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Thursday, October 17, 2013 Last Update: 7:35 AM PT



## Pollution Evidence Seeps Into Chevron Fraud Trial

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MANHATTAN (CN) - A scientist who first tagged Chevron with billions in liabilities for rainforest contamination and is now testifying for the oil giant told the court about his "toxic tour" of the Amazon.

David Russell, the head of the environmental consulting firm Global Environmental Operations, started out as the lead scientific witness against the company in 2003.

That year, trial started against Chevron in Lago Agrio, Ecuador, where Chevron's predecessor Texaco drilled from 1972 to 1990. Russell began his assignment by performing what he described as a cursory visual inspection of 45 open oil pits during a four-day "toxic tour" of the Amazon. He said that he whizzed by some of the pits in a van going between 40 and 50 mph, and examined others by tossing a rock into the oil and listening to the gurgling sound it made before sinking. He said that he did not take any soil or water samples, and that he did not have access to environmental data.

After drawing up his observations in the Hotel Lago, he arrived at a cost-estimate of more than \$6 billion. He called the figure Thursday a S.W.A.G., or a "Scientific Wild Ass Guess." Two years into the case, Russell quit after a falling out with Steven Donziger, who was then the lead attorney on the lawsuit representing residents of the Ecuadorean rainforest, and publicly disavowed the estimate.

Nevertheless, the Lago Agrio court slapped Chevron with a much higher \$19 billion judgment in 2011, the largest environmental award ever secured.

Russell testified in Manhattan on Wednesday as Chevron tries to have a federal judge condemn the Ecuadorean verdict as a fraud procured by skewed science and corrupt courts.

The company is also fighting to exclude any evidence that would make it seem liable for environmental and public health damage to the Ecuadorean rainforest. It insisted that this issue was irrelevant to their claims that Donziger and his associates bribed judges, corrupted scientific reports, and spearheaded a campaign to pressure a settlement through a political and media offensive.

Zoe Littlepage, a Texas-based lawyer now representing Donziger, protested that it would be unfair to keep the evidence of the pollution out of a trial when Chevron called Russell to testify that his report was "wildly inaccurate" and had "no scientific data to back it up."

U.S. District Judge Lewis Kaplan, who is hearing the case without a jury, allowed Littlepage to question the witness about such evidence. With that brief ruling for the bench, the judge allowed Donziger's legal team to open the door to an issue that it was never previously clear they would be allowed to present at trial.

Russell's direct examination, submitted via a deposition that Chevron prepared and he signed, makes that evidence appear to be very thin.

"While I was working on the estimate in the Hotel Lago, Donziger told me that he wanted a 'really big number,' and he needed a 'really big number' for purposes of 'putting pressure' on Chevron to settle the litigation," the deposition states. "In response, I told him that I would try to come up with the biggest possible cost estimate I could."

Littlepage's cross-examination uncovered a more nuanced picture.

Russell testified that he mostly sat alone in an empty ballroom of the Hotel Lago with notes and visual records of his so-called "toxic tour" and a copy of a book he wrote to perform calculations. He said that Donziger stopped in to check in on him a couple of times but never interfered with his work.

While Judge Kaplan characterized Russell's visual inspections as "eyeballing it," the scientist said that he could make rough determinations based on the color, viscosity and appearance of the pits. He recalled stepping on one covered with leaves and vegetation and hearing a "squishy" sound, "like stepping on the soft surface of a sponge, only a very big sponge," and taken down rough measurements of its size.

On the second day of his testimony Thursday, Russell stood by the remarks he made in a 2003 interview with the Wall Street Journal that the hundreds of oil pits spotting the Amazon had a scale "larger than the Chernobyl disaster."

He added that he had been referring to the landmass of the affected area rather than the gravity of the pollution. There were between 600 and 700 open oil pits in the Oriente region of the rainforest, and the number could be as high as 900, Russell estimated. He told the paper that decontamination would dwarf any other project ever taken, adding on the witness stand that the remark may no longer be true after the Fukushima disaster.

Without repudiating those comments, Russell added that he was uncomfortable with how Donziger's publicists used them to trumpet reports of the "Amazon's Chernobyl." The scientist said that he eventually told Donziger to "drop it" because radioactivity and oil contamination were not a proper comparison, and he grew frustrated that Donziger would not fund soil and water testing needed to turn his "guesstimate" to an "estimate." He told the lawyer, "A cost estimate is not a trivial matter," in an email dated Dec. 12, 2004.

