

Ecuadorian Villagers v. Chevron
**Canada Enforcement Action – Status Report by Counsel for
the Villagers**
September 2016

Significance of Canadian Enforcement Action

**In September 2015, Canada’s Supreme Court [granted Ecuadorian indigenous and farmer villagers a resounding victory](#) against Chevron. The Court denied Chevron’s attempt to block the enforcement action in Canada of the \$9.5 billion Ecuadorian environmental judgment against the oil company.

**The enforcement action now returns to a trial court in Toronto for resolution, with the stakes even higher for the oil giant. The villagers will try to execute their judgment against the oil company’s assets in Canada to finally resolve the 22-year-old legal dispute.

**This is the first time in history that indigenous groups have won a significant environmental judgment against a major oil company. Chevron refuses to pay despite promises to abide by the judgment when the case was moved from the United States to Ecuador in 2001 at the request of the company; during the trial in Ecuador (2001 to 2013), Chevron sold off all of its assets in the country to evade paying the judgment.

**The outcome of the enforcement action in Canada will have significant implications not only for the affected Ecuadorian indigenous groups, but also for communities worldwide that have been victimized by corporate polluters and who seek redress in the courts. Chevron uses various “tricks” and legal technicalities to argue it should not owe even one dollar to its victims, despite having lost the case in court in the country where it wanted the trial held.

**The villagers are counting on Canada’s courts to uphold the rule of law – and to stand for the principle that the law should apply equally to all, including one of the most powerful corporations in the world.

Motions Hearing Begins September 12

**The first important phase of the enforcement process, a motions hearing, will begin at 10 a.m. on September 12 in the Superior Court of Justice in Toronto, located at 330 University Avenue, 8th Floor. Both sides have very specific goals for this hearing:

**The Ecuadorians will try to knock out all of Chevron's "fraud" defenses to enforcement on the grounds they already were litigated and rejected in Ecuador, by three layers of courts including that country's Supreme Court, in the forum where the oil company itself demanded the proceeding be held. Chevron, consistent with its two-decade strategy of delay, will ask the Canadian trial court to re-litigate the entire Ecuador trial as well as miscellaneous collateral attacks on the Ecuadorian judgment that were either not raised when and where they should have been in Ecuador, or were expressly rejected by Ecuadorian courts.

**To be clear, all of Chevron's so-called allegations regarding fraud are absolutely disputed by the Ecuadorians and their counsel – contrary to what Chevron and U.S. courts have dishonestly tried to claim. These "facts" also have been rejected in whole or in part by no fewer than 18 separate appellate judges around the world, including the entire Supreme Courts of Ecuador and Canada. In fact, the Ecuadorians plan to show that Chevron's fraud allegations are simply a smokescreen used by the company to cover up, and distract attention from, its own environmental crimes and fraud in Ecuador.

**Separately, Chevron is asking the Canadian trial court to let it hide behind a technicality and rule that even if the villagers win the enforcement trial, the company's assets in Canada cannot be seized because they are held by a wholly-owned subsidiary.

**The issue of subsidiary liability is critically important. It has implications for corporate accountability campaigns the world over. If Chevron's legal theory holds, it will be virtually impossible for victims of human rights abuses anywhere in the world to collect compensation for harms caused by major oil and mining companies. That partially explains why Chevron is fighting so hard, having used at least [60 different law firms and 2,000 legal personnel](#) against the villagers.

**The ruling on the motions hearing by the Canadian trial court, expected in a few weeks, will determine the scope and nature of the judgment enforcement trial against Chevron that will be held in the same court in 2017.

Important New Evidence

**At the motions hearing, lawyers for the villagers will present new evidence from Chevron that demonstrates the company's wholly-owned subsidiary in Canada does not operate independently of its corporate parent in the United States. The concept of an "independent" subsidiary is one of Chevron's most critical arguments as it attempts to protect its Canadian assets from seizure.

**The new evidence comes from extensive document production and sworn depositions of Chevron executives, as ordered by the Canadian trial court. Much of

this evidence will be made public following Chevron's recent settlement in favor of the villagers related to the lifting of a confidentiality order that had been obtained by the company.

Case Trending Against Chevron

Chevron has suffered a number of key setbacks in recent years, despite its scorched earth strategy. Some of these setbacks include:

**Chevron lost the trial in Ecuador in the forum of its choice, based on [overwhelming scientific and other evidence](#); two separate appellate courts, including the country's Supreme Court, affirmed the decision.

**In an international arbitration action where Chevron is trying to get a taxpayer-funded bailout of its Ecuador liability from Ecuador's government, the company [lost a key plank](#) of its defense in a recent decision.

**In Canada, the Supreme Court [unanimously rejected](#) the company's attempt to create a new jurisdictional hurdle that would have blocked the villagers from proceeding.

