

AMENDED THIS / MODIFIÉ CE September 10 2013 PURSUANT TO / CONFORMÉMENT A A  
RULE/LA RÈGLE 25.02 ( )

Court File No. CV – 11 – 435841

IN THE ORDER OF \_\_\_\_\_  
JUDGE \_\_\_\_\_ **ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
REGISTRAR / GREFFIER  
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE  
BETWEEN:

**GERMAN CHUB CHOC**

Plaintiff

and

**HUBBAY MINERALS INC. and  
COMPAÑÍA GUATEMALTECA DE NÍQUEL S.A.**

Defendants

**SECOND AMENDED STATEMENT OF CLAIM**

Notice of action issued on September 26, 2011

***I. OVERVIEW***

1. From 2008 until 2011, Canadian mining company HudBay Minerals owned, managed and was in control of the Fenix Mining Project, a proposed nickel mine located near El Estor, Guatemala.
2. In the afternoon of September 27, 2009, German Chub Choc, a young father, was shot at close range in an unprovoked attack by the head of security for HudBay's Fenix Mining Project. As a result of the shooting, German Chub suffered catastrophic and life threatening injuries. He survived the attack, but is now paralyzed and no longer has use of his left lung.

3. The brutal and arbitrary shooting of German Chub was caused by the negligent management of HudBay Minerals both in Canada and in Guatemala. HudBay Minerals negligently authorized the reckless and provocative deployment of heavily-armed security personnel into Mayan Q'eqchi' communities on September 27, 2009, and negligently authorized the excessive use of force by its security personnel in response to Mayan Q'eqchi' communities that were peacefully opposing the illegal occupation of historic Mayan land.
4. HudBay Minerals was aware that it was operating in a country with very high levels of violence and low levels of accountability for such violence. HudBay Minerals knew that the Fenix Mining Project security personnel were not licensed to provide private security services in Guatemala. HudBay Minerals further knew that Fenix security personnel were using unlicensed and illegal weapons in the course of their duties at the Fenix Project. HudBay Minerals knew that Fenix security personnel had in the past used unreasonable violence against the local Mayan communities that had opposed mining in their community, and knew that there was a very high risk that its security personnel would commit acts of unreasonable violence in the future. Despite this knowledge, HudBay Minerals continued to engage under-trained, inadequately supervised and unlawful security personnel while failing to implement or enforce standards of conduct that would adequately govern and control their conduct.
5. The Plaintiff Mr. Chub therefore asserts that HudBay Minerals is directly liable in negligence for the catastrophic damage suffered by him.

## ***II. RELIEF CLAIMED***

6. The Plaintiff German Chub Choc claims:
  - (a) General, aggravated and special damages in the amount of \$2,000,000.00;
  - (b) Punitive and exemplary damages in the amount of \$10,000,000.00;
  - (c) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;

- (d) Costs of this action on a substantial indemnity basis; and
- (e) Such further and other relief as this Honourable Court may deem just.

### ***III. THE PARTIES***

- 7. German Chub Choc (“German Chub”) is 23 years old and lives in the town of El Estor, located in the municipality of El Estor, department of Izabal, Republic of Guatemala. He is a single father to a three-year-old son.
- 8. The Defendant HudBay Minerals Inc. (“HudBay Minerals” or “HudBay”) is a transnational mining company that is incorporated under the laws of Canada, and headquartered in Toronto, Ontario. At all material times, HudBay Minerals owned and operated four mining projects in Canada and one mining project in Guatemala. Shares of HudBay Minerals are listed on the Toronto Stock Exchange.
- 9. At all material times, Compañía Guatemalteca de Níquel S.A. (“CGN”) was the wholly-controlled Guatemalan subsidiary of HudBay Minerals.

### ***IV. MATERIAL FACTS***

#### **The Fenix Mining Project**

- 10. The Fenix Project is a proposed open pit nickel mining operation located in the municipality of El Estor, in the department of Izabal, Republic of Guatemala (the “Fenix Project”). The Fenix Project consists of a mine whose operations have been suspended since 1982, a processing plant and an exploration concession covering almost 250 square kilometers (the “Fenix Property”).
- 11. HudBay Minerals has controlled operations at the Fenix Project since August 2008, when HudBay Minerals purchased all of the shares of the previous owner of the project, Canadian mining company Skye Resources Inc. (“Skye Resources”). After the share purchase, Skye Resources became a wholly-owned subsidiary of HudBay Minerals.

Skye Resources was renamed HMI Nickel Inc. (“HMI Nickel” or “HMI”), and all of Skye Resources’ managerial and operational functions were transferred to HudBay Minerals, leaving HMI Nickel solely as a holding corporation for the shares of CGN. On August 15, 2011, HMI Nickel amalgamated with its parent corporation HudBay Minerals under the *Canada Business Corporations Act*.

12. At all material times, the Fenix Project was indirectly owned by HudBay Minerals through HMI Nickel which in turn owned 98.2% of the shares of Guatemalan company Compañía Guatemalteca de Níquel S.A. (“CGN”). At all material times, HMI Nickel was a wholly-owned and controlled subsidiary of HudBay Minerals.
13. At all material times, HudBay Minerals and its subsidiary CGN carried on a combined and integrated economic enterprise with the common purpose and intent of constructing and operating an open pit nickel mine at the Fenix Property. At all material times, operations at the Fenix Project were directed, controlled, managed and financed by HudBay Minerals both directly, through HudBay’s executives, managers and employees, and indirectly, through HudBay’s total control of the management and operation of CGN. At all material times, CGN answered to and was directed, controlled, managed and financed by HudBay Minerals from HudBay’s head office in Toronto, Ontario. In particular, oversight and direction of the Fenix Project by senior management of HudBay Minerals took place from HudBay’s head office in Toronto.
14. HudBay Minerals made key decisions regarding the relationship between the Fenix mining project and Mayan communities located near the Fenix Project. HudBay Minerals formulated corporate responses to Mayan Q’eqchi’ claims to contested land and formulated and implemented policies regarding local community relations. HudBay Minerals also decided whether, when and how to deploy Fenix security personnel into communities located near the Fenix Project. Many of these decisions were made at HudBay’s head office in Toronto, Ontario.
15. At all material times, HudBay Minerals provided all capital required to conduct all operations at the Fenix Project. The financial arrangements which funded all of the

operations at the Fenix Project were established and based in Ontario, and all capital used by CGN came from Ontario.

