

The Amazon Chernobyl

Ross Welcome to Renegade Inc. The catastrophe dubbed the Amazon Chernobyl is probably the biggest oil disaster you've never heard of. Between 1964 and 1992, the oil company Texaco, later acquired by Chevron, was allegedly responsible for dumping over 30 billion gallons of toxic waste and crude oil into the Amazon rainforest in Ecuador. The impact on local communities has been devastating, destroying livelihoods and causing a spike in cancer and birth defects.

Ross Steven Donziger was the lead U.S. attorney for the indigenous plaintiffs of Ecuador in a class action that began in 1993. In February 2011, an Ecuadorian court issued a historic ruling ordering Chevron Texaco to pay almost 10 billion dollars. Chevron considered the ruling illegitimate and inapplicable and then moved all their assets out of Ecuador. In the same year, they filed a civil racketeering suit in New York City against the lawyer, Steven Donziger, which is where the plot thickens. The judge assigned to the case was U.S. District Judge Lewis Kaplan. And in 2014, he ruled that the judgement in Ecuador was invalid, claiming Donziger had achieved the result through, quote, "fraud, bribery and corruption". In 2020, Donziger was disbarred in New York, but not in the District of Columbia, where he is also a bar member. He denies all the allegations and appealed the verdict, considering the attack on his law licence to be politically motivated in retaliation for his successful human rights work in Ecuador. Before we speak to Steven, it's important to note that as part of the appeals process, Judge Kaplan ordered him to surrender his computer, phones and other electronic devices to Chevron. Donziger refused and appealed the order, arguing that this would violate the attorney-client privilege. Whilst his appeal against the order was pending, Judge Kaplan charged him with six counts of criminal contempt of court. Mr. Donziger is currently under house arrest in his apartment in New York. His trial has been postponed several times and is now scheduled for May the 10th. To date, the Ecuadorian plaintiffs have not received any compensation from Chevron for the Amazon Chernobyl.

Ross Steven Donziger, thank you very much for joining us here on Renegade Inc.

Steven Donziger Thank you for having me.

Ross Looking at your case and reading the case notes and looking at the story that surrounds it, to put it bluntly, it makes the Erin Brockovich story look like a tame episode of Judge Judy. Can you tell a UK audience the facts around the story and how you are sitting in Manhattan at the moment under house arrest?

Steven Donziger Sure. Thank you for the opportunity. You know, in a nutshell, this case concerns the world's worst oil related disaster on Earth. Not enough people have heard about. It happened in Ecuador, in the Amazon rainforest starting in the mid 1960s when an American company called Texaco, now Chevron, went into this pristine rainforest and secured the rights from the military government to drill over an enormous fifteen hundred square mile area of rainforest where several indigenous groups were living and had been living prosperously for millennia. And what Texaco now, Chevron, then proceeded to do was grotesque and, in our opinion, criminal. They designed a system of oil extraction that had as its fundamental feature, the systematic discharge on a daily basis of millions of gallons of

