

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

GERMAN CHUB CHOC

Plaintiff

and

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

Defendants

REPLY

1. The plaintiff adopts all definitions as set out in the second amended statement of claim in this action.
2. The plaintiff admits the allegations contained in paragraphs 1, 5, 6 (except that the plaintiff has no knowledge regarding when CGN was incorporated), 7, 8, 10, 12 (only to the extent that security for the Fenix Project was provided by several CGN employees and a third party contractor retained by CGN named Integración Total S.A.), 13 (only to the extent of the first two sentences), 16 (only that the town of El Estor is located less than one kilometer from La Colonia), 31 (only to the extent that German Chub alleges he was shot at close range, on a soccer field just outside La Colonia in an unprovoked attack by Padilla on September 27, 2009) and 37 of the amended statement of defence filed on May 27, 2015 (the “Amended Statement of Defence”).

3. The plaintiff denies the allegations in paragraphs 14, 15, 17-20, 26-30, 33-36, and 38-49 of the Amended Statement of Defence.
4. The plaintiff has no knowledge in respect of the allegations contained in paragraphs 9, 11, and 21-25 of the Amended Statement of Defence.

Events of September 27, 2009

5. In response to paragraphs 29-30 of the Amended Statement of Defence, Mr. Chub states that he was not involved in the community protests that occurred on September 27, 2009, nor was he part of any “mob” when he was shot.
6. HudBay pleads in paragraphs 26-30 of the Amended Statement of Defence that Fenix Security Forces were subject to a violent attack by a “mob” in which the Fenix Security Forces were “significantly outnumbered and surrounded”, “could not match the firepower of their attackers” and “feared for their lives”. These allegations are hyperbolic and false.
7. The large number of serious injuries suffered by members of the community at the hands of Fenix Security Forces on September 27, 2009 is in contrast to the few minor injuries sustained by the Fenix Security Forces. Nine members of the community were shot by Fenix Security Forces on September 27, 2009 with either handguns or shotguns. In addition to German Chub (shot and paralyzed), and Adolfo Ich (struck with machetes, shot in the head and killed), the following other individuals from the community were also shot by Fenix Security Forces (with estimated age in brackets):
 - (a) Haroldo Cucul Cucul (30) – suffered shotgun wounds to the right shoulder and a fractured humerus;
 - (b) Ricardo Acté Coc (28) – suffered shotgun wounds to the face;
 - (c) Samuel Coc Chub (14-20) – suffered shotgun wounds to the chest and upper limbs;
 - (d) Alfredo Tzi Ich (20) – suffered shotgun wounds to the left knee;

- (e) Alejandro Acté Coc (35) – suffered shotgun wounds to the chest and right arm, resulting in hemorrhaging and hemopneumothorax (air and blood in the chest cavity);
- (f) Oscar Anibal Cac Caal (15) – suffered shotgun wounds to the face and right arm; and
- (g) Luciano Choc (41) – suffered shotgun wounds to the right shoulder.

8. In contrast, the only injury sustained by a member of the Fenix Security Forces requiring medical treatment on September 27, 2009 was some kind of injury to one member's hand. The cause and nature of this injury are unknown.

German Chub's statements to public authorities

- 9. In paragraph 34 of the Amended Statement of Defence, HudBay pleads that Mr. Chub has "concocted" a story to explain how and by whom he was shot. This allegation is false and without foundation.
- 10. In response to paragraphs 34 and 34A of the Amended Statement of Defence, the plaintiff pleads that at all times Mr. Chub has consistently maintained that he was shot and paralyzed by Fenix Security Personnel. Mr. Chub did not, however, identify Mynor Padilla as the individual member of the Fenix Security Personnel who shot him in his initial statements to the prosecutor. Mr. Chub's initial reluctance to specifically identify his shooter was due in part to the very high levels of fear that Mr. Chub felt in the time after he was shot. Mr. Chub was terrified that he and his family would be at grave risk if he gave full details of what happened to him, including in particular if he identified Mynor Padilla as the individual member of the Fenix Security Personnel who shot him.
- 11. According to numerous international reports from the United Nations, Human Rights Watch, the United States Department of State and others, Guatemala is one of the most dangerous countries in the world in which to report a crime or to be a court witness. Witnesses are routinely intimidated, targeted with threats and assaults and are sometimes