16. HudBay Minerals has made significant and continued representations to the public about its direct and controlling involvement in the affairs of the Fenix Project, about its control of corporate relationships with Mayan communities located on or near land claimed to be owned by CGN, and about its corporate strategy and policy regarding the ongoing land disputes with local Mayan communities.
17. At all material times, HudBay Minerals conducted its operations at the Fenix Project in large part through HudBay's Country Manager for Guatemala, John Bracale. In addition to being Country Manager for Guatemala for HudBay Minerals at all material times, John Bracale was also President and Legal Representative of CGN, and was responsible for CGN's operations at the Fenix Project. All decisions and actions taken by Mr. Bracale were taken jointly on behalf of HudBay Minerals in his role as HudBay's Country Manager for Guatemala and on behalf of CGN in his role as President and Legal Representative for CGN. At all material times, Mr. Bracale answered to and was directed by HudBay's senior management in relation to all of his duties at the Fenix Project, including all duties related to community relations, security and security personnel. HudBay's senior management conducted this supervision and direction from HudBay's head office in Toronto, Ontario.
18. John Bracale, HudBay's Country Manager for Guatemala, and CGN's President and Legal Representative, regularly travelled to Ontario to attend and participate in business meetings with other HudBay Minerals executives, to provide updates regarding CGN's operations to HudBay Minerals and to receive instructions and orders about future CGN operations from HudBay Minerals. Mr. Bracale also participated in numerous and frequent electronic communications with HudBay corporate headquarters in Ontario by telephone, conference call, email and facsimile.
19. HudBay Minerals appointed a specific executive, Tom Goodman, Senior Vice President, Development, to be responsible for the oversight of Corporate Social Responsibility of all

of HudBay's operations, including at the Fenix Project. At all material times, Mr. Goodman conducted his duties from Canada.

### **HudBay's Fenix Security Personnel**

20. Under instructions from and subject to continuing approval by HudBay Minerals, CGN employed private security personnel at the Fenix Project on behalf of and for the benefit of HudBay Minerals at all material times. These private security personnel were directly or indirectly controlled by HudBay Minerals.
21. From January 7, 2007 until September 28, 2009, under authorization from first Skye Resources and later HudBay Minerals, CGN retained a third party company called Integración Total S.A. ("Integración Total") to provide further security at the Fenix Project. CGN retained Integración Total solely through an informal oral agreement.
22. Skye Resources, and later HudBay Minerals, had knowledge of and power over the terms of the oral agreement between CGN and Integración Total and in fact approved the terms of the oral agreement. This informal oral agreement failed to include rules of conduct for security personnel, failed to impose standards regarding the appropriate use of force and failed to require adequate training of security personnel.
23. At all material times, all security personnel provided through Integración Total were agents of CGN. CGN's internal security personnel and the security personnel provided through Integración Total will be hereinafter collectively referred to as the "Fenix Security Forces" or the "Security Forces".
24. HudBay Minerals knew that Guatemalan law requires private security providers to be specifically authorized and licensed prior to providing security services. HudBay Minerals knew that neither CGN nor Integración Total had the required authorization or license to provide private security services in Guatemala, and therefore knew that the Fenix Security Personnel were operating at the Fenix Project illegally.

25. HudBay Minerals further knew that both individuals and private security providers are prohibited from carrying or using firearms without specific authorization from Guatemala's Office for Arms and Ammunition Control. In order to gain authorization, private security providers must, *inter alia*, register and license all weapons used in the provision of security services and conduct background checks on its employees.
26. HudBay Minerals knew that the Fenix Security Forces did not have the required weapons authorization, registration or licenses to acquire, possess or distribute firearms, and therefore knew that their Security Forces were using firearms at the Fenix Project illegally. In particular, HudBay Minerals knew that Integración Total and CGN failed to conduct the necessary background checks on its employees and failed to register any of the approximately 34 shotguns that were used by the Security Forces at the Fenix Project.
27. As part of HudBay Minerals' background assessment of the risks and responsibilities of continuing to retain Integración Total to provide private security services at the Fenix project, HudBay Minerals knew or should have known that there were common public, serious and credible allegations that Integración Total and its managers were involved in organized crime and were implicated in arms and drug trafficking. HudBay Minerals should have taken this alleged criminality into account when assessing the risks of continuing to retain Integración Total, including its assessment of the likelihood of Integración Total's employees committing potential illegal or inappropriate acts in connection with their duties at the Fenix Project.
28. HudBay's Fenix Security Forces included individuals who were members of the Guatemalan military or paramilitary groups during the time of the civil war. During the war, the Guatemalan Military and paramilitary groups participated in war crimes and crimes against humanity, including genocide, on a large scale.
29. At all material times, the Fenix Security Forces were led and controlled by Mynor Ronaldo Padilla González ("Mynor Padilla"), who was directly employed by CGN as Head of Security at the Fenix Project at the direction of HudBay Minerals.

30. HudBay Minerals knew that Mr. Padilla did not have the necessary license to lawfully acquire, possess or carry a firearm as required by Guatemalan law. HudBay Minerals knew that despite failing to have the required firearms license, Mr. Padilla openly and illegally carried and used a 9mm pistol that had been issued to him by its subsidiary CGN while on duty as Head of Security for the Fenix Project.
31. HudBay Minerals also knew that, prior to the shooting of German Chub, Mr. Padilla had been accused of committing several criminal acts while employed as Head of Security for the Fenix Project. At least three of these incidents resulted in the filing of formal complaints with the Justice Department in Guatemala. These incidents include allegations that:
- (a) Mr. Padilla, along with another CGN employee, issued death threats against community members near El Estor in May 2009 while on duty at the Fenix Project; and
  - (b) Mr. Padilla shot his gun recklessly and without cause, causing damage in a Mayan Q'eqchi' community located on contested land while on duty at the Fenix Project in September 2009.
32. At all relevant times, HudBay Minerals made key decisions regarding the Fenix Security Forces including establishing (or failing to establish) any codes of conduct regarding the use of force; determining the rules of engagement in situations involving force; determining the level of protection of human rights; determining the size and composition of the Security Forces; deciding who would lead the Security Forces; and determining the manner in which the Security Forces were deployed. Many of these decisions were made at HudBay's head office in Toronto, Ontario.
33. HudBay has referred to the Fenix Security Forces as "our own security personnel" on its Canadian-based website.
34. John Bracale, in his role as HudBay's Country Manager for Guatemala, was responsible for and did in fact supervise and direct the activities of the Fenix Security Forces

deployed at the Fenix Mining Project. Mr. Bracale was responsible for overseeing the hiring, training and equipping of the Fenix Security Forces. Mr. Bracale was also responsible for establishing, implementing and enforcing rules of conduct for the Security Forces. In particular, Mr. Bracale personally supervised and directed the Head of Security for the Fenix Project, Mynor Padilla. Mr. Bracale knew that the Fenix Security Forces were not licensed or authorized to provide private security services in Guatemala; knew that the Fenix Security Forces, including Mr. Padilla, were not licensed or authorized to carry or use the dozens of weapons that were in fact carried and used by the Security Forces at the Fenix Project; and knew that several allegations of criminal acts had been made against Mr. Padilla.

