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Chevron's Ecuador case takes new twist

By Ed Crooks in New York and Naomi Mapstone in Lima

Lawyers acting for plaintiffs suing Chevron, the US oil group, over pollution in Ecuador plan to pursue the American company with legal actions in other countries after an Ecuadorean court upheld an $18bn damages award.

Pablo Fajardo, an Ecuador-based lawyer representing the 30,000 plaintiffs suing over environmental damage in the Amazon region, said: "It's not going to be easy to enforce this judgment, but even if hell freezes over we're going to do it."

Chevron, which denounced the judgment as "procured through a corrupt and fraudulent scheme" has no assets in Ecuador, so the plaintiffs will be forced to bring actions in other countries.

Mr Fajardo said: "This judgment gives us the ability to go ahead and enforce the ruling in any part of the world where we see fit."

The legal saga, which has had plenty of twists and turns since the first action was launched back in 1993, appears to have still more to come.

The fight has dragged on thanks in large part to the dogged persistence of Steven Donziger, the plaintiffs' controversial US-based lawyer. While Chevron remains adamant in its rejection of the case against it, the company could yet end up having to pay a multi-billion dollar settlement to resolve the issue.

Fadel Gheit, an analyst at Oppenheimer in New York, says: "At the very beginning, it didn't look as though the case was going anywhere. Oil companies get sued every day by everyone, everywhere, and most of the cases we never hear about."

Now he expects Chevron to agree to pay $2bn-$3bn to bring the dispute to an end.

For Chevron, the second-biggest US oil and gas group by market capitalisation, the battle has been infuriating, not least because it has never operated in Ecuador.

The pollution that is the subject of the case is alleged to have been caused by Texaco, which Chevron bought in 2001. By then, Texaco had been out of the Amazon region for almost a decade, having pulled out of its joint venture with Petroecuador, the state-run oil company, in 1992.

Ecuador's government signed an agreement saying that Texaco had cleaned up the area as required, but that did not prevent civil claims. In and around Lago Agrio, the rough and tumble oil town where Texaco helped found Ecuador's oil industry, locals have come forward alleging damage to the land and their health. In the jungle, deep pits as big as swimming pools filled with crude oil are testament to the scars that the oil industry has left on the region. However, Chevron argues that it is Petroecuador, which was sole owner of the oilfields after 1992, that is responsible for the pollution.

Timeline

1993 Plaintiffs file suit against Texaco for widespread pollution in Lago Agrio in a US federal court.

2002 Case is thrown out on appeal on the condition that Texaco agree to Ecuadorean jurisdiction.

2003 Plaintiffs file against the new owner, Chevron, in the Lago Agrio court.

2009 Judge Juan Nunez recuses himself from the case after being secretly filmed discussing the case. He is later disbarred.

Plaintiffs use celebrities to bring attention to the case and Joe Berlinger premieres a sympathetic documentary, *Crude*. Outtakes from *Crude*, subpoenaed by Chevron, later deal a significant blow to the plaintiffs, when US-based lawyer Steven Donziger, a leading figure in the litigation for many years, is filmed discussing corruption in Ecuador and strategies for intimidating judges.

Kohn, Swift and Graf, a Philadelphia based firm that spent at least $7m litigating the Chevron case, withdraws its involvement amid a dispute with Mr Donziger, before the *Crude* outtakes came to light.

Chevron publicly gives up hope of a favourable verdict from the Ecuadorean court branding the case a "shakedown" and turns to US courts and the Hague.

The US company was confident enough in the strength of its argument that it sought to have the case heard in Ecuador. Its reaction to Tuesday's decision, which upheld a ruling from another court last year, was furious.

"Today's decision is another glaring example of the politicisation and corruption of Ecuador's judiciary that has plagued this fraudulent case from the start," it said in a statement.

"Chevron does not believe that the Ecuador ruling is enforceable in any court that observes the rule of law."

So far, investors have shared that view. Chevron's shares closed just 0.1 per cent lower on Wednesday.

That move followed an excellent 2011 for Chevron's investors: over the past 12 months, their shares have risen 20 per cent, compared with 14 per cent for the larger ExxonMobil and just 8 per cent for smaller ConocoPhillips.

Even for a company of Chevron's size, $18bn would be a significant hit: about 8 per cent of its market capitalisation. But investors seem not to believe that the award, the second-largest environmental damages award ever imposed on an oil company, after the $20bn compensation for victims of the Gulf of Mexico spill agreed by BP, will be paid.

For now, that assessment looks justified. There are further legal contests to come in US courts and at the international court of arbitration in The Hague.

Kevin Koenig, a Quito-based spokesman for Amazon Watch, a campaign group, argues that it is time for Chevron to "do the right thing and respect the judgment", but concedes that it is unlikely the case will be resolved soon.

However, he said Chevron had made a "serious miscalculation" in forcing the plaintiffs to pursue the company in foreign courts.

Chevron has significant assets in other Latin American countries, including Argentina, Venezuela and Brazil, where the US group has been targeted by regulators over an oil spill and faces a damages claim for $10.6bn. Mr Donziger's team is reluctant to say exactly where it will take the action next, but moves in one or more of those countries, or in Europe, are possible.

"Chevron has to win every one of those cases. The plaintiffs will only need to win one," Mr Koenig says. John Watson, Chevron's chief executive, is adamant that the company should not pay anything for what it regards as a fraudulent case, Mr Gheit says. However, as the dispute heats up, the argument for reaching a deal grows stronger.

"When the dog keeps on barking and barking, eventually you have to throw it a bone," says Mr Gheit.

2011 Panel of arbitrators at the Hague order Ecuador to take “all measures at its disposal” to block enforcement of any ruling until it rules on the case. Ecuador appeals. A week later judge Nicolas Zambrano of the Lago Agrio court orders Chevron to pay $8.6bn in damages, which would more than double if the company refuses to give a public apology.

Rafael Correa, Ecuador’s president, calls it “the most important judgment in the history of the country”.

2012 Yesterday’s ruling against Chevron sets the scene for a series of legal battles in countries were Chevron has assets.

By Naomi Mapstone in Lima