**Chevron's evidence of "fraud" [has unraveled](#) in the last year, with the company's [key witness recanting most of his testimony](#) and admitting he was paid \$2 million by the company.

**A recently-disclosed [whistleblower video](#) shows Chevron scientists in Ecuador laughing at the company's pollution while devising strategies to hide it from the Ecuador court.

**A U.S. appellate court decision in favor of the company is [irrelevant to the Canada proceeding](#) and will not block the seizure of Chevron's assets around the world. The U.S. decision is based on fabricated facts, contradicts the findings of 18 other appellate judges, and essentially rubber-stamped the erroneous findings of an ideologically-motivated U.S. trial judge.

Undisputed Facts: Texaco and Chevron Continue to Cause Contamination

**There is no dispute as to the [underlying facts](#) of the disaster: Chevron has conceded – and courts have found – that the company (operating as Texaco) systematically and deliberately discharged billions of gallons of toxic production water into the waterways of the Ecuadorian Amazon where indigenous groups lived for millennia. The company also abandoned roughly 1,000 unlined waste pits filled with oil sludge that to this day contaminate soils and groundwater and continue to cause harm. [Cancer rates](#) in the area have skyrocketed, and thousands of people

have died or are threatened with imminent and grave harm as a result of the pollution.

**The bulk of Chevron's operations in Ecuador occurred between 1964 and 1992. Most of the damage was caused in the 1970s and 1980s, when the company consistently violated accepted oil industry practices by dumping its waste product directly into the environment. During the Ecuador trial, Chevron lawyer Adolfo Callejas argued that the Amazon rainforest where Chevron operated was really an "industrial zone" and that any health problems were the fault of the people for living there.

**The clean-up of what is now considered the world's worst oil-related catastrophe, the survival of the traditions of five indigenous groups, and the health and well being of tens of thousands of people in Ecuador now hangs in the balance with the enforcement of the judgment.

The Players in the Canadian Case

**The Ecuadorian villagers are represented by Alan Lenczner of Lenczner Slaght in Toronto and Kirk M. Baert from Koskie Minsky LLP. Mr. Lenczner is considered one of Canada's foremost litigators; he has handled more than 200 trials in his career.

**Chevron and its Canadian subsidiary are represented primarily by Larry Lowenstein from Osler Hoskin & Harcourt and Clarke Hunter of Norton Rose Fulbright.

** Patricio Salazar, an Ecuadorian lawyer who represents the main community-based organization in Ecuador (Amazon Defense Coalition, or FDA) that brought the lawsuit and is the beneficiary of the judgment, also will be attending. Other affected peoples from Ecuador might attend, pending approval of visas.

**Responsibility for Chevron's growing financial risk rests squarely on the shoulders of Chevron [CEO John Watson](#) and General Counsel R. Hewitt Pate. For several years, both Watson and Pate have authorized and carried out the company's scorched earth strategy against the villagers, spending an estimated \$2 billion and causing a [negative reaction among numerous major shareholders](#). Their jobs, not to mention their legacies, are possibly on the line with this case.

The Monetary Stakes

**With statutory interest under Canadian law running since 2012, the year the Ecuadorian enforcement action was filed, the environmental judgment against Chevron is now valued at \$12 billion and continues to grow at roughly \$275 million annually while Chevron fights enforcement.

**According to Chevron's own documentation and publicly available records, the company has an estimated \$15 to \$25 billion worth of assets in Canada, or more than enough to satisfy the entirety of the Ecuador judgment.

**Chevron's substantial assets in Canada include oil production in the Beaufort Sea and the Hibernia Field (offshore Newfoundland and Labrador); the Athabasca Oil Sands project in Alberta; and a refinery in British Columbia.

Background: The Underlying Ecuador Decision

**The Ecuador trial court, after eight years of proceedings, in 2011 ordered Chevron to clean up its extensive contamination and to fund clean water and medical relief for a class of 30,000 persons, including the members of five indigenous groups (the Cofan, Secoya, Siona, Huaranoi, and Quichua). Eight appellate judges at two levels of appeal in Ecuador have unanimously affirmed the trial court ruling. All of Chevron's claims of "fraud" were heard and rejected by three layers of courts, including the country's Supreme Court in a [unanimous 2013 decision](#).

**Locals call the damage the "Amazon Chernobyl" and experts believe it might be the worst oil-related catastrophe on the planet. In addition to the dumping of toxic waste and creation of the waste pits, Chevron also flared massive amounts of poisonous natural gas from hand-built towers. All of these practices were expressly forbidden by accepted international practices as well as by Chevron's own operations manual.

**As scientific evidence against it mounted in Ecuador, Chevron stripped all of its assets from the country in 2007. That move, combined with Chevron's refusal to pay the judgment, necessitated the filing of enforcement actions in Canada, Brazil, and Argentina.