35. HudBay Minerals has publicly committed to implementing and adhering to specific standards and principles of conduct applicable to the security personnel engaged at the Fenix Project. These standards and principles of conduct are contained in corporate social responsibility frameworks including the international Voluntary Principles on Human Rights and Security. Mr. Bracale was responsible for ensuring that the Security Forces adhered to the clear and specific standards and guidelines set out in the Voluntary Principles on Security and Human Rights. Despite publicly representing that HudBay would abide by these security standards, HudBay did not, in fact, implement or apply these standards in the hiring, directing or supervising of security personnel engaged at its Fenix Project.

#### **Land disputes between HudBay Minerals and Mayan Q'eqchi' communities**

36. Several indigenous Mayan Q'eqchi' farming communities are currently located on a small portion of the Fenix Property (the "Contested Land"). During the period relevant to this lawsuit, HudBay and its subsidiaries claimed that CGN and HudBay had valid legal right to the land, while the Mayan Q'eqchi' communities claimed that Mayan Q'eqchi' are the rightful and legal owners of the lands which they consider to be their ancient ancestral homeland. The Mayan Q'eqchi' further claimed that any apparent rights to the Contested Land claimed by HudBay or its subsidiaries are illegitimate as these rights were first granted by a dictatorial military government during the Guatemalan

Civil War, at a time when Mayan Q'eqchi communities were being massacred and driven off of their land.

37. In 2006, an agency of the United Nations ruled that Guatemala had breached international law by granting mining rights to the Fenix Project without adequately consulting with local Mayan Q'eqchi' communities. HudBay Minerals and the Guatemalan government have ignored this ruling.
38. On February 8, 2011, the Constitutional Court of Guatemala, the highest court in the country, ruled that Mayan Q'eqchi' communities have valid legal rights to the Contested Land, and ordered the Government of Guatemala to formally recognize the community's collective property rights. To date, HudBay Minerals and the Guatemalan government have ignored this ruling.
39. In or around September 2006, the Mayan Q'eqchi' who had been expelled from the area around El Estor and their descendants reclaimed several parcels of land near El Estor by moving onto a small part of the land that constitutes the Fenix Property and occupying it. These farmers view their reclamation as a rightful and legal repossession of historical Mayan Q'eqchi' land brutally and unjustly taken from them and their families during the Guatemalan Civil War.
40. In late 2006 and early 2007, police, military and illegally-armed mine company security personnel conducted a number of forced evictions of these reclaimed communities at the request of HudBay Minerals' predecessor corporation, Skye Resources. Skye Resources has since amalgamated with HudBay Minerals. In the course of these evictions, CGN's private security personnel, police and military burnt hundreds of houses to the ground, fired gunshots, stole goods, and in at least one community, gang-raped several women.
41. Immediately after these evictions, evicted community members returned to the land they had been forced to leave. These community members continue to reside and farm on this Contested Land. HudBay and its predecessor corporation, Skye Resources, have

repeatedly referred to these land claimants as “squatters” or “invaders”, and have refused to recognize or accommodate Mayan Q’eqchi’ claims to the land.

42. The Defendant HudBay Minerals noted in public corporate documents in November 2008 that the ongoing land conflict represented a material risk to HudBay Minerals’ business, stating that “future incidents [regarding the Contested Land] may be larger and more disruptive to the progress of the Fenix Project and may cause significant delays, which could have a material and adverse effect on HudBay’s business and results of operations”.

#### **The events leading to the shooting of German Chub**

43. Throughout the time period prior to the shooting of Mr. Chub, HudBay’s managers and executives were briefed regarding the ongoing land dispute, including being advised in 2009 of rising tensions between the company and communities located on Contested Land.
44. In particular, Mr. Bracale, HudBay’s Country Manager for Guatemala, frequently met or conversed with Mr. Padilla, the Head of Security for the Fenix Project, to discuss the ongoing land dispute, to receive reports on security issues, and to give Mr. Padilla directions regarding the conduct of the Fenix Security Forces.
45. HudBay Minerals, through its executive and manager Mr. Bracale, authorized the deployment of Fenix Security Forces armed with unlicensed and illegal weapons and led by Mr. Padilla into Mayan Q’eqchi’ communities located on Contested Land on Sunday, September 27, 2009 during an unannounced, unwelcome and confrontational visit by the Governor of the Department of Izabal to a Mayan Q’eqchi’ community.
46. In light of the heightened tensions and increased conflict between the mining company and Mayan Q’eqchi’ communities at the time, this authorized deployment of illegally armed Fenix Security Forces into Mayan Q’eqchi’ communities was reckless and provocative.

47. The intrusion of Fenix Security Forces into Mayan Q'eqchi' communities provoked fears of renewed forced and violent evictions and sparked a series of protests that occurred throughout the day of September 27, 2009. These protests included a road blockade as well as a general protest that occurred on the south side of a cluster of buildings owned by CGN. These buildings housed a police station and police dormitories, as well as company offices and a health clinic (the "Fenix Buildings").
48. The Fenix Buildings are surrounded by a large open space that was enclosed by a barbed-wire fence in some places and a chain-link fence in others (the "Fenix Compound"). The Fenix Compound is approximately 300 metres wide by 400 metres long. The Mayan Q'eqchi' community of La Unión is located on the north side of the Fenix Compound. The community soccer field is located in the community of La Unión. On the west side of the soccer field there are mine company buildings; on the east side, there is a public road; on the north side is the community of La Unión; and on the south side of the soccer field, there is an empty field that at the time of the events described herein was separated from the soccer field by a barbed-wire fence.
49. In the afternoon of September 27, 2009, German Chub was watching a soccer game between two neighbourhoods at the community soccer field in La Unión when Fenix security personnel and Mr. Padilla, the Head of Security for the Fenix Project, arrived. Fenix security personnel wore CGN uniforms and bullet-proof vests and were heavily armed with a variety of unlicensed and unlawful weapons including handguns, shot-guns, machetes, pepper-spray and tear gas.
50. Mr. Chub was not involved in any protest activities that took place that day, nor were there any protest activities taking place in the vicinity of Mr. Chub when Mynor Padilla and the Fenix security personnel arrived.
51. [Removed]
52. Mr. Chub was standing at the side of the soccer field a few meters outside the Fenix Compound fence. Mr. Padilla approached to within several metres of Mr. Chub at which

time, Mr. Chub saw Mynor Padilla draw his handgun and aim it at him. As Mr. Chub turned to attempt to escape, Mynor Padilla shot Mr. Chub without provocation. The bullet entered Mr. Chub's left shoulder, punctured his left lung, travelled through his chest cavity and badly damaged his spinal column. Mr. Chub lost consciousness shortly after being shot. He awoke a short time later lying face down on the ground, coughing up blood.

