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Litigators of the Week: With $18B on the Line, Gibson Dunn's Mastro and Champion Prove Arbitration Award Was a Sham

'This case screamed out that something terribly wrong happened here and that Chevron was the victim of a sham process,' said Gibson Dunn's Randy Mastro. 'Facts win cases, not rhetoric. The facts here spoke volumes.'

By Jenna Greene
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Our Litigators of the Week are Gibson, Dunn & Crutcher partners Randy Mastro and Anne Champion, who made an $18 billion save for Chevron Corp. in a case that sets guardrails to ward off abuses in international arbitrations.

While courts typically confirm arbitration awards, the Gibson Dunn duo convinced U.S. District Judge Jeffrey White in the Northern District of California to nix the eye-popping judgment by an Egyptian tribunal against Chevron.

White held that there was no agreement between the parties to arbitrate, and moreover, that "numerous procedural infirmities would independently preclude confirmation of the arbitral award."

Mastro and Champion discussed the case with Lit Daily.

Lit Daily: Who is your client and what was at stake?

Randy Mastro: Our long-time client, Chevron Corporation, once again turned to us to represent it in high-stakes litigation. The petitioners were seeking to enforce an $18 billion foreign arbitration award against Chevron and one of its U.S. subsidiaries, even though Chevron had never agreed to arbitration and found itself dragged into a sham process orchestrated by a so-called arbitration association in Egypt.

The petitioners claimed to be Saudi landowners owed billions of dollars in back lease payments related to oil production operations conducted there over many decades. But they never had any agreement with Chevron, let alone any agreement to arbitrate any dispute; and the Saudi government had long since taken over the entire operation.

The farce that followed was a textbook case of litigation fraud. So the stakes could not have been higher. Eighteen billion dollars at stake, and the integrity of international arbitration sullied by this sham award. A major U.S. corporation's due process rights denied at every turn. And a case crying out for justice to be done. And justice was done this week in the U.S. courts.

(Photo: Courtesy Photo)

Anne Champion and Randy Mastro, Gibson Dunn

You had amicus support from the International Court And who was opposing counsel?

Annie Champion: Chevron had been aware of the sham arbitration proceeding in Egypt for some time and brought us into the matter early as events were unfolding. So when this petition to confirm hit the court docket on June 1, 2018, just days before the statute of limitations under the Federal Arbitration Act would have expired, we immediately began to map out with Chevron the strategy for responding.

For an award of this size, the choice of opposing counsel was a surprise—a small Seattle firm, Chung, Malhas & Mantel. They threw us some curve balls and made all sorts of wild, baseless allegations as cover for this sham award. But we didn't take the bait. When you have the truth on your side, the best response is to stick to the facts and make it clear you are not afraid of the rhetoric, and that's what we did.

Chevron faced enforcement of what you described as a "sham" arbitration award. Tell us about how you framed your arguments against that backdrop.

Randy Mastro: The key to any successful litigation is telling a narrative that frames the case, then backing it up with facts and evidence. And then, at the end of the case, being able to say, "I told you so, and I proved it."

Here, the narrative was of a sham arbitration that violated due process at every turn, and that resulted in a sham, multi-billion dollar award. And all of this was done to a party—Chevron—that had never agreed to arbitrate.

The procedural irregularities, which violated the New York Convention, were an essential part of our narrative, and ultimately, the court found "these multiple procedural irregularities . . . caution against confirmation of the Award." Not the least of them was the "highly irregular" "constitution of the arbitral panel," which, the court concluded, "appears to have been engineered to produce a result in favor of Petitioners."

We also emphasized the damage that such a sham award would do to the international arbitration community. But the narrative here was always about a sham process and fundamental injustice.

Arbitration awards are typically recognized and enforced in court. How did you counter that typical presumption?

Annie Champion: Confirmation proceedings are summary proceedings, where, typically, there is no discovery. So we had to make our response to the petition really count, and tell our compelling story of international intrigue and duplicity aiming to impose a sham award on a major U.S. company.

The challenge was how to convey this outlandish and factually complex story in a way that was understandable and impactful, with evidence that would be admissible in federal court—all within a 45-page limit. And we had to do it within the framework of the New York Convention without falling into the trap of talking about this award as if it were business as usual.

The grounds for resisting enforcement under the Convention are mostly dry legal points, such as whether there is an agreement to arbitrate, whether the dispute falls within the scope of the agreement, and whether the arbitration was conducted in accordance with the agreement. All of those bases to oppose confirmation certainly existed here, but that only scratched the surface of what had gone wrong.

By way of analogy, when you are trying to prove something is a counterfeit, you don't want to get caught up in a debate over how good a job the counterfeiter did. This whole arbitration process, including the "award," was a sham. And that was our narrative throughout.

You made the unusual strategic decision to challenge whether the court even had jurisdiction over the case. Were you concerned that might turn off the court?

Annie Champion: It was a bold step to lead with the jurisdictional argument, since courts usually entertain such a petition and then decide whether it holds up under the New York Convention. But ultimately, we determined that it was the right and necessary thing to do. To go back to the counterfeiting analogy, if you walk into the bank with a counterfeit check and cash it, the crime isn't just that the bank cashed it but that you asked it to do so in the first instance.

