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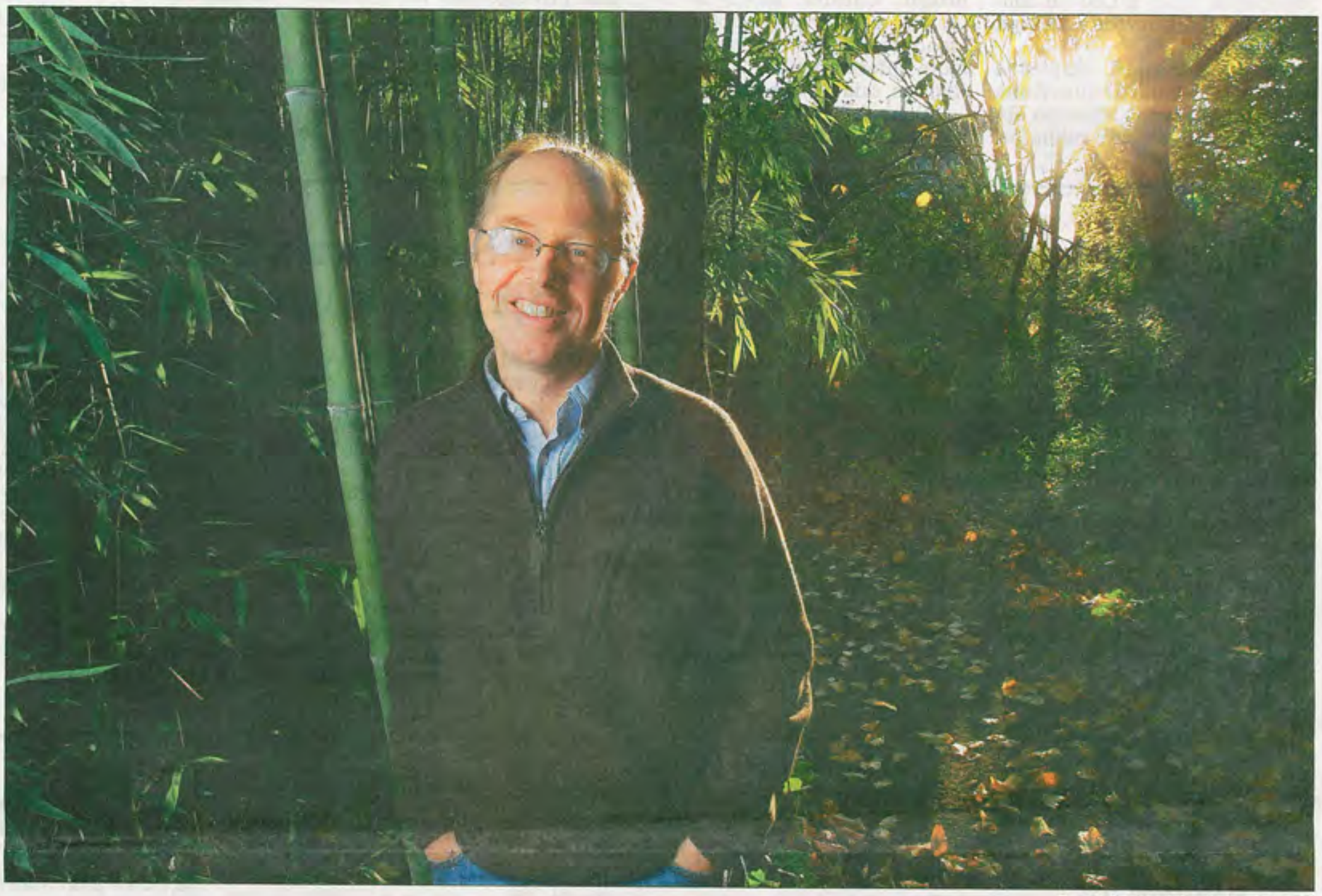
Inside

Calendar **B2**
For The Record **B2**
Obituaries **B3**



BRIAN DAVIES/*The Register-Guard*

Bern Johnson *is director of Eugene-based Environmental Law Alliance Worldwide, or E-LAW. A judge faulted Chevron's legal challenges toward the organization after the filing of a legal brief in an Ecuador case involving damage to the Amazon rain forest.*

Environmental group wins judgment

A judge awards Eugene-based E-LAW $33,000 in compensation in a legal challenge involving Chevron

BY KAREN MCCOWAN
The Register-Guard

A small local environmental organization has successfully stared down the world's 10th-largest corporation — Chevron — in a legal battle.

U.S. District Court Magistrate Judge Thomas Coffin ruled last week that Chevron has made "unduly burdensome" demands for potential evidence from Eugene-based E-LAW — the Environmental Law Alliance Worldwide.

The judge also found that "harassment" seemed at least part of Chevron's motive for serving E-LAW Executive Director Bern Johnson with a legal order that required him to submit to a day of questioning under oath by Chevron lawyers.

Coffin ordered the energy company to pay E-LAW $32,945 as compensation for the time the nonprofit organization spent responding to Chevron's requests for the questioning and for thousands of pages of documents.