In addition to worrying about his professional reputation, Russell said that he grew angry that Donziger did not pay him more than \$113,000 that he was owed. He quit two years into the job, sued Donziger, and collected a settlement. Their relationship became "poor, bordering on hostile" in 2005, he said.

That year, he started sending emails to his former adversary, Chevron scientist Sara McMillen. One message from that November informed her of a report by the Alexis Group, with whom he arranged to provide soil samples. He told McMillen that "the data appear authentic," and the report discussed a cheaper method of oil remediation. He explained in court that the method he recommended in his original estimate for Donziger involved digging up, transporting and incinerating petroleum, whereas the new study recommended a cheaper "bio-remediation" technique involving the addition of enzymes and bacteria to neutralize and attack the pollution. He offered in that email to provide a "revised cost estimate" for Chevron.

The next year, Russell began sending "cease-and-desist" letters to Donziger and Amazon Watch, a nonprofit that Chevron calls a co-conspirator, to stop using his \$6 billion estimate. He said that Donziger ignored two of his letters and continued citing the figure in press releases for months.

More tips to his former adversary at Chevron followed. Russell said he wrote in an August 2006 email to McMillen relating information about a Polish study that he believed could be helpful to Chevron. He wrote "this falls into the category of CYA," which he called a "term of art" for "cover your ass."

Judge Kaplan interjected, "Which is a high art form in our society," to laughter in the court.

Reed Brodsky, a Chevron lawyer known as a former prosecutor for the largest insider-trading scheme in U.S. history, highlighted far less friendly emails between Russell and Donziger during redirect. In one Oct. 12, 2004, email that Russell had titled "misquoting me is not a good

idea," the scientist chastised Donziger for allegedly misrepresenting him as accusing Chevron of acting with "evil intent" in sending samples to a U.S. laboratory.

A Nov. 4, 2004, message informed Donziger that the compounds BTEX, a form of benzene, and GRO, a type of gasoline were found.

Russell wrote that these chemicals were "more indicative of Petroecuador," a state-run company that Chevron blames for the pollution. This is because the elements do not tend to last long in the Amazon's tropical climate, and Texaco left the area in 1990, the scientist testified.

Donziger's team contends that Texaco provided the infrastructure that Petroecuador uses, and thus deserves a share of its liabilities.

Kaplan appeared intrigued about the issue and asked several questions to Russell about the compounds after both parties finished their examinations, perhaps signaling that the issue is likely to arise again in the trial, which is expected to last three or more weeks. The court then recessed for lunch before reconvening for testimony by McMillen, Russell's former adversary turned correspondent.

Lawyers for Donziger and the rainforest residents have objected to the courtroom protocol of taking direct examination testimony from witnesses by deposition. The lawyers must later lodge objections to the portions they think the court should strike as inadmissible. Though Judge Kaplan refused to change this procedure, he added earlier this week that the first of such depositions included arguments that did not comply with the rules of evidence.

In her colorful, 37-page deposition, McMillen briefly recounts her professional relationship with Russell but mostly takes aim at a report from the scientific expert appointed by the Lago Agrio court. Chevron says this expert, Richard Cabrera, was supposed to be independent but filled his report with passages ghostwritten by Stratus Consultants, a Colorado-based firm that filled Russell's shoes years later.

Like Russell, Stratus executives also have turned against Donziger to testify for Chevron. They are expected to take the stand in the coming weeks, at which time more details of the science investigating the state of the Amazon may come to light.

Chevron had McMillen investigate Stratus, and she describes her findings in the deposition.

"I almost fell out of my chair," McMillen said. "Stratus not only drafted the Cabrera report, but 'cleaned and sanitized' the document in an attempt to hide its involvement."

So far, only the draft depositions have been made publicly available, and it is unclear which of the statements by Chevron witnesses will remain in the record.

Meanwhile, Donziger's lawyers have long argued that the Cabrera report is a red herring because the judgment against Chevron states that the Ecuadorean judge did not consider it.

Witness testimony continues on Monday with Robert Leonard, a professor of linguistics. He is expected to analyze the Cabrera report's relation to the Ecuadorean judgment.

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