

AMENDED THIS Nov. 29/10 PURSUANT TO  
MODIFIÉ CE CONFORMÉMENT À

RULE/LA RÈGLE 26.02 ( A )

THE ORDER OF \_\_\_\_\_  
L'ORDONNANCE DU \_\_\_\_\_

DATED / FAIT LE \_\_\_\_\_

*[Signature]*  
REGISTRAR GREFFIER  
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-10-411159

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ANGELICA CHOC, individually  
and as personal representative of the estate of  
ADOLFO ICH CHAMÁN, deceased**

Plaintiffs

and

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

Defendants

*Seal*

**FRESH AS AMENDED  
STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiffs.  
The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**IF YOU PAY THE PLAINTIFFS' CLAIM, and \$10,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$400 for costs and have the costs assessed by the court.**

Date: September 24, 2010

Issued by:

" J. Richards "

Local Registrar

Address of court office: 393 University Avenue, 10<sup>th</sup> floor  
Toronto ON M5G 1E6

**TO: HUBBAY MINERALS INC.**  
1 Adelaide Street East  
Suite 2501  
Toronto, ON  
M5C 2V9

**TO: HMI NICKEL INC.**  
1 Adelaide Street East  
Suite 2501  
Toronto, ON  
M5C 2V9

**AND TO: COMPAÑÍA GUATEMALTECA DE NÍQUEL S.A.**  
3<sup>rd</sup> Ave 13-78, Zone 10  
Citibank Tower, 4<sup>th</sup> Floor, Office 401  
Guatemala City,  
Republic of Guatemala

## CLAIM

### ***I. OVERVIEW***

1. On September 27, 2009, Adolfo Ich Chamán, a respected Mayan Q'eqchi' community leader and an outspoken critic of the harms and human rights violations caused by Canadian mining activities in his community, was hacked and shot to death by private security forces employed by a subsidiary of Canadian mining company HudBay Minerals Inc.
2. This lawsuit is brought by Angelica Choc, Adolfo Ich's widow. She brings this lawsuit against HudBay Minerals Inc. and two of its subsidiaries to seek accountability from those who are responsible for the brutal murder of her husband.

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

3. The Plaintiff Angelica Choc, on her own behalf, claims:
  - (a) General, aggravated and special damages in the amount of \$1,000,000.00;
  - (b) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
  - (c) Costs of this action on a substantial indemnity basis; and
  - (d) Such further and other relief as this Honourable Court may deem just.
4. The Plaintiff Angelica Choc, as personal representative of the estate of Adolfo Ich Chamán, deceased, claims:
  - (a) General, aggravated and special damages in the amount of \$1,000,000.00.
  - (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***

5. Adolfo Ich Chamán (“Adolfo Ich”), deceased, was the President of the Community of La Unión, a respected Mayan Q’eqchi’ leader and a schoolteacher. He lived in the community of La Unión, which is located in the municipality of El Estor, department of Izabal, Republic of Guatemala. He was an outspoken critic of the harms and human rights violations caused by Canadian mining companies in his community, and a strong advocate for Mayan Q’eqchi’ land rights. Adolfo Ich was the father of five children.
6. The Plaintiff Angelica Choc is Adolfo Ich’s widow and mother of his children. She resides in the community of La Unión, and is also a respected Mayan Q’eqchi’ leader. Angelica Choc brings this action on her own behalf and as a personal representative of Adolfo Ich’s estate.
7. 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. HudBay Minerals owns and operates four mining projects in Canada and one mining project in Guatemala. Shares of HudBay Minerals are listed on the Toronto Stock Exchange.
8. The Defendant HMI Nickel Inc. (“HMI Nickel”) is a wholly-owned subsidiary of HudBay Minerals and is headquartered in Toronto, Ontario. HMI Nickel was formerly named Skye Resources Inc. (“Skye Resources”) prior to the purchase of all of the shares of Skye Resources by HudBay Minerals in August 2008.
9. The Defendant Compañía Guatemalteca de Níquel S.A. (“CGN”) is a subsidiary of HMI Nickel and HudBay Minerals. Prior to the purchase of a majority of its shares by HMI Nickel in 2004, CGN was named Exploraciones y Explotaciones Mineras Izabal S.A. (“EXMIBAL”). Through HMI Nickel, HudBay Minerals indirectly owns 98.2% of the shares of CGN.

