Concerns grow in Chevron-Ecuador suit

New York attorney general, analyst, investment fund critical of major's handling

New York—Momentum seems to be growing against Chevron in the 16-year-old case involving environmental damage allegedly left behind in Ecuador, days before the company's annual meeting and months before a verdict is expected in a case in which alleged damages assessed run as high as $27 billion.

Last week, New York City Office of the Comptroller and small investment firm Trillium Asset Management, with $800 million of assets under management, e-mailed Chevron shareholders asking them to support a shareholder resolution, Proposal 10, at the May 27 annual meeting that asks Chevron to identify the "policies and procedures that guide Chevron's assessment of host country laws and regulations with respect to their adequacy to protect human health, the environment and our company's reputation."

Amnesty International, an activist investor in Chevorn, co-sponsored the proposal, which said Chevron "has repeatedly been cited for practices that allegedly have caused environmental damage and harmed the health and welfare of local communities," and referred to ongoing litigation in Ecuador.

New York weighs in

Earlier this month, New York Attorney General Andrew Cuomo wrote Chevron, saying "this office has broad authority to investigate and pursue allegations of financial fraud and material misstatements in connection with publicly traded companies."

"In recent weeks, we have received complaints regarding Chevron's disclosures of the potential litigation risks and Chevron's characterization of available legal defenses," said the letter, dated May 4. Cuomo asked Chevron to estimate "possible damages if found liable...[and] what if any reserves have been established in contemplation of such damages being assessed against Chevron." A spokesman from Cuomo's office did not return a call from Platts.

Chevron spokesman Don Campbell said in an e-mail on May 22 that Chevron has previously disclosed in securities filing that "management, at this time, cannot make an accurate estimate of the damages."

Analysts seem mixed on what the Ecuador fallout ultimately may mean to Chevron but appear to agree there will be at least a short-term knock to the stock price.

Oppenheimer analyst Fadel Gheit said in an e-mail last week that the case "is a mess in the ground and in public opinion" and has been "very poorly handled" by Chevron. The alleged damage was the result of work by Texaco, which Chevron agreed to acquire in 2000.

"I think the longer it lingers the more it will cost," Gheit said. "I would settle and cut my losses. Time is not on their side. The sooner they resolve it the better off shareholders are. I don't think it will cost $27 billion but [it] will certainly cost a hell of a lot more than $1.8 billion" Chevron has reserved for liabilities, he said.

Barclays Capital analyst Paul Cheng said in a May 4 note to investors that if Chevron "loses the case, it will appeal to the higher courts in Ecuador and subsequently to the international courts. Although it will likely be years (if not decades) before the case will reach a resolution, we would expect that any negative ruling would be damaging to the stock's near-term performance, and we would be an aggressive buyer to take advantage of any weakness."

Last week Cheng told Platts that given Chevron's lack of Ecuador assets, any decision is "impossible to enforce." "You could be talking about decades before any money changes hands," Cheng said.

For now, anyway, the noise is getting louder—and that will bruise Chevron's reputational risk, said Shelley Alpern of Chevron investor Trillium. The case in Ecuador has been featured recently by leading US television newsmagazine 60 Minutes and by *The New York Times*, among others.

Remediating environmental damage could cost $7 billion to $16 billion, an expert appointed by the court in the provincial town of Lago Agrio said in April 2008. Plaintiffs' own estimate for remediation had been $10 billion or higher. By May 2009, the figure had grown to $27 billion.

"There's more of a drumbeat as the verdict gets closer," said Alpern, director of social research and advocacy for the fund, which calls itself an "innovator" of socially responsible investing. In addition to Chevron, the firm's energy investment portfolio includes shares of Anadarko Petroleum and Apache.

Trillium backed the shareholder proposal in an effort to instill "internal rigor" so the major in the future would be "less likely to have legacies that they're facing" in Ecuador, Alpern said.

The Pennsylvania pension fund was a "co-filer" of the resolution, she said. A spokeswoman for the Pennsylvania State Employees' Retirement System was unavailable for comment.

Patrick Doherty, director of corporate social responsibility for the City of New York Office of the Comptroller, confirmed that the comptroller's office backed the proposal, but would not otherwise comment. The comptroller manages New York City Pension Funds, which currently hold 7,301,028 shares in Chevron, spokesman Michael Loughran said. The fund's total combined asset value is $77.1 billion, he said.

Chevron does not support the proposal.

Both Chevron and lead lawyer for the plaintiff, Steve Donziger, expect a decision from an Ecuador judge no earlier than November.

The litigation has been in the Ecuador court system since 2003 but had been ongoing in US courts for about a decade before that. Texaco held a 37.5% interest in a consortium with Ecuador's national oil company Petroecuador. It served as operator of the consortium from 1964 to 1990, when Petroecuador became operator. Ecuador's government declined to renew Texaco's concession in 1992. Chevron has never operated in Ecuador.

Remediation pact

Under an agreement with the government, Texaco cleaned oil field pits in proportion to its approximate one-third share of the consortium. In 1998, the government released it from all future claims and liabilities.

According to Chevron, over the last 18 years, Petroecuador "has grievously failed to fulfill" its own remediation obligations, and has operated the oil fields "in a manner that has exacerbated environmental conditions" (ON 9/15/08).

The plaintiffs, which comprise indigenous peoples and other Amazon residents, allege that contaminated sites cover the area about the size of Rhode Island and say they are open to a settlement that would pay for a comprehensive remediation and past compensation. Donziger declined to state a settlement figure.

A May 20 letter from Chevron to shareholders, signed by Lydia Beebe, a corporate secretary and chief governance officer, said the case has "further devolved into a judicial farce due, in large part, to open complicity between the plaintiffs and the government of Ecuadorian President Rafael Correa." The government, Chevron said, is "attempting to shift the moral responsibility and financial liability for Petroecuador's failings onto you, the stockholders of Chevron." Correa "has personally called" for the courts to rule against Chevron, said the letter, later adding that plaintiffs' trial lawyers have "unleashed a campaign to obtain an out-of-court settlement that would spare them" from scrutiny.

Chevron's letter took aim at Trillium for backing the shareholder resolution, and said it was "part of a campaign" directed by the [plaintiff's] American trial lawyers.

Alpern said the accusation was unfounded. "It's ridiculous to think that all the co-filers are taking their cues from the plaintiffs' attorney," she said. "They're trying to shoot the messenger. The way they have handled the problem...has left them with a black eye."—*Leslie Moore Mira*