

WINNING | A SPECIAL REPORT

The National Law Journal presents five lawyers and their teams who faced tough odds at trial and prevailed by using creative litigation strategies, sharp trial techniques and plenty of legal brainpower. They demonstrate how determination and professionalism can turn legal challenges into client victories.



Turning Point Was the 'Turncoats'

Skills sharpened as a prosecutor helped Mastro secure a win for Chevron.

RANDY MASTRO

GIBSON, DUNN &
CRUTCHER

BY CARLYN KOLKER

Randy Mastro spent his early professional years prosecuting fraud and racketeering cases against unions and organized crime. The skills he honed then—especially the ability to elicit helpful testimony from some really bad actors—came in handy when he helped his client, Chevron Corp., beat back one of the largest environmental lawsuits in the world.

"I approached this as I would have in my former life as a prosecutor," Mastro said. "I took this evidence and developed it like it was a RICO case. It was a series of extortions that created a pattern of racketeering."

In 2011, an Ecuadoran court awarded indigenous villagers \$19 billion—later reduced to



SHELLEY GADES

TRIAL TIPS

- As the plaintiff's trial lawyer bearing the burden of proof, avoid the tendency to overtry your case. Go with your strengths early and put on witnesses who can tell the whole story at the outset, and if the trial is going well, then pare back and eliminate risk.
- On cross-examination, sometimes you have to throw out the rule book and go with your gut in questioning hostile witnesses. Taking calculated risks can produce great rewards, especially when the hostile witness doesn't see it coming.

WINNING

\$9.5 billion—against Chevron. The court found that Texaco, later purchased by Chevron, contaminated the Amazon region and failed to clean it up, endangering the lives of thousands.

Chevron's job was to convince a federal judge in New York that he should not enforce that judgment in the United States, relying on Mastro and a team of litigators from Gibson, Dunn & Crutcher in what became an epic showdown against Steven Donziger, the plaintiffs' lawyer who spearheaded the case.

Although the villagers' battle against Chevron dated to the 1990s, Mastro and his team joined the case only in late 2009. His plan was to determine whether the Ecuadoran litigation, which had become a cause célèbre among environmentalists, had been tarnished by fraud. In a scorched-earth discovery battle, Mastro helped Chevron procure outtakes from a documentary film about the litigation and, ultimately, personal papers from Donziger.

The footage and papers convinced Chevron that Donziger and his associates had engaged in a scheme to ghostwrite a key expert's report in the case, bribe the Ecuadoran judge overseeing the litigation and help him write the decision. In February 2011, Chevron sued Donziger, alleging the plaintiffs had secured the judgment fraudulently and that it therefore was unenforceable.

A bench trial began in fall 2013, with Mastro, co-chairman of Gibson Dunn's litigation department, leading more than a dozen of the firm's lawyers representing Chevron. Donziger's attorney,

Richard Friedman, called the trial a "surreal experience."

Mastro and his team called in-house lawyers and scientists to describe Chevron's litigation experience in Ecuador, explaining that Chevron had received an unfair trial, in part, because the court did not rely on proper science to hold the company accountable. They then presented what Mastro called the "turncoat witnesses"—former allies of Donziger.

Two Ecuadoran witnesses were the key to the trial, Mastro said. One was Alberto Guerra Bastidas, a former Ecuadoran judge who had overseen an initial phase of the proceedings. Guerra testified that after he stepped down as a judge the plaintiffs team paid him to write opinions in the name of the judge who delivered the judgment.

Mastro said he used some lessons from his days as a fraud prosecutor when he put Guerra on the stand. As in a fraud or mob prosecution, "you are not putting a saint on the stand; you are putting a sinner on the stand," he said. "The most important thing for the whistleblower turncoat is to admit he's a sinner. [Guerra] was a remarkably compelling witness because he admitted his crimes. He admitted his role in the scheme."

Then Mastro called Nicolas Zambrano, the former Ecuadoran judge who levied the judgment. Zambrano had come to trial at the 11th hour as a witness for Donziger. But Mastro decided to call him as a hostile witness first so he could control the narrative. "I wasn't going to let him get up there and have the bully pit for several hours on

the stand," he said.

He forced Zambrano to admit that he remembered almost nothing from the decision that he said he'd written and had little familiarity with key material from the case.

Jose Martin, a Chevron attorney who was present in the courtroom nearly every day, called Zambrano's testimony "the moment" of the trial. "Randy was able to show, blow by blow, by giving pop quizzes, by showing inconsistencies in his testimony, that the judge did not draft the judgment," Martin said.

Friedman, Donziger's lawyer, was less impressed, calling it "kind of an unremarkable cross-examination."

Ultimately, U.S. District Judge Lewis Kaplan agreed with Chevron and in March 2014 issued a 497-page ruling enjoining collection of the judgment in the United States, writing, "if ever there were a case warranting equitable relief with respect to a judgment procured by fraud, this is it." Donziger has appealed.

Mastro's other recent notable cases include representing New Jersey Gov. Chris Christie in the George Washington Bridge road closure probe and representing Lavastone Capital LLC, an affiliate of AIG in fraud litigation against Coventry First LLC.

Carlyn Kolker is a freelance reporter in New York.