53. Mynor Padilla and the other Fenix security personnel present took no steps to assist Mr. Chub after shooting him, and simply left. Mr. Chub was removed from the scene shortly thereafter by friends and relatives.
54. Mr. Chub suffered catastrophic and life threatening injuries as a result of the shooting. He required the attention of several medical specialists to save his life. Mr. Chub spent three months in hospital and a further 17 months in various physiotherapy and rehabilitation centres. As a result of the shooting, Mr. Chub is now a paraplegic and has lost the use of his left lung. The bullet shot by Mynor Padilla remains lodged in Mr. Chub's chest.
55. Later on September 27, 2009, Mynor Padilla shot and killed Adolfo Ich Cháman in a similar unprovoked attack.
56. Hours after Mr. Chub was shot, unknown individuals ransacked the Fenix Buildings.
57. At all material times, all Fenix Security Forces were acting within the course of their duties as employees or agents of CGN on behalf of HudBay Minerals Inc. In particular, Mynor Padilla was acting in the course of his duties as Head of Security for the Fenix Project when he shot Mr. Chub at close range. At all material times, including when Mr. Chub was shot by Mr. Padilla, Mr. Padilla and the Fenix Security Forces were acting under the control and supervision of Mr. Bracale and HudBay Minerals.

### **The Defendant's knowledge**

58. HudBay Minerals knew that excessive and unjustified violence had been used at previous evictions requested by Skye Resources, and that were carried out, in part, by CGN security personnel in 2007. In particular, executives of HudBay Minerals and CGN had seen video depictions of homes being burned to the ground during these evictions, allegedly by individuals employed by CGN.
  
59. HudBay Minerals knew or should have known that there was a significant risk that Mynor Padilla would use unjustified violence in the course of his duties as Head of Security for the Fenix Project. In particular, HudBay Minerals knew that Mr. Padilla had been credibly accused of committing previous criminal acts, including issuing death threats against Mayan Q'eqchi' community members located on contested land and shooting his gun recklessly and without cause.
  
60. HudBay Minerals knew that Mr. Padilla did not have the firearms license that is required to lawfully acquire or possess a firearm or ammunition in Guatemala. HudBay Minerals further knew that Mr. Padilla had been unlawfully issued a 9mm handgun by its Guatemalan subsidiary, CGN, which Mr. Padilla later used to shoot Mr. Chub.
  
61. HudBay Minerals knew that the Fenix Security Forces did not have the proper license to provide private security services, and were therefore providing security at the Fenix Project illegally.
  
62. HudBay Minerals knew that, for a period of over two years, the Fenix Security Forces were using dozens of unlicensed and illegal weapons at the Fenix Project.
  
63. HudBay Minerals knew that Integración Total was retained to provide complex armed security of the Fenix mining project in a volatile context solely on the basis of an informal oral agreement and specifically without the benefit of a formal written contract.

64. HudBay knew, or should have known, that Guatemala is a very violent society with one of the highest murder rates in the world. The Defendant knew, or should have known, that the murder rate in Guatemala is higher now than it was during the height of the Guatemalan Civil War.
65. HudBay knew, or should have known, that private security forces in Guatemala continue to employ the violent tactics that were used during the Guatemalan Civil War, including extra-judicial executions.
66. HudBay knew, or should have known, that individuals who were former members of the Guatemalan military and paramilitary groups during the Guatemalan Civil War were employed as part of HudBay's Fenix Security Forces.
67. HudBay knew or should have known that there were common public, serious and credible allegations that Integración Total and its managers were involved in organized crime and were implicated in arms trafficking and drug trafficking.
68. In particular, HudBay Minerals knew that two of Integración Total's executive managers were at the centre of a notorious and well-publicized criminal espionage scandal in 2008. HudBay Minerals knew that in September 2008, an arrest warrant was issued for the vice president and co-owner of Integración Total, Gustavo Solano Cerezo Bladimir. HudBay Minerals knew that Mr. Cerezo, who was also employed as a high level intelligence official for the President of Guatemala, was charged with espionage and accused by the Guatemalan state of spying on the President on behalf of organized crime groups after listening equipment was discovered in the President's offices and his home. HudBay Minerals further knew that another Integración Total executive manager, Osman Amílcar Contreras Alvarado, was also implicated in the plot.
69. HudBay knew that Guatemala's justice system is dysfunctional, and suffers from serious and debilitating problems with corruption, political interference and threats and violence against justice officials and witnesses. HudBay knew, or should have known, that the

vast majority of violent crime in Guatemala is not investigated, let alone tried in court.

The international organization Human Rights Watch reports:

More than a decade after the end of the [Guatemalan Civil War], impunity remains the norm for human rights violations. . . . According to official figures, there was 99.75 percent impunity for violent crime as of 2009. Deficient and corrupt police, prosecutorial and judicial systems, as well as the absence of an adequate witness protection program, all contribute to Guatemala's alarmingly low prosecution rate. In addition members of the justice system are routinely subject to attacks and intimidation.

The defendants further knew that Guatemala's weak and dysfunctional justice system has no appreciable deterrent effect, and therefore knew that there was a greatly increased risk that individuals employed at the Fenix Project would resort to violent tactics to resolve disputes without fear of sanction or punishment, as in fact happened in this case.