cancer-causing toxic waste into rivers and streams that the local communities relied on for their drinking water, for their bathing, for their fishing, for their very survival. And over a period of time, many people died of cancer. They continued to die. There's a thousand open air toxic waste pits that Chevron built that run their cancer-causing effluent into rivers and streams to this day. Chevron left Ecuador in the early 1990s and we filed a lawsuit. I'm a lawyer. A group of us filed a lawsuit on behalf of the communities that were affected. And in a nutshell, over many years, we ended up winning the lawsuit in Ecuadorian courts where Chevron had insisted the trial take place and where Chevron had accepted jurisdiction. As the evidence mounted against the company they knew they would lose. They started attacking Ecuador's court system. They started attacking the lawyers who brought the case, including me. They attacked community leaders. And in a nutshell, we won the case big. There's about a ten billion dollar judgement, which, by the way, that might sound like a lot, it's a modest number compared to the magnitude of the damages. It's a fraction, for example, of what British Petroleum has paid for its Deepwater Horizon disaster in the United States. But in any event, it's a sizeable number. And then Chevron sued me back in US courts where I live here in New York. They named as defendants all the community leaders, other lawyers, scientific consultants. And they ran what was essentially a show trial without a jury, presided over by a judge who's a former tobacco industry lawyer who would not look at any of the evidence from the Ecuador case, would not look at the voluminous scientific evidence to back the judgement in Ecuador, which has been affirmed by multiple appellate courts. And he found, based on a paid witness - Chevron paid a witness two million dollars - that I orchestrated the bribery of the trial judge in Ecuador ordered to win the case, which is something that's completely false. It's been rejected by twenty nine different appellate judges in Ecuador and Canada who have looked at it. But it was used to attack me and tried to block enforcement of the judgement against Chevron's assets. And as part of that process, Chevron demanded that I turn over my computer and cellphone to the company so they could spy on our operations and our various enforcement actions. My ethical obligations, my legal obligations, prevented me from doing that. So I appealed Judge Lewis Kaplan's order. It's still under appeal. And while it was under appeal, he charged me with criminal contempt of court and had me locked up in my house where I've been for now 16 months at the time of this interview. So in our view, this is a politically motivated corporate attack by a major oil company and a judge who is sympathetic and wants to punish me and send an intimidating message to all human rights lawyers and advocates who want to take on the fossil fuel industry.

Ross You mentioned Judge Kaplan. He has publicly stated that he feels that "Chevron is a company of considerable importance to our economy that employs thousands all over the world, that supplies a group of commodities, gasoline, heating oil, other fuels and lubricants on which every one of us depends every single day." Judge Kaplan is a former corporate lawyer turned judge. Is it the case that he has a soft spot for the corporate world? Is that fair to say?

Steven Donziger I think it is. I mean, look, judges come in all shapes and sizes. I mean, my complaint is not that I think a judge should absolutely agree with our position. I mean, what judges need to do is do their jobs correctly, which is be neutral, look at the facts, apply the law and make sound decisions that are backed by reason. And I think in this case, Judge Kaplan let his emotions get the best of him. For example, in our case, first of all, he never should have taken the case when Chevron sued me. I mean, the case had been in Ecuador and those were the courts where Chevron had wanted the case to be decided and they decided it

against Chevron. And a corporation shouldn't be able to get a second bite of the apple by going back to its home country forest and finding a sympathetic judge to somehow come up with a ruling that attacks a high court judgement from another country, a sovereign country, which is what Judge Kaplan did. So, you know, Judge Kaplan, for example, wouldn't look at the Ecuador judgement. He wouldn't look at the evidence in Ecuador. He just decided he was going to exclude all that, which clearly supported the judgement against Chevron. And he was just going to rule based on evidence from a guy named Alberto Guerra, who's a witness from Ecuador to whom Chevron paid two million dollars to come up and lie about the supposed bribe. I mean, no judge in his or her right mind should only look at a teeny part of the evidence, in this case, what we believe is corrupt evidence. It has been rejected by twenty nine appellate judges in Ecuador and Canada. So, yes, I do think Judge Kaplan had a soft spot. I think the quote you read as an example of that. I mean, what's the point of that quote? To say that just because a company is so big and important, it shouldn't be allowed to be held accountable for human rights violations? I mean, you know, it's preposterous. It hurts personally. But what it really is, is a broader attack on the whole idea of human rights, lawyer and corporate accountability and environmental justice. And without this work, we're not going to have a planet. I mean, you know, being able to do this kind of accountability work, to hold the polluters accountable, is critically important to the survival of the planet. So, you know, this case is a flash point on some of the most important issues facing our world today. And I do believe Judge Kaplan should be removed from the case and it should be reassigned to a neutral judge, for sure.

Ross Another renowned human rights lawyer, Martin Garbus, says: "This is the first case I have seen where a judge let a private corporation take over the prosecutorial power of the U.S. government to silence a critic." That's quite a statement.

