litigation began in 1993. The first case was filed in New York, by US lawyers representing Ecuadorean plaintiffs. The lawsuit was dismissed on forum grounds with Chevron pleading for the case to be held in Ecuador, but the plaintiffs appealed claiming that the Ecuadorean legal system was too inefficient for the case to be held there. Upholding the dismissal in 2001, Judge Jed Rakoff of the US District Court in New York said: "Because the record establishes overwhelmingly that these cases have everything to do with Ecuador and nothing to do with the United States, the court grants the motion and dismisses the cases on the ground of forum non conveniens." The US Court of Appeals also upheld the decision, once Chevron had submitted to Ecuador's jurisdiction.

The plaintiff's lawyers subsequently filed in Ecuador, on behalf of 48 residents of the Orellana and Sucumbios provinces. According to ChevronToxico.com, a website run by two NGOs supporting the class action suit – Amazon Watch and Frente de Defensa de la Amazonía – there are now 30,000 plaintiffs in the case. The legal team is fronted by Pablo Fajardo, an Ecuadorean lawyer, with the support of a team of US lawyers, including litigators Cristobal Bonifaz and Steven Donziger.

The case was launched amid keen media interest in Lago Agrio on 21 October 2003. Chevron immediately objected on constitutional grounds, but the case proceeded in two phases. The first is evidentiary, with witnesses as well as documentary evidence, and "judicial inspections", or examinations of the environmental conditions of the concession area. Each party could question the

other's findings, and "settling experts" would be appointed by the court for each inspection in case of conflicting reports. In the next phase, any environmental damage would be assessed, its cause identified, and the necessary remediation steps – and costs – specified.

In August 2007, the assessment stage began, with Chevron saying that only 47 of 122 sites had been examined and only one "settling report" produced. Chevron says plaintiffs requested that the case move forward because the science was coming out against them, and that the one settling report produced, for well site Sacha 53, exonerates Chevron. Plaintiffs say the multinational was unnecessarily and unfairly delaying the process, and that the residents suffering the environmental damage allegedly caused by Chevron deserved a speedy resolution. They also claim that the evidence is overwhelmingly in their favour.

Phase two is being conducted by a court-appointed expert called Ricardo Cabrera, who is shortly expected to produce his report and present it to the court.

SILVIA GARRIGO

MANAGER OF GLOBAL ISSUES AND POLICY,

CHEVRON

Silvia Garrigo has worked with Chevron since 2002, as downstream in-house counsel for Latin America and the Caribbean. In 2005, she moved to headquarters and in January was appointed to her current post. She has been working on the case since 2004.

What's the legal basis for your case?

That question gives context to our characterisation of this case as a legal farce. The plaintiffs' complaint is based upon a 1999 Ecuadorean environmental management law. They are using this law against Chevron in a retroactive manner, which is unconstitutional in Ecuador – so their whole legal house of cards falls simply on the basis of the unconstitutionality of their claim.

Add to that legal weakness the fact that Texaco was released from all liabilities resulting from its participation in the consortium. Further add to that the fact that their claims are barred by the statute of limitations. They also sued the wrong party – Chevron is not the successor in interest to Texaco. But obviously the plaintiffs went to the deep pocket, the mother of all mothers, which they thought they could harass enough to extort a settlement.

Why not just settle – might it be cheaper?

We have a fiduciary duty to our shareholders and employees to defend Chevron in this case. I can guarantee you that if this case had any legal or scientific legitimacy, we would not be sitting here today. We take our reputation very seriously, and if there were actual health or environmental impacts resulting from Texaco's legacy, we would address them.

We also think it is very important to set the record straight against a false and unethical media campaign by the plaintiffs and NGOs which is really designed to extort a settlement from Chevron. We think that one of the outcomes of this case should be to hold NGOs and US trial lawyers litigating abroad accountable for their actions. That US trial lawyer litigating in Ecuador should be subject to the same bar rules of ethics as they would in the US. Because they are not, there are many abuses and unethical tactics going on.

What kind of unethical tactics?

During the judicial inspections, the plaintiffs used a laboratory called HAVOC to analyse its oil and water samples. That lab has cleared 75 per cent of their evidence so far – the information in their expert reports alleging all these environmental and health effects. But the accreditation organisation in Quito has not given the necessary recognition to this laboratory to do the type of soil and water samples that the plaintiffs requested, nor did it have the technical capabilities of rendering reliable and accurate results.

When we found this out we tried to conduct a judicial inspection of the lab – we tried eight times, and each time through petitions engineered by the US trial lawyer, that inspection was blocked. The role of the US lawyer here is clear because he went to the lab on the day of the proposed inspection, and on national television pointed the finger at our lawyers, calling them corrupt and traitors. If he would have played that scene out in the US, I'm sure the bar would have taken note. But those are the tactics that they get away with in Ecuador.

Has the other side launched any additional claims?

The plaintiffs have been successful in getting criminal investigations launched on more than one occasion, based on the fraudulent procurement of the remediation contract and the fraudulent execution of the remediation work – so both a contractual crime and an environmental crime. Both cases were rejected by the prosecutor general. But the plaintiffs continue to say that we are under criminal investigation even though official documents

submitted to the Quito Supreme Court state that neither claim had any legal or scientific merit. The prosecutor general even hired its own expert to go out into the field and take soil and water samples to examine each and every one of the sites which the plaintiffs claim were not remediated according to proper environmental standards – and those experts issued a formal report stating that Texpet met all of its remediation obligations.

This is why we continue to call this case a judicial fraud – the law is in our favour, the science is in our favour, and yet we're still involved in a case which no longer has any semblance of a fair and impartial judicial process. Plaintiffs have even managed to obtain the support of the president of the country, who has publicly proclaimed his support for the plaintiffs to collect evidence against Chevron, to obtain a judgment against Chevron, and to initiate criminal proceedings against those parties who approved the remediation programme and absolved Texaco from liability. This is highly unusual. I have never seen executive support in a private civil matter in all my years of litigating in the US, Latin America, or in any part of the world.

So, in your opinion the case has been hijacked by political interests?

Part of the executive's campaign is an anti-US, anti-multinational campaign, but we believe that the real motive is – plain and simple – money. If a judgment is entered against Chevron for remediation costs, that takes PetroEcuador off the hook to clean up its environmental mess. One of the big injustices we face in this case is that not only are we being passed on the bill for PetroEcuador's responsibility but also for the mess it has created in its 17 years of operation since Texaco left Ecuador. Just between 2000 and 2006 it has had over 880 spills. When I have gone out to the jungle for evidentiary hearings at the well sites or production stations, I have met a lot of the *colonos*, the local residents of the area, and many times they have told me: "Why are you guys going to clean this up when PetroEcuador is going to come back tomorrow and spill oil all over it?"

The political agenda is to get a deep pocket, a multinational that fits within a political campaign to pay the Ecuadorean government money that would be used supposedly to clean up the environment. And that is a big "supposedly". I guarantee you, if we cut a cheque today for any amount of money, it would not be used to benefit the people in the Oriente [Ecuador's eastern region], to give them potable water, access to health care or a clean environment – because the government hasn't done it for 17 years. In fact, when we signed the remediation agreement, part of the US\$40 million we spent was for socioeconomic programmes, one of which was the

furnishing of potable water. The residents, years later, still do not have potable water. Over the last 17 years, there have been budgets established for such programmes, and these things have never come to fruition.

What's your experience of the NGOs in this case?

Since the inception of this case the NGOs have attempted to try it in the court of public opinion, not in a court of law. First they have exploited the local people, using those with cancer and all sorts of illnesses and claiming they have been caused by exposure to petroleum operations, when in fact the opposite is true. Illnesses such as cancer unfortunately are a reality of our lives, but the official census data of Ecuador demonstrate that the incidence of cancer in non-petroleum operating parts of Ecuador are higher than in areas where there are petroleum operations. So unfortunately what the plaintiffs do is take people when they're at their most vulnerable – the poor, the sick, and the dying – and use them as poster children for their cause when in fact there's no scientific truth behind what they're saying.

They have also accused Chevron of murder, of attempted kidnap, theft – all media ploys that gain traction for a public that has nationalistic sentiments and little time or ability to independently verify the allegations. Meanwhile the NGO is the main financial beneficiary of any settlement or judgment – they get up to 10 per cent. They say that they are advocates of the people of the Oriente and have taken on this case to defend them against environmental contamination. Yet they have sued the company that operated according to industry standards, that did its job and remediated, and have completely ignored the company that has not operated according to industry standards, and that is not remediating its share of the consortium. It becomes very obvious what their motives are – their motives are not the environment, their motives are money.

Are you meeting these media tactics with a PR strategy of your own?

It is important to us to set the record straight, and to let the public, our employees, shareholders know the travesties of justice that are occurring in Ecuador. And we also want the public to know what is actually occurring in the case – that the judge, after absolving the plaintiffs of the burden of proof [moving the case on to the assessment phase], and contrary to prior judicial orders, appointed one sole expert, Ricardo Cabrera, to conduct a regional environmental assessment of the consortium area. To compound the judicial error, this expert has publicly stated his bias against Texaco – in his work plan, Cabrera has stated that his mission is to find the contamination caused by Texaco. He is using people from the NGO as part of his team collecting field

samples, and has violated court orders, requiring him to disclose the people that he's working with and their qualifications. Chevron has a right to participate and a right to know what work he is doing, but all of his work has been conducted in secret. He has also taken on an additional task of evaluating and determining remediation costs against Texaco – which is not part of the judge's mandate, but is what the plaintiffs said would happen. When they pushed the judge for the regional study, they publicly announced that it would eventually generate a monetary amount that Texaco would be responsible for. We think there is no coincidence that the plaintiffs say one thing and the expert does that same thing.

There are reports that cost is US\$6 billion – is that fair?

The plaintiffs got a huge shot in the arm at the beginning of the case when an expert called David Russell stated in the media that Texaco could be held liable for US\$6 billion (see box, below). That expert has since then recanted, publicly stating that it was a very cursory estimate, not based on any field or laboratory work, and that it doesn't really have any technical or scientific validity. Yet the plaintiffs continue to use that figure as if it is a fact, because part of their tactic is to create these sensationalist stories to scare our shareholders and manipulate public opinion to convince them that Chevron will ultimately be condemned to this multibillion-dollar judgment.

What's the worst-case scenario for you? If the judgment is given against you, what are your options at that point?

If an adverse judgment is entered by the trial court, we have a right to appeal to the superior court of that same tribunal. If that court rejects the appeal, we also have the right to appeal to the Supreme Court in Quito. We think the Quito Supreme Court can issue a one-page opinion dismissing the entire case, basing itself exclusively on the argument that their claim is unconstitutional. But if that does not happen, we would go to international tribunals that recognise cases in which due process has been violated, for example ICSID. Because of the failure to follow the rule of law, we think any adverse judgment would not have any validity outside Ecuador, and so we're pretty confident that any enforcement proceedings against Chevron, wherever it operates, won't have any success.

Have you considered filing an ICSID case now?

We think it is premature at this time.

Is there a diplomatic or lobbying element to your strategy?

We think that the judiciary should be independent of any external pressures, and one of those pressures would be any type of lobbying. Plaintiffs have garnered the support of the Ecuadorean executive branch, and we think that kind of partnership destroys judicial objectivity and independence. If the president of the country publicly declares it will support criminal investigations against anyone who exonerated Texaco from any liability, what judge is going to risk his or her neck and declare that that release is valid? That's political suicide.

Is there evidence that the judge is under pressure, political or otherwise?

Oh yes, there are numerous facts that show the judge feels not only politically intimidated but also intimidated by the plaintiffs. The judge's order absolving them of the burden of proof only came after the plaintiffs had filed the petition requesting the cancellation of the judicial inspections three times. The first two times the judge said that Ecuadorean law did not permit him to grant it, that if they wanted to claim damages for the sites under inspection, then they had the burden of proving that those sites actually had environmental damage caused by Texaco. The third time the petition was filed the judge granted it. The judge probably feels paralysed, because we can only imagine the kind of reaction he would face [if he ruled for Chevron]. Losing his job might be the safest thing that could happen to him. I empathise with him – he has an extraordinarily difficult task, and it would take (as they say in Latin America) pants of steel to issue the right ruling in this case.

Given public opinion, and the political and judicial landscape, is there any room for you to manoeuvre?

Certainly. We continue to press on, and provide a solid legal and scientific defence to the claims that are being made. And the science has so far escaped political pressure – for example, the organisation of accreditation in Ecuador has stated unequivocally that the HAVOC lab did not have the necessary qualifications or capacity. Then, there's Ecuador's environmental protection agency's independent soil and water analysis, which did not evidence any presence of petroleum chemicals which could pose a health risk to people, but did show a high level of bacteria in the water supply. They are finding the same things we are.

You mentioned the case demonstrates a need for greater regulation of US lawyers litigating abroad – is that part of a deeper problem in the US system?

When discussing with media or business people in Ecuador who believe we are the victims of an unfair

and corrupt process, they often say: "Well, welcome to Ecuador, Silvia – this is unfortunately one of the weaknesses of our country." After acknowledging this is a problem I also say to them that the worst of our countries have united. On the one hand you have the Ecuadorean judicial system, but on the other you have US class action lawyers that make such claims as part of their business. They finance them, they strategise them, and they work with local NGOs and local counsel to ultimately get a large settlement or judgment. Globalisation has brought such class action lawsuits into countries where these lawyers can take advantage of political agendas, which together permit them to continue with their frivolous cases. And we do know the US trial lawyers are being paid on contingency.

Are there lessons here for you or for other oil companies?

There are – we always need to keep our focus on ensuring that we have access to a fair and impartial tribunal, one that guarantees due process and the sanctity of contracts.

Do you mean international arbitration tribunals?

That would be one avenue. Ecuador was unfortunately rated one of the most corrupt countries in a recent transparency index, but I do not think that is the case in the rest of Latin America. I have had experiences in the court systems and in arbitration in Latin America where the processes, the panels and judges really respect the rule of law and really ensure that their judgments are based on admissible and legitimate evidence. I don't think we have to run away from Latin America and go to international arbitration, I still think there are countries in which we can litigate, but it has to be examined on a case-by-case basis.

Are there broader implications for the region, in your opinion?

I do think this case has an effect on the world's opinion of justice in Latin America. Justice must be seen to be done in Latin America for its global reputation in business to continue to improve. If the rule of law is absent, there will be a significant impact on investment.

US\$6 BILLION?

David Russell of Global Environmental Operations puts the record straight for LATINLAWYER

"The largest fraction of the US\$6 billion figure was for groundwater and surface water clean-up and

cleaning rivers and swamps, with soil clean-up reaching about US\$400 million of that. Moreover, the estimate was preliminary and based on three or four days of site visits in the jungle without any access to chemical data or analyses. While the unit cost figures I used were accurate at the time, the underlying assumptions may not be accurate when viewed with regard to the greater quantity of information now available. I have not been involved in the case nor have I seen any of the chemical analyses or groundwater analyses since 2004.

"Knowing what I know now, I am sure that the number would be substantially lower. I put a lot of caveats in the original estimate, but everyone focused on the bottom line of US\$6 billion – but I no longer think the groundwater contamination is as extensive as I once did."

STEVEN DONZIGER

LAWYER FOR THE PLAINTIFFS

Steven Donziger practises criminal defence, class action litigation and human rights law. He has advocated for Cuban detainees and led a mission to Iraq to investigate the civilian impact of bombing after the first Gulf War. He has worked on the Chevron case since the beginning

What's the legal basis for your case?

The legal basis for the case is traditional tort law, based on common law theories of tort, as well as the Ecuadorean civil code, which has provisions dating to 1861 that codify tort principles.

Civil law systems are less open to class action suits than common law. Are there provisions within the Ecuadorean system that allow this kind of suit?

The Ecuadorean civil code is really disadvantageous to our clients in that there is no mechanism for a US-style class action in Ecuador. There is a mechanism to aggregate claims around environmental damage, but individual claims cannot be included and have to be filed separately. Because it is impracticable to file tens of thousands of suits based on individual claims, we have had to exclude those claims from the suit and lop a significant amount of damages off the top.

That's why you decided to file in the US first of all?

That's one of the reasons, yes. Also, at the time this case was filed, in 1993, we felt the US was the appropriate forum, because the decision by Texaco to systematically dump billions of gallons of toxic

waste and engage in substandard practices in Ecuador was made in New York, in the world headquarters. The tort happened in New York and as a result we filed the case against Texaco in the courthouse down the street. They fought it for 10 years, claiming it would be more convenient for them to have the case tried in Ecuador, and they ultimately prevailed, which is why the case was refiled in Ecuador. Interestingly, during that 10-year period and indeed after, their main argument for moving the case to Ecuador was that the court system there was fair, honest, transparent and appropriate. They have the trial now that they sought for 10 years.

How do you think that relates to Chevron's current claim that they are being subjected to a judicial farce in Ecuador?