70. HudBay knew about the complex historical land issues in Guatemala that have led to frequent land reclamations by Mayan Q'eqchi' communities who were displaced during the civil war, and further knew that armed forced and violent removal of these communities is the typical response to these land reclamations. For example, according to an Amnesty International report published in March 2006:

[There is] a common pattern of human rights violations [during evictions]. One feature is the use of violence. . . . In most cases there are wounded, and sometimes dead, on both sides, although *campesino* communities, who frequently resist forced evictions, bear the brunt of the violence. . . . The destruction, in particular burning, of homes and personal possessions is common. . . . Private individuals carry out the destruction with the acquiescence of the police and sometimes with their active help.

71. HudBay Minerals knew that its subsidiary CGN, formerly known as EXMIBAL, was linked to past violence associated with the Fenix Project. The United Nations-sponsored truth and reconciliation commission, the *Comisión para el Esclarecimiento Histórico*, (the "Truth Commission") reported in 1999 that:

- (a) In June 1978, employees of EXMIBAL (now called CGN) were involved in the execution of four persons near the El Estor mine site. The Truth Commission classified these murders as arbitrary executions.

- (b) In 1981, police travelling in a vehicle owned by EXMIBAL abducted community leader Pablo Bac Caal from his home near the Fenix mine site. He was later found murdered. Pablo Bac Caal had often spoken out on the issue of the land rights of indigenous peoples. The Truth Commission classified his murder as an arbitrary execution.
- (c) In May 1978, Jose Che Pop and Miguel Sub, protestors from near El Estor, were shot at and wounded by men riding in truck owned by EXMIBAL. The Truth Commission classified this incident as an attack on the civilian population.

72. The Plaintiff pleads that CGN's historical involvement in acts of serious human rights violations is relevant in assessing legal foreseeability, as well as HudBay's duty of care and standard of care. Based on the known historical involvement of CGN in acts of serious human rights abuse, including arbitrary executions, the Defendant HudBay Minerals should have been aware of the increased and serious risk of violence by CGN employees at the Fenix Project, and should have taken increased precautions to ensure that CGN employees did not continue to be involved in acts of repression and violence.

#### **HudBay Minerals' public representations**

73. Since acquiring the Fenix Project in 2008, HudBay Minerals has made numerous public representations regarding its concern for corporate social responsibility and good community relations at its Fenix Project. These representations were made in Ontario.
74. The Plaintiff pleads that these representations are relevant to assessing the legal duty of care owed by HudBay Minerals to Mr. Chub, the legal standard of care applicable to HudBay Minerals, and the legal proximity that exists between HudBay Minerals and Mr. Chub. The Plaintiff pleads that by making these representations, HudBay is acknowledging and accepting its responsibility for and control over the issue of corporate social responsibility at the Fenix Project and the issue of the relationship between the Fenix Project and local residents, including Mr. Chub.

75. The Plaintiff further pleads that while these public representations are an acknowledgement by HudBay of responsibilities and duties owed by HudBay to Mayan community members living near the Fenix Project, including Mr. Chub, HudBay did not take any reasonable or appropriate steps to meet these responsibilities or comply with these duties. Rather, the Plaintiff pleads that HudBay used these representations as a public relations exercise to enhance its reputation in the eyes of the Canadian public and Canadian investors.

76. For example, in HudBay Minerals' "Corporate Social Responsibility Report 08" HudBay Minerals states:

- (a) "At HudBay, we embrace our responsibilities through our Company-wide commitment to the welfare of neighbouring communities. . . . Our core values are reflected in every region where we operate, including our new Fenix project in Guatemala which we acquired in 2008."
- (b) "Our stakeholders include employees of HudBay and its subsidiaries, shareholders, suppliers and service providers, as well as communities [and] Aboriginal groups. . . affected by, or that can affect, HudBay's operations."
- (c) "Part of the reason we have stayed in business over eight decades is that we take responsibility for our actions. . . We are responsible. . . [sic] to conduct business in a legal and responsible manner, respecting our neighbours. . . . Being responsible is a core Company value."
- (d) "Two of HudBay's executives have particular responsibility for the oversight of corporate social responsibility issues."
- (e) "At HudBay, we embrace our responsibilities through our Company-wide commitment to the welfare of neighbouring communities, the safety and health of our employees, and the environment. Our corporate governance policies have been enhanced in 2009 aligned with our core values of honesty, openness and transparency."

77. Further, HudBay publicly states that it subscribes to the “Towards Sustainable Mining Principles”, which it calls a “rigorous system for achieving best performance and continuous improvement”. These principles state that, “[i]n all aspects of our business and operations, we will: Respect human rights and treat those with whom we deal fairly and with dignity.”
78. Peter Jones, HudBay’s former President and CEO, spoke publicly on behalf of HudBay in response to the shootings by Fenix Security Personnel on September 27, 2009, stating: “[o]ur number one priority is to ensure the safety and security of all residents and employees in El Estor. . . . We remain committed to working with local residents to reach a fair and equitable solution to land claims and resettlement.”
79. In HudBay Minerals’ “2009 Corporate Social Responsibility Report”, the CEO and President of HudBay writes:
- (a) “In Guatemala, we continued investments in the region of El Estor. . . . Many of these investments are aimed at cementing our relationship with the broader community, whose efficient functioning and support are critical to the long-term success of the company in Guatemala.”
  - (b) “. . . we will continue to invest in El Estor. This support is integral to HudBay’s relationship with the community and helps to maintain our social licence to operate.”
  - (c) “For 2010, HudBay’s commitment to corporate social responsibility remains steadfast.”
  - (d) HudBay’s corporate social responsibility (CSR) reporting “reflects HudBay’s commitment to continuous improvement and demonstrates our dedication to achieving high CSR standards.”
  - (e) “Our track record of supporting the communities in which we work is an extension of the high standards we have established within our operations.”
  - (f) “HudBay’s immediate communities are the population centers near our areas of mining activity.”