Steven Donziger Let me tell you what I think Mr. Garbus means by that. By the way, for those who don't know, Marty Garbus has practiced law for 60 years. He's represented Nelson Mandela, Cesar Chavez, Daniel Ellsberg, some of the most important figures who fought for social justice in the world and US history. Marty is an incredible lawyer. So for him to say that means something. And what he means, I think, is this. When Judge Kaplan charged me criminally, you know, the charging power in a civilised society comes from a prosecutor's office. In Latin America, it's called the Fiscal. In England, you have prosecutors who bring cases. What happened in this case is Kaplan had, in my view, such a personal vendetta against me, he charged me as a judge. Judges don't charge crimes. They preside over cases. So when Kaplan charged me, he was obligated by law to take his contempt charges to the normal federal prosecutor's office called the SDNY. That's the office in New York. And that office notably rejected his charges. They refused to prosecute me. And I believe they did so because I believe these charges are baseless. Like no one's ever been charged with criminal contempt for what I did, which was basically protecting my clients and challenging orders that I believe were lawful on appeal. So when they rejected the charges, Kaplan then appointed a private law firm to prosecute me in the name of the government. So I'm not being prosecuted by the government, I've been prosecuted privately in the name of the government. The law firm is called Seward and Kissel, and they have none other than Chevron as a client, as well as many major oil and gas entities. So when Marty says this is the first time I've seen this. No one has seen this. You know that I am being prosecuted in the name of the government by Chevron, by Chevron lawyers from a Chevron law firm, and they have locked me up. Now, I believe that not only would a normal prosecutor never have charged this case

because we know that they rejected it, but even if they had, they wouldn't lock me up. I mean, there's not a single person in America charged with what's called a misdemeanour offence. It's a petty crime with a maximum sentence of six months, which is my criminal contempt. It's a petty misdemeanour offence who has spent even a minute or a day in any kind of pre-trial confinement. And I've been here 16 months.

Ross Steven, in that first half, at a very high level, you've really descriptively shown us what's going on with you, your case, your house arrest, and the fact that it could be the case that the judiciary in the US looks favourably at corporate interests over the interests of human rights and the environment. When you were first told that house arrest was going to happen, Judge Loretta Preska enacted the proceedings, what was your reaction, having won the lawsuit, almost 10 billion dollars in Ecuador, what was your reaction to her judgement that you were going to be incarcerated in your own apartment?

Steven Donziger I was shocked. I really did not expect it. That kind of thing had never happened before in our country's history. But it became very clear to me that day in court, which is August 6, 2019, that this was just a setup and there was nothing, at least on that day, that I could do about it. I did not have a lawyer. I mean, I walked in to ask for more time because this was a very sudden kind of thing. And I had to hire a lawyer to help me. And even without a lawyer, she just slapped an ankle bracelet on me, imposed an eight hundred thousand dollar bond, which, by the way, is highly unusual for a misdemeanour case. I'd say it's unprecedented as well. So it's like the double whammy. And I almost ended up in jail because I couldn't get the eight hundred thousand dollars to post for various reasons. And ultimately a supporter of mine posted it. And that allowed me the ability to stay in my home with an ankle bracelet and be detained here as opposed to an actual prison.

Ross When it comes to Chevron and their strategy, what is their strategy? Because when you start to read about what's happened to you, it's clear that there's a sort of punishment angle here that goes on. I mean, just some of the things, they've hired private investigators to track you. They've created publications to smear you. You've been disbarred, your bank accounts have been frozen. You have been prohibited from earning money. Is this all part of the demonisation or character assassination, which ultimately comes down to strategic play, which is, play the man, not the ball?