Chevron contends that the information could help it appeal an Ecuadoran judge's February order that it pay $18 billion to poor residents of Ecuador's Amazon rain forest harmed by environmental contamination from Texaco's operation of an oil-drilling consortium there in the 1970s and 1980s. Texaco is now a subsidiary of Chevron, which is seeking to overturn the judgment in Ecuador's court of appeals and in an international arbitration tribunal at The Hague, Netherlands.

Chevron also filed a U.S. District Court racketeering lawsuit against some of the Ecuadoran plaintiffs and their attorneys, accusing them of fraud and of using the Ecuadoran lawsuit to extort money from Chevron. A federal appeals court in New York has put the racketeering case on hold, however, while it

Turn to **LAW,** *Page B2*

Law: Hosted Eucadoran attorney in Eugene

Continued from Page B1

decides if U.S. federal courts have jurisdiction in the foreign case.

E-LAW, which employs just 12 people — many of them part-time — is not a party in any of the cases, however.

Coffin ruled that Chevron's legal requests of E-LAW violated federal rules by "imposing undue burden or expense" on non-parties when seeking information from them.

Johnson this week called the ruling gratifying, given that "ultimately E-LAW is working to strengthen the rule of law around the world." E-LAW's only involvement in the Ecuador case, he said, was filing a "friend of the court" brief explaining how environmental class-action cases had been handled by other courts around the world. E-LAW also hosted one of the plaintiffs' Ecuadoran attorneys, Pablo Fajardo, during a 10-week fellowship to study English at the University of Oregon in 2009, Johnson said.

"Blatant misconduct"

In court, Chevron responded to Coffin's ruling by filing a motion Monday to voluntarily dismiss its effort to compel further information from E-LAW in connection with Chevron's foreign court actions.

In an e-mailed response to Register-Guard questions Wednesday, however, Chevron appeared to fault Coffin's ruling for focusing only on whether Chevron met its legal requirement to avoid unduly burdening E-LAW.

"What's been lost in the most recent conversation is that E-LAW is advocating on behalf of those who have repeatedly engaged in blatant misconduct," Chevron representative Justin Higgs said. "As well, some of the most egregious examples of transgressions occurred when E-LAW was hosting one of the plaintiffs' lawyers for a fellowship in Eugene, Oregon."

That comment rankled Johnson.

E-LAW spent "hundreds of hours to locate thousands of documents in response to Chevron subpoenas," he said, while still struggling to "do the work that E-LAW does, helping communities and advocates around the world protect the environment."

As Coffin's ruling noted, E-LAW then provided Chevron more than 2,000 pages of documents, plus a log listing other documents protected by attorney-client privilege. Finally, Johnson submitted to a day of questions under oath, the judge wrote, "part of which consisted of Chevron going through (a) list of 300-plus people, name by name," asking Johnson if he was familiar with each.

After receiving all that information, Chevron found no evidence of wrongdoing and on Monday withdrew its demand for more information from E-LAW, Johnson said Wednesday.

"Don't follow that by suggesting that E-LAW did something wrong," he said of Higgs' e-mailed comments Wednesday.

Asked to elaborate on what "egregious transgression" Fajardo allegedly committed here, Higgs said Fajardo continued to work with other plaintiffs' attorneys via e-mail while in Eugene on what Chevron called "their scheme to draft the fraudulent Ecuador trial court judgment." Some of what he wrote appeared "word-for-word" in the $18.2 billion Ecuadoran judgment, Higgs said.

Documentary footage

Chevron is committed to "holding the plaintiffs' representatives accountable" for alleged misconduct including "fabricating official expert reports, manufacturing fraudulent evidence, making corrupt payments and colluding with court officials and ghostwriting part or all of the verdict," he wrote.

The company has based its appeals and its racketeering suit in part on outtakes it obtained from the makers of "Crude," a documentary film about the lawsuit and the impact of oil contamination on the Amazon region and its residents. Chevron won legal access to the footage, despite the filmmaker's assertion of journalistic privilege and the plaintiffs' assertions of attorney-client privilege, by citing a scene in the film showing some plaintiffs in a focus group with a purportedly neutral court expert.

Chevron also responded to Coffin's ruling by saying that eight other federal court judges "found that the plaintiffs' representatives have engaged in fraud" — an assertion disputed by E-LAW's attorney, Charlie Tebbutt.

"There has been no trial on this case as to whether fraud has occurred," he said. In the eight rulings cited by Higgs, U.S. District Court judges ruled that there was enough evidence that "these things might have occurred" to compel certain individuals to comply with Chevron subpoenas, Tebbutt said.

"Chevron's spin-masters have been living in a fantasy that fraud against them is the reason for the $18 billion judgment against them, rather than the pollution that they and their predecessors caused in villages in the Amazon headwaters," the Eugene lawyer said. He reiterated that E-LAW "played no role" in the trial of the case in Ecuador, beyond submitting its "friend of the court" brief.

The pressure from Chevron will not chill future efforts by the 22-year-old organization, Johnson said.

"E-LAW works to protect communities and the environment from environmental abuses," he explained. "That work is going to make powerful corporations angry. Sometimes they are going to come after us. A lot of our partners around the world have been put in jail and threatened. We understand that comes with the territory."