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

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

10. HudBay Minerals, through its subsidiaries HMI Nickel and CGN, owns and operates the Fenix Mining Project (the "Fenix Project"). 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 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"). HudBay Minerals estimates that it will have to spend \$1 billion dollars in order to bring the Fenix mine back into production. HudBay Minerals estimates that the Fenix Project will produce 1.3 billion pounds of nickel over the life of the mine.
11. HudBay Minerals and its subsidiaries HMI Nickel and CGN carry 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. HMI Nickel and CGN are directed, controlled, managed and financed by HudBay Minerals from its corporate headquarters in Toronto, Ontario. Operations at the Fenix Project are similarly directed, controlled, managed and financed by HudBay Minerals. Both HudBay Minerals and HMI Nickel Inc. have made significant and continued representations to the public about their direct involvement in the affairs of the Fenix Project, including by frequently referring to the Fenix Project as "our project" or "our company's project".
12. HudBay Minerals and HMI Nickel have overlapping executives and boards of directors. At all relevant times:
  - (a) Peter Jones was both a director and Chief Executive Officer ("CEO") of HudBay Minerals Inc. and CEO and President of HMI Nickel;
  - (b) David Bryson was and is both Senior Vice President and Chief Financial Officer ("CFO") of HudBay Minerals and a director and CFO of HMI Nickel;

- (c) Alan Hair was and is both Senior Vice President, Development for HudBay Minerals, and a director of HMI Nickel; and
  - (d) Maura Lendon was and is Senior Vice President, General Counsel and Corporate Secretary for Hudbay Minerals, as well as being a member of both the board of directors and the executive of HMI Nickel.
13. HudBay Minerals and HMI Nickel's head offices share the same address in downtown Toronto.
  14. HudBay Minerals conducts its operations at the Fenix Project through its subsidiary CGN, and through its 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 Country Manager for Guatemala and on behalf of CGN in his role as President and Legal Representative.
  15. HudBay Minerals makes key decisions regarding the interaction between its subsidiaries and communities located near the Fenix Project. HudBay Minerals formulates corporate responses to Mayan Q'eqchi' claims to contested land and formulates and implements policies regarding community relations. HudBay Minerals and HMI Nickel also decide whether, when and how to seek the forced evictions of the communities located near the Fenix Project, including determining the level of involvement of Fenix Security Forces in those evictions.
  16. HudBay Minerals has appointed a specific executive, Vice President Operations, to be responsible for the oversight of Corporate Social Responsibility of all of HudBay's operations, including the operations of its subsidiaries at the Fenix Project.

### **HudBay's Fenix Security Forces**

17. CGN employs private security forces at the Fenix Project for the benefit of HudBay Minerals. These private security forces are directly or indirectly controlled by HudBay Minerals. At all material times, CGN, as a subsidiary of HudBay Minerals that was controlled by HudBay Minerals, employed Mynor Ronaldo Padilla González (“Mynor Padilla”) as the Head of Security at the Fenix Project.
18. Since January 7, 2007, CGN has also retained a third party company called Integracion Total S.A. (“Integracion Total”) to provide further security forces at the Fenix Project. At all material times, these security forces were agents of CGN. CGN’s internal security forces and the security forces provided through Integracion Total will be hereinafter collectively referred to as the “Fenix Security Forces” or the “Security Forces”.
19. HudBay’s Fenix Security Forces include 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.
20. At the relevant times, HudBay Minerals made key decisions regarding the Fenix Security Forces including establishing any applicable codes of conduct regarding the use of force; determining the rules of engagement in situations involving force; determining level of protection of human rights; determining the size and composition of the Security Forces; and determining the manner in which the Security Forces were deployed.