Steven Donziger Well, look, you know, if you're a corporation that's caught stone-cold dumping billions of gallons of cancer-causing toxic waste into the Amazon and killing off indigenous nations, and you don't want to meet your responsibilities, you're going to look for some way to distract people's attention from your crime. And I think that Chevron, when they looked at the landscape of the case, they determined that their best bet to avoid paying this judgement was to make it about the lawyers and specifically about me. So they made up evidence and paid this witness to tell this tall lie in the US court. They found the right judge. I mean, this wasn't an accident, didn't just happen to land on Judge Kaplan's courtroom, they directed it to him and they launched a campaign laundered through the credibility of the federal judiciary to demonise me. We have an email from 2009, actually, from a Chevron consultant who admits - and this a whole bunch of Chevron officials saying our LT, meaning long-term, strategy is to demonise Donziger. This is back in 2009. So this strategy was created over a decade ago and has been implemented for the last decade. The other thing they said is they threatened the indigenous peoples of Ecuador with what they call a lifetime of

litigation if they didn't drop the case. So if you have their lifetime of litigation threat, you have their demonisation threat, and that's exactly what we're watching happen now as it plays out.

Ross I just want to take you back to one point you made, which is you said a witness lied. Can you give me evidence, factual evidence, that this witness lied in your case?

Steven Donziger Absolutely. He admitted it himself but the fundamental facts are these. He came into court and alleged that I had bribed a trial judge or approved a bribe with a trial judge in Ecuador. He offered no corroborating evidence to that at all. They had all my emails. There is no email communication between me and the judge. I had never met the judge. I had no contact with the judge. It was all just a big fat lie. And we have evidence that this witness had been coached for 53 consecutive days by Chevron's lawyers prior to his testimony. Subsequent to his testimony, in a separate arbitration proceeding, he testified under oath that he had lied repeatedly before Judge Kaplan when he accused me of approving a bribe.

Ross And what was the outcome of that admission?

Steven Donziger Well, nothing. I mean, because Judge Kaplan, even though we submitted it to the court in New York, Judge Kaplan never changed his opinion. He never did anything. But what it did do is it buttressed the judgements out of these other courts who have rejected Judge Kaplan's decision. And it's very important for people to understand that Judge Kaplan rejected all the evidence - 64,000 chemical sampling results and over 100 technical evidentiary reports that we had submitted in the Ecuador case as evidence against Chevron. He wouldn't even look at it, yet accepted testimony from this one man who had been paid massive sums of money from Chevron. That's not in dispute. Chevron gave us the contract, moved him to the United States, moved his family to the United States. He had been making 500 dollars a month in Ecuador. He was paid 12,000 dollars a month in the United States by Chevron to basically be a professional witness. He was given health insurance, a car. His income taxes were paid and he was given independent lawyers that Chevron paid for. And we believe this is still going on today years later. He's still living here on Chevron's payroll. That kind of witness has no credibility.

Ross If the strategy from the corporate entity here, which is Chevron, is to demonise you and thus create a chilling effect, similar with Julian Assange in Belmarsh here in the UK, create a chilling effect, so anybody else who thinks to go and do human rights work at the level that you're working at thinks twice about getting involved because they know ultimately the price that they pay isn't dissimilar to the price that you're paying. If that is the strategy, these slap lawsuits, we haven't heard about them in the UK. What is a slap lawsuit and why are they in existence?

Steven Donziger The slap lawsuit is a lawsuit filed by a powerful entity like a corporation, in this case Chevron, or some governmental entity or some wealthy individual that's designed not to litigate any claims really on the merits or it's not designed to get justice, it's designed to use the lawsuit itself as a weapon of attack, to silence advocacy. In other words, if somebody is advocating in their community against a big company that's, say, polluting a creek or a stream and they get hit with a lawsuit, they have no money to hire a lawyer and they're facing bankruptcy from this lawsuit, they're likely to just stop advocating. And the company knows

they can never get money from that person. I mean, I don't have any money and they've taken it all. But I've never had much to begin with. I'm a human rights lawyer. So why would a giant oil company that has 250 billion US in revenue, annually, want to sue someone with no money? Well, it's not about the money. It's not about justice. It's about trying to abuse the legal process to deny people free speech rights. That's a slap lawsuit.

