

Litigator of the Week: Randy Mastro of Gibson, Dunn & Crutcher

By Jan Wolfe

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Randy Mastro

There was plenty of drama when Chevron Corporation's fraud and racketeering case against Steven Donziger finally went to trial last fall. But few moments were as memorable—or as illuminating—as when Randy Mastro ambushed a former Ecuadorean judge about the \$9.5 billion environmental judgment at the heart of the case.

The judge, Nicolas Zambrano Lozada, issued the megajudgment under his name in Ecuador in 2011. But under oath in a Manhattan courtroom, peppered with Mastro's nonstop questions, Zambrano appeared to know very little about his own ruling. The failed pop quiz seemed to perfectly support Chevron's allegations: that Donziger and his team rigged the underlying pollution case in Ecuador, from fixing a supposedly independent damages report to bribing a judge and ghostwriting the final judgment itself.

On March 4, Chevron's claims were vindicated in full by U.S. District Judge Lewis Kaplan. (See our coverage of Kaplan's ruling here and here.) The case isn't over, and the fight over Chevron's liability for oil pollution in the Amazon will continue. But with this week's win by Mastro and his partners Andrea Neuman and Reed Brodsky, the chance of the plaintiffs collecting from Chevron is looking close to nonexistent.

The pop quiz was something of a gamble for Mastro, who cochairs the litigation practice at Gibson, Dunn & Crutcher. A few days before Zambrano took the stand at trial, the ex-judge sat for his first-ever deposition in the case (he'd failed to show up for one in Peru a year ago). If Mastro quizzed him hard during the deposition, Zambrano might have realized what Mastro was planning and boned up on the judgment. So Mastro probed the judge just enough to gauge how he'd fare on the stand.

"I didn't want to give away that there would be a quiz on the judgment. If I did that, he could spend the next 48 hours studying," Mastro told us. "I wanted the element of surprise."

It wasn't the first time Gibson Dunn's strategy in the fraud case took Chevron's opponents by surprise. Back in September, for instance, Chevron dropped a damages claim against Donziger so

that it could ensure a bench trial, rather than a jury trial. The maneuver seemed almost chicken-hearted at the time—Kaplan had already signaled his sympathy for Chevron's allegations, so winning him over was a safer route than going before an unpredictable jury.

Now it looks like Gibson Dunn made the right move. Jurors don't explain their reasoning. Kaplan, on the other hand, has carefully laid out his findings in a spellbinding 497-page decision that will likely be given considerable weight by judges in Argentina, Canada and Brazil, who are deciding whether to enforce the Ecuadorean judgment and seize Chevron's assets. (Because Chevron no longer has assets in Ecuador, the Ecuadorean plaintiffs represented by Donziger have sought to enforce the judgment abroad.) American Lawyer columnist Michael Goldhaber predicted this week that the ruling marks the beginning of the end of the Chevron in Ecuador litigation.

Mastro and his colleagues laid the foundation for this week's victory years ago. In 2009 and 2010, they used a seldom-invoked statute known as Section 1782 to investigate Donziger's conduct in Ecuador over the years.

In one Section 1782 proceeding Kaplan ordered a film crew to produce outtakes from a Joe Berlinger documentary, "Crude." With the camera rolling, Donziger had made regrettable statements such as "we need to do more, politically, to control the court, to pressure the court." Similarly, in early 2011 Kaplan ordered Donziger to turn over his entire 17-year case file. "People said it couldn't be done," Mastro said of the discovery maneuvers.

Donziger's case file and the "Crude" outtakes are cited repeatedly in Kaplan's ruling. For instance, on page 62, Kaplan uses Donziger's own words as evidence that in 2005 he improperly paid money to a court-appointed monitor. "Feel like I have gone over to the dark side," Donziger wrote in his notebook, vowing that this would be his "one bargain with the devil."

In reality, Mastro convinced the judge, it was an early stop on a long trail of corruption.