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

21. Between 1960 and 1996, Guatemala endured a bloody civil war that was characterized by genocide, massacres, summary executions, disappearances, rape and mass internal displacement. Mayan populations were particularly targeted by the Guatemalan State.
22. Prior to the civil war, the land that is now part of HudBay’s Fenix Property was occupied and farmed by Mayan Q’eqchi’ communities, who considered it to be their ancestral land.

23. In 1965, during the midst of the civil war, Canadian mining company INCO Ltd. secured a mining concession to a large tract of this ancestral Mayan Q'eqchi' land through its subsidiary EXMIBAL. In the years that followed, the Mayan Q'eqchi' inhabitants were forcefully expelled by the Guatemalan State to make way for INCO's mining operations. INCO operated an open pit nickel mine on the property for a brief period in the early 1980s before suspending operations in 1982. In 2004, the Defendant HMI Nickel (known at the time as Skye Resources) acquired the Fenix Project from INCO by purchasing the majority of the shares of EXMIBAL. HMI Nickel then changed EXMIBAL's name to Compañía Guatemalteca de Níquel (CGN).
24. The local Mayan Q'eqchi' have never accepted the legality of the mining concession or the alleged transfer of land to any mining company, and have always maintained that the land is rightfully theirs.
25. 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.
26. In or around September 2006, 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 the land that constitutes a small part of the Fenix Property and occupying it. These farmers view their reclamation as a rightful and legal repossession of historical Mayan Q'eqchi' land unjustly taken from them and their families during the Guatemalan Civil War. Adolfo Ich and Angelica Choc were part of this reclamation process.
27. In late 2006 and early 2007, police, military and private security forces conducted a number of forced evictions of these reclaimed communities at the request of HMI Nickel (known at the time as Skye Resources). In the course of these evictions, CGN's private security forces, police and military burnt hundreds of houses to the ground, fired gunshots, stole goods, and in at least one community, gang raped several women.

28. Immediately after these evictions, evicted community members from the five communities, including Adolfo Ich and Angelica Choc, returned to the land they had been forced to leave. These community members continue to reside and farm on this contested land. HudBay Resources and HMI Nickel 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.

### **The events leading to the murder of Adolfo Ich Chamán**

29. On September 11, 2009, approximately two weeks before his murder, Adolfo Ich invited municipal, departmental and national governments to a meeting in the town of El Estor called on behalf of all communities located on contested land near El Estor. At this meeting, Adolfo Ich publically reaffirmed his people’s deep historical, cultural and spiritual connection to the land, voiced their concerns regarding the harms caused by mining companies in the region and demanded that HudBay and CGN leave the area. He again noted that the communities had not been consulted as required by international and Guatemalan law, and condemned the violent evictions that were carried out at the request of HMI Nickel and CGN in 2006 and 2007.
30. Adolfo Ich’s speech included a call for unity of all local Mayan Q’eqchi’ communities in opposition to the harms and rights violations caused by HudBay and CGN. Adolfo Ich’s attempts to unite community members against the mine represented an ongoing problem for HudBay Minerals’ Fenix Project. As noted in HudBay’s reports to their shareholders, “[e]xploration and mining operations in and around the Fenix Project will depend on the support of local communities.”
31. In or around the week of September 20-27, 2009, HudBay’s Fenix Security Forces repeatedly visited one of the communities located on contested land and told community members that they had to leave. In at least one instance, Security Forces destroyed community property and fired both rubber bullets and live ammunition.