Video clip (Dan Gretton) One of the things that really I found troubling in the nineties, particularly after the Shell - Saro-Wiwa stuff happened. You may remember there was this term that started being used in about '96/'97, Corporate Social Responsibility. And it's still used, you know. The more and more I think about it, I think that there's a huge problem. And I think we need to move totally away from the idea of Corporate Social Responsibility because what that does is it essentially lets corporations off the hook. If you think about it, in a large organisation like an oil company, if you have a CSR department that takes away almost all of your responsibility if you're out in the field and in Nigeria because you think, oh, well, the CSR people that there doing the ethics. We don't have to worry about it.

Video clip (Ross) So what you want to replace it with?

Video clip (Dan Gretton) .I want to replace it with, 'I think people should be held individually accountable for the actions they take in corporations'. I mean, I've got minutes of Shell meetings at the time that Saro-Wiwa was executed. I know the names of all of those people who were at those meetings the day before. And those people one day will be in The Hague. Those people one day will be being held individually responsible for their corporate crimes. And that's absolutely as it should be.

Ross So Steven, here Dan is referring to the Ken Saro-Wiwa case. He was the leader of the resistance struggle against the devastation that Shell was causing in Nigeria at the time in the 90s. Shell effectively worked with the Nigerian military dictatorship to frame Saro-Wiwa and he was executed in 1995. When we look at the parallels between what's happened there in the 90s and what's happened in Ecuador, which you brought to light, there are a fair few bits of crossover here, aren't there?

Steven Donziger I think this is a playbook used by corporations in the fossil fuel industry that has been around for a long time. I mean, it has different characteristics depending on the situation. It's harder to execute a guy like me in New York than to do what was done to Ken Saro-Wiwa in Nigeria in the mid 90s, but, you know, the effect, or I should say, the objective is the same, which is to intimidate people into not doing this kind of work and to really obtain some degree of impunity for corporate human rights violators.

Ross People hearing this now want to put pressure on Chevron, and others, to say you have to stop doing this immediately. How do they begin to do that? How do they begin to get their voice heard?

Steven Donziger Well, you know, this is a battle that is probably the most important battle in the world today, which is about how do we deal with the fossil fuel industry so we can save our planet and create a sustainable economy. This case is a one flashpoint in this larger battle. But make no mistake, I mean, legal cases like this where lawyers and campaigners try to hold fossil fuel companies accountable for their pollution are absolutely critical. It's important

people rally to the cause and do whatever they can in whatever way they can in their communities and more broadly, I think in terms of our case, we need help. This is a paradigmatic case. This is the most important corporate accountability case in the world today. It's the most important climate justice litigation over pollution in the world today. So we ask for people to join our campaign. There's a website called donzigerdefense.com. So we need people's help. The Ecuadorian communities need the support of the world. Please go on that website. You can do one of three things. You can see articles and learn more about the case. You can donate funds to our defence fund, which pays for some of the legal expenses as well as our living expenses so me and my family can survive this because I can't work and they took all my money. And you can also sign up to our campaign where we send out periodic emails asking people to take action. Separately, there's a website called makechevroncleanup.com and that's the website maintained by the affected communities in Ecuador and the United States. It's in English and you can also sign up for the campaign and take action via that website.

Ross Finally, I mentioned Erin Brockovich right at the top. Who would you like to direct the eight part series of this tale? Because let's face it, you can't get more cinematic, televisual, dramatic and David and Goliath than this?

Steven Donziger That's a good question. You know, it's interesting you ask that. I mean, I think this story needs to get out any way it can. I don't want people to think like this is like a Hollywood thing. And I know you sort of asked that question tongue in cheek, but I do think the story needs to get out. I do think the story needs to be told. It's an epic story about struggle by indigenous peoples and the team of international lawyers in a unit that's never been seen before. It's about incredibly courageous donors who have funded this case. It's an extraordinary story. It does deserve a wider telling and I think it would make a great script. The director, I'll sort of leave that to the experts. There's a lot of great directors I admire who I think would do a great job.

Ross Steven Donziger, thank you very much for your time.

Steven Donziger Thank you so much for having me. Really appreciate it.