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How Lawyer Arrogance Imperils Chevron Shareholders in Ecuador

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One of the more interesting aspects of the \$18 billion Chevron-Ecuador environmental case is not only that the oil giant recently offered a [\\$1 billion bribe to Ecuador's government to quash the case](#), but how a series of monumental mistakes by the American law firm Gibson Dunn Crutcher ("GDC") and its lead partner, Randy Mastro, have increasingly imperiled the interests of a major client like Chevron and its institutional shareholders.

The latest of several recent Gibson Dunn setbacks occurred Tuesday, when [an Ecuador appellate court affirmed the \\$18 billion judgment against Chevron](#). Chevron is Gibson Dunn's lead client for the last two years as the law firm has seen its profits soar off of the oil giant's Ecuador debacle, which is largely a function of Mastro's own flawed advice and unethical litigation practices as outlined below.

Gibson Dunn partners might want to wake up to Mastro's shenanigans, which have largely remained hidden from public view but threaten to stain the reputation of a prominent law firm that has always been pretty good at hiding its dark side. The same might go for Chevron's management, which continues to foot the bill for a legal strategy that creates major operational risks for the company in countries around the world.

Gibson Dunn has long advertised itself as the "dream team" for clients in serious trouble. It boasts that lawyers like Mastro, Andrea Neumann, Scott Edelman, and William Thomson are capable of mounting "rescue" operations for corporations facing [major liability for environmental and other abuses committed against vulnerable peoples](#) like the indigenous and farmer communities of Ecuador's Amazon. If the law is in the way of a client's interests, GDC claims it will work to either change the law or maneuver around it. The firm is notorious for throwing a client's lawyers under the bus for not being "aggressive" enough so GDC can replace them.

Hyped-out aggression is an approach that can resonate powerfully to a desperate and confused management team like the one at Chevron. CEO John Watson already has egg on his face for bungling what could be the largest environmental litigation in history. For years [Chevron praised Ecuador's courts to move the venue of the case out of the U.S.](#) Its attacks on those courts today after it lost the case seem opportunistic to say the least, particularly after Chevron submitted scientific evidence and [internal audits that prove the claims of the plaintiffs](#). While with Mastro's encouragement Watson tries to kick the Ecuador can down the road, the risk to Chevron's shareholders continues to increase while Watson's personal conflicts of interest become ever more manifest. See [here](#), [here](#), and [here](#).

(Note: Watson in 2001 helped engineer the Chevron purchase of Texaco after failing to properly vet the company for the Ecuador liability. Chevron at the time ignored repeated warnings about the case from environmentalists and others. After ignoring these warnings, Chevron vastly overpaid for Texaco by not accounting for the Ecuador liability in the purchase price. The problem for shareholders is exacerbated by the company's notoriously passive board of directors, whose members allow Watson to police himself by holding the dual titles of board chairman and CEO.)

Back to Gibson Dunn. The combination of Chevron's deep pockets and its desperate situation in Ecuador -- the country where it wanted the trial held thinking it could use political influence to engineer the "proper" result -- has created the perfect storm of opportunity for GDC's marketing and billing machine. In fact, Gibson Dunn has billed Chevron so much for its Ecuador work -- at least hundreds of millions of dollars over the past two years, according to those who know the legal profession -- that one has to wonder whether Chevron General Counsel Hewitt Pate works for his outside law firm or whether the outside law firm works for Pate. Gibson Dunn alone has at least 60 lawyers working on the Ecuador case, [according to its own admission before a U.S. federal court](#).

Chevron also uses three other major U.S. law firms on the case (Jones Day, King & Spalding, and Boies Schiller) and [at least six public relations firms](#) to spread company propaganda that the matter is a "fraud" orchestrated by greedy American lawyers. It also uses the same political consulting firm that launched the Swift Boat campaign against John Kerry in the 2004 presidential election. What few know is that Gibson Dunn basically uses carbon copy lawsuits alleging "fraud" against almost any entity that has the temerity to challenge its powerful clients.

To get Chevron out of its mess, Gibson has targeted [Ecuadorian lawyer, Pablo Fajardo, who was profiled with great sensitivity in Vanity Fair](#). Fajardo brilliantly has outmaneuvered Chevron's high-priced lawyers at almost every turn. The fact GDC with its

hundreds of millions of dollars has been unable to shake Fajardo and his team of twenty-somethings has to be the litigation story of the year, but you won't read about it American Lawyer, which recently named Gibson Dunn its litigation firm of the year even after it suffered multiple setbacks in the Ecuador case.

More incredible is that since Gibson Dunn entered the Ecuador case on behalf of Chevron in 2009, the interests of the oil company's shareholders have endured a series of blows almost unprecedented in the annals of litigation. Consider the sad results of Mastro's latest "rescue" operation for Chevron:

- Chevron in February of 2011 lost the underlying Ecuador litigation in one of the largest civil judgments in history -- roughly \$18 billion. In a 188-page decision, the court found the company poisoned an area the size of Rhode Island, decimated indigenous groups and caused an outbreak of cancer affecting thousands of people. See [here](#) and [here](#).
- Just this week, Gibson Dunn suffered another blow when an [Ecuadorian appellate court affirmed the trial court decision](#).
- Roughly half of the total judgment in Ecuador is to compensate the rainforest communities for the harm caused by Chevron's and Gibson Dunn's hyper-aggressive litigation tactics, including the repeated filing of frivolous motions and the [threatening of the presiding judge with jail time if he didn't rule in favor of the company](#).
- Last September, a federal appellate court panel in New York rebuked Mastro for attempting (without any legal precedent) to use the U.S. court system to block the Ecuadorian rainforest communities from enforcing a judgment from their courts in any country in the world. Mastro's position was [blasted by jurists around the world](#) for turning U.S. trial courts into appellate courts for all of the world's judicial systems. Mastro was so hysterical and rude to the appellate panel that one of its members asked him to sit down. [See page 19 of this transcript](#). Chevron General Counsel Pate, who was attending, looked ashen-faced after the argument.
- Chevron orchestrated a video entrapment scheme against a sitting judge in Ecuador, [which backfired against the company](#) and prompted an ongoing criminal investigation in Ecuador of Chevron's attempts to corrupt the country's justice system. Mastro and his team have played a leading role in trying to block the release of documents in the United States related to this outrageous scandal, which also has [created potential exposure for Chevron under the Foreign Corrupt Practices Act](#).
- Gibson Dunn lawyers have been sanctioned repeatedly by U.S. courts for engaging in unethical behavior on behalf of Chevron. Just weeks ago a federal judge in Oregon sanctioned and fined Chevron after finding that Gibson lawyer Kristin Hendricks (an associate working under Mastro) [abused the discovery process](#) to harass a respected environmental organization that had filed a brief in the Ecuador case.
- A Colorado federal court in 2010 [rebuked Gibson Dunn lawyer Andrea Neumann](#) for trying to intimidate and harass a witness she was deposing who had worked for the Ecuadorian plaintiffs.
- Gibson Dunn partner Scott Edelman, a key member of Mastro's team, has been sanctioned twice under California's anti-SLAPP statute for filing frivolous litigation to intimidate lawyers and filmmakers who are trying to hold Gibson Dunn clients accountable for human rights violations. In one of those cases, a judge [ordered Chevron to pay the legal fees](#) for a lawyer who had represented the Ecuadorian plaintiffs against Chevron.
- Gibson Dunn partner William Thomson, also a key member of Mastro's team, wrote a report for the U.S. Chamber of Commerce criticizing "abusive foreign litigations" [without disclosing that he represents Chevron in the Ecuador case](#), which the Chamber uses as Exhibit A in its campaign to prevent the enforcement of foreign judgments against U.S. corporations. Thomson allowed his report to be used to mislead the U.S. Congress at a recent hearing that dealt with the Ecuador case.
- Under Mastro's leadership, the Ecuador case recently has taken a profound turn for the worse with [the attempted bribe of Ecuador's government by long-time ally Ivonne Baki](#), the discovery that Chevron [lied to its own expert witnesses](#) to get them to defend the use of deceptive sampling practices during the trial, and the shocking revelation that Chevron [used a secret lab to hide from the Ecuador court its dirty soil samples](#) taken from its former well sites. In fact, Chevron's entire defense in Ecuador is falling apart given the mounting evidence that it is based on fraudulent science designed to hide evidence of life-threatening amounts of contamination.
- Mastro recently tried to convince a federal court judge that Ecuador's entire judicial system is as bad as that of Iran's, which has about as much credibility as saying North Korea will hold free and fair elections to replace Kim Il Jong. In fact, [Ecuador has one of the top judicial systems in Latin America](#) and Chevron and other foreign investors have won multiple cases in Ecuador's courts in recent years.

Mastro also appears to use his own low-paid associates to take outrageous personal risks that he would never take himself. The official court sanctioning of Hendricks, a young graduate of Georgetown law school, is a classic example. What is distressing is that Hendricks did not bungle the Oregon case; harassment is what Mastro teaches his associates if they want to get ahead in his practice group.

The real question is whether Chevron's shareholders wake up to the fact that a) their company faces unprecedented legal risk for the obvious mishandling of the Ecuador case; b) that their own management team is in bed with a law firm that has a huge stake in convincing the company to continue the litigation even at great risk, so it can keep lubricating its billing machine; and c) that an American law firm is creating open conflict between Chevron and a foreign government, disrespecting local laws and the communities in which the company operates, all the while casting outrageous aspersions on the court system of a nation that is a U.S. ally.

Given that Chevron might face enforcement actions in countries around the world over the Ecuador liability, shareholders might want to question whether Gibson Dunn's "rescue" strategy is as good for Chevron as it for Gibson Dunn.

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