32. As a result of these visits, individuals from various communities near El Estor who had before been subject to violent evictions feared that HudBay Minerals and CGN were preparing to conduct another round of forcible evictions.
33. On the morning of Sunday, September 27, 2009, the Governor of the Department of Izabal traveled to one of the communities located on land claimed to be owned by CGN, accompanied by police and Fenix Security Forces. Community members were convinced that this visit represented the beginning of renewed forced evictions. The Governor's visit sparked a series of protests that occurred throughout the day. These protests included a road blockade, as well as a general protest that occurred later that afternoon near a cluster of buildings owned by CGN located adjacent to the community of La Unión. These buildings housed a police station, police dormitories, as well as company offices and a health clinic (the "Fenix Buildings").
34. In the early afternoon of September 27, 2009, Adolfo Ich returned home after participating in some of the protests that occurred earlier in the day. He was with his wife at his house in La Unión when he heard gunshots being fired from the direction of the Fenix Buildings, located not far from his house.
35. As a respected community leader and schoolteacher, he was concerned about the safety of community members who lived near the site of the protest. Accordingly, he went towards the Fenix Buildings to find out what was going on, to warn people to stay back and to see if he could help restore calm. He was not carrying any weapons.
36. Dozens of Security Forces were located in and around the Fenix Buildings. These Security Forces wore CGN uniforms and bullet-proof vests and were heavily armed with a variety of weapons including handguns, shot-guns, machetes, pepper-spray and tear gas. At various times, Security Forces shot their guns both in the air and in the direction of community members, while at some point, some community members threw rocks towards the Fenix Buildings.

37. When Adolfo Ich arrived, Mynor Padilla, the Head of Security for the Fenix Project, recognized Adolfo Ich as a prominent community leader and appeared to invite him to speak with the Security Forces about the community protests.
38. As Adolfo Ich neared the fence that separates the community from mine property, approximately a dozen armed members of the Security Forces came through a gap in the fence, surrounded Adolfo Ich and immediately began to beat him. They then dragged him through back through the gap in the fence.
39. Once on the other side of the fence, a member of the Fenix Security Forces struck Adolfo Ich on the right forearm with a machete, nearly severing his arm from his body. Mynor Padilla then approached Adolfo Ich and shot him in the head at close range.
40. The Security Forces then dragged the severely wounded Adolfo Ich to the Fenix Buildings as he cried out for help. Community members attempted to come to his aid, but were held back by shots fired by the Security Forces.
41. Adolfo Ich died of his wounds shortly after, while in the custody and control of HudBay's Fenix Security Forces. His injuries included a bullet wound to his throat, fragmented left ear bones, a shattered jaw, a partially severed right forearm, a broken right arm, blunt force trauma wounds to his head and skull and a lacerated left shoulder. The report of the autopsy conducted on Adolfo Ich's body on September 28, 2009 concluded that the cause of death was "lesions of blood vessels and nerves of the left lateral neck, caused by a bullet from a firearm."
42. During the protests of that day, another seven members of the community were seriously injured by gunshots fired by Fenix Security Forces. These include Ricardo Acte Coc, shot in the face; Samuel Coc Chub, shot in the neck; Alfredo Tzi Ich, shot in the left side of his chest; Alejandro Chuc, shot in the neck and right arm; Luciando Choc, shot in the left shoulder; German Chub Coc, shot in the neck; and Aroldo Cucul Cucul shot in the left shoulder. One of these men is now paralyzed.

43. After Adolfo Ich was killed, unknown individuals ransacked the Fenix Buildings.
44. 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 and killed Adolfo Ich at close range.

### **The Defendants' knowledge**

45. HudBay Minerals, HMI Nickel and CGN knew, or should have known, that Guatemala has one of the highest murder rates in the world. The Defendants 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.
46. The Defendants knew, or should have known, that targeted violence is often directed against human rights defenders such as Adolfo Ich. For example, the United Nations' Special Rapporteur on extrajudicial, summary or arbitrary executions reported in 2007 that "assassinations of human rights defenders are alarmingly common" in Guatemala and that those most frequently assassinated are peasant workers, indigenous leaders and environmental activists.
47. The Defendants knew, or should have known, that in Guatemala, private security forces, police and military often perpetrate such violence.
48. The Defendants knew, or should have know, that private security forces in Guatemala continue to employ the violent tactics that were used during the Guatemalan Civil War, including extra-judicial executions.
49. The Defendants 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 the HudBay's Fenix Security Forces.

50. HudBay Minerals, HMI Nickel knew or should have known that their 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 that:
- (a) In June 1978, employees of EXMIBAL 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.
51. The Plaintiffs plead that CGN’s historical involvement in acts of serious human rights violations is relevant in assessing legal foreseeability, as well as the Defendants’ duty and standard of care. Based on the known historical involvement of CGN in acts of serious human rights abuse, including arbitrary executions, the Defendants HudBay Minerals and HMI Nickel should have been aware of the increased risk of violence due to the employment of CGN at the Fenix Project, and should have taken increased precautions to ensure that CGN did not continue to be involved in acts of repression and violence.

