

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

DANIEL CARLOS LUSITANDE YAIGUAJE, BENANCIO FREDY CHIMBO GREFA, MIGUEL MARIO PAYAGUAJE PAYAGUAJE, TEODORO GONZALO PIAGUAJE PAYAGUAJE, SIMON LUSITANDE YAIGUAJE, ARMANDO WILMER PIAGUAJE PAYAGUAJE, ANGEL JUSTINO PIAGUAJE LUCITANTE, JAVIER PIAGUAJE PAYAGUAJE, FERMIN PIAGUAJE, LUIS AGUSTIN PAYAGUAJE PIAGUAJE, EMILIO MARTIN LUSITANDE YAIGUAJE, REINALDO LUSITANDE YAIGUAJE, MARIA VICTORIA AGUINDA SALAZAR, CARLOS GREFA HUATATOCA, CATALINA ANTONIA AGUINDA SALAZAR, LIDIA ALEXANDRIA AGUINDA AGUINDA, CLIDE RAMIRO AGUINDA AGUINDA, LUIS ARMANDO CHIMBO YUMBO, BEATRIZ MERCEDES GREFA TANGUILA, LUCIO ENRIQUE GREFA TANGUILA, PATRICIO WILSON AGUINDA AGUINDA, PATRICIO ALBERTO CHIMBO YUMBO, SEGUNDO ANGEL AMANTA MILAN, FRANCISCO MATIAS ALVARADO YUMBO, OLGA GLORIA GREFA CERDA, NARCISA AIDA TANGUILA NARVAEZ, BERTHA ANTONIA YUMBO TANGUILA, GLORIA LUCRECIA TANGUILA GREFA, FRANCISCO VICTOR TANGUILA GREFA, ROSA TERESA CHIMBO TANGUILA, MARIA CLELIA REASCOS REVELO, HELEODORO PATARON GUARACA, CELIA IRENE VIVEROS CUSANGUA, LORENZO JOSE ALVARADO YUMBO, FRANCISCO ALVARADO YUMBO, JOSE GABRIEL REVELO LLORE, LUISA DELIA TANGUILA NARVAEZ, JOSE MIGUEL IPIALES CHICAIZA, HUGO GERARDO CAMACHO NARANJO, MARIA MAGDALENA RODRIGUEZ BARCENES, ELIAS ROBERTO PIYAHUAJE PAYAHUAJE, LOURDES BEATRIZ CHIMBO TANGUILA, OCTAVIO ISMAEL CORDOVA HUANCA, MARIA HORTENCIA VIVEROS CUSANGUA, GUILLERMO VINCENTE PAYAGUAJE LUSITANDE, ALFREDO DONALDO PAYAGUAJE PAYAGUAJE and DELFIN LEONIDAS PAYAGUAJE PAYAGUAJE

Plaintiffs

and

CHEVRON CORPORATION, CHEVRON CANADA LIMITED and CHEVRON CANADA FINANCE LIMITED

Defendants

NOTICE OF MOTION FOR SUMMARY JUDGMENT

The plaintiffs will make a Motion to a Judge presiding over the Commercial List on Monday, March 7, 2016 at 10:00 a.m. or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

- (a) an Order for summary judgment of all of the defences of Chevron Corporation (“Chevron Corp.”) specified in its Statement of Defence;
- (b) an Order for partial summary judgment striking and dismissing all those defences of Chevron Corp. advanced in its Statement of Defence that are prohibited by the Supreme Court of Canada in *Beals v. Saldanha* and the restricted defences set out therein;
- (c) the costs of this motion and of the action; and
- (d) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Chevron Corp. is a Judgment Debtor. It has had its day in three courts in Ecuador from 2003 to 2013;
- (b) Chevron Corp. chose to defend the plaintiffs’ claims in the courts of Ecuador and those claims have been adjudicated by three levels of Ecuadorian courts, which ordered Chevron Corp. liable for USD \$9.51 billion. Chevron Corp. has resiled from its promise to pay the Judgment Debt and has not paid it;

