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## Canada's Supreme Court Says Ecuadoreans Can Sue Chevron

Scott Flaherty, The Am Law Daily

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Canada's highest court pushed a reset button Friday on a group of Ecuadorean villagers' quest to enforce a \$9.5 billion environmental judgment based on accusations that Chevron ravished the Amazon rainforest in Ecuador.

The [Supreme Court of Canada held](#) that Ontario courts have jurisdiction over a lawsuit that the Ecuadorean plaintiffs [filed in 2012](#) as an attempt to collect on the mega-judgment against the energy giant.

The plaintiffs, [villagers from Ecuador's rural Lago Agrio region](#), had in 2011 secured a ruling from an Ecuadorean court that put Chevron on the hook for \$19 billion, although that amount was slashed on appeal to about \$9.5 billion. Alan Lenczner of Toronto-based Lenczner Slaght Royce Smith Griffin represented the plaintiffs in Canada, while Chevron turned to Norton Rose Fulbright senior partner Clarke Hunter in Calgary.

Chevron has resisted paying the Ecuadorean judgment, maintaining that it was reached through the [fraudulent acts of Steven Donziger](#), a U.S. lawyer and former Harvard Law School classmate of President Barack Obama who led the villagers' efforts in Ecuador. The plaintiffs, meanwhile, [have turned to courts in other countries](#), including Argentina, Brazil and the U.S., to try to force Chevron into complying with the Ecuadorean court's findings.

Friday's decision focused on whether the villagers had the right to file suit in Canada to try to enforce the foreign judgment against Chevron. Upholding a lower appellate court, Canada's top court found that there was, in fact, jurisdiction in Canada over the plaintiffs' enforcement action. Supporters of the Ecuadorean plaintiffs, including the Union of Persons Affected by Texaco/Chevron (UDAPT), welcomed the Canadian court's ruling Friday.

"While some legal hurdles remain, the merits of the environmental justice rendered by Ecuador's courts are settled and will be respected," said a statement by Aaron Marr Page, managing attorney at Washington, D.C.-based human rights and environmental litigation boutique Forum Nobis, who has worked with UDAPT for more than a decade. "It is clearer than ever that Chevron's long run from justice is coming to an end."

The ruling, however, doesn't mark an unqualified victory for the plaintiffs on the merits of their case. Instead, it effectively sends the dispute back to a lower court to resume the proceedings at an earlier stage. The Canadian high court noted that its findings had no bearing on whether the Ecuadorean villagers would eventually succeed in collecting on the \$9.5 billion environmental judgment against San Ramon, California-based Chevron.

"A finding of jurisdiction does nothing more than afford the plaintiffs the opportunity to seek recognition and enforcement of the Ecuadorian judgment," wrote the Canadian court in its ruling Friday.

The high court also noted that Chevron would retain several defenses to the enforcement action, including its claim that the Ecuadorean court ruled as a result of fraud. Chevron has already succeeded in making that argument in U.S. court. In March 2014, U.S. District Judge Lewis Kaplan in Manhattan concluded that [Donziger had engaged in fraud and racketeering](#) to obtain the massive judgment in Ecuador.

In a statement issued Friday, Chevron downplayed the importance of the Canadian court's ruling on jurisdiction and stressed that the company would continue to press its fraud claims.

"The facts remain, as Chevron Corp. established in the United States, that the Ecuadorian judgment is the product of fraud and other misconduct, and is therefore illegitimate and unenforceable," the company said in its statement.

Following the 2011 Ecuadorean judgment, Chevron has taken aim at Donziger and many of his supporting cast, including erstwhile [co-counsel at Patton Boggs](#) and litigation funders, such as Burford Capital, Woodsford Litigation Funding Ltd. and Gibraltar-based billionaire [James Russell DeLeon](#), who provided financial backing for the environmental lawsuit in Ecuador.

Chevron has negotiated a string of settlements with others who were once involved in the sprawling Ecuador litigation. Many of those former supporters have generally renounced their association with the case and have agreed to assign their financial interest in the \$9.5 billion judgment back to Chevron.

On Thursday, [Chevron announced another settlement](#) along those lines with a California-based litigation services and electronic discovery firm called H5. Under that deal, H5 also withdrew its support of the environmental litigation against Chevron and agreed to provide the company with its 1.25 percent stake in any Ecuadorean judgment. Accounting for interest on the \$9.5 billion judgment, H5's stake could be worth more than \$120 million.

It's likely that some of the more high-profile developments in the near future of the case will come in the U.S. or in an international arbitration forum. The U.S. Court of Appeals for the Second Circuit, for instance, is currently [weighing a challenge](#) to Kaplan's March 2014 ruling that found Donziger had engaged in fraud and racketeering to obtain the Ecuadorean judgment. Gibson, Dunn & Crutcher's Theodore Olson and Randy Mastro lead Chevron's U.S. legal team. Deepak Gupta of Gupta Beck argued at the Second Circuit for Donziger.

The parties are also awaiting a decision in [arbitration proceedings](#) that Chevron brought against Ecuador, pushing for a declaration that the \$9.5 billion judgment is unenforceable and void under international law.