#### **HudBay Minerals’ public representations**

52. Since acquiring the Fenix Project in 2008, HudBay Minerals has made numerous public representations regarding its Corporate Social Responsibility, what communities near the

proposed Fenix Project could expect from HudBay Minerals, and who HudBay Minerals considers to be its “stakeholders”.

53. For example, in HudBay Minerals’ “Corporate Social Responsibility Report 08” released in 2009, 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. Safety, Health and Environment is [sic] handled by the Senior Vice President, Development.”
- (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.”

54. Further, HudBay publically 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.”

55. Peter Jones, HudBay and HMI Nickel’s CEO, spoke publically on behalf of HudBay in response to Adolfo Ich’s death, 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.”

56. 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 immediate communities are the population centers near our areas of mining activity.”

### **HMI Nickel’s public representations**

57. The Defendant HMI Nickel has made various representations regarding standards to which it has agreed to abide by in its operations in Guatemala. For example, HMI Nickel

publically stated that “the Fenix project will meet all key international benchmarks, in particular the Equator Principles. The project will comply with all relevant Guatemalan laws and the International Finance Corporation (IFC) Performance Standards.”

58. As part of HMI Nickel’s claimed commitment to IFC Performance Standards at the Fenix Project, HMI Nickel agreed to, and was required to, to abide by specific standards applicable to its Security Forces. In particular, the IFC Performance Standards required HMI Nickel to:

- (a) “be guided by the principles of proportionality, good international practices in terms of hiring, rules of conduct, training, equipping and monitoring of such personnel, and applicable law”;
- (b) “make reasonable inquiries to satisfy itself that those providing security are not implicated in past abuses, . . . train them adequately in the use of force (and where applicable, firearms) and appropriate conduct toward workers and the local community, and require them to act within the applicable law”;
- (c) “not sanction any use of force except when used for preventive and defensive purposes in proportion to the nature and extent of the threat”;
- (d) establish “a grievance mechanism. . . [that] allow[s] the affected community to express concerns about the security arrangements and acts of security personnel”;  
and
- (e) “investigate any credible allegation of unlawful or abusive acts of security personnel, taking action to prevent recurrence and report unlawful and abusive acts to public authorities when appropriate.”

59. Further, the Defendant HMI Nickel made frequent public representations about its relationship with neighbouring communities, including La Unión, the community in which Adolfo Ich resided. At the relevant time, HMI Nickel was called Skye Resources.

- (a) “Skye remains committed to building good relationships with the local community.”
- (b) “Support from the local community is paramount to Skye’s success in Guatemala. We are committed to building a foundation of trust and to open and transparent communications on all issues and concerns related to the Fenix Project.”
- (c) Skye Resources’ strategy is to “apply best practices in community relations and environmental management.”
- (d) “Skye has focused on understanding and responding to community concerns.”
- (e) “The company is currently carrying out environmental and social impact assessments to comply with the Equator Principles.”
- (f) “We have also expanded Skye’s community relations group which has been active in enhancing relationships with the communities adjacent to the mining area”
- (g) “Our exploration, mining and processing operations will have an impact on the communities in which they are situated and depend for their success on the support of those communities. We are committed to consulting and working constructively with local communities on such grounds as safety and health, opportunities for local people and long term sustainability.”
- (h) “Since Skye commenced its activities in Guatemala in 2005, we have focused enormous efforts on understanding the complex issues facing local communities.”
- (i) In a letter written by the Chief Executive Officer of Skye, “[w]e are taking whatever steps we can to build trusting relationships with our neighbours and to respond to their fears and concerns.”

