

Ecuador Appellate Court Affirms Judgment Against Chevron

January 20, 2012 by Louis M. Solomon

We have posted several times on the U.S. aspects of the international dispute between Chevron and the plaintiffs from Ecuador suing for environmental contamination. We have followed the [Southern District's decision](#) granting an injunction as well as the [Second Circuit's reversal of that decision](#). We predicted U.S. reaction to the District Court's negative statements about the Ecuadorian judiciary, and we posted on the [Third Circuit's comments](#), which reflected a sentiment previously expressed on this blog ([here](#)), that:

the Chevron applicants are asking that American courts make a finding that the attorneys in a civil case in Ecuador can control the Ecuadorian criminal justice system. Though it is obvious that the Ecuadorian judicial system is different from that in the United States, those differences provide no basis for disregarding or disparaging that system. American courts, though justifiably proud of our system, should understand that other countries may organize their judicial systems as they see fit.

Comes now the appellate tribunal in Ecuador, affirming the judgment of what is now claimed to be an \$18 billion against Chevron (what must be a mediocre [translation](#)). The Court's decision raises still more interesting international practice issues, including:

First, we are not certain how to square the decision with the 2011 decision of the international arbitration unit at the Hague, which directed that, under the U.S.-Ecuador Bilateral Investment Treaty, Ecuador was required to take all measures at its disposal to prevent enforcement of the Lago Agrio judgment until further order of the Tribunal. The arbitral Tribunal also recorded (this according to Chevron's press release but confirmed in various of the decisions on the subject) that if it were established that any judgment made by an Ecuadorian court in the Lago Agrio case was a breach of an obligation Ecuador owed to Chevron as a matter of international law, any loss arising from the enforcement of such judgment (within and without Ecuador) may be losses for which Ecuador would be responsible to Chevron under international law.

Second, the judicial reaction from U.S. courts casting aspersion on the integrity of the Ecuadorian courts brought an equal and opposite reaction from the Ecuadorian appellate tribunal, which referred to "[i]mproper comments against against Ecuadorian jurisdiction in international fora" and that the

U.S. District Court “tried to offend no reason or justification for the Administration of Justice in Ecuador”.

Third, as the U.S. District Court observed earlier, with this decision by the Ecuadorian Appellate Court, unless enjoined, the plaintiffs have the right to seek to enforce their judgment.

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