



Investment fund: We were defrauded in suit against Chevron

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A fund that finances litigation claims it was deceived by the plaintiffs suing Chevron in Lago Agrio, Ecuador.

By Roger Parloff

FORTUNE -- Burford Capital, a \$300 million publicly-traded fund that invests in lawsuits, has accused representatives of the Ecuadorians who are suing Chevron in Lago Agrio, Ecuador, of having defrauded the firm into investing in their case two years ago.

The accusation -- not previously reported -- was made in a September 2011 letter Burford sent to leaders of the environmental suit, including U.S. lawyer Steven Donziger. Burford turned the letter over to Chevron in December, and Chevron filed it Monday in federal court in Manhattan, where it is pursuing a civil racketeering case against Donziger and other team members.



"We believe that you and particularly your U.S. representatives engaged in a multi-month scheme to deceive and defraud in order to secure desperately needed funding," the letter states, "all the while concealing material information and misrepresenting critical facts in the fear that we would have walked away had we known the true state of affairs." (Read the entire letter below)

(*Fortune* wrote a feature story, **Have you got a piece of this lawsuit?**, about Burford's investment in the controversial case in late May 2011, about four months before Burford wrote its newly revealed letter.)

On October 31, 2010, Burford gave the plaintiffs \$4 million in financing as the first tranche in what was planned to become a \$15 million investment. In exchange it received a 1.5% stake of any recovery, which was to rise to a 5.5% stake upon full funding.

Burford's investment was initially secret, as most litigation financings are. But its involvement emerged in December 2010 when Chevron deposed Donziger in New York. That same month Burford recovered its full investment by selling a \$4 million "participation" to another investor, while retaining an upside interest in the case, it later disclosed in filings to shareholders.

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In February 2011, Chevron sued Donziger and other members of the plaintiffs team under the Racketeer Influenced and Corrupt Organizations (RICO) act, alleging that they had engaged in acts amounting to criminal extortion, mail and wire fraud, money laundering, obstruction of justice, and witness tampering. Burford was not named as a defendant in the RICO case, but it was identified as a "co-conspirator." (Donziger and those defendants who have answered the charges -- some of the Ecuadorian defendants defaulted or could not be served -- have denied wrongdoing.)

Two weeks later, the provincial court in Lago Agrio handed down an \$18.2 billion judgment for the plaintiffs, which has since been bumped up to more than \$19 billion.

Sometime in early 2011, Burford decided not to provide further funding. In the recently disclosed September 2011 letter, Burford says evidence that emerged after it invested revealed that Donziger and others lied to Burford about the depths of its secret collaboration with a court-appointed special master, Richard Cabrera, and the extent to which they feared that their conduct was illegal even under Ecuadorian law. The three-page, single-spaced letter cites, among other things, passages from Donziger's depositions, held in December 2010 and January 2011, in which he, in their view, effectively "admitted that plaintiffs had in fact ghost written the entire report and had worked very hard to cover that up." They also emphasized the emergence in February 2011, for the first time, of an email that one of Donziger's Ecuadorian co-counsel had written to him nine months earlier, warning that if the plaintiffs' American experts were forced to turn over documents revealing their role in writing Cabrera's report -- which eventually did happen -- "all of us, your attorneys, might go to jail."

Burford also cites the plaintiff team's failure to disclose a letter written to its Ecuadorian leaders in August 2010 by Joseph Kohn of Kohn Swift & Graf, the Philadelphia law firm that served as the suit's chief funder from 2003 until 2009. Burford protested that in it Kohn had "criticized Mr. Donziger for having misled him in virtually the same way we have been misled."

Burford closes: "It is now clear that you were willing to do and say anything to attract new funding."

In a statement, Karen Hinton, a spokesperson for the Ecuadorian plaintiffs team, writes: "Burford's letter is itself nothing more than a fraudulent attempt to evade its funding obligations to the Ecuadorians. As a result of improper pressure by Chevron, Burford tried to remove itself from the case yet maintain its equity interest in the Ecuador judgment at the same time. Chevron's false allegations of fraud against the Ecuadorians and their counsel always were disclosed to Burford and were available through a simple Google search of public documents."

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Christopher Bogart, Burford's CEO, responds: "Ms. Hinton's statement is nonsense, but there is no point served in a public debate on these matters. Burford has addressed the status of its investment in its public filings and has no further substantive comment." (Bogart was once Executive Vice President & General Counsel of Time Warner, *Fortune's* publisher's parent company. He left in 2003.)

Two attorneys for Donziger did not return emails.

This past July, in the RICO case, U.S. District Judge Lewis Kaplan **ruled** that the plaintiffs' Ecuadorian case was "unquestionably... tainted" by fraud, though he reserved decision on whether the judgment was totally unenforceable in the U.S. as a consequence. (The plaintiffs have repeatedly accused Kaplan of bias, and a federal appeals court has rejected those claims.)

In addition to the alleged Cabrera fraud, Chevron (**CVX**) has also presented "mounds of evidence," a Florida federal judge wrote last June, that the \$18.2 billion Ecuadorian judgment itself was written with the clandestine assistance of the plaintiffs lawyers. See, for instance, **here** and **here**. In his July ruling, Judge Kaplan found such evidence "troublesome," but withheld judgment pending the presentation of additional evidence.



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