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The 2016 Plaintiffs' Hot List

McKool Smith

Zoe Tillman, The National Law Journal

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By the time McKool Smith got involved in 2014 in a whistleblower suit against highway guardrail manufacturer Trinity Industries Inc., there'd been one mistrial.

Lawyers for the whistleblower wanted fresh perspective and a deeper Texas-based bench for the second round. They called McKool principal Samuel Baxter.

Baxter served as co-lead counsel at the second trial in federal court in Marshall, Texas. The jury ruled in favor of whistleblower Joshua Harman, finding that Trinity made false statements to the federal government about its highway guardrails — guardrails that Harman had long maintained were dangerous. The final judgment, entered in June 2015, came to \$663 million.

Baxter attributed the success at trial in part to humanizing the whistleblower — convincing the jury that Harman pursued claims against Trinity out of concern for public safety, not for the money — and taking apart defense witnesses. Trinity is appealing the verdict.

"You're trying to make it as simple as you can, because a lot of this stuff is complicated. You've got to tell a story. We've got an awfully deep bench of people who can do that," Baxter said.

Boies, Schiller & Flexner partner George Carpinello, another lead attorney for Harman, called Baxter's defense cross-examination "devastating."

"Sam's a first-rate litigator with a real natural trial lawyer's instinct for what's important to emphasize and what you should cast away," Carpinello said.

McKool's other wins over the past year included a \$36.5 million judgment for the developers of Canyon Ridge Resort in Georgia, who sued financial-services firm Sterne, Agee & Leach and one of its former investment bankers for breach of contract and fiduciary duty.

It was reportedly one of the largest, if not the largest, verdicts in the history of Hamilton County, Tennessee, where the case was tried.

FIRM FACTS:

Founded: 1991

Based: Dallas

Total number of attorneys: 182

Partners: 87

Associates: 83

TRIAL TIPS:

Remember your audience. Whether it's a judge, a sophisticated jury or a less sophisticated jury, you should always direct your case appropriately.

Don't act like it's your first rodeo. Always be prepared and have your witnesses ready and on time. Lastly, in baseball, people say keep your eye on the ball. Well, in court, you are the ball. Remember that the jury is watching you to see how you react to rulings, how you interact with your client, and, most importantly, how you treat your team. — *Samuel Baxter*

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