

## Litigator of the Week: Winn Carter of Morgan, Lewis & Bockius

By David Bario

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Jurors filed into a Houston courtroom on Nov. 13 poised to potentially fine a trio of companies more than \$1 billion for allowing toxic waste to foul the San Jacinto river for half a century. Instead, two defendants—McGinnis Industrial Maintenance Corp. and Waste Management of Texas—cut a last-minute deal to flee the case, leaving International Paper Inc. to face the jury alone.

"You don't see MIMC and you don't see Waste Management here because they've settled," Winstol "Winn" Carter of Morgan, Lewis & Bockius said in his closing argument later that morning. "We are still here because we did nothing wrong."

The jury reached its verdict the same day, after just an hour of deliberations, sending plaintiff Harris County and its contingency lawyers at Connelly Baker Wotring home with only the \$29 million they'd negotiated from Waste Management and McGinnis. International Paper's bet on the jury—and on Carter—had paid off.

"We were ecstatic," said Carter, a veteran Texas litigator who was tapped by International Paper to lead its defense last year, replacing a team from Baker & Hostetler. "Like Dwight Eisenhower on D-Day, we had prepared one response if we were successful and another if we weren't. Needless to say, we were glad we didn't need the worst-case version."

Harris County had initially sought more than \$3 billion in civil penalties from the defendants—including \$1.6 billion from International Paper. Back in the mid-1960s, a company later acquired by International Paper had contracted with McGinnis (since absorbed by Waste Management of Texas) to cart away tons of waste from its milling operations. The waste was dumped near the banks of the San Jacinto east of Houston, in pits that proved no match for Mother Nature or the river's meandering course.

There's no denying the environmental catastrophe at the heart of the case: 14 acres of paper mill waste leeching dioxins into the river and downstream to Galveston Bay. It was Carter's job to convince the jury that International Paper shouldn't be penalized for the slow-motion disaster.

In his opening argument, Carter emphasized that the original dumping occurred in a different era, long before current environmental restrictions. To illustrate just how much times have changed, he reminded the jury that cars lacked seat belts at the time, and even showed them a photo of himself from his fourth grade yearbook.

He and his partner David Schrader chipped away at the county's theory of how the chemicals leaked into the river, arguing that the county itself had allowed the contamination to occur through a dredging project in the 1990s. And Carter pointed out that the county wasn't seeking damages in order to remediate the site. Instead, he told the jury, any fines would



Winn Carter

Deirdra N. Tyrone-Davis

be split between the state's general fund and the county's contingency fee lawyers. International Paper, meanwhile, was already helping to fund a Superfund effort at the site under the auspices of the Environmental Protection Agency, he said.

"IP has stepped up to the plate," Carter said in his closing. "Is this case about protecting the environment? No. Is this case about the lawyers? Yