

Response from Chevron Regarding Use of Strategic Lawsuits

5 December 2022

Chevron submits this response to the inquiry from the Business & Human Rights Resource Center regarding EarthRights International's Report entitled, "The Fossil Fuel Industry's Use of SLAPPs and Judicial Harassment in the United States."

The Report falsely asserts that litigation filed by Chevron against Steven Donziger was a Strategic Lawsuit Against Public Participation ("SLAPP"). But SLAPP suits are *meritless* lawsuits that are "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances" through "abuse of the judicial process." C.C.P. § 425.16; *see also M.G. v. Time Warner, Inc.*, 89 Cal. App. 4th 623, 627 (2001) (purpose of anti-SLAPP statute "is to curb meritless lawsuits, not to prohibit bona fide claims"). Chevron's claims against Mr. Donziger were the opposite of a SLAPP suit.

Rather than targeting Mr. Donziger on the basis of his views or protected expression, Chevron's claims stem from Mr. Donziger's decades-long campaign of extortion and wrongdoing against Chevron. Mr. Donziger's misconduct included ghostwriting a multibillion-dollar Ecuadorian judgment against Chevron that both U.S. courts and international tribunals have rejected as the product of bribery, corruption, and fraud. Mr. Donziger also used third parties to disseminate false information about the lawsuit and environmental conditions in Ecuador in an effort to pressure Chevron to capitulate to his fraudulent multibillion-dollar scheme. And Mr. Donziger attempted to conceal his wrongdoing by refusing to comply with judicial orders to turn over information about his fraudulent activity. Mr. Donziger is an adjudicated racketeer who has been disbarred for his misdeeds, and no court or tribunal anywhere in the world has ever recognized Mr. Donziger's sham Ecuadorian judgment as legitimate.

Chevron's claims against Mr. Donziger were neither frivolous nor abusive. To the contrary, they were meritorious claims meant to curb fraudulent behavior by Mr. Donziger, and court after court has confirmed their validity. The subpoenas listed in the Report, purportedly "targeting" organizations critical of Chevron, are all related to Mr. Donziger's pressure campaign to extort money from the company.¹ Chevron prevailed against Mr. Donziger in U.S. District Court in New York, and the judge wrote an almost 500-page opinion exhaustively setting out the evidence of Mr. Donziger's fraud and corruption. The judgment against Mr. Donziger was unanimously affirmed by the Second Circuit. *See [Chevron Corp. v. Donziger](#), 974 F. Supp. 2d 362, 644 (S.D.N.Y. 2014)*, *aff'd [Chevron Corp. v. Donziger](#), 833 F.3d 74 (2d Cir. 2016)*. The Supreme Court also declined to grant review.

¹ Further, the subpoena from Chevron U.S.A. to Consumer Watchdog referenced in the Report was in the context of a meritless class action lawsuit filed *against* Chevron U.S.A. when the plaintiffs (not Chevron) put Consumer Watchdog's reports at issue. Chevron U.S.A.'s defenses to this lawsuit were proved meritorious when the court granted summary judgment in favor of Chevron U.S.A. and the other defendants. *See [Persian Gulf Inc. v. BP West Coast Products LLC](#), [Persian Gulf Inc. v. BP W. Coast Prods.](#), 15-cv-1749-JO-AGS (S.D. Cal. Sep. 30, 2022)*.

Provided below is key information primarily drawn from publicly available court and international arbitral rulings demonstrating why Chevron’s litigation against Mr. Donziger and the participants in his pressure campaign has been anything but a SLAPP suit. Mr. Donziger is not a human rights or environmental lawyer as he touts himself to be, but rather a convicted criminal and adjudicated, disbarred racketeer, as the incontrovertible judicial rulings and evidence demonstrate.

1. **Steven Donziger is an adjudicated racketeer.** The U.S. District Court for the Southern District of New York found overwhelming evidence that Donziger “obtained [the Ecuadorian judgment against Chevron] by corrupt means,” including a pattern of extortion, bribery, wire fraud, money laundering, witness tampering, obstruction of justice, and violations of the Travel Act and Foreign Corrupt Practices Act. See [Chevron Corp. v. Donziger](#), 974 F. Supp. 2d 362, 644 (S.D.N.Y. 2014), *aff’d* [Chevron Corp. v. Donziger](#), 833 F.3d 74 (2d Cir. 2016). The Court held that the corrupt Ecuadorian judgment was just one component of Donziger’s unlawful pressure campaign to extort Chevron out of billions of dollars—and had he succeeded, he would have personally profited by “more than \$600 million.” [Id.](#) at 504.
2. **The fraud, extortion, and bribery findings were conclusive, well documented, and unanimously affirmed by a distinguished appellate panel.** On appeal, a unanimous Second Circuit, in an opinion by the distinguished Carter appointee Judge Amalya Kears, affirmed Judge Kaplan in full. The court noted that Donziger did not “challeng[e] the sufficiency of the evidence to support any of [Judge Kaplan’s] findings” and held that “[t]he record . . . reveals a parade of corrupt actions by [Donziger and his] team, including coercion, fraud, and bribery, culminating in the promise to [an Ecuadorian judge] of \$500,000 from a judgment in favor of the plaintiffs.” [Chevron Corp. v. Donziger](#), 833 F.3d 74, 81, 126 (2d Cir. 2016). The U.S. Supreme Court denied certiorari, rendering the judgment final and unappealable.
3. **An international arbitration tribunal independently established the fraud.** In 2018, a Bilateral Investment Treaty arbitration panel—including an arbitrator appointed by Ecuador (the “BIT Tribunal”)—unanimously made the same findings of fraud, bribery and corruption. [Chevron Corp. v. Ecuador](#), PCA Case No. 2009-23, Track II Award (Aug. 30, 2018) (“BIT Award”). The BIT Tribunal found that “the circumstantial and other evidence adduced in this arbitration is overwhelming. Short of a signed confession by the miscreants . . . the evidence establishing ‘ghostwriting’ in this arbitration ‘must be the most thorough documentary, video, and testimonial proof of fraud ever put before an arbitral tribunal.’” [BIT Award at ¶ 8.54](#).
4. **Donziger used the organizations and individuals listed in the Report as part of his pressure campaign against Chevron.** Donziger “sought to pressure Chevron by causing third parties to act on his misrepresentations.” [Chevron Corp. v. Donziger](#), 974 F. Supp. 2d 362, 584 (S.D.N.Y. 2014). For example, the New York District court found that “Hinton, Lehane, Soltani, and others at Amazon Watch became important figures in Donziger’s pressure campaign against Chevron” and “Donziger not only controlled the content of Amazon Watch press releases pertaining to the litigation, he drafted also complaints that Amazon Watch submitted to the SEC and memoranda to be sent to elected

officials regarding Chevron.” [Chevron Corp. v. Donziger, 974 F. Supp. 2d 362, 405 \(S.D.N.Y. 2014\)](#). Similarly, the court found that “Donziger fed DiNapoli and Cuomo the same misrepresentations he was feeding the press. And he sought to use their influence, both as public officials and in the case of the Comptroller as a major Chevron stockholder, to ‘increase the leverage and increase the cost [to] Chevron.’” [Chevron Corp. v. Donziger, 974 F. Supp. 2d 362, 404, 585 \(S.D.N.Y. 2014\)](#).

5. **Donziger’s “egregious professional misconduct” resulted in his disbarment.** In 2020, the New York Appellate Division disbarred Donziger for “egregious professional misconduct, namely, corruption of a court expert and ghostwriting his report, obstruction of justice, witness tampering, and judicial coercion, and bribery which he steadfastly refuses to acknowledge and shows no remorse for.” [Matter of Donziger, 186 A.D.3d 27, 30 \(2020\)](#). In May 2021, the New York Court of Appeals denied Donziger’s attempt to appeal. The U.S. Supreme Court rejected his attempt to seek certiorari.
6. **Donziger has been held in civil contempt, and convicted of criminal contempt, for defying court orders and the RICO Judgment.** In March 2021, the Second Circuit affirmed all but one of Judge Kaplan’s many findings of civil contempt, most of which resulted from Donziger’s attempts to profit from his fraud and cover up his misconduct. The Second Circuit found “that Donziger acted in contempt of the Injunction that resulted from the RICO Judgment in numerous ways.” [Chevron Corp. v. Donziger, 990 F.3d 191, 213 \(2d Cir. 2021\)](#). The Court noted that, for the most part, Donziger did “not even attempt to challenge the district court’s findings.” *Id.* Donziger did not appeal the district court’s order that he turn over his electronic devices, and in fact appealed only the contempt finding regarding how he could get paid. *Id.* at 200 n.4 (“Donziger challenges the contempt finding only as to his alleged profiting and monetizing of the Ecuadorian Judgment. Indeed, he expressly admits that he has not addressed any other ‘lingering civil contempts’,” including “violating a court order to provide forensic experts access to certain electronically stored information.”). There is no question that Donziger refused to comply with multiple orders from the district court. And, as noted, Donziger did *not* appeal the orders requiring him to produce his electronic devices to the Second Circuit.

In August 2019, Judge Kaplan filed an Order to Show Cause charging Donziger with six counts of criminal contempt for his violations of court orders and the RICO judgment, as provided for in Federal Rule of Criminal Procedure 42. Chevron had no role in the court’s decision to file these charges. Chevron did not initiate the criminal contempt and was not a party to it. After a week-long trial, on July 26, 2021, Judge Loretta A. Preska convicted Donziger on all six counts in a 241-page opinion. [United States v. Donziger, 2021 WL 3141893, at *86 \(S.D.N.Y. July 26, 2021\)](#). Judge Preska found that Donziger tried to “take the law into his own hands” and “repeatedly and willfully def[ie]d Judge Kaplan’s orders.” *Id.* On June 22, 2022, the Second Circuit affirmed Donziger’s criminal conviction: “Donziger does not deny that he repeatedly refused to obey court orders over a period of years. The district court’s findings of fact and conclusions of law describe Donziger’s behavior as an “extensive and continuous laundry list of past violations of [the district court’s] orders” and as “years of noncompliance.” [United States v. Donziger, No. 21-2486 \(June 22, 2022\)](#), at 29-30. Donziger filed a petition for a writ of certiorari before the U.S. Supreme Court on September 20, 2022, which is currently

pending. Donziger's cert petition does not challenge any of the misconduct for which he was found civilly liable or criminally convicted.

The above definitively demonstrates that Chevron's litigation against Mr. Donziger and other members of his conspiracy is a story of corrupt profiteering by a disbarred and discredited former U.S. lawyer, and is in no way, shape, or form a meritless SLAPP suit or an attempt to silence Chevron's critics. Instead, Chevron's actions are about enforcing the rule of law and holding Mr. Donziger accountable for his own bad acts. Mr. Donziger's troubles are entirely of his own making.