We had strong arguments that this award had no business crossing the courthouse steps; these parties had never agreed to arbitrate anything; and the documentation required for seeking confirmation, which would be rote in the ordinary case—authenticated copies of the arbitration agreement and the award—became significant jurisdictional hurdles here. They contained translation errors and forged stamps that made them suspect. These issues went to the heart of the scheme.

Were you concerned you'd have a proof problem if you had to take the case to trial on the fraud allegations, which were very fact-intensive, especially when so many witnesses live overseas and couldn't be subpoenaed here?

Randy Mastro: Not really. While there are defenses under the New York Convention that this sham award constituted a denial of proper process and violated U.S. public policy, we argued that these were merely among the many grounds on which this confirmation petition had to fail, based on undisputed facts all parties conceded about this sham process.

Moreover, we were in good company calling out this fraud. Egyptian law enforcement authorities had independently investigated and brought criminal charges of their own, resulting in the criminal convictions of the head of the so-called arbitration association overseeing this sham process and the three arbitrators who issued this sham award. In fact, by the time we won this case, an Egyptian court had already found this "fake arbitration" to be a "criminal enterprise . . . against . . . Chevron Corporation" that was a "trap" of "fabricated procedures" and "fraudulent methods" that resulted in a "forged award."

Who were the members of your team and what individual strengths did they bring to the representation?

Annie Champion: We were under enormous time pressure at the outset of the case. Opposing counsel would not even agree to an extension of time for us to file a response to the petition. In a few weeks, we had to nail down so

many legal and factual issues, on which we worked seamlessly with our superb co-counsel at Herbert Smith, led by Christian Leathley, whose team had an enormous amount of historical knowledge and expertise.

We mobilized the Gibson Dunn "army," led by our "general," Randy Mastro, and put together a team on both coasts, including Chuck Stevens and Steve Henrick in San Francisco, and Akiva Shapiro, Delyan Dimitrov, Victoria Orlowski and Genevieve Quinn in New York, among others—all of whom did an amazing job distilling this complex, multi-lingual record into a compelling presentation that carried the day. And I cannot say enough about Chevron's exceptional in-house team, who lived this case for years and provided invaluable insights.

Randy Mastro: Annie's being too modest. She was our "field general." She's an extraordinary litigator, so dedicated, determined, and indefatigable.

You also exposed litigation fraud in the Chevron/Ecuador/RICO case. How did this case compare to the Chevron/Ecuador/RICO case?

Randy Mastro: I could quote the words of the immortal Yogi Berra: "It's like deja vu all over again." But of course, the two cases have their differences. What Steve Donziger did—and continues to do—in connection with the Ecuador litigation and related RICO case in the SDNY shocks the conscience. But the audacity of both of these schemes is also pretty darn shocking, even for a grizzled veteran of the litigation bar such as myself.

Is there something unique in the way Gibson Dunn litigates that makes your firm successful at exposing litigation fraud?

Randy Mastro: Now, you're asking me for the "secret sauce" recipe. That's like asking Coke for the "Classic" formula. Not going to happen.

But I will say this. We approach these cases like so many of us here did when we were young federal prosecutors trying to investigate potential wrongdoing. Only we didn't have any subpoena power or formal tools to compel discovery pre-litigation, like a prosecutor does, so we've had to be particularly creative, innovative, and dogged in uncovering fraud and amassing the evidence of it.

One thing I can tell you for sure: When we go to court alleging fraud, we bring the proof to back it up. Of course, we further develop the evidence in discovery in the litigation, but we've already laid the foundation and therefore have particular credibility. That's how, over the past several years, we've exposed litigation frauds perpetrated against Chevron, Dole, Facebook, AIG and others. We wear that as a badge of honor, because we're seeing justice done. And as I like to say, we get justice for "Fortune 50" companies.

Your adversary went out of his way to highlight to the court what you'd done in the Chevron/Ecuador/RICO case, even quoting Steve Donziger's attacks against your firm and your client. How did you handle that?

Randy Mastro: To paraphrase Michelle Obama, when they went low, we went high. Courts don't appreciate ad hominem attacks and personal vitriol. We let the facts speak for themselves. This case screamed out that something terribly wrong happened here and that Chevron was the victim of a sham process. Facts win cases, not rhetoric. The facts here spoke volumes.

You had amicus support from the International Court of Arbitration of the International Chamber of Commerce, which rarely weighs in on disputes. What does that signify about the wider implications of this fight? What do you hope will be the legacy of this case?

Annie Champion: The foundation of the system of international arbitration is consent, and I think there has always been an honor system in place among practitioners and litigants. It's a small world with repeat players.

But as arbitration and, in particular, international arbitration become more widespread tools of dispute resolution, opportunities for abuse arise, and sham arbitration awards are becoming a recognized problem. This case is significant because the arbitration community, including the ICC and the Cairo Regional Centre for International Arbitration, a respected arbitration institute in Egypt whose deputy director, Dalia Hussein, also submitted a declaration to the federal court, have recognized that this kind of fraud and abuse threatens the legitimacy of the whole system.

The fact that these respected international arbitration organizations felt compelled to weigh in, which, as you note, is unusual, sends a strong message that the international arbitration community cares about these issues and is prepared to step up to engage in soul-searching and self-policing.

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