



LOCKE LORD

WINNER ■ GENERAL LITIGATION—LARGE FIRM

Front row, from left: partners Roy Hardin, Thomas Yoxall, John McDonald, Arthur Anthony and Cynthia Timms.
Middle row, from left: partners J. Clint Schumacher, Michael Powell, W. Scott Hastings, Robert Mowrey and Antroy Arreola.
Back row, from left: partners Karin Torgerson and David Harrell.

LITIGATION

—2014—

DEPARTMENTS OF THE YEAR

TEXAS LAWYER

SPECIAL SECTION ■ JUNE 2014

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Locke Lord's Supreme Year

by MARY ALICE ROBBINS

From obtaining a more than \$113 million verdict for a client in an antitrust case to winning a victory at the U.S. Supreme Court for another client, Locke Lord's litigation department had a very good year in 2013.

"We had such an incredible year," said John McDonald, a Dallas partner and co-chairman of the firm's litigation department.

He said that the \$113.5 million verdict that Locke Lord obtained for Retractable Technologies Inc. (RTI) and the win at the Supreme Court demonstrate "the significant, kind of cutting-edge litigation at the trial level, at the appeal level" that lawyers at the firm practice.

A jury in the U.S. District Court for the Eastern District of Texas returned the verdict for RTI on Sept. 19, 2013, after more than a week of trial of an antitrust suit against a rival syringe manufacturer. Locke Lord Dallas partner Paul Schuster, the antitrust lawyer on the case, said the damages are subject to tripling.

Schuster said that the client originally filed *Retractable Technologies Inc. v. Becton Dickinson and Co.* in 2007, alleging claims for patent infringement, antitrust and Lanham Act violations, as well as various other claims. Acting on a motion by Becton Dickinson, the district court severed the nonpatent claims from the suit, according to the court's Jan. 18, 2008, order.

As noted on the verdict form in the antitrust and Lanham Act case, the jury found that Becton Dickinson "engaged in anticompetitive conduct with the intent to, and the dangerous probability that it would acquire monopoly power within the relevant markets" for safety syringes and engaged in false advertising. The

jury awarded damages based on Becton Dickinson's "deception regarding safety syringes," according to the verdict form.

Dallas partner Roy Hardin, RTI's lead counsel, said the most difficult part of the trial was having the jurors understand that antitrust law protects innovation, not just price.

"The case was about the basic place of innovation in the economy," Hardin said. "I think they [jurors] got it."

Hardin said that the case was a good showing of what teamwork can do in litigation. Six Locke Lord attorneys worked on the case, he said, along with Otis Carroll, a founder of Ireland Carroll & Kelley in Tyler, and Jim Parsons, with the Law Offices of Jim Parsons in Palestine.

Michele Larios, RTI's vice president and general counsel, said Locke Lord's



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attorneys did “an excellent job” in handling the claims against Becton Dickinson.

“It was a complex representation,” she said, noting that the patent infringement claim was tried to verdict before the trial on the other claims.

RTI announced in a Nov. 10, 2009, press release that the jury returned a verdict for \$5 million after finding that Becton Dickinson infringed RTI’s three patents at issue in the suit. Hardin says an appeal in the patent infringement suit continues at the U.S. Court of Appeals for the Federal Circuit.

“They saw us all the way through all aspects of that case,” Larios said.

In addition to the damages issue for the nonpatent claims, a number of motions are pending before U.S. District Judge Leonard Davis, including motions for judgment as a matter of law that Becton Dickinson and Retractable Technologies filed in October 2013.

Also in October 2013, Locke Lord Dallas partner Scott Hastings argued at the U.S. Supreme Court on behalf of Virginia-based Atlantic Marine Construction Co. The case would resolve splits between

If parties agree in advance on a forum for the resolution of any disputes under the contract, that agreement will be enforced but for the most exceptional circumstances, Dallas partner Scott Hastings argued at the U.S. Supreme Court on behalf of Virginia-based Atlantic Marine Construction Co.

various circuit courts of appeals regarding the impact of a contractual forum selection clause on venue in federal courts.

The high court issued its unanimous decision in *Atlantic Marine Construction Co. Inc. v. U.S. District Court for the Western District of Texas* on Dec. 3, 2013, which provides the following background on the case. Atlantic Marine entered into a subcontract with Texas-based J-Crew Management Inc. for work on a child development center at Ford Hood. The subcontract included a clause specifying that all disputes between the parties would be litigated in the U.S. District Court for the Eastern District of Virginia in Norfolk. When a dispute

about payment under the subcontract arose, J-Crew sued Atlantic Marine in the U.S. District Court in the Western District of Texas in Austin and invoked the court’s diversity jurisdiction. Atlantic Marine filed motions to either dismiss the suit or transfer it to a federal court in Virginia. The U.S. district court in Austin denied both motions, and the U.S. Court of Appeals for the Fifth Circuit affirmed.

The Supreme Court reversed the Fifth Circuit’s judgment and remanded the case. The court held that, when a defendant files a 28 U.S.C. §1404(a) transfer motion premised on a contractual forum selection clause, the federal district court should transfer the case to the forum specified in that clause except “under extraordinary circumstances.”

William Allensworth, senior partner in Austin’s Allensworth & Porter, argued against Hastings at the Supreme Court.

“He handled the argument well,” Allensworth said.

Allensworth also said of the Locke Lord attorneys, “In all of our dealings with them, they were professional in every way.”

Hastings says the Supreme Court’s decision is important because it provides assurances that contracts will be enforced as written. If parties agree in advance on a forum for the resolution of any disputes under the contract, that agreement will be enforced but for the most exceptional circumstances, he said.

“It’s hard to find a business contract that doesn’t have it in it,” Hastings said. ■

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

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BY THE NUMBERS

	Firmwide	Texas
Department size (headcount)	251	129
Department as percent of firm (headcount)	44.70%	43.40%
Department as percent (revenue)	41.10%	37.40%