

• select Print from the File menu above

LITIGATION • Oct. 11, 2010

Malicious Prosecution Suit Ends

By Rebecca Beyer

Daily Journal Staff Writer

SAN FRANCISCO - A federal judge dismissed the single narrow claim that remained in Chevron Corp.'s malicious prosecution lawsuit against an attorney who initiated the massive environmental lawsuit the company faces in Ecuador.

U.S. District Judge Claudia Wilken's Friday order brings Chevron's case, which stemmed from a separate personal injury lawsuit the attorney filed against Chevron, to an end. *Chevron Corp. v. Cristóbal Bonifaz*, 09-5371.

The San Ramon-based energy company filed the malicious prosecution suit against Cristóbal Bonifaz last fall, nearly two years after the personal injury lawsuit he filed on behalf of nine Ecuadoreans plaintiffs was dismissed. The plaintiffs claimed their cancers were linked to toxins left in the Amazon region of Ecuador where Chevron's predecessor, Texaco Inc., drilled for oil. After some of the plaintiffs admitted they did not have cancer, the case fell apart, and U.S. District Judge William H. Alsup sanctioned Bonifaz \$45,000 for failing to uncover the truth about his plaintiffs before filing suit.

On Friday, Wilken ruled that Alsup's sanctions order was the proper remedy.

"Public policy in California favors deterring meritless litigation by way of sanctions, in lieu" of malicious prosecution lawsuits, Wilken wrote.

Allowing Chevron's suit to proceed, the judge wrote, would "have a chilling effect on attorneys and litigants prosecuting arguably meritorious actions ... and encourage prevailing defendants to file malicious prosecution suits."

Bonifaz' attorney, Jacqueline S. Corley, of Kerr & Wagstaffe in San Francisco, said the order, which follows a prior order dismissing the rest of Chevron's claims, "completes the vindication" of her client.

Chevron officials said in a statement that the company is "evaluating its options for further review of the case."

"Although it is true that Bonifaz was sanctioned by the court for his misconduct, Chevron respectfully disagrees with Judge Wilken's conclusion that Bonifaz should not also be held liable for the damage his misconduct caused," Kent Robertson, a Chevron spokesman, said.

One of Chevron's attorneys, Scott A. Edelman, of Gibson, Dunn & Crutcher in Los Angeles, added that Alsup found the personal injury case was "likely a smaller piece of some larger scheme against" and manufactured "for reasons other than to seek a recovery on these plaintiffs' behalf."

In a case with similar allegations of corruption on both sides, Edelman is part of a team that headed up Dole Food Co.'s successful effort to dismiss Nicaraguan banana workers claims that a pesticide the

company used made them sterile on grounds that the plaintiffs' attorneys committed fraud. On Thursday, one of the attorneys representing the plaintiffs in that case filed a complaint against Edelman and others with the State Bar, alleging Edelman bribed a witness in the Dole investigation.

Alsup's 2007 findings in Bonifaz' case against Chevron were exactly what Chevron contended in its malicious prosecution suit, arguing Bonifaz was using the personal injury lawsuit to bolster the environmental litigation pending in Ecuador, in which Ecuadoreans claim Chevron should be responsible for cleaning up from the drilling.

Wilken's order follows her May ruling dismissing most of Chevron's case on Bonifaz' anti-SLAPP motion. The judge allowed Chevron to proceed with limited discovery on whether Bonifaz found out one plaintiff did not have cancer after he filed the lawsuit but before it was dismissed.

"To substantiate its malicious prosecution claim, Chevron must present sufficient evidence to support an inference that Bonifaz subsequently learned that [the plaintiff] did not in fact have cancer and failed timely to dismiss her claims," Wilken wrote. "It does not do so."

Corley said the order was proof her client brought the original lawsuit "in good faith" and it is a "setback" for Chevron, which has gone on an all-out legal offensive against the Ecuadorean case and those involved in an effort to prove the plaintiffs are trying to extort money from the company.

Massachusetts-based Bonifaz, who was born in Ecuador, was one of the original attorneys behind the environmental contamination lawsuit Chevron faces. He has not been involved in that case since 2006.

rebecca_beyer@dailyjournal.com

© 2010 Daily Journal Corporation. All rights reserved.