



HAYNES AND BOONE, LLP

WINNER ■ GENERAL LITIGATION—LARGE FIRM

Clockwise from front, center: Nina Cortell, Lynne Liberato, Ernest Martin Jr., John Turner, Anne Johnson and Mark Trachtenberg of Haynes and Boone

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Haynes and Boone Has A+ Year

by MARY ALICE ROBBINS

While the 131 attorneys in Haynes and Boone’s litigation department in 2014 typically handled complex commercial cases, they also demonstrated their ability to score victories in a wide variety of matters.

“We had a great 2014,” said Anne Johnson, a Dallas partner and the firm’s litigation department chairwoman.

One of the firm’s biggest wins came on Aug. 28, 2014, when 250th District Judge John Dietz of Austin issued his final judgment in *Texas Taxpayer and Student Fairness Coalition v. Coleman v. Williams*. Dietz held the state’s school finance system unconstitutional, finding, among other things, that the system “effectively imposes a state property tax” and is “structured, operated and funded so that it can not provide a constitutionally adequate education for all Texas schoolchildren”—both claims that Haynes and Boone’s clients made.

Led by Houston partner Mark Trachtenberg, the Haynes and Boone team represented Calhoun County ISD, a coalition of 88 school districts.

“I think we played a very important role at the trial,” Trachtenberg said.

Trachtenberg said his co-counsel, Dallas partner John Turner, examined

all the critical witnesses that the state put on at trial. Trachtenberg said his role included working on findings of fact and conclusions of law that the plaintiffs submitted to the judge, as well as briefing and arguing on behalf of the plaintiffs when the state tried to recuse Dietz in June 2014.

According to the final judgment, four coalitions of school districts and the Texas Charter School Association were the plaintiffs, and Texans for Real Efficiency in Education intervened in the case. Defendants were state officials.

“Just the breadth of the case was the biggest challenge,” Turner said.

There were more than 80 live witnesses and more than 5,000 exhibits admitted in the first 45-day trial, which began in October 2013. In the second three-week trial, which

began in January 2014 and addressed legal changes that the Texas Legislature made in the system, the court heard from another 12 witnesses and admitted an additional 700 exhibits.

Appeals of Dietz’s judgment are pending at the Texas Supreme Court.

Thompson & Horton partner David Thompson of Houston, lead counsel for the plaintiff Fort Bend County ISD districts, praised the Haynes and Boone attorneys for their substantive knowledge of the school finance issues, basic lawyering skills and professionalism. He said the various school groups were closely aligned on some issues, but disagreed on others, and the Haynes and Boone attorneys worked with the different groups to present a united front.

“I thought they handled the disagreements extremely professionally,” Thompson said.

In early 2014, a Haynes and Boone team of insurance coverage, appellate



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and trial attorneys began representing Heckmann Water Resources after a Dimmit County jury returned a \$281 million verdict against the company in a wrongful death case stemming from a 2012 accident. *Aguilar v. Heckmann Water Resources* produced one of the top verdicts of 2013. [See “Top 20 Case Summaries,” *Texas Lawyer*, May 26, 2014, p. 13.]

The family of Carlos Aguilar sued Heckmann, an oil field water supplier, after Aguilar was struck and killed by a driveshaft assembly that broke off from a tractor trailer driven by a Heckmann employee and crashed through the windshield of a pickup truck in which Aguilar was a passenger. The jury found Aguilar’s death was the result of gross negligence attributable to Heckmann, according to the April 1, 2014, final judgment.

Lynne Liberato, a Houston partner in Haynes and Boone, was Heckmann’s lead counsel for posttrial motions on behalf of Heckmann. Dallas partner Ernest Martin Jr. represented Heckmann in claims against its insurance carriers, two Zurich-owned companies.

“The most challenging thing is that we had multiple plaintiffs that we were dealing with and huge amounts of money,” Liberato said.

Johnson, who also was involved in the case, noted in an email, “Through posttrial motions, including a request for remittitur, we were able to reduce the jury’s \$281 million verdict by 63 percent to a judgment of \$105 million.”

Martin said that a confidential settlement reached in June 2014 covered the

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claims against the insurer and in the underlying suit.

Beck Redden partner Eric Nichols of Austin, who represented the plaintiffs in *Aguilar*, said the Haynes and Boone team “brought a great deal of vigor and enthusiasm” to representing their clients’ interests but demonstrated professionalism.

“I just appreciate the professional approach they take to representing their clients,” he said.

Also in 2014, Haynes and Boone attorneys working with Lynn Tillotson Pinker & Cox partner Jeff Tillotson of Dallas convinced the Texas Supreme Court to rule in favor of their clients on a significant issue of first impression for the renewable energy industry. The case centered on the enforceability of liquidated damages provisions in contracts between TXU Portfolio Management Co. and wind farms owned by FPL Energy. In reaching its conclusion, the high court made a critical distinction between renewable energy credits and electricity in the state’s statutory scheme.

The Supreme Court’s March 21, 2014, opinion, in *FPL Energy v. TXU Portfolio Management* provides the following background: TXU sued FPL for breach of

contract after the wind farms failed to produce the electricity and associated RECs it contracted to provide. FPL argued in a counterclaim that TXU failed to provide it with sufficient transmission capacity.

The trial court found that the contracts required TXU to provide transmission capacity and that the liquidated damages provisions were unenforceable but entered take-nothing judgments for both parties. The Fifth Court of Appeals in Dallas reversed those rulings and assessed FPL’s damages at \$29 million. The liquidated damages provisions accounted for the bulk of that amount.

The Supreme Court partially reversed the appeals court, finding that the contracts did not require TXU to provide capacity but that the liquidated damages provisions in the contracts are unenforceable as a penalty. The high court remanded the case to the Fifth Court to determine damages.

Nina Cortell, a Dallas partner in Haynes and Boone, said she had to master the regulatory framework before she argued at the Supreme Court.

“We were deeply enmeshed in the regulatory scheme,” Cortell said.

Tillotson gave the Haynes and Boone team much of the credit for the victory at the Supreme Court.

“They positioned the case so it made sense for the Supreme Court to review it,” he said. “They put together an A-plus team that worked seamlessly with me and a very active client and produced a first-rate work product.” ■

“The most challenging thing is we had multiple plaintiffs that we were dealing with and huge amounts of money,” said Lynne Liberato, a Houston partner.

Mary Alice Robbins is an Austin freelance writer and former senior reporter with Texas Lawyer.