60. HMI Nickel also issued a statement of principles called the “Environmental and Social Commitment” which concern HMI Nickel’s “environmental and social responsibility and its conduct wherever it conducts business.” According to HMI Nickel, the “ESC includes commitments regarding community engagement, human rights, economic development and environmental responsibility.”
61. HMI Nickel and HudBay Minerals have also taken responsibility for responding publically to any criticism regarding human rights violations or other community relations issues at the Fenix Project.
62. The Plaintiffs plead that HudBay Minerals and HMI Nickel’s representations are relevant in assessing the duty and standard of care that the Defendants owed to individuals who reside in communities near the Fenix Project. These representations acknowledge that HMI Nickel and HudBay Minerals are responsible for community safety, community relations and the behaviour of the Fenix Security Forces.

**CGN’s connection to Ontario**

63. The Defendant CGN is owned, directed, controlled, managed and financed by the Defendants HudBay Minerals and HMI Nickel Inc from HudBay Minerals and HMI Nickel’s headquarters in Toronto, Ontario. HudBay Minerals and HMI Nickel operate their Fenix Project through CGN.
64. CGN depends exclusively on HudBay Minerals and HMI Nickel to provide the capital needed conduct all of its operations at the Fenix Project. The financial arrangements which fund all of CGN’s operations are established and based in Ontario, and all capital used by CGN comes from Ontario. If the Fenix Project were to go to production, any profits from the Fenix Project would accrue to HudBay Minerals in Ontario.
65. All major decisions regarding CGN’s business, management and operations are made in Ontario. These include the development of a business plan; the decision to halt construction of mining facilities at the Fenix Project; the decision of whether and when to

restart construction of the Fenix Project; determining the size of CGN's operations in Guatemala; developing community relations strategies; deciding who CGN will hire as its manager; and determining the size of CGN's workforce.

66. CGN managers, including John Bracale, CGN's President and Legal Representative, as well as HudBay's Country Manager for Guatemala, regularly travel to Ontario to attend and participate in business meetings with 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.
67. CGN has been owned and controlled by corporations based in Canada since its incorporation in 1954, first by INCO, later by Skye Resources and now by HudBay Minerals. Throughout this time, the corporations based in Canada have used overlapping executives and boards of directors to retain control of the project. For example, William Keith Service was Chief Financial Officer of HMI Nickel at the same time he was Vice President of CGN; Hugh Brooke MacDonald was Vice President Legal Affairs for HMI Nickel at the same time he was Secretary of CGN's Board of Directors; William Anthony Enrico was Vice President, Operations of HMI Nickel at the same time he was President and Legal Representative of CGN; and David Anthony Huggins was Chief Operating Officer of HMI Nickel at the same time he was President of the Board of Directors and Legal Representative of CGN.
68. CGN conducts business in Ontario in the form of frequent CGN managerial meetings in Ontario, the frequent and key decisions regarding the operations of CGN that are made in Ontario, as well as the financing for the CGN project that is provided from Ontario.

## *V. Legal Claims*

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

69. Angelica Choc claims on her own behalf against HudBay Minerals for negligence causing the death of her husband Adolfo Ich.
70. Angelica Choc claims on behalf of the estate of Adolfo Ich against HudBay Minerals for negligence causing physical harm.
71. HudBay Minerals, through its Country Manager for Guatemala and through its direct control of CGN, controlled, directed, financed and supervised the Fenix Security Forces at all material times.
72. HudBay Minerals, through its employees, agents, executives and directors committed numerous acts and omissions and made numerous decisions both in Canada and in Guatemala that caused the assault, imprisonment and death of Adolfo Ich. These decisions and actions include decisions and actions made 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.
73. HudBay Minerals knew, or should have known, that a failure to act with reasonable care would create a reasonably foreseeable risk that the Fenix Security Forces would use undue force in the exercise of their duties.
74. In making decisions regarding the Fenix Project, HudBay Minerals owed the Plaintiffs a duty to act with reasonable care. HudBay Minerals breached that duty by:
  - (a) Deciding to engage private security forces at its Fenix project with knowledge of the risk that members of these Security Forces would commit violent acts against local community members;