80. HudBay Minerals has publicly stated that it has adopted the Voluntary Principles on Security and Human Rights – a detailed set of international standards applicable to the use of private security forces at resource extractive projects. In adopting the Voluntary Principles on Security and Human Rights, and in publicly and repeatedly declaring that adoption, HudBay has acknowledged and accepted responsibility for policies and practices related to security personnel at the Fenix project in Guatemala. The standards and principles adopted by HudBay Minerals include the following:

- (a) “Private security should observe the policies of the contracting Company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments; and promote the observance of international humanitarian law”;
- (b) “Private security should maintain **high levels of technical and professional proficiency**, particularly with regard to the **local use of force and firearms**”;
- (c) “**Private security should act in a lawful manner. They should exercise restraint and caution** in a manner consistent with applicable international guidelines regarding the local use of force, including the UN Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, as well as with emerging best practices developed by Companies, civil society, and governments”;
- (d) “Private security should have policies regarding **appropriate conduct and the local use of force (e.g., rules of engagement)**. Practice under these policies should be capable of being **monitored by Companies** or, where appropriate, by independent third parties. Such monitoring should encompass **detailed investigations into allegations of abusive or unlawful acts**; the **availability of disciplinary measures sufficient to prevent and deter**; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate”;
- (e) “**All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated**”;

- (f) **“Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities”;**
- (g) **“Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals** while exercising the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work”;
- (h) **“In cases where physical force is used, private security should properly investigate and report the incident to the Company.** Private security should refer the matter to local authorities and/or take disciplinary action where appropriate”;
- (i) **“Where appropriate, Companies should include the principles outlined above as contractual provisions** in agreements with private security providers and ensure that **private security personnel are adequately trained** to respect the rights of employees and the local community. To the extent practicable, agreements between Companies and private security should require investigation of unlawful or abusive behavior and appropriate disciplinary action. Agreements should also permit termination of the relationship by Companies where there is credible evidence of unlawful or abusive behavior by private security personnel”;
- (j) **“Companies should consult and monitor private security providers** to ensure they fulfill their obligation to provide security in a manner consistent with the principles outlined above”;
- (k) **“Companies should review the background of private security** they intend to employ, **particularly with regard to the use of excessive force”** (emphasis added).

81. After the events of September 27, 2009 described herein, HudBay Minerals has continued to make statements demonstrating that HudBay had assumed responsibility for both resolving the land conflict at the Fenix Project and for implementing and enforcing standards of conduct applicable to security personnel at the Fenix Project. In particular, HudBay Minerals' 2010 Corporate Social Responsibility Report asserts, "[i]n Guatemala, we implemented the Voluntary Principles [on Security and Human Rights]". In a section entitled "Addressing Conflict in Guatemala" in the same report, HudBay asserts:

During the time that HudBay had an interest in the Fenix nickel project (from late 2008 to September 2011), we and our subsidiaries worked to resolve an issue of illegal land occupations through peaceful and constructive dialogue. A series of events on September 27, 2009 resulted in the tragic death of a community member and several injuries to others. . . . **HudBay is dedicated to promoting and respecting human rights, and implemented the internationally recognized Voluntary Principles on Security and Human Rights for our personnel and contractors in Guatemala. This included extensive training of security personnel [emphasis added].**

82. Despite public representations from HudBay management regarding the company's ostensible commitment to specific and identifiable security standards, HudBay did not in fact take any reasonable or appropriate steps to implement or enforce any standards regarding the use of security personnel at HudBay's operations in Guatemala, nor was the training that was ostensibly provided sufficient or appropriate. Further, despite its public representations, HudBay Minerals has taken no steps to become an actual "signatory participant" as is required to formally participate in the Voluntary Principles.

## ***V. Legal Claims***

### **Claim against HudBay Minerals for Negligence**

83. The Plaintiff German Chub claims against HudBay Minerals directly for negligence causing physical and psychological harm.

84. The Plaintiff pleads that HudBay Minerals is directly liable in negligence for the injuries suffered by Mr. Chub. As set out above, HudBay Minerals, through its employees, managers, executives and directors committed numerous acts and omissions and made

numerous decisions both in Canada and in Guatemala that together caused and resulted in the shooting of Mr. Chub. These decisions and actions include decisions made and actions taken by John Bracale, HudBay Minerals' Country Manager for Guatemala and President and Legal Representative of CGN, as well as other executives and employees of HudBay Minerals.

85. HudBay Minerals knew, or should have known, in all of the circumstances described above, that a failure to act with reasonable care would create a reasonably foreseeable and serious risk that the Fenix Security Personnel would use undue force in the exercise of their duties.
86. In making decisions regarding the Fenix Project, HudBay Minerals owed Mr. Chub a duty to act with reasonable care. With the knowledge particularized above, HudBay Minerals breached that duty by:
- (a) Authorizing the reckless and provocative deployment of security personnel armed with unlicensed and illegal weapons into communities located on Contested Land on Sunday, September 27, 2009 with the knowledge that this deployment would likely precipitate violence;
  - (b) Authorizing the distribution of lethal, unlicensed and illegal weapons to Fenix Security Forces, including to Mynor Padilla, without adequate training or controls, and in contravention of Guatemalan laws on firearms and ammunition;
  - (c) Failing to investigate and adequately respond to knowledge that, prior to the shooting of Mr. Chub, Mr. Padilla was accused of committing criminal acts, including uttering death threats and shooting his gun recklessly and without cause, while on duty as head of security for the Fenix Project;
  - (d) Negligently directing, controlling, monitoring and supervising the Fenix Security Forces, including the head of security for the Fenix Project, Mynor Padilla;

- (e) Instructing CGN to engage private security forces at its Fenix project without taking reasonable or adequate steps to protect against the unjustified use of violence by these Security Forces;
- (f) Providing continued approval and authorization for use of Fenix Security Forces without taking reasonable or adequate steps to protect against the use of unjustified violence by the Security Forces;
- (g) Providing approval to continue to retain Integración Total to provide security at the Fenix Mine site despite knowledge that Integración Total was retained only through an informal oral agreement, and was not legally licensed to provide private security services in Guatemala;
- (h) Failing to establish, implement or enforce a corporate code of conduct that adequately protected the human rights of those impacted by HudBay's Fenix mining project;
- (i) Formulating and directing a corporate response toward communities that escalated tensions and greatly increased the risk of violence, including by pursuing a strategy of clearing contested ancestral land of Mayan Q'eqchi' families, often through use of force and threats of violence;
- (j) Failing to establish, implement or enforce appropriate standards of conduct for its Security Forces;
- (k) Failing to ensure that its Security Forces were adequately trained;
- (l) Failing to ensure that its Security Forces had reasonable levels of technical and professional proficiency;
- (m) Failing to take reasonable steps to ensure that its Security Forces did not include individuals who had previously committed serious human rights violations;
- (n) Failing to establish and implement adequate disciplinary mechanisms designed to prevent and deter unreasonable uses of violence by its Security Forces;

- (o) Failing to investigate known past uses of violence by its Security Forces, including the frequent and liberal use of firearms during evictions requested by CGN and its predecessor corporation, Skye Resources, in 2006 and 2007; and
- (p) Failing to implement, monitor or enforce the Voluntary Principles on Security and Human Rights as HudBay publicly committed it would.

