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Federal Judge Sanctions Chevron Lawyers at Gibson Dunn for Harassing Witness in Ecuador Case

Oil Giant Scolded Yet Again by U.S. and Ecuadorian Courts



Amazon Defense Coalition

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Eugene, Oregon – Chevron's lead law firm in the \$18 billion Ecuador environmental lawsuit, already [under scrutiny for trying to mislead Congress](#) (<http://www.sustainabilityprofessionals.org/news/4415>), has been scolded and sanctioned by a federal judge for harassing a witness in a discovery action in Oregon.

Magistrate Judge Thomas M. Coffin last week ordered Chevron to pay \$32,945.20 in costs to ELAW, a non-profit network of environmental lawyers from 60 countries that in 2009 filed an amicus brief before the Ecuador court hearing charges that the oil giant dumped billions of gallons of toxic waste into the Amazon. Coffin found that the deposition of ELAW's executive director, conducted by Kristin Hendricks of the Gibson Dunn & Crutcher law firm, was in part "meant to harass".

The executive director of ELAW, Bern Johnson, had accused Hendricks of deliberately misstating testimony during his deposition on Sept.15 as part of a civil case Chevron filed in New York against the Ecuadorian plaintiffs. That case was stayed Sept.19 by a federal appellate court in New York, cutting off Chevron's ability to depose more witnesses in the United States. Chevron has since moved to withdraw its discovery action against ELAW.

Pablo Fajardo, the lead Ecuadorian lawyer in the case against Chevron, is a member of ELAW.

In February of this year, an Ecuador court found that the oil giant had [deliberately dumped billions of gallons of toxic waste into the rainforest](#) ([assets/docs/2011-02-14-summary-of-judgment-Aguinda-v-ChevronTexaco.pdf](#)) from 1964 to 1992, when it operated several large oil fields. The pollution has decimated indigenous groups and caused an outbreak of cancer and other oil-related diseases. See [here](#) ([assets/docs/2011-01-17-Summary-Memo-and-Plaintiffs-Final-Argument-Part-1.pdf](#)) and [here](#) ([assets/docs/2011-01-17-Plaintiffs-Final-Argument-Part-2.pdf](#)).

In his [written opinion](#) ([assets/docs/2011-12-05-cvx-fee-order.pdf](#)), Judge Coffin stated: "It is a reasonable conclusion that Chevron's subpoena to Johnson's deposition was, at least in part, meant to harass." The judge relied on an affidavit from an ELAW lawyer outlining how Hendricks and other Gibson Dunn lawyers disregarded their own chosen deadlines, showed up late for the deposition, took elongated breaks, and asked repetitive questions designed to waste time.

In that [affidavit](#) ([assets/docs/2011-eugene-tebbutt-deposition.pdf](#)), ELAW counsel Charles M. Tebbutt described how the Gibson Dunn lawyers also violated court rules by issuing a subpoena without using local counsel, and were repeatedly late for phone meetings they requested as they tried to resolve various discovery disputes. In addition to Hendricks, lawyers from Gibson Dunn involved in the ELAW matter included Randy Mastro, Alexandra Southwell, and Gregory Shill.

"Judge Coffin should be lauded for calling out Chevron's continued abuse of the discovery process to distract attention from its environmental crimes in Ecuador," said Karen Hinton, the U.S. spokesperson for the Ecuadorians. "A picture is emerging of lawyers at Gibson Dunn who were being paid by Chevron to bully a respected international environmental organization.

"Because of ELAW's courage and tenacity, the tables now have been turned against Gibson Dunn lawyers who are clearly guilty of using Chevron's

superior resources to abuse the judicial process," Hinton added.

Gibson Dunn in the last two years has filed dozens of discovery actions in the U.S. against almost any American connected to the Ecuador lawsuit in an effort to consume the limited resources of the plaintiff's team and scare off funding for the case, said Hinton. In the meantime, Chevron suffered a series of legal setbacks in Ecuador that led to the historic judgment, which is now under appeal.

A Gibson Dunn lawyer recently disclosed the firm has at least 60 lawyers working for Chevron on the Ecuador matter even though it is only one of the four large law U.S. firms defending the company. The others are Jones Day, King & Spalding, and Boies Schiller.

