

# TEXAS LAWYER

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## THE LEGAL AND LITIGATION DEPARTMENTS OF THE YEAR

### WINNER: ENVIRONMENTAL KING & SPALDING

## ENVIRONMENTAL LITIGATION IS A SCIENCE

BY MARY ALICE ROBBINS

**KING & SPALDING'S ENVIRONMENTAL LAWYERS** regularly square off against plaintiffs' attorneys who have made their careers suing companies in industries in which the firm's clients operate. Its successful track record in litigating groundwater and other contamination cases against those attorneys has made King & Spalding a "go-to" firm for high-stakes environmental litigation.

The firm's attorneys have been asked to represent clients in a wide range of environmental litigation, from the novel coastal erosion lawsuits filed by the state of Louisiana to matters involving hydraulic fracking. Houston partners Bruce Hurley and Elizabeth Taber have served as national counsel for a major oil services company on multiple fracking cases across the country.

"There are several factors that set our environmental practice apart," said Carol Wood, a Houston partner and leader of King & Spalding's toxic tort and environmental practice. "We're not just environmental lawyers," Wood said. "We have significant experience and bench strength as trial attorneys. Having handled so many of these cases, we have a real depth of

knowledge of the science and are able to communicate our clients' position in a simple and understandable way to the fact finder, be it a jury, judge or administrative panel."

In a trial that ended in December 2016, the California city of Clovis sought \$72 million in actual damages plus \$62 million in punitive damages from King & Spalding client Shell Oil Corp. over the alleged contamination of the city's drinking water. Tracie Renfroe, managing partner of King & Spalding's Houston office, was Shell's lead counsel.

*City of Clovis v. Shell Oil Co.*, was tried in a Superior Court of California. After a three-month trial, the jury rejected the punitive damage claim and returned a verdict of \$22 million. In a March 2017, order, the Superior Court in Fresno County reduced that amount to about \$14 million as a result of a \$7.8 million offset for damages other defendants had paid in a settlement.

King & Spalding's litigation attorneys also have been successful on the appellate level.

Shawn Stephens, another Houston partner in the firm, said King & Spalding was called in to represent a solid waste disposal services company on appeal after its suit against a

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The partners are, standing from left to right, Bruce Hurley, Elizabeth L. Taber and Tracie Renfro. Seated, from left to right, are Carol Wood and Shawn Stephens.

competitor was dismissed by a federal district court in Texas. *Republic Waste Services of Texas, Limited v. Texas Disposal Systems Inc.* involved a purported conflict between a Health and Safety Code provision and an exclusive contract for solid waste disposal services. The King & Spalding team, made up of Stephens and James P. Sullivan, a senior associate in Austin, prevailed on an issue of first impression at the U.S. Court of Appeals for the Fifth Circuit.

The Fifth Circuit's Dec. 15, 2016, opinion in *Republic Waste Services* provided the following background on the case: In July 2015, Republic had entered into an exclusive contract with San Angelo, a home-rule city, to collect, transport and dispose of all residential and nonresidential waste within the city. Before Republic had entered into that exclusive contract, the city had issued a solid waste hauling permit to Texas Disposal Systems. After Republic obtained its exclusive contract with the city, TDS began providing solid waste disposal services to several construction projects within the city. Republic sued seeking a

declaratory judgment upholding its exclusive contract, but the U.S. District Court for the Northern District of Texas dismissed the suit.

In its ruling, the district court reasoned that Health and Safety Code Section 364.034(h) conveyed the Texas Legislature's clear intent to take away the city's inherent right to grant exclusive rights in contracts to provide temporary solid waste disposal services to a construction project.

"We reframed and focused in on the argument," Stephens said.

Stephens argued that any limit by the Legislature on the police powers of home-rule cities under the Texas Constitution "must be imposed with unmistakable clarity." A three-judge panel of the Fifth Circuit agreed and reversed the district court's order granting the defendant's motion to dismiss Republic's suit.

Jim Hemphill, a shareholder in Graves Dougherty Hearon & Moody in Austin, faced Stephens in the arguments before the Fifth Circuit.

"I thought obviously she was a very effective and very professional appellate advocate," Hemphill said. ■