Chevron's claim that there is a judicial farce is based on their realisation that the evidence means there are probably going to be on the receiving end of an adverse judgment. In the 15-year history of this legal battle, it is only in recent months that they have tried to discredit the trial itself. It is clear in my mind that they are expecting the worst, with justification, because the evidence in the case, produced by their own technical representatives as well as ours, overwhelmingly shows massive levels of toxic contamination. Many of the analytical samples are thousands of times higher than the maximum regulatory standards in the US, Ecuador or the EU. There are hundreds of well sites and oil production sites that Texaco built, that are still there and are still contaminating soil, water and air, and many of these sites have never even been touched by any other oil company. It is a horrendous situation that gets worse with time. Many people have died of cancer and oil-related diseases in this area. This case is ultimately about corporate accountability and the ability of the oil industry as a whole to recognise that they must respect the environment and not cause harm to people who live in areas from which they extract oil.

Chevron was released from liability for future claims after their remediation in the mid-1990s. How does that affect your case?

The issue of Chevron's release from liability is irrelevant to our civil lawsuit, because that was a release given by the government to Texaco pertaining to claims the government could bring against Texaco. It does not pertain to claims that could be brought by private citizens. There is specific language in that release which clearly and explicitly carves out third-party claims. It is utterly irrelevant, and the fact that they are relying on this release as a defence, frankly, to me shows the level of reaching Chevron is doing to try to sustain a semblance of argument in a case where the proof is overwhelmingly against them. A related issue is that

there has been a legitimate claim of fraud brought against Chevron for engaging in deception to procure that release, and the attorney general of Ecuador has filed a complaint with the US Department of Justice seeking an investigation of this alleged fraud.

Are there other legal strategies you are employing that are extraneous to the case in Lago Agrio? Are there other criminal cases you have brought, for example?

That's not our case, it is a separate authority in Ecuador that has brought that complaint. We're only doing one case – there's a lot of ancillary litigation that has grown out of the primary case, which is frankly the only case I am concerned about, although the fact that Ecuador's highest legal authority, the attorney general, has brought a fraud complaint against Chevron related to this release obviously matters.

Chevron claims a lack of due process, because one of the laboratories used by the plaintiffs to oversee evidence analysis, HAVOC, and the expert appointed to oversee the next phase, Ricardo Cabrera, are underqualified. How do you respond to this?

Chevron really is grasping at straws to try to divert attention away from the evidence in the case. Basically, their fundamental defence strategy now is to try to delay the case so that it never ends, and to put out misinformation to make it look like they are the victims. In my opinion it fundamentally turns truth on its head. With regard to their specific claims about Cabrera, he is eminently qualified and highly respected in Ecuador for doing environmental assessments for oil companies. He was appointed by the court in a previous field inspection, and Chevron at that time never objected to him. It was only when he was appointed to his final phase damages assessment that they adopted the strategy to try to discredit the entire trial, because this is the final phase and their biggest fear is that the trial will end. As a result, they claim he is not qualified. But the court has determined he is qualified. There are two additional points: he is not the only one doing the work – he has hired a team of multidisciplinary experts to assist him. Also, Cabrera and his team are reviewing all of the evidence in the case as part of their assessment, including Chevron's – so there is no reason for them to worry, as long as they believe their own evidence.

Another key plank of Chevron's claim is that the final phase – assessment of damages – has begun before the evidentiary phase was complete.

The evidentiary phases, both in terms of witnesses and documentary evidence and in terms of judicial inspections, have been completed, but for one fact.

Chevron had asked for 10 field inspections that have not been done, because Chevron has never asked that they be scheduled. This is part of their tactic of delay, allowing them to make the argument that the final phase has been started before the previous phase was finished. Equally, Ecuadorean law allows the different phases to happen simultaneously – the idea is to get all the evidence in as soon as possible. The fact that this case has taken almost five years shows that Chevron has been relatively successful with its defence strategy, filing literally hundreds of repetitive motions to slow down the trial, to obligate the court to read thousands of pieces of paper. In my opinion, there has been ample due process extended to Chevron. If they can't prove this case in 15 years, they have a serious problem.

Is the open endorsement of your case by the executive branch something you have sought, or find useful?

