

Preliminary Fact Sheet On Damages In Ecuador Trial (Updated on April 2, 2008)

When was the damages claim submitted and can I get a copy?

The damages claim in the *Aguinda v. ChevronTexaco* case, currently on trial in Ecuador, was submitted this week by the court-appointed technical expert, Richard Cabrera. The report is more than 5,000 pages and is available for public viewing in the courthouse in Lago Agrio, Ecuador. Copies will be given to the parties once the judge completes the process of formally accepting the submission, which should happen within days. Once the plaintiffs receive a digital copy of the report, they will post it on the web (www.chevrontoxico.com and www.texacotoxico.org) and distribute hard copies of the executive summary to journalists. The materials in this Q&A document are based largely on a reading of the 60-page executive summary. The full report will take several days to carefully review and analyze.

What is the legal and historical significance of Chevron's case in Ecuador?

The *Aguinda* case represents the first time that indigenous groups and other rainforest dwellers have forced a large American oil company to subject itself to jurisdiction in their national courts for environmental damages. Chevron is largely responsible for this unprecedented situation. The lawsuit originally was filed in 1993 in U.S. federal court in New York. For several years, Chevron argued over the objections of the plaintiffs that the case should be tried in Ecuador because that court system was fair, impartial, and better able to hear the evidence. As a result, the case was sent to Ecuador but on the condition that Chevron consent to jurisdiction in that country, which Chevron did. Thus, by virtue of its previous stipulation, Chevron is bound by any judgment out of the Ecuador court system. The case is also significant because in dispute is responsibility for what experts believe is the largest oil-related environmental damage on the planet – one that threatens the existence of indigenous groups.

What is the damages claim, and when can we expect a final decision?

Trials dealing with technical evidence in Ecuador have three phases: an evidentiary phase with documents and witnesses, field inspections by the judge, and (if a party requests it) a final report by a qualified expert to help the court assess liability and damages. In the Chevron case, the plaintiffs asked for the final report and the court appointed Cabrera, a respected Ecuadorian geologist and environmental consultant, to conduct the work. Cabrera relied on a team of technical experts to help gather information, conduct chemical analyses of toxic contamination, and review tens of thousands of laboratory results and other documents that are part of the evidence. The report submitted is more than 5,000 pages and includes a review of 64,000 chemical sampling results, 80% of which were submitted by Chevron. It estimates damages to be between \$7 billion and \$16 billion, but it excludes several categories where the plaintiffs sought compensation.

The court will make the final decision on damages, although expert reports in the third phase of a trial generally receive substantial deference by judges in Ecuador. Both parties will be given a chance to respond to the report before written final arguments are submitted. The timing of a final judgment will depend on the court, but it should come in late 2008 or early 2009. The losing party will have a right to appeal to an intermediate court and then to Ecuador's Supreme Court.

What did the report conclude about the question of liability?

The report validates most of the assertions that the plaintiffs have been making for many years -- that Chevron created in Ecuador's Amazon an environmental disaster with extremely adverse impacts for public health, and that it did so deliberately to lower production costs. It found that Chevron's role as exclusive operator of a consortium was the "main cause" of the extensive contamination found in the region and that Chevron "operated ... with few or no environmental controls" in Ecuador. The expert reported that Chevron abandoned 916 open-air toxic waste pits in the jungle, into which the company dumped toxic drilling wastes that have leached into surrounding soils and groundwater. It also found that Chevron dumped billions of gallons of untreated toxic waste water into Amazon waterways. The report found that the concentrations of toxic hydrocarbons in the concession area are "many times higher than environmental clean-up standards in Ecuador and in other countries of the world." It concluded that Chevron's practices had caused "damage to the human population" including adverse health effects such as "cancer, death from cancer, [and] spontaneous abortions." The report found that the contamination is "widely corroborated by historical sampling that took place in years prior to the lawsuit." It also rejected Chevron's claim that it had cleaned up some of the waste pits, as the expert found high levels of hydrocarbons in those very pits. Finally, the report estimates 428 excess deaths from cancer for the region due to the impacts of the contamination -- although we believe this estimate may be conservative, as it does not take into account rapid population growth in the Amazon area of Ecuador since the lawsuit began in 1993.

What does the damages claim cover? Why is there a range of damages rather than a single figure?