Chevron Arrogance, Bad Faith, and Attempts to Buy Impunity

**Chevron has consistently shown bad faith and has tried to string out the case rather than address its legal and moral obligations to the people it harmed.

**After insisting the case be heard in Ecuador rather than the United States (where it was originally filed in 1993), Chevron started to attack Ecuador's court system once the evidence against it mounted. After Chevron lost, the company claimed its victims also should not be able to collect against Chevron's assets because they are held by wholly-owned subsidiaries. Under Chevron's [legal theory of corporate impunity](#), the villagers will never be able to collect a single dollar on their judgment anywhere in the world.

**Chevron lawyers and officials also have stepped all over themselves with ill-timed, arrogant, and even racist public comments about the villagers and their claims.

**A Chevron spokesman said in 2009 that the company would fight the Ecuadorian villagers “until hell freezes over and then we will fight it out on the ice.” Another Chevron lobbyist was quoted in the U.S. magazine Newsweek as saying in regard to the case, “We can’t let little countries screw around with big companies like this.” Chevron lawyer Doak Bishop once told a court in reference to the villagers: “The plaintiffs are irrelevant. They always were irrelevant.” Even one of Chevron’s Canadian lawyers, Clarke Hunter, got into the act in 2014 by telling Canada’s Supreme Court, “There is a danger in paying too much attention to fairness.” ([Here is a summary](#) of Chevron’s ten most offensive comments.)

**These sad statements reveal Chevron’s utter disregard for the humanity of its victims, and its lack of respect for court processes. In fact, Chevron’s actual strategy is not to litigate on the merits, but to distract attention from its own wrongdoing by delaying the proceedings and attacking lawyers for the villagers. The company admitted in a 2009 email that its “long term” strategy to win the case was to “demonize Donziger” – a reference to Steven Donziger, a U.S. legal advisor to the villagers who has been a driving force behind the case since its inception.

Collateral Attack

**Chevron’s resistance campaign has gone far beyond defensive litigation. It uses taxpayer-supported civil court systems worldwide to launch retaliatory attacks against its own victims and their lawyers, and uses disturbing extrajudicial intimidation and harassment techniques including corporate espionage, fabricated evidence, and threats against judges in Ecuador. Among the company’s “soft” targets: environmental groups like Amazon Watch, a filmmaker, and even bloggers.

**While one notorious U.S. trial judge (Lewis Kaplan) with financial ties to Chevron issued a “racketeering” judgment in the company’s favor, that decision came after a blatantly one-sided bench trial in which he refused to accept critical evidence offered by the defense and refused to consider Chevron’s environmental crimes at all. In the meantime, numerous other U.S., Canadian, and Ecuadorian judges – at least 18 in all – who actually heard all of the evidence have dismissed Chevron’s collateral attacks as abusive or otherwise have affirmed the findings against Chevron.

**The recent decision by the U.S. federal appellate court (the Second Circuit Court of Appeals) rubber-stamped Kaplan’s flawed factual findings. That decision is regrettable in that it shows just how far U.S. courts will bend over backwards to protect an “important” American company in trouble. But that decision does not

change the international enforcement calculus, nor does it mitigate the enormous risk faced by Chevron.

**U.S. courts simply ignored objective evidence that devastates Chevron's claims. This included a Chevron-sponsored [analysis of the Ecuadorian judge's computer](#) that proves the judge wrote the judgment against Chevron himself in chambers, contrary to Kaplan's findings. Both U.S. courts also ignored later testimony by Chevron's key witness, Alberto Guerra, expressly admitting that [he perjured himself](#) during Kaplan's proceeding.

**Canadian courts will engage in an analysis of the facts and the law independent of the U.S. courts.

Enforcing Foreign Judgments – A Matter of Routine

**Enforcing foreign judgments against those who refuse to pay is considered routine in the global economy. All countries, including Canada, have domestic laws governing this practice. That said, a Chevron spokesman has mocked Canadian courts for taking up the case of the Ecuadorians, calling the matter a "crook" and a "waste of time and money".

**Consistent with its strategy, Chevron is again seeking to delay and obstruct in Canada. More than four years after the villagers filed their enforcement action in Toronto, the company thus far has tied up the courts in technical arguments about jurisdiction and subsidiary liability.

Policy Issue Regarding Human Rights Victims

**While the legal battle will and should be decided according to established rules of Canadian law, there is a more profound challenge posed to the public, and to Chevron's consumers in particular. They must ask whether they will continue to tolerate a management team that engages in such abusive behavior – and whether they will look the other way when a company engages in egregious environmental abuses and human rights retaliation, as Chevron has shown it is willing to do under CEO Watson's leadership.

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