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Jackpot Justice Goes Global

By [Vince Vitkowsky](#)

From distant court rooms in Latin America to court houses here in the United States, a disturbing trend is emerging. A new iron triangle of trial lawyers, misguided activist NGOs, and anti-American governments with weak judicial systems is forming. Each acts in its own interests, and in the case of NGOs, their interests are often noble. But the cumulative effect is to create a dynamic that can be used to shake down American companies.

In the U.S., busy courts are asked to hear cases that can be described as "torts-for-import." Trial lawyers find plaintiffs in foreign lands to assert claims. Evidence from faraway lands can be hard to refute. At times, the "evidence" is simply manufactured, with complicity from local officials.

For example, Dole Foods faced baseless charges in Nicaragua by plaintiffs who claimed they became sterile after exposure to pesticides when working in the company's banana fields. Although plaintiffs received some favorable judgments against Dole in Nicaragua, when the case was heard in the U.S., the real evidence proved that most of the plaintiffs never worked in Dole's fields, nor were they in fact sterile. The U.S. judge tossed the case out as "fraud on the court" and "blatant extortion." She scolded the plaintiffs' lawyers, and having heard evidence suggesting they were conspiring with corrupt Nicaraguan judges and local officials, she asked federal prosecutors to investigate.

To avoid U.S. courts and their requirements of real evidence, some attorneys prefer litigation in other countries, in which the rule of law is weak and manufactured evidence is more readily accepted. An example is the case against Chevron in Ecuador, which arises from oil production activities carried out by Texaco (which Chevron bought in 2001) in the Amazon region of Ecuador from the 1960's to the early 1990's.

Texaco ended its work in Ecuador in 1992 and conducted a \$40 million clean-up of the region. After Texaco ceased operations, it was given a full release by the government. Subsequently, Ecuador enacted a new statute which gave private claimants a basis to seek to eviscerate that release.

A federal court in the U.S. soundly dismissed the plaintiffs' allegations against Chevron in a related case, and fined the attorney for fabricating claims of alleged cancer victims. But the plaintiffs have found a far friendlier forum in Ecuador. Reports by the International Bar

Association and the U.S. State Department have pointed out that Ecuador's judicial system has little independence, and that the rule of law there is weak.

Ecuador's President, Raphael Correa, has demonstrated a pattern of seizing the assets of foreign companies operating within his borders, firing judges who don't bow to his political pressure, and raiding media outlets not supportive of his political agenda. Correa has publicly declared his support for the plaintiffs in the Chevron case. (Think of the outrage that would follow if President Obama had taken the unprecedented step of publicly choosing sides in a U.S. civil lawsuit involving a foreign corporation.) Correa's government has indicted two of Chevron's local defense lawyers. So it is not surprising that the presiding judge in the Chevron case has already displayed his sympathies for the plaintiffs in numerous media interviews.

It is also telling that the plaintiffs ignore the real culprit - the state run oil company PetroEcuador, which has one of the worst environmental records in Latin America. It continued to operate in the region after Texaco left, and it logged an astonishing 1,415 separate oil spills from 2000 to 2008. Yet no trial lawyers have rushed to sue PetroEcuador, which is a much more protected target in Ecuador than a large American business.

Where the rule of law is respected, cases like those against Dole Foods and Chevron don't stand a chance. Where it is not, plaintiffs are free to seek jackpot justice in the global litigation lottery. Even when the American companies ultimately win, their reputations are smeared. And even when they win, their defense costs alone can run tens or hundreds of millions of dollars.

It is critical that legal experts, diplomats and policymakers understand what is happening. If steps are not taken now to help protect American businesses operating abroad, more trial lawyers will find international venues to manipulate, and more companies will be victimized. In the end, American consumers and taxpayers will pay the price.

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