

Judge Guts Chevron's Suit Against Lawyer Massachusetts

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 By **Kate Moser**
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SAN FRANCISCO — A federal judge threw out (.pdf) eight of nine claims in Chevron's malicious prosecution case against a Massachusetts lawyer on Wednesday.

But while she granted most of the lawyer's anti-SLAPP motion, U.S. District Judge Claudia Wilken of Oakland left the door open a crack for Chevron to try to prove one claim that Cristobal Bonifaz maliciously sued the energy giant.

"She has set a very high bar for any plaintiff bringing a malicious prosecution case," said Chevron's attorney, Scott Edelman, a partner in the Los Angeles office of Gibson, Dunn & Crutcher.

Chevron's suit stemmed from an action Bonifaz brought in 2006 on behalf of nine Ecuadoreans against the energy giant and two of its subsidiaries. The plaintiffs alleged the company's oil exploration and production in Ecuador had made them sick.

The plaintiffs didn't prevail, and Chevron sued Bonifaz in November. The company is seeking \$4 million in special damages.

In court filings, Bonifaz's attorneys at San Francisco's Kerr & Wagstaffe have said Chevron sued the 75-year-old semi-retired attorney, who operates his solo practice from a barn in rural Massachusetts, because he "had the audacity to dedicate the last 15 years of his legal career to legally assisting the poor, indigenous people of the Ecuadorean Amazon."

Kerr & Wagstaffe partner Jacqueline Scott Corley heralded Wednesday's decision as a vindication of her client.

"Mr. Bonifaz, as we showed in our motion, is a respected human rights lawyer with a long career," Corley said. "This helps remove a cloud over that career. It's unfortunate that Chevron dragged his name through the mud."

In its malicious prosecution complaint, Chevron theorized that Bonifaz filed suit after a group of plaintiffs in a separate case replaced him as their lawyer. Bonifaz filed the new complaint, Chevron alleged, "in an attempt to gain media attention and leverage as a key component of his efforts to extort money from Chevron," adding that he was "maliciously motivated by a desire to retain or enhance his financial interest" in the other litigation.

Edelman held to that theory on Thursday.

"The lawsuit continues," Edelman said. "Under no circumstances is this a vindication of Mr. Bonifaz. The case that he brought remains what it always was — an effort to extort Chevron to try to settle purportedly multibillion-dollar claims brought in Ecuador."

Wilken deferred deciding on one claim, allowing Chevron 60 days of discovery on the "discrete, narrow issue" of whether Bonifaz pursued a claim on behalf of one Ecuadorean plaintiff even though he knew that she didn't actually have cancer. The woman had admitted she wasn't sick to Bonifaz's co-counsel in Ecuador.

"If Bonifaz knew of her admission and did not dismiss her claims, malice on his part could be inferred," Wilken wrote in her order in *Chevron v. Bonifaz*, 09-05371.



Jacqueline Scott Corley, Kerr Wagstaffe partner
 Image: Jason Doiy/The Recorder

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Corley said she was "confident" that the discovery "will not support Chevron's allegations and that this claim, too, will be dismissed."

Because of Wilken's ruling, Chevron is on the hook for Bonifaz's attorneys' fees, Corley said.

Edelman said the issue of attorneys' fees isn't so clear. "That is something that will have to be sorted out," he said.

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