Russ Emerson Named Texas Lawyer Litigator of the Week

By Russ Emerson, Stephanie Sivinski | December 7, 2017

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Texas Lawyer highlighted Haynes Boone Partner Russ Emerson as Litigator of the Week for leading a patent litigation team that got infringement claims against client BlueStone Natural Resources dismissed — and for citing a Rudyard Kipling poem in the process.

BlueStone, a Tulsa-based oil and gas company, and other companies operating in the Barnett Shale had been sued by Effective Exploration, a nonpracticing firm, over its patent for a system of drilling multiples wells from a single drilling pad. Though other defendants settled, BlueStone refused, denying any infringement. Effective Exploration then sought sanctions for continuing the litigation.

As *Texas Lawyer* reported:

So in a brief written by Haynes Boone Associates Stephanie Sivinski and Matt Chiarizio, BlueStone decided to respond with poetry by citing a 100-year-old poem written by Rudyard Kipling called "Dane-Geld (A.D. 980-1016)." In it, Kipling warns against paying ransom demanded by Danish Vikings because "once you have paid him the Dane-geld, you never get rid of the Dane."

"The fact that BlueStone is the only defendant sued in the current tranche of litigation that declined settlement thus far is also not a sanctionable offense," BlueStone's response stated. "It simply means that, unlike its codefendants, BlueStone thus far has taken Rudyard Kipling's advice and refused to pay a nuisance-value settlement to make Effective Exploration go away."

"The idea is you don't pay these raiders money to go away because they'll just come back," Emerson said.

U.S. Magistrate Judge Roy Payne denied the sanctions motion and recommended a summary judgment for BlueStone. U.S. District Judge Rodney Gilstrap then issued a summary judgment order, finding no infringement, on Nov. 29.

The ruling vindicates BlueStone's decision not to settle on the cheap, Emerson told *Texas Lawyer.*

"It's a business decision, right? And it's a legitimate business decision to say 'Look, we're going to spend more money litigating this than to pay a little to settle," Emerson said. "But they stood on principle and won. The next nonpracticing entity that thinks about suing them is going to think twice now.''

And it's not every day that a patent litigant gets a chance to use classic English poetry as a defense, Emerson said.

"I think it's perfectly appropriate here. It's quite analogous to the patent shakedown we see too often," Emerson said. "And it's fun to use a literary reference. It's hard to find the opportunity but when you find it you use it. You have to have some fun right?"

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