killed. Guatemala's authorities have been powerless to grant witnesses even basic protection. As a result, crimes are very often not reported to authorities, and when they are, victims are extremely reluctant to name names. The danger of being a witness in Guatemala is a prime reason that Human Rights Watch reported in 2011 that 99.75% of violent crime goes unpunished in Guatemala, and that murder convictions are exceedingly rare.

Circumstances of German Chub's statements to public authorities

12. German Chub's first statement to prosecutors was given from a hospital bed in Puerto Barrios on September 28, 2009, the day after Mr. Chub was shot. Prosecutors met with Mr. Chub, wrote up a summary of their conversation, and had Mr. Chub imprint the document with his thumbprint. Mr. Chub's ability to comprehend the statement written by prosecutors was extremely limited owing both to his very poor health at the time, and his limited ability to read Spanish. According to the statement, Mr. Chub said that he was shot by Fenix Security Forces. He did not, however, identify precisely which member of the Fenix Security Forces shot him.
13. Mr. Chub remembers very little of September 28, 2009, and does not remember giving a statement to prosecutors. At the time, Mr. Chub was in critical condition. He had been shot mere hours before, and was fighting for his life. He had lost a great deal of blood, was in tremendous and constant pain, was heavily medicated, had great difficulty breathing and speaking, and was drifting in and out of consciousness. There were tubes coming out of his rib cage, draining blood and other fluid from his body, and he was heavily medicated. On September 28, 2009, Mr. Chub was alone; he was not able to see his family until several days after he was admitted into hospital. In the circumstances, Mr. Chub felt a tremendous amount of fear.
14. The second witness statement, taken on May 7, 2011, was also given in highly unusual circumstances. In May 2011, Mr. Chub was recovering at a medical facility called "Transitions" – an organization that helps newly disabled individuals adapt to living with disabilities. The staff at Transitions told Mr. Chub that they wanted to avoid problems

associated with criminal investigations and had specifically cautioned Mr. Chub against speaking with anyone, including the prosecutor, about the circumstances or the details of his shooting.

15. Nonetheless, in early May, a prosecutor managed to obtain Mr. Chub's direct cell phone number and called him to arrange a meeting. Mr. Chub was afraid, but agreed to meet the prosecutor on Saturday, May 7, 2011 in front of a school close to Transitions. Two individuals from the office of the prosecutor pulled up in a pickup truck, and requested that Mr. Chub get in, which he did. The prosecutors proceeded to conduct the entire interview in the truck. Again, the prosecutors wrote up a summary of their conversation with Mr. Chub, and had Mr. Chub sign the document. Mr. Chub's ability to comprehend the statement written by prosecutors was poor owing to his limited ability to read in Spanish.
16. Mr. Chub was very uncomfortable and fearful during this interview. In particular, he had heard that his family was receiving threatening messages, and he was terrified that his family would be harmed or killed if he identified the man who shot him. According to the statement (which again is a prosecutor's summary of an interview of Mr. Chub), Mr. Chub stated that he did not know specifically who had shot him, but again confirmed that he had been shot by Fenix Security Personnel.
17. Upon Mr. Chub's return to his home after almost two years in various medical and rehabilitation centres, and once his physical and mental state had strengthened, Mr. Chub made the difficult decision of specifically naming the individual who had shot him despite the risks of doing so and despite his continuing fears for himself and his family. Since making that decision, Mr. Chub has been consistent in his description of the shooting, including by specifically identifying Mynor Padilla as his shooter.

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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

REPLY

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