The allegations of executive involvement are not true and also a non-factor. This case will ultimately be decided by an independent court based on the facts in the law. Since this case was filed in 1993 there have been 12 presidents in Ecuador, 11 of whom always voiced support for Texaco or Chevron. We now have our first president who has actually expressed sympathy for victims of environmental contamination in areas where Texaco operated, while making it clear that his sympathy has nothing to do with interfering in a judicial case where there are all sorts of complicated issues of fact and law that need to be decided by a court. So this is a non-factor. What is a factor is Texaco and Chevron's history of trying to enlist the executive branch of Ecuador to inappropriately interfere with the case. This has happened throughout their history in Ecuador and has been documented by their own memos that we've seen in discovery: they hired a former US ambassador to Ecuador to lobby the Ecuadorean government in the early 1990s, and in 2005 Chevron's general counsel Charles James flew into Quito and met with Ecuador's then-president Alfredo Palacios.

Do you think that there is a way the plaintiff's legal team can force Chevron to pay up, assuming there is a judgment against them?

Absolutely. We believe we will be able to enforce any judgment from Ecuador in a US court – and as a matter of fact we're not going to wait for the appeals process. If we get a judgment at trial level, we have a right to immediately collect that judgment and we will, as quickly as is feasible, go into a US court and motion for the collection. Chevron is completely strait-jacketed by the fact that between 1993 and 2006 it argued that Ecuador had a great court system. They are going to be in a very difficult position when they

go into a US court to argue that a judgment in a trial they sought over our objection should not be enforced, when they stipulated as a condition of the transfer of the case to Ecuador that they would accept jurisdiction there. They are on incredibly narrow ground, and we are highly confident that we will be able to get any judgment out of Ecuador enforced in the US.

How important are the PR and media tactics to your case?

Chevron are constantly trying to claim that we are trying this case in the court of public opinion, and the reality is we are not; they are. They have spent, we believe, millions of dollars buying advertisements in Ecuadorean newspapers trying to influence the court's position, or on a PR firm in New York to try to manage media coverage. We have been forced by their PR strategy to expend part of our very modest resources to engage with the media. But at the end of the day, just like their point about the executive branch, it is not really going to matter, because the case will be decided on the fact in the law.

What are the broader implications for the region, in your opinion?

This case is a bellwether case for the energy industry in Latin America, which will probably confront many more cases of this nature and magnitude in years to come. This is a new paradigm case, the first that I know of in which indigenous groups have been able to force a large US oil company to be a defendant in a civil case over environmental damages. And that is a positive development for business in Latin America, because it reinforces the strength of civil society, it takes people off the streets and puts them into the courthouse, and gives them hope of legal and non-violent means of gaining some level of justice from negligent abuse that has been heaped upon them by large multinationals from the north. If we're going to talk about globalisation we have to include in the conversation that fact that people who historically have been left out, including indigenous people in the Amazon, are now players in this game, and they are asserting themselves. This case is a perfect

illustration of that.

THE FORUM ARGUMENT

When an UNCITRAL arbitration was filed by Chevron against the Republic of Ecuador for a denial of justice during ancillary litigation to the close-down of their operation in Ecuador in the 1990s, the republic retained attorneys from Winston & Strawn LLP. In the government's defence plea, submitted in November, the court documents from the US litigation (the *Aguinda* case) over the clean-up of the consortium area are examined.

The plea notes that the *Aguinda* plaintiffs told the court in 1994 that they had filed in the US because "the administration of justice in Ecuador is extremely inefficient". In response, Texpet submitted affidavits from legal experts that both local citizens and officials had faith in the Ecuadorean court. A submission to the court by Texpet from the Ecuadorean ambassador to the US said that "the plaintiffs have suggested... that they cannot expect a fair hearing in Ecuadorean courts... such a claim is false and defamatory" and "highly offensive". In a separate briefing, Texpet submitted opinions from legal experts saying, for example, "the courts of Ecuador, in the complex and delicate task of administering justice, treat all persons who present themselves before them with equality and in a just manner."

The court agreed with Texpet that the Ecuadorean courts were the appropriate forum to hear the case. The appeal court however decided the forum non conveniens argument was inappropriate without an express agreement to Ecuadorean jurisdiction. With that consent given, the forum non conveniens argument won the day.

The Winston & Strawn attorneys argued that given Chevron's explicit endorsement of the Ecuadorean legal system (arguments repeated in 2006 before a New York Court), their claim of a denial of justice was invalid.