The expert divided the damages into three primary categories. The first category includes costs to repair the environmental damage, such as the cleaning of toxins from soils and water and the provision of health care and clean water to the exposed population. It also includes funds to compensate indigenous groups for the particular impacts they have suffered, including loss of ancestral lands. The second category appears designed to compensate people for losses that have occurred between the time Chevron began operating and the time a remediation would be complete, such as deaths from cancer and loss of the value of the rainforest ecosystem. The losses for these two categories alone, which is considered the core of the case, is at least \$7.2 billion and as high as just over \$8 billion (the range in this area depends on different methods of calculating ecosystem losses). The third category, where damages are roughly \$8.3 billion, reflects the compounded value of the cost savings that benefited Chevron for failing to invest in

proper technology. The court must decide whether the latter category – called “unjust enrichment” in legal parlance -- will be added to the core damages, or seen as an alternative theory of damages. If the amount is added and the judge accepts the higher numbers, the total damages will be \$16.3 billion – an amount lower than Chevron’s profit last year.

Does the damages claim favor Chevron on any particular issues?

It does. While the expert report is a major setback to Chevron in terms of both liability and the amount of damages, entire categories of damages were excluded from the assessment. While the report found troubling levels of groundwater contamination, it did not include compensation to remediate groundwater which is a primary source of drinking water in the area. The expert also apparently rejected the stricter soil clean-up standard sought by the plaintiffs, a fact that lowers costs for cleaning areas around the wells and pits. We also believe the number of excess deaths from cancer is underestimated because the baseline data is from the early 1990s and does not take into account rapid population growth since then. Finally, the expert’s remediation plan falls well short of a complete restoration of the damages that we believe the plaintiffs are entitled to by Ecuadorian law. A complete restoration would now be impossible given the irreversible damage to the rainforest (largely due to the contamination) and the limits of clean-up technology. We believe one shortcoming is that the expert did not include damages to compensate Amazon residents for the damage that *can never be repaired* -- although the \$8.3 billion “unjust enrichment” component could be directed for this purpose.

Does Chevron have any basis to claim the Ecuador trial is unfair?

Chevron’s claim that the trial is unfair is a litigation tactic that derives from the realization that the evidence likely will compel a judgment against it. The reality is that the Ecuador court has made special efforts to accommodate Chevron, extending it due process rights not available to a typical defendant. Chevron has submitted more than 200,000 pages of documentary evidence, is responsible for generating 52,000 analytical results from soil and water samples, and has submitted thousands of motions to delay the proceedings for almost five years (after a previous 10-year jurisdictional battle in the U.S., as the case originally was filed on November 3, 1993 in federal court in New York). Since the case began in 1993, Chevron’s lawyers consistently have praised the fairness and impartiality of Ecuador’s justice system to convince various U.S. judges to keep the case out of U.S. courts. Chevron won the long battle over the location of the forum based on these representations, which is why the plaintiffs filed their claims in Ecuador. As the evidence is clear and the trial nears an end, potentially leading to a major adverse judgment, the company has shifted gears and with no basis tried to discredit the proceedings. If anything, the trial has been unfair to the thousands of plaintiffs who have been forced to stomach Chevron’s shifting and incomprehensible arguments in various courts that result in incessant delays.

Does Chevron have any ability to avoid paying any judgment against it?

Chevron's argument that it will not pay a judgment in Ecuador rests on extremely thin legal ground. It was Chevron that sought the trial in Ecuador over the objections of the plaintiffs, who wanted the case heard in the U.S. From 1993 through 2006, to avoid jurisdiction in the U.S., Chevron argued to four separate U.S. courts that the Ecuadorian judiciary is adequate, independent, impartial, and fair. These U.S. courts expressly found that Ecuador was an adequate and impartial forum, and as a condition of dismissal, Chevron stipulated that it would consent to jurisdiction in Ecuador. It is only now, after the evidence in the Lago matter is almost fully presented, that Chevron has started to argue Ecuador's courts are biased. Chevron's contradictory positions before different courts constitute a clear abuse of rights and likely will prevent it from being able to challenge any result from the Ecuador court even if there was a basis to do so, which there is not. Ultimately, Chevron will not decide whether it pays the judgment – a court of law will make that decision.

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