Gibson Dunn brags in its [marketing materials](#)

(<http://www.gibsondunn.com/News/Pages/GibsonDunnNamedLitigationDepartmentoftheYearbyTheAmericanLawyerMagazine.aspx>) that it is a bastion of "innovative thinking" whose lawyers conduct "rescue operations" for clients in trouble, but it has been repeatedly sanctioned for its misconduct in the Ecuador matter and in related cases.

In 2009, Chevron was [ordered to pay all attorney fees \(news-and-multimedia/2010/0514-chevron-gibson-dunn-suffer-stiff-setback-on-ecuador-pollution-case.html?searched=Bonifaz&advsearch=allwords&highlight=ajaxSearch_highlight+ajaxSearch_highlight1\)](#) associated with the defense of a civil lawsuit brought by Gibson Dunn against Cristobal Bonifaz, a former lawyer for the Ecuadorian plaintiffs who operates a solo practice in Massachusetts. A state judge in California found that the lawsuit was [designed to harass Bonifaz and suppress his First Amendment rights \(news-and-multimedia/2010/0514-chevron-gibson-dunn-suffer-stiff-setback-on-ecuador-pollution-case.html\)](#).

In 2010, a federal court in Colorado found that Gibson Dunn lawyer Andrew Neumann [asked several harassing questions \(news-and-multimedia/2010/1130-sanctioned-chevron-lawyers-violating-new-court-order-in-ecuador-environmental-trial.html\)](#) of a technical expert for the plaintiffs in the Ecuador case.

The same Gibson Dunn practice group used by Chevron in the Ecuador case, headed in part by Neumann, recently was hit with sanctions from a second California judge for filing a frivolous lawsuit to [suppress the free speech rights \(http://www.chevroninecuador.com/2010/12/no-sanction-for-chevron-lawyers-over.html\)](#) of a filmmaker who made a documentary about how pesticides used by Dole in Central America have poisoned banana workers. Dole is a Gibson Dunn client.

In the Ecuador trial, Chevron's lawyers on numerous occasions were fined and sanctioned for harassing the court in the South American nation. One lawyer [threatened the judge with criminal sanctions if he did not rule in the company's favor \(news-and-multimedia/2011/0203-chevron-threatened-judge-with-prison-time-if-he-failed-to-grant-motions.html\)](#). The misconduct of the Chevron lawyers was cited by the court as one reason it imposed a punitive sanction on the company.

Just last week, lawyers for the affected Ecuadorian communities submitted a blistering letter to the U.S. Congress accusing a Gibson Dunn partner, William Thomson, of orchestrating the [presentation of false information about the Ecuador case during a subcommittee hearing on foreign judgments \(assets/docs/2011-11-29-letter-to-hons-coble-and-cohen.pdf\)](#). Thomson also represents Chevron in the Ecuador matter, a fact not disclosed to the subcommittee.

Thomson wrote a report for the U.S. Chamber of Commerce warning of what he called a "new breed" of abusive foreign litigation without disclosing he reaps sizable fees from Chevron in its efforts to defeat enforcement of the Ecuador judgment. The report was submitted to the Congressional record.

Gibson Dunn is notorious for its sharp-edged litigation practices. The firm was fined a shocking \$20 million in 2003 in Montana for harassing an art expert for failing to raise the appraisal value of a forged painting owned by a firm client.

"Let me be as clear as possible," said Hinton, the spokesperson for the Ecuadorians. "The Gibson Dunn law firm wouldn't raise a finger for Chevron if wasn't being paid millions of dollars per month in a futile attempt to get an oil company off the hook for polluting the rainforest."

"The law firm might be increasing its profits, but it is doing it at the expense of both Chevron's shareholders and Chevron's victims in Ecuador," added Hinton.

Hinton said that R. Hewitt Pate, Chevron's General Counsel and a former Bush Administration appointee, is responsible for the use of a law firm that "clearly has a problem adhering to the ethical rules" of the legal profession.

Once it was hit by sanctions, Chevron's lawyers at Gibson Dunn quickly moved yesterday [to dismiss its discovery action against ELAW \(assets/docs/2011-12-05-cvx-mot-voluntary-dismissal.pdf\)](#). ELAW has opposed the dismissal and has informed the court that it will seek further sanctions against the oil giant.

For more information, become a follower of [The Chevron Pit \(http://thechevronpit.blogspot.com/\)](http://thechevronpit.blogspot.com/) or follow [@ChevronPit \(http://twitter.com/#!/chevronpit\)](http://twitter.com/#!/chevronpit) on Twitter.

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