

Legal Ethics

Sued By Chevron for \$4M, Lawyer Scores Interim SLAPP Suit Victory in Malicious Prosecution Case

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By [Martha Neil](#)

A plaintiff's lawyer sued for \$4 million in damages by Chevron has scored a significant interim victory in the malicious prosecution case, winning a court ruling eliminating a large portion of the company's complaint on the grounds that it amounts to a strategic lawsuit against public participation under California law.

A federal judge in San Francisco yesterday [struck](#) (PDF) much of the oil company's complaint against attorney Cristobal Bonifaz, prior to any discovery, and his lawyer anticipates that the SLAPP ruling by U.S. District Judge Claudia Wilken is likely to result in an award of legal fees.

However, attorney [Scott Edelman](#) of Gibson Dunn, who is representing Chevron, says the case is far from over. "We're very much in the game here," he tells the ABA Journal, contending that opposing counsel's anticipation of an attorney fee award against the oil company is "presumptuous" and "getting way ahead of the court."

The malicious prosecution case continues, albeit with fewer allegations in the complaint to support it, he says. And, as to the SLAPP ruling, "I think it sets a very high bar for any plaintiff to be able to meet at the preliminary pleading stage," he continues. "We have great respect for the court but we have to differ with the court on this one."

The malicious prosecution case against Bonifaz relates to continuing, hard-fought litigation in which he is no longer involved over \$27 billion in claimed environmental damage in the Amazon rainforest in Ecuador. It was allegedly caused by Texaco, which is now owned by Chevron. The oil company, which is seeking dismissal of the ongoing litigation, says it has been denied due process.

Bonifaz is represented by [Jacqueline Scott Corley](#) of Kerr & Wagstaffe. She tells the ABA Journal that her client apologized and paid sanctions, under Rule 11 of the Federal Rules of Civil Procedure, after the underlying case brought he brought in federal court in San Francisco on behalf of nine Ecuadorians fell apart. But his conduct was not malicious prosecution, as the judge recognized, Corley states.

An Oct. 16, 2007 [order](#) (PDF) by U.S. District Judge William Alsup sanctioned Bonifaz \$45,000 for bringing baseless claims, without adequate investigation, on behalf of three Ecuadorian plaintiffs. It follows an earlier Aug. 3, 2007 [order](#) (PDF) which grants Chevron's motion for summary judgment dismissing their claims but reserves a decision concerning sanctions.

In Wilken's order yesterday dismissing much of the case against Bonifaz, she says that malicious prosecution cases are disfavored. Plus, she continues, the sanctions order against the Massachusetts practitioner in the underlying case shows only that he was sanctioned, not why, since the findings of another tribunal are inadmissible hearsay.

"This leaves the question of whether Rule 11 sanctions, on their own, suffice as evidence that Bonifaz lacked probable cause" to pursue the underlying case, the judge writes. "They do not."

While the sanctions show that Bonifaz and his colleagues "made improper representations to the court," she explains, they don't establish what he knew when he initiated the underlying case or that he knew the plaintiffs' claims were legally untenable.

"Certainly, the levy of sanctions suggests deficient conduct by Bonifaz. However, Chevron stretches the meaning of the sanctions too far. It does not necessarily follow that Bonifaz lacked probable cause to initiate the suit."

Corley says she doesn't know how much her client's legal fees will total, but assumes the tally may be considerably less than Chevron has spent. "It's pretty much been me against Jones Day and Gibson Dunn," she says.