- (b) Providing continued financing to pay for Security Forces at its Fenix project with the knowledge of the risk that these Security Forces would commit violent acts against local community members;
- (c) Failing to establish, implement or enforce a corporate code of conduct that adequately protects the human rights of those impacted by HudBay's Fenix mining project;
- (d) 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 land of Mayan Q'eqchi' inhabitants, often through use of force and threats of violence;
- (e) Failing to adequately supervise the operation of CGN – a company entirely controlled and directed by HudBay Minerals;
- (f) Failing to adequately supervise and direct HudBay's Country Manager for Guatemala, John Bracale;
- (g) Failing to establish, implement or enforce appropriate standards of conduct for its Security Forces;
- (h) Failing to adequately and effectively monitor and supervise its Security Forces;
- (i) Failing to ensure that its Security Forces were adequately trained;
- (j) Failing to ensure that its Security Forces had reasonable levels of technical and professional proficiency;
- (k) Failing to take reasonable steps to ensure that its Security Forces did not include individuals who had previously committed serious human rights violations;
- (l) Failing to establish and implement adequate disciplinary mechanisms designed to prevent and deter unreasonable uses of violence by its Security Forces;

- (m) Failing to investigate past uses of violence by its Security Forces, including the frequent and liberal use of firearms during evictions requested by its subsidiaries, CGN and HMI Nickel, in 2006 and 2007.

**Claim against CGN for Wrongful Death**

- 75. In the course of their duties as members of the Fenix Security Forces, employees of CGN directly and willfully caused Adolfo Ich's death by striking him with machetes and shooting him in the head. CGN is responsible in law for these actions.
- 76. Angelica Choc on her own behalf claims from CGN for the loss of guidance, care and companionship, loss of financial support and loss of services caused by the death of her husband, Adolfo Ich.
- 77. To the extent available under the applicable law, Angelica Choc claims for the wrongful death of her husband, including compensation for the damage and harm caused directly to him.

**Claim against CGN for Battery**

- 78. Angelica Choc on behalf of the estate of Adolfo Ich pleads that the actions of employees of CGN, including striking Adolfo Ich with machetes and shooting him in head at close range, were done willfully and intentionally and constitute the tort of battery.
- 79. As a result of the Defendant's conduct, the Plaintiff suffered serious injuries that caused significant pain and suffering. This conduct was also the direct cause of Adolfo Ich's death.
- 80. The Plaintiff pleads that CGN is responsible in law for the above actions that constitute battery that were taken by its Security Forces, employees or agents.

### **Claim against CGN for False Imprisonment**

81. Angelica Choc on behalf of the estate of Adolfo Ich pleads that the actions of the Fenix Security Forces constitute false imprisonment. These actions include surrounding Adolfo Ich prior to his shooting, dragging him to CGN's buildings, and preventing others from coming to his aid.
82. The Plaintiff pleads that CGN is responsible in law for the above actions that constitute false imprisonment and were taken by its Security Forces, employees or agents.

### **Claim Against CGN for Negligence**

83. Angelica Choc claims on her own behalf against CGN for negligence causing the death of her husband Adolfo Ich.
84. Angelica Choc claims on behalf of the estate of Adolfo Ich against CGN for negligence causing bodily harm.
85. CGN failed to exercise reasonable care in its activities in order to avoid injury to the Plaintiffs.
86. The assault, imprisonment and murder of Adolfo Ich were caused by the negligent acts and omissions of the Defendant CGN, particulars of which include:
  - (a) Authorizing the use of force by Security Forces against local communities;
  - (b) Failing to establish, implement or enforce appropriate standards of conduct for its Security Forces;
  - (c) Failing to adequately and effectively monitor and supervise its Security Forces;
  - (d) Failing to ensure that its Security Forces were adequately trained;
  - (e) Failing to ensure that its Security Forces had reasonable levels of technical and professional proficiency;

- (f) Failing to take reasonable steps to ensure that its Security Forces did not include individuals who had previously committed serious human rights violations;
- (g) Purchasing, supplying and authorizing the use of lethal weapons by Security Forces including handguns, shotguns and machetes;
- (h) Failing to establish and implement adequate disciplinary mechanisms designed to prevent and deter unreasonable uses of violence by Security Forces;
- (i) Failing to investigate past uses of violence by its Security Forces, including the frequent and liberal use of firearms during evictions requested by CGN in 2006 and 2007.

