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LITIGATOR of the WEEK

Big Defense Win Against Sierra Club

On behalf of his energy industry clients, William Dawson will seek attorney fees from the Sierra Club. That outcome would add to the victory Dawson, a partner in Gibson, Dunn & Crutcher in Dallas, won after a three-day bench trial.

In a March 28 memorandum opinion and order, U.S. District Judge Walter S. Smith of the Western District of Texas denied the injunctive relief that the Sierra Club sought based on its allegations that opacity limit violations under the federal Clean Air Act occurred at the Big Brown Plant in Freestone County. Defendants Energy Future Holdings and Luminant own the coal-burning plant, and Dawson represented both EFH and Luminant in *Sierra Club v. Energy Future Holdings*.

In his ruling, Smith concluded that the events that formed the basis of the Sierra Club complaint were reported properly to federal and state regulatory authorities

and that both government agencies determined that no enforcement action was necessary. Smith also wrote that the defendants could seek reasonable attorney and expert witness fees from the Sierra Club under 42 USC §7604(d).

Dawson said his defense strategy called for letting the judge hear from the hands-on, real people who operate the energy plant in question. Those witnesses persuaded the judge that the energy plant, despite the allegations that it violated federal opacity limits, remained in regulatory compliance and was properly monitored, Dawson said.

"The claims were very fact-intensive. Our strategy was to put on people on the witness stand who were there with the operations, who did the work. They showed up and defended the work they were proud of," said Dawson.

The Gibson Dunn partner said he led a team of lawyers who worked

together to achieve the victory. As a lawyer who usually tries IP cases, he said, he found environmental law to be as complex an endeavor as a complicated patent case.

Ilan Levin, a lawyer for the Environmental Integrity Project in Austin, represents the plaintiff. He declined to comment on the case and the defense lawyers' work but said, "We are considering all our options at this point. We'll be appealing the attorney fee issue."

The victory stands not just for his defendants, Dawson said, but for all Texans who benefit from a stable electricity grid.



William Dawson

— MIRIAM ROZEN