87. HudBay Mineral's Country Manager for Guatemala, John Bracale, was responsible for directing, controlling, monitoring and supervising the Fenix Security Forces, and in particular the Head of Security at the Fenix Project, Mynor Padilla.

88. The Plaintiff pleads that HudBay Minerals is responsible in law for the negligence of Mr. Bracale, the particulars of which are as follows:

- (a) Negligently directing, controlling, monitoring and supervising the Fenix Security Forces, including Mynor Padilla, the Head of Security for the Fenix Project;
- (b) Authorizing the reckless and provocative deployment of security personnel armed with unlicensed and illegal weapons on September 27, 2009 into communities located on Contested Land despite knowledge that this deployment would likely precipitate violence;
- (c) Failing to implement or enforce appropriate standards of conduct for the Fenix Security forces despite knowing of the past uses of unreasonable violence by the Fenix Security Forces, and despite knowing of the ongoing risk that Fenix Security Forces would use unjustified violence in the exercise of their duties;
- (d) Failing to investigate and adequately respond to criminal complaints that were laid against Mr. Padilla asserting that he had uttered death threats against community members as part of his duties as Head of Security for the Fenix Project;
- (e) Authorizing the use of force by Fenix Security Forces against local communities; and

- (f) Authorizing the distribution of lethal, unlicensed and illegal weapons to Fenix Security Forces, including Mynor Padilla, without adequate training or controls, and in contravention of Guatemalan laws on firearms and ammunition.

89. Tom Goodman, Senior Vice President, Development for HudBay Minerals, was responsible for the oversight of Corporate Social Responsibility for all of HudBay's operations, including at the Fenix Project. The Plaintiff pleads that the Defendant HudBay Minerals is responsible in law for the negligence of Mr. Goodman, the particulars of which are as follows:

- (a) Failing to develop, implement and/or enforce an adequate or reasonable corporate social responsibility framework for HudBay's operations in Guatemala; and
- (b) Negligently supervising and directing community relations programs at HudBay's Fenix Project with the knowledge that policies regarding the appropriate use of force and the protection of human rights at the Fenix Project were lacking, inadequate or were not being enforced.

**Catastrophic and life-threatening injuries suffered as a result of HudBay's tortious conduct**

90. As a result of HudBay's tortious conduct as particularized above, Mr. Chub sustained catastrophic and life-threatening injuries caused by a penetrating gunshot wound extending from his left shoulder to his spinal column. The severe and life-threatening injuries caused by the gunshot include severe damage to his spinal cord, a punctured and collapsed left lung, and severe lacerations to tissue and blood vessels.

91. After being left for dead by Fenix security personnel, Mr. Chub was taken to hospital where he required the attention of several medical specialists to save his life. Mr. Chub spent over 20 months in various hospitals and physiotherapy and rehabilitation centres. Mr. Chub will require continued medical attention and care for the rest of his life.

92. As a result of the shooting and corresponding damage to his spinal cord, Mr. Chub now suffers from total paraplegia. In particular, Mr. Chub has lost total function, control and feeling below his 4<sup>th</sup> thoracic vertebra, which is approximately mid-chest height. Mr.

Chub also suffers from continual issues with his spinal column which will require continued further attention by medical specialists.

93. As a result of the shooting and corresponding damage to his left lung, Mr. Chub's left lung is permanently and totally collapsed. Mr. Chub has no use of his left lung and no prospect of regaining the use of his left lung.
94. Mr. Chub has been unable to carry on normal tasks of living and has suffered a serious and tragic reduction in the enjoyment of life.
95. Mr. Chub has incurred the loss of large amounts of present and future income as a result of the shooting. He will continue to suffer a serious diminution of income on a permanent basis.
96. Mr. Chub has incurred special damages for costs incurred as a result of the shooting including hospitals costs, rehabilitation costs, lost income, and other related expenses. Full particulars of these accounts will be delivered to the Defendant during the course of these proceedings.

#### **Punitive damages**

97. The Plaintiff pleads that the Defendant's conduct was malicious and reckless and constitutes a wanton disregard for Mr. Chub's rights. Mr. Chub therefore asserts that it is appropriate, just and necessary to order aggravated and punitive damages against the Defendant.

#### **Law Applicable to the Claim**

98. The Plaintiff contends that Ontario law is applicable in relation the Defendant's liability and to damages for all claims in this action.
99. In the alternative, the Plaintiff pleads that the applicable law is Guatemalan law in relation to the Defendant's liability and Ontario law with respect to damages for all claims in this action.

100. If Guatemalan law is deemed to apply, the Plaintiff pleads and relies on Guatemalan law from the *Civil Code of Guatemala* and the *Criminal Code of Guatemala* (in relation to civil liability for criminal acts) that is annexed to this document as Schedule "A".

**Location of Trial**

101. The Plaintiff proposes that this action be tried at Toronto, Ontario

Date: October 26, 2011

Amended on: February 6, 2012

Amended again on: October 10, 2013

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**Solicitors for the Plaintiff**

**SCHEDULE A**  
**GUATEMALAN CIVIL CODE**

**Article 24.** Legal persons are civilly responsible for the actions of their representatives when in the exercise of their functions they harm another, or when they violate the law or do not comply with the law; this is without prejudice to appropriate action against the perpetrators of the damage.

....

**SECTION VII**

**Obligations that Result from Unlawful Acts**

**CHAPTER ONE**

***All damage must be compensated***

**Article 1645.** Any persons who cause damage or harm to another, whether intentionally, or due to lack of care or imprudence, are obligated to provide compensation for such damage, except where it can be shown that the damage or harm was produced by the fault or inexcusable negligence of the victim.

**Article 1646.** The person responsible for an intentional or unintentional delict is obligated to compensate the victim for the damage and harm that has been caused to the victim.

....

**Article 1648.** Blame is presumed, but this presumption can be rebutted by evidence to the contrary. The injured person is only obligated to prove the damage or harm suffered.

....

***Bodily injuries***

**Article 1655.** If the damage consists of bodily injuries, the victim has the right to be reimbursed for medical expenses, and to be provided with payment for the damage and harm that results from either partial or total physical inability to work. The judge will determine the amount by examining the following factors:

- 1) Age, civil state, occupation or profession of the person who has been affected:
- 2) Obligation of the person to provide for other people who have the right to be provided for under the law;
- 3) The ability and capacity of the obligated party to pay.

In the case of death, the heirs of the victim, or those who have the right to be provided for by the victim are able to claim compensation that will be determined in accordance with the foregoing factors.