**Claim against HMI Nickel for Negligence**

- 87. Angelica Choc claims on her own behalf against HMI Nickel for negligence causing the death of her husband Adolfo Ich.
- 88. Angelica Choc claims, on behalf of the estate of Adolfo Ich, against HMI Nickel for negligence causing bodily harm.
- 89. HMI Nickel, through its employees, agents, executives and directors committed numerous acts and omissions and made numerous decisions that caused the assault, imprisonment and death of Adolfo Ich.
- 90. HudBay Minerals knew, or should have known, that a failure to act with reasonable care would create a reasonably foreseeable risk that the Fenix Security Forces would use undue force in the exercise of their duties.
- 91. In making decisions regarding the Fenix Project, HMI Nickel owed the Plaintiffs a duty to act with reasonable care. HMI Nickel breached that duty by:

- (a) Deciding to engage private security forces at its Fenix project with knowledge of the risk that members of these Security Forces would commit violent acts against local community members;
- (b) Providing continued financing to pay for the Fenix Security Forces with the knowledge of the risk that these Security Forces would commit violent acts against local community members;
- (c) Failing to establish, implement or enforce a corporate code of conduct that adequately protects the human rights of those impacted by the Fenix mining project;
- (d) 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 land of Mayan Q'eqchi' inhabitants, often through use of force and threats of violence;
- (e) Failing to adequately supervise the operation of HMI Nickel's subsidiary CGN;
- (f) Failing to establish, implement or enforce appropriate standards of conduct for the Fenix Security Forces;
- (g) Failing to adequately and effectively monitor and supervise the Fenix Security Forces;
- (h) Failing to ensure that the Fenix Security Forces were adequately trained;
- (i) Failing to ensure that the Fenix Security Forces had reasonable levels of technical and professional proficiency;
- (j) Failing to take reasonable steps to ensure that its Security Forces did not include individuals who had previously committed serious human rights violations;
- (k) Failing to establish and implement adequate disciplinary mechanisms designed to prevent and deter unreasonable uses of violence by Security Forces;

- (l) Failing to investigate past uses of violence, including the frequent and liberal use of firearms by Security Forces during evictions requested by HMI Nickel in 2006 and 2007.

### **Piercing the corporate veil**

92. The Plaintiffs claim that CGN is completely controlled by, subservient to and dependant upon HudBay Minerals, and is an agent of HudBay Minerals. The Plaintiffs plead that it is in the interests of justice to pierce the corporate veil and to impose liability for battery, wrongful imprisonment and wrongful death directly against the parent corporation, HudBay Minerals.
93. This pleading is separate from and in addition to the pleading that HudBay Minerals is directly liable in negligence for the assault, imprisonment and death of Adolfo Ich that was caused by the tortious actions and omissions of HudBay Minerals.

### **Punitive damages**

94. The Plaintiffs plead that the Defendants' conduct was malicious and reckless and constitutes a wanton disregard for the Plaintiff's rights. The Plaintiff therefore asserts that it is appropriate, just and necessary to order aggravated and punitive damages against the Defendants.

### **Service of the Statement of Claim outside of Ontario under R. 17**

95. The Defendant CGN is a necessary or proper party to a proceeding properly brought against and served upon Ontario defendants HudBay Minerals and HMI Nickel in Ontario.
96. The Defendant CGN carries on business in Ontario.

97. The Plaintiffs rely on the facts and allegations set out above and upon subsections 17.02 (o) and (p) of the *Rules of Civil Procedure* for the purposes of serving this Statement of Claim upon the Defendant CGN outside of Ontario.
98. The Plaintiffs propose that this action be tried at Toronto, Ontario.

Date: September 24, 2010

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**Solicitors for the Plaintiffs**

**ANGELICA CHOC et al.**  
Plaintiffs

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

v.

Court File No.

CV-10-411159

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

Proceeding commenced at Toronto

**FRESH AS AMENDED**  
**STATEMENT OF CLAIM**

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