- (c) in this recognition and enforcement action, Chevron Corp. is restricted, by the Supreme Court of Canada Decision in *Beals v. Saldanha*, to three defences: the Defence of Extrinsic Fraud; the Defence of Natural Justice; and the Defence of Public Policy;
- (d) in its Statement of Defence, Chevron Corp. impermissibly seeks to relitigate issues decided by the courts of Ecuador;
- (e) in its Statement of Defence, Chevron Corp. pleads defences that do not comply with the restriction and scope of the three defences permitted at law;
- (f) in its Statement of Defence, Chevron Corp. pleads defences that do not challenge the operative Judgment of the Intermediate Court of Appeals of Ecuador or the Judgment of the Ecuadorian National Court of Cassation;
- (g) in its Statement of Defence, Chevron Corp. pleads impermissible intrinsic fraud, not extrinsic fraud. Further, the defences were all addressed and adjudicated by the Ecuadorian courts;
- (h) in its Statement of Defence, Chevron Corp. pleads impermissible defences under the rubric of natural justice. At all three levels of court, Chevron Corp. fully participated in the proceedings, and put forward all its submissions and arguments both as to the merits of the environmental claims and as to evidentiary and procedural matters;

- (i) in its Statement of Defence, Chevron Corp. pleads impermissible defences under the rubric of public policy. Tort and environmental claims comport with Canadian values of morality;
- (j) Rules 20.01, 20.04 and 21.01(1) and (2) of the *Rules of Civil Procedure*;
- (k) summary judgment is a proportionate, expeditious and less expensive means to achieve a just result; and
- (l) such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) the briefs of submissions (Alegatos) filed by Chevron Corp. before Judge Zambrano, before the Intermediate Court of Appeals and before the National Court of Cassation;
- (b) the Judgments rendered by Judge Zambrano, the Intermediate Court of Appeals and the National Court of Cassation;
- (c) the motion materials and decisions of the Intermediate Court of Appeals on the motions made on April 21, 2011, 2:20 p.m.; May 5, 2011, 10:50 a.m.; July 26, 2011, 5:48 p.m.; September 19, 2011, 1:15 p.m.; December 6, 2011, 4:47 p.m.; December 21, 2011, 4:28 p.m.; and December 21, 2011, 4:45 p.m.; and
- (d) such further and other evidence as the lawyers may advise and this Honourable Court permit.

October 23, 2015

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

Alan J. Lenczner, Q.C. (11387E)

Tel: (416) 865-3090

Fax: (416) 865-2844

Email: alenczner@litigate.com

Brendan F. Morrison (61635B)

Tel: (416) 865-3559

Fax: (416) 865-3731

Email: bmorrison@litigate.com

Lawyers for the Plaintiffs

TO: **NORTON ROSE FULBRIGHT CANADA LLP**
3800 - Royal Bank Plaza, South Tower,
200 Bay St, P.O. Box 84
Toronto, ON M5J 2Z4

Clarke Hunter, Q.C.

Tel: 1 (403) 267-8292

Fax: 1 (403) 264-5973

Anne Kirker, Q.C.

Tel: 1 (403) 267-9564

Fax: 1 (403) 264-5973

Robert Frank (35456F)

Tel: (416) 216-6741

Fax: (416) 216-3930

Lawyers for the Defendant,
Chevron Corporation

AND TO: **OSLER HOSKIN & HARCOURT LLP**
P.O. Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Larry Lowenstein (23120C)
Tel.: (416) 862.6454
lloenstein@osler.com
Laura K. Fric (36545Q)
Tel.: (416) 862.5899
lfric@osler.com

Fax: (416) 862.6666

Lawyers for the Defendant,
Chevron Corporation

AND TO: **GOODMANS LLP**
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON
M5H 2S7

Benjamin Zarnett (17247M)
Tel: (416) 597-4204
Suzy Kauffman (41703D)
Tel: (416) 597-6281
Peter Kolla
Tel: (416) 597-6279

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Defendant,
Chevron Canada Limited

DANIEL CARLOS LUSITANDE YAIGUAJE et al.
Plaintiffs

-and- CHEVRON CORPORATION et al.
Defendants

Court File No. CV-12-9808-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION FOR SUMMARY JUDGMENT

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

Alan J. Lenczner, Q.C. (11387E)

Tel: (416) 865-3090

Fax: (416) 865-2844

Email: alenczner@litigate.com

Brendan F. Morrison (61635B)

Tel: (416) 865-3559

Fax: (416) 865-3731

Email: bmorrison@litigate.com

Lawyers for the Plaintiffs