



Media Relations in High-Profile Litigation: *Chevron Corp. v. Donziger*

These observations should assist counsel and clients facing similar tactics in the context of high-stakes, high-profile litigation

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Editor's Note: This is the third of a three-part series from Gibson Dunn, outside counsel for Chevron Corp. in the case Chevron Corp. v. Donziger. Part one and part two can be found on InsideCounsel.com. For the other side of the story, Mr. Donziger, the defendant in the case, published a rebuttal on InsideCounsel.com last week.

With social media, the 24-hour news cycle, and the ubiquity of phones, tablets and other devices, a tidal wave of information is available instantaneously on every topic imaginable. These innovations have amplified the significance for lawyers and clients of remaining sensitive to the public discourse intertwined with a high-profile case. Chevron Corp.'s recent victory in its RICO lawsuit offers several lessons about the use of media in connection with litigation, and how to counteract a fabricated, well-orchestrated and well-funded public narrative being spun by the other side.

The main defendant in Chevron's RICO suit was New York lawyer Steven Donziger, whose overarching strategy involved disparaging Chevron in the media and before government officials, in order to force Chevron to pay him and his clients a multi-billion dollar settlement for an environmental case in Ecuador that lacked basis in law or fact. According to the Southern District of New York, Donziger's "extensive public relations and media campaign has been part of his strategy from early days, and it continues." But Chevron was ultimately able to expose Donziger's fraud with abundant evidence, prevail in the RICO trial earlier this year, and turn the tide of public opinion.

The following observations should assist counsel and clients facing similar tactics in the context of high-stakes, high-profile litigation.

Do not advance a demonstrably false narrative

Based on the existence of oil contamination in Ecuador (attributable to the Republic of Ecuador's state-owned oil company), Donziger and others seeking to extort Chevron concocted a false but superficially compelling narrative — a large U.S. energy company operating abroad and exploiting the indigenous Amazonian people. They served their fictional story up to the media, including reputable news outlets such as Vanity Fair and 60 Minutes. Well-intentioned reporters relied on these misrepresentations and published articles that contained demonstrable falsehoods.

For example, various sources referred to a multi-billion dollar damages report issued by the "independent court-appointed expert." As Chevron proved at trial, however, this key report had actually been ghostwritten by Donziger and his team, who secretly paid off the court-appointed expert while touting his "independence" to the media and government agencies. These corrupt tactics were among the bases of Donziger's eventual RICO liability. And Donziger's manipulation of journalists has destroyed his credibility and led even sympathetic media outlets to abandon his cause.

Avoid exploiting sympathizers

To expand the reach and bolster the appeal of their false narrative, Donziger and his co-conspirators partnered with (and sometimes funded) NGOs, especially those focused on environmental issues. They also convinced various scientists, experts, and law firms to lend their credibility to advance the scheme (some did so unknowingly). A number of well-meaning celebrities jumped on the bandwagon as well.

Then the shocking evidence of fraud, bribery and other ille-

gal conduct came to light. These revelations left an indelible stain on the various organizations and individuals associated with Donziger's cause. Many of his former allies provided some of the most persuasive evidence against him at trial. For example, employees of Stratus Consulting — whom Donziger engaged to ghostwrite the supposedly "independent court-appointed expert's" damages report — later "disavow[ed] any and all findings and conclusions" in that report and have since expressed "deep[] regret" concerning their involvement with Donziger.

Be consistent in messaging

An effective media campaign must be consistent with the arguments being made inside the courtroom — counsel should assume that adversaries, and the court, are paying attention. For instance, while Donziger and his team received tens of millions of dollars in funding, they sought to gain leverage throughout the RICO case on the basis that they were supposedly insolvent. When Donziger's counsel moved to withdraw, claiming that he was not being paid, Chevron pointed out that a member of Donziger's legal team had denied to the press that funds had "dried up," while another admitted that they were "scaling back in New York" because they regarded the RICO case as a "distraction." Chevron pointed these inconsistencies out to the court, which noted in its ruling that Donziger's insolvency claims were baseless: "[T]his is a case in which those who control whatever money is available to finance litigation efforts have decided not to pay these lawyers."

Documentaries can be "crude"

As part of their pressure campaign against Chevron, Donziger and his collaborators commissioned and helped finance a documentary of the Ecuadorian litigation from their point of view: *Crude*. The goal was to disseminate their fictional account and promote their cause to a broader audience. But Donziger's strategy backfired when Chevron detected a scene in which a member of the "independent" court-appointed expert's team was present at the plaintiffs' internal strategy meeting.

This smoking-gun evidence of collusion helped Chevron gain access to more than 600 hours of outtakes — which contained proof of Donziger and his team's illicit strategy. For instance, when one of Donziger's environmental consultants remarked that there was no evidence of contamination spreading beyond the source, Donziger snapped: "This is Ecuador, okay You can say whatever you want and at the end of the day, there's a thousand people around the courthouse, you're going to get what you want.... [T]his is all for the Court just a bunch of smoke and mirrors and bullshit.... We have enough, to get money, to win."

Be proactive, especially when the evidence speaks for itself

Initially during the Ecuador litigation, Chevron found itself playing defense against the drumbeat of false accu-

sations coming from Donziger and his media consultants. Eventually, though, Chevron amassed a mountain of evidence to disprove the bogus claims and shed light on the fraud. In addition to its legal strategy, the company turned the tables with a proactive media strategy aimed at correcting the record and ensuring public access to the full and accurate story. It disseminated the truth via a website and blog devoted to the litigation, where the public and media could easily obtain important evidence and case filings. The company also implemented a focused social media effort intended to counter each of the falsehoods that Donziger weaved together into his false narrative. These strategies proved successful — enabling the public and media to learn the facts, view the evidence, and make up their own minds.

By letting the powerful evidence speak for itself, Chevron was able to change the public discourse from Donziger's account — which had attracted supporters, journalists, and even funders for more than a decade — to the truth about a racketeer with a law degree who corrupted a lawsuit in order to extort a multi-billion dollar payoff from Chevron.

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