Summary of *Caal v. HudBay* (Lawsuit Regarding The Rapes at the Community of Lote Ocho)

The Plaintiffs Rosa Elbira Coc Ich, Margarita Caal Caal, and nine other Mayan Q’eqchi’ women are suing HudBay Minerals Inc. in the company’s home jurisdiction of Ontario for negligence and carelessness causing physical and psychological harm.

The claim asserts that on January 17th, 2007, the Plaintiffs were gang-raped. It also alleges that the offence was committed by uniformed mining company security personnel, police and military. The offence allegedly took place during the forceful expulsion of Mayan Q’eqchi’ families from their farms and homes in the remote community of Lote Ocho.  These armed evictions were sought by Canadian mining company Skye Resources in relation to its Fenix mining project, located on the north shores of Lake Izabal, which it operated through its Guatemalan subsidiary Compañía Guatemalteca de Níquel (CGN). The communities believe these evictions were illegal.

In 2008, Skye Resources, together with CGN and the Fenix Project, was purchased by HudBay Minerals, and Skye Resources was renamed HMI Nickel. This corporation will be referred to as “HMI/Skye” in this document.  HMI/Skye later merged with and became one company with HudBay Minerals.  This is legally significant because, as a result of the merger, HudBay is legally responsible for HMI/Skye’s liabilities and past actions.

The lawsuit alleges that the harm suffered by the Plaintiffs was caused by the legal negligence and carelessness of in its operation of the Fenix project, and therefore HMI/Skye is legally responsible for this harm.  For example, the Plaintiffs allege that HMI/Skye was negligent and careless in directing, controlling, and supervising the mining security personnel who committed the rapes.  The Plaintiffs further allege that HMI/Skye was negligent and careless in seeking, requesting and authorizing the forced evictions of Lote Ocho without taking reasonable steps to protect the community from the use of violence during this eviction.

Each Plaintiff claims $1 million in compensatory damages for their pain and suffering, and $4 million in punitive damages owing to the extreme and heinous nature of the attacks against them.  The total claimed by the lawsuit for all Plaintiffs is $55 million.

**Key Facts Alleged in the Lawsuit**

There are currently several Mayan Q’eqchi’ farming communities located on land that HudBay Minerals and HMI/Skye claim makes up part of the Fenix mining project.  The Mayan Q’eqchi’ communities disagree with HudBay Minerals and HMI/Skye regarding who has legal and moral right to this land.

HMI/Skye claimed that they had valid legal right to the contested land.  Mayan Q’eqchi’ communities counter that they are the rightful owners of the land their ancestors farmed and lived on for generations, and that any apparent rights that were granted to mining companies during the Guatemalan civil war are illegitimate.

HMI Nickel knew that Guatemala was and is an extremely violent country.  HMI Nickel knew, or should have known, that violence is regularly used against Mayan Q’eqchi’ communities in the forced evictions that regularly occur in all parts of the country.  HMI Nickel knew, or should have known, that levels of sexual violence against women are very high in Guatemala, in part as a legacy of the civil war where the rape of Mayan Q’eqchi’ women commonly occurred in military operations.

Despite this knowledge, despite HMI/Skye’s public relations statements that indicated that they wished to resolve the land conflict through dialogue, and despite there being no pressing need to rush the resolution of the conflict, the lawsuit alleges that HMI/Skye responded immediately and aggressively by seeking forced expulsions in early 2007.

CGN engaged mine security personnel at the Fenix mining project on behalf of and for the benefit of HMI/Skye.  These security personnel were directly or indirectly controlled by HMI/Skye from its head-offices in Canada and were engaged under instructions from and subject to continuing approval by HMI/Skye.  Mine security personnel were engaged, in part, in response to the outstanding land conflict.

The lawsuit alleges that HMI/Skye made key decisions regarding Fenix security personnel including (1) establishing (or failing to establish) codes of conduct regarding the use of force; (2) determining the rules of engagement in situations involving force; (3) determining procedures for protecting human rights; (4) determining the size and composition of its security forces; (5) determining whether and how security personnel were deployed; and (6) determining the level of participation of its security forces in forced evictions.

On January 8th and 9th 2007, forced evictions were carried out in at least five Mayan communities located on contested land, including the community of Lote Ocho.  In the course of these evictions, dozens of houses were burnt to the ground.

After this first round of evictions, HMI/Skye, through its CEO and President, Ian Austin, and other executives and managers, knew that the evictions had not been peaceful.  In particular, executives of the company, including Mr. Austin, knew that during some of the evictions, homes had been burnt to the ground.

The lawsuit alleges that HMI/Skye did not take reasonable steps after the evictions of early January to investigate alleged uses of violence during previous evictions.  HMI/Skye did not reconsider or modify its strategy of seeking forced evictions of Mayan Q’eqchi’ communities in light of these allegations of violence, and took no steps to modify or strengthen any of its policies or standards relating to Fenix security personnel or the protection of human rights.

In the week that followed, the community of Lote Ocho returned to the land and began to rebuild their homes.

**Attacks against the Plaintiffs**

On January 17th, 2007, hundreds of police, military and Fenix security personnel returned to Lote Ocho to conduct a second eviction of the community.  This eviction was again sought by HMI/Skye.

The lawsuit alleges that during this eviction, the Plaintiff Rosa Elbira Coc Ich was assaulted by nine men, including police, soldiers and company security personnel wearing uniforms bearing the initials and logo of CGN.   At first, a policeman drew a pistol and put it to her head and asked her where her husband was.  When she was unable to tell him, he said that they were going to kill her.  Then all nine men, including uniformed members of the Fenix security personnel, held her down, covered her mouth and raped her.  Ms. Coc is no longer able to have children, possibly because of injuries sustained from the gang rape.

The other ten women suffered similar attacks and rapes. Some of the women were pregnant at the time of the attack and later lost their babies, possibly as a result of the rapes.

On January 17th, 2007, the same day the Plaintiffs were raped during the forced eviction sought by HMI/Skye, HMI/Skye President and CEO Ian Austin published a public letter regarding the evictions, stating “the company did everything in its power to ensure that the evictions were carried out in the best possible manner while respecting human rights.”

The lawsuit alleges that despite public representations from the highest levels in HMI/Skye’s management regarding the company’s commitment to specific and identifiable security standards, HMI/Skye did not take reasonable or appropriate steps to implement or enforce standards regarding the conduct of security personnel at HMI/Skye’s operations in Guatemala.

As a result of HMI/Skye’s careless conduct and the resulting assaults and gang-rapes, the Plaintiffs suffered physical and psychological harm for which the Plaintiffs claim damages.  In particular, the Plaintiffs claim damages for pain and suffering as well as traumatic, emotional and mental distress.

Analysis Questions:

1. Why, according to the lawsuit, is HMI/Skye legally responsible for this crime?
2. Explain the differing perspectives of HMI/Skye and Mayan Q’eqchi’ communities in regards to land ownership.
3. Infer the difference, from a legal point of view, of “knew” and “should have known”.
4. What public defence did HMI/Skye President and CEO Ian Austin to these allegations?