....

***Employers' responsibility***

**Article 1663.** The employers or owners of workshops, hotels, business or industrial establishments and, in general, people who have someone under their command must answer for damage or harm caused by their employees or other workers in the context of their jobs.

They are also obligated to answer for acts beyond their control that have to do with the possession or control of an object or thing that they have delivered or transferred to a person that does not offer the necessary guarantees in order to make use of that object or thing.

The one that pays is able, in turn, to claim against the one who actually caused the damage or harm for the amount that he himself paid.

***Legal persons***

**Article 1664.** Legal persons are responsible for the damage or harm caused by their legal representatives in the exercise of their duties.

....

***Illegal imprisonment and constraint***

**Article 1667.** The person who causes illegal imprisonment and constraint, or those who order it, are jointly responsible for the damage or loss caused.

**GUATEMALAN CRIMINAL CODE**

***Criminal responsibility of legal persons***

**Article 38.** Legal persons will be held responsible for crimes committed by directors, managers, executives, representatives, administrators, staff members, or employees who have become involved in an act and without whose participation said act would not have transpired. Legal persons will be punished in the same way as indicated by the Code for individual persons.

....

**SECTION IX**

**Civil Responsibility**

***Responsible persons***

**Article 112.** Each person who is criminally responsible for a delict or fault, is also civilly responsible.

....

***Transmission***

**Article 115.** Civil responsibility derived from a delict or fault, is passed on to heirs of the responsible person; likewise, an action is passed on to the heirs of the victim so that they can continue it.

....

***Extension of civil responsibility***

**Article 119.** Civil Responsibility includes: 1. Restitution; 2. Reparation for material and moral damages. 3. Compensation for damages.

....

***Referral to the civil law***

**Article 122.** With respect to that which has not been covered by this section, the rules from the *Civil Code* and the *Code of Civil and Commercial Procedures* that cover this material will be applied.

## CÓDIGO CIVIL DE GUATEMALA

**ARTÍCULO 24.** Las personas jurídicas son civilmente responsables de los actos de sus representantes que en el ejercicio de sus funciones perjudiquen a tercero, o cuando violen la ley o no la cumplan; quedando a salvo la acción que proceda contra los autores del daño.

...

### TÍTULO VII

#### Obligaciones que proceden de hechos y actos ilícitos

##### CAPÍTULO ÚNICO

Todo daño debe indemnizarse

**ARTÍCULO 1645.** Toda persona que cause daño o perjuicio a otra, sea intencionalmente, sea por descuido o imprudencia, está obligada a repararlo, salvo que demuestre que el daño o perjuicio se produjo por culpa o negligencia inexcusable de la víctima.

**ARTÍCULO 1646.** El responsable de un delito doloso o culposo, está obligado a reparar a la víctima los daños o perjuicios que le haya causado.

....

**ARTÍCULO 1648.** La culpa se presume, pero esta presunción admite prueba en contrario. El perjudicado sólo está obligado a probar el daño o perjuicio sufrido.

....

#### *Lesiones corporales*

**ARTÍCULO 1655.** Si el daño consiste en lesiones corporales, la víctima tiene derecho al reembolso de los gastos de curación y al pago de los daños o perjuicios que resulten de su incapacidad corporal, parcial o total para el trabajo, fijado por el juez en atención a las siguientes circunstancias:

- 1°. Edad, estado civil, oficio o profesión de la persona que hubiere sido afectada;
- 2°. Obligación de la víctima de alimentar a las personas que tengan derecho conforme a la ley; y
- 3°. Posibilidad y capacidad de pago de la parte obligada.

En caso de muerte, los herederos de la víctima, o las personas que tenían derecho a ser alimentadas por ella, podrán reclamar la indemnización que será fijada de conformidad con las disposiciones anteriores.

....

#### *Responsabilidad de los patronos*

**ARTÍCULO 1663.** Los patronos y los dueños de talleres, hoteles, establecimientos mercantiles o industriales y, en general, las personas que tienen a otra bajo su dependencia, responden por los daños o perjuicios que causen sus empleados y demás trabajadores en actos del servicio.

También están obligados a responder por los actos ajenos, los que teniendo la posesión o el mando de un objeto o elemento cualquiera, lo entreguen o transfieran a persona que no ofrezca las garantías necesarias para manejarlo.

El que pague puede repetir contra el autor del daño o perjuicio lo que hubiere pagado.

#### ***Personas jurídicas***

**ARTÍCULO 1664.** Las personas jurídicas son responsables de los daños o perjuicios que causen sus representantes legales en el ejercicio de sus funciones.

....

#### ***Apremio y prisión ilegales***

**ARTÍCULO 1667.** El que origina un apremio o prisión ilegales y el que los ordena, son responsables solidariamente por el daño o perjuicio que causen.

## **CÓDIGO PENAL DE GUATEMALA**

### ***RESPONSABILIDAD PENAL DE PERSONAS JURÍDICAS***

**ARTÍCULO 38.** En lo relativo a personas jurídicas se tendrá como responsables de los delitos respectivos a directores, gerentes, ejecutivos, representantes, administradores, funcionarios o empleados de ellas, que hubieren intervenido en el hecho y sin cuya participación no se hubiere realizado éste y serán sancionados con las mismas penas señaladas en este Código para las personas individuales.

....

## **TITULO IX**

### **DE LA RESPONSABILIDAD CIVIL**

#### ***Personas Responsables***

**ARTÍCULO 112.** Toda persona responsable penalmente de un delito o falta, lo es también civilmente.

....

#### ***Transmisión***

**ARTÍCULO 115.** La responsabilidad civil derivada de delito o falta, se transmite a los herederos del responsable; igualmente, se transmite a los herederos del perjudicado la acción para hacerla efectiva.

....

#### ***Extensión de la responsabilidad civil***

**ARTÍCULO 119.** La responsabilidad civil comprende:

- 1o. La restitución.
- 2o. La reparación de los daños materiales o morales.
- 3o. La indemnización de perjuicios.

....

***Remisión a leyes civiles***

**ARTÍCULO 122.** En cuanto a lo no previsto en este título, se aplicarán las disposiciones que sobre la materia contienen el Código Civil y el Código Procesal Civil y Mercantil.

**GERMAN CHUB CHOC**  
Plaintiff

v.

**HUDBAY MINERALS INC. et al.**  
Defendants

Court File No. CV – 11 – 435841

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**SECOND AMENDED**  
**STATEMENT OF CLAIM**

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