

# **Key Questions & Answers on Canadian Enforcement of the Ecuador Judgment**

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## **1) What is the significance of the environmental case against Chevron in Ecuador?**

By almost any measure, the case is one of the most significant and far-reaching civil lawsuits ever. The lawsuit is being fought to force Chevron to pay for a clean-up of what many experts believe is the largest and most damaging oil-related catastrophe on the planet – one that poisoned an area the size of Rhode Island and has existed for close to a half-century. The size of the judgment is the largest ever in an environmental case stemming from a completed and single trial (BP's estimated liability for the 2010 Gulf spill is higher once one adds up potential fines, compensation, a civil lawsuit settlement, and clean-up costs). Finally, the Ecuador case represents the first time indigenous and farmer communities stand a realistic chance of holding a major oil company accountable for environmental damage on a mass scale.

## **2) Why are the Ecuadorian plaintiffs filing an enforcement action?**

Enforcement actions are necessary because Chevron refuses to comply with the court judgment in Ecuador. The indigenous and farmer communities in Ecuador's Amazon first filed their legal claims against Chevron in 1993 and have been waiting for almost two decades for a resolution. In the meantime, Chevron has used at least 39 law firms and 483 lawyers and professionals to battle the communities every step of the way. The company apparently concluded that it would be cheaper to pay an army of lawyers to fight the communities than to fund a comprehensive clean-up of their ancestral lands. In January of this year, an Ecuadorian appellate court fully affirmed the trial court judgment in the amount of \$18 billion. When Chevron refused to post a bond in February, the judgment became enforceable worldwide. The Ecuadorians have stated they intend to enforce the judgment in multiple countries against Chevron assets until they collect the entire judgment. In the meantime, Chevron is pursuing an extraordinary final appeal to Ecuador's highest court, the National Court of Justice.

## **3) Why won't Chevron respect the court judgment in Ecuador?**

Chevron claims the judgment was a product of fraud, but its charges were repeatedly considered by the Ecuador trial and appellate courts and rejected. What is more certain is that Chevron has a long history of ignoring court orders and undermining the rule of law in the Ecuador case. When the lawsuit was filed in the U.S. in 1993, Chevron fought for nine years to have it sent to Ecuador and filed 14 sworn affidavits praising the fairness of Ecuador's courts. Once the trial started in Ecuador in 2003 and the scientific evidence pointed to its culpability, Chevron

switched gears and attacked Ecuador's courts as corrupt. It also fought to bring the case back to the U.S., completing contradicting its earlier position. In a 2009 interview with 60 Minutes, Chevron lawyer Sylvia Garrigo stated Chevron's belief that it is entitled to impunity for its misconduct in Ecuador: "We didn't want to get sued, period. We don't want to be in any court." Another Chevron spokesman promised the plaintiffs a "lifetime of litigation" and said the company would fight the case "until hell freezes over and then skate it out on the ice."

**4) Why are you filing an enforcement action in Canada?**

Canada is a country with a respected judiciary that gives appropriate deference to the judgments of foreign courts. Further, Chevron has substantial assets in the country that would be subject to seizure should Canada recognize the Ecuadorian judgment. These assets include a 20% interest in the Athabasca oil sands project, which has the capacity to yield 255,000 barrels per day and supplies 10% of Canada's oil needs; a minority interest in the Hibernia project, which is Canada's largest offshore drilling field; and the Ells River exploration, which covers 75,000 acres and contains an estimated 7.5 billion barrels of oil. Chevron also owns 161 service stations in Western Canada, the Burnaby refinery in British Columbia, and approximately 130 Town Pantry convenience stores.

**5) Would enforcement disrupt any oil-producing projects in Canada?**

The Ecuadorians seek only to make Chevron pay the judgment, not to interfere in any business relationship or to do anything that would affect the lives of innocent third parties. Chevron's annual profits exceed \$30 billion; the company clearly has the means to pay the judgment immediately with little impact on the fundamental profitability of its business. The primary goal of the plaintiffs will be to seek a court order that the company's revenue stream in Canada must be used to satisfy the Ecuadorian judgment or that Chevron assets be sold with the proceeds used to satisfy the judgment. Chevron is not the operator of any of the projects in which it holds an interest, reducing the likelihood of significant disruption to supplies or employment. That said, any disruptions to Chevron's business or operations will be entirely Chevron's fault for refusing to respect the rule of law in Ecuador.

**6) What other countries might be considered for enforcement actions and when might they be initiated?**

The plaintiffs maintain a list of approximately 30 potential countries that recognize foreign judgments and where Chevron has assets. Actions likely will be filed in a small number of these countries as necessary to ensure that the full amount of the judgment can be satisfied.

**7) How long will it take for any enforcement action to conclude?**

At least several months and possibly longer depending on the jurisdiction and on the time frame of any appeals that may be filed. We are certain that Chevron, consistent with its litigation strategy in the U.S. and Ecuador over the last 18 years, will employ any tactic it can to delay the enforcement process.

**8) Is \$18 billion in damages a reasonable number?**

The amount of the judgment in Ecuador is modest given the large scope of the disaster and the decades that it has haunted the indigenous groups and farmer communities in Ecuador. By way of comparison, the BP disaster in the Gulf of Mexico was much smaller in environmental impact and shorter in duration than what happened in Ecuador, yet BP's liability is at least twice as large as the court judgment in Ecuador. If anything, the amount of the judgment is modest compared to the unprecedented nature of the damage.

**9) Is international judgment enforcement a common practice?**

International judgment enforcement is common throughout the world. Almost all countries have judgment enforcement mechanisms under international treaties, local statutes, or their respective common law traditions. In the U.S., foreign judgment enforcement is governed by state law. In several countries in Latin America, the process is governed by treaty. A party seeking to enforce a judgment first files for recognition of the validity of the original judgment. This process is not an opportunity to re-litigate the underlying case, but simply to determine if it met basic standards of fundamental fairness consistent with the normal procedures and rules of the country where the trial took place. Once recognized, the judgment becomes a final domestic judgment of the host country and can be enforced in that country.

**10) What does enforcement consist of exactly?**

Typically, a party seeking to enforce a judgment first files for recognition of the validity of the original judgment. This process is not an opportunity to re-litigate the underlying case, but simply to determine if it met basic standards of fundamental fairness, consistent with the normal procedures and rules of the country where the trial took place. Once recognized, the judgment becomes a final domestic judgment of the host country and can be enforced in that country. Enforcement can result in judicially-ordered asset seizures, freezing of accounts, garnishment of revenue streams, auctions of the debtor's assets, and a range of other tools to make sure debtors satisfy their obligations.

**11) Why did you not file in the U.S., Chevron's home country?**

The primary reason is that the vast majority of Chevron's assets are located in countries outside of the U.S. and many of these jurisdictions have traditions that favor the enforcement of foreign judgments. The plaintiffs also chose not to file in the U.S. given that Chevron had its chance to litigate the case fully in U.S. courts when the case was filed there in 1993, and rejected the opportunity at great cost to the rainforest communities in terms of delay and financial burden. The Ecuadorians also are concerned that they will be subject to personal jurisdiction in a civil case Chevron filed against them and their counsel that is based on trumped-up fraud allegations and is clearly intended to distract attention from the company's misconduct. The Ecuadorians are open to enforcement in the U.S. at some point, assuming the full amount of the judgment is not first collected elsewhere and Chevron's fraud allegations have been appropriately dismissed.

**12) Do you think Chevron's strategy to allege fraud will help it block enforcement?**

Once enforcement courts review the trial record, we believe there is a very low likelihood that Chevron's fraud narrative will gain traction in Canada or in any other enforcement country. First, the enforcement court will learn that Chevron fought for the case to be heard in Ecuador and claimed at the time it would satisfy any adverse judgment. Second, all of Chevron's allegations were already considered and rejected by Ecuador's courts. Third, the allegations themselves have no credible factual basis and reflect a "delay and distract" strategy designed to obfuscate the company's environmental crimes and fraud in Ecuador.

**13) Did Chevron receive due process in Ecuador?**

The Ecuador court bent over backwards to provide Chevron ample opportunity to present evidence and to defend itself. The trial record consisted of 220,000 pages of argument and evidence. Both parties submitted a total of 106 expert technical reports to the court and more than 64,000 chemical sampling results. The case might be the most intensely litigated environmental trial in history. That said, there is overwhelming evidence and judicial findings that Chevron abused the good faith of the Ecuador courts by filing frivolous motions and by threatening to retaliate against judges who did not rule in its favor. These and numerous other ethical lapses by the company were documented fully in the sworn affidavit of Juan Pablo Saenz, available from the plaintiffs. They were also cited extensively in the appellate court decisions in Ecuador.

**14) What about Chevron's argument that the case will be determined by an international investment arbitration against Ecuador's government?**

Chevron's argument lacks merit. The Ecuadorian plaintiffs are prohibited from participating in the arbitration proceeding, and therefore cannot be bound by its orders. That matter is between the Ecuador government and Chevron and its resolution cannot override a civil litigation that private citizens have fought and won against Chevron. Ecuador's government thus far has chosen not to comply with the orders of the arbitral panel, saying it is operating beyond the scope of any legitimate legal authority.

**15) Should the enforcement actions succeed, where will the money be sent?**

The monies will be held and distributed in accordance with Ecuadorian law and judicial orders, including through a court-ordered trust. The trust requires the funds to be spent on remediation of the environmental damage.

**16) How extensive is the evidence of contamination in Ecuador?**

Chevron (operating under the Texaco brand) admits that it discharged more than 16 billions gallons of highly toxic "formation waters" directly into Amazon waterways relied on by indigenous groups for their drinking water and sustenance. The company also gouged at least 900 open-air waste pits out of the jungle floor that continue to migrate toxins into streams, soils, and groundwater. Chevron also discharged massive amounts of poisonous gas into the air at its

well sites. The amount of toxins spilled far exceeds the environmental impact of the BP Deepwater Horizon disaster or the Exxon Valdez spill. And unlike those incidents, which were accidents, the Ecuador disaster is the result of an intentional design to lower production costs. One authority, using peer-reviewed health data in the region, estimated at least 9,000 people will contract cancer in the coming years even assuming an adequate clean-up in the near term.

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