

Chevron Suit Proceeds: Ecuador Plaintiffs' Judicial Estoppel Motion Rejected

September 8, 2011 by [Sean Wajert](#)

A New York federal court ruled last week that Chevron could continue to pursue its effort to overturn a questionable \$18 billion judgment against the company in Ecuadorean court. [Chevron Corp. v. Salazar et al.](#), No. 1:11-cv-0371 (S.D.N.Y. 8/31/11).

This is an action by Chevron for, among other things, a declaration that the large judgment entered against it by a provincial court in Lago Agrio, Ecuador, is not entitled to recognition or enforcement, and for an injunction against its enforcement outside of Ecuador.

The district court's memorandum opinion dealt with their contentions that Chevron was judicially estopped to now deny that (1) the Ecuadorian legal system provides impartial tribunals and procedures compatible with due process of law, and (2) the Ecuadorian court had jurisdiction over Chevron.

The judicial estoppel argument rested principally on statements made in a separate lawsuit brought in 1993 by many of the same plaintiffs against Texaco, Inc. — then an independent, publicly owned company. That suit was dismissed on the ground of forum non conveniens many years ago and, indeed, before this Lago Agrio litigation even began. Plaintiffs cited statements made in briefs, and in affidavits and declarations by witnesses submitted in the prior litigation in support of Texaco's efforts to obtain the forum non conveniens dismissal. All were allegedly to the effect that the Ecuadorian courts were neither corrupt nor unfair.

Each and every one of these statements was made by Texaco. Indeed, each was made before Chevron acquired its stock in Texaco in October, 2001. Chevron never was a party to the prior litigation. Thus, the statements about and the alleged consent to jurisdiction in Ecuador were made by Texaco and Texaco alone.

The court thought it important to emphasize that the pleadings in this case were entirely devoid of any allegations that Texaco merged with or into Chevron, or indeed, any subsidiary of Chevron. Nor were there any allegations that would support piercing the corporate veil of Texaco, treating Chevron as Texaco's alter ego, or otherwise disregarding the separate corporate existence of Texaco. Texaco did not merge with or into Chevron. Rather, a wholly owned subsidiary of Chevron merged with and into Texaco. Texaco was the surviving entity. Chevron became the sole stockholder.

Judicial estoppel occurs when a party assumes a legal position which it later changes, and assumes a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position previously taken by him. It applies if 1) a party's later position is clearly inconsistent with its earlier position; 2) the party's former position has been adopted in some way by the court in the earlier proceeding; and 3) the party asserting the two positions would derive an unfair advantage against the party seeking estoppel. Some courts limit it to situations where the risk of inconsistent results has a clear impact on judicial integrity.

Here, the court had a factual and a legal rejection of the application of judicial estoppel. While Texaco certainly appeared to have argued throughout much of the 1990s that it could get a fair trial in Ecuador, the issue here was different. The issue now was whether the Ecuadorian legal system, in the *next decade*, provided impartial tribunals and procedures compatible with due process of law. It was Chevron's contention that it did not, as a result of [events](#) that occurred in and after 2004, whatever may have been the case previously. That is not an *inconsistent* position from what Texaco had allegedly argued.

Second, the operative legal documents in the public record established that Texaco at all relevant times was a legal entity separate and distinct from Chevron. The fact that a Chevron subsidiary merged into Texaco did not make Chevron responsible for Texaco's obligations. To be sure the law recognizes various bases for disregarding a corporate entity and imposing its obligations upon the stockholder or stockholders. But a litigant seeking to impose corporate obligations on a shareholder or shareholders must allege facts that, if proven, would justify disregard of the corporate entity. The plaintiffs alleged no such facts in this case. They certainly had not demonstrated, as they must in order to prevail on a motion for judgment on the pleadings on this theory, that the pleadings unequivocally establish facts that warrant disregarding Texaco's separate corporate existence and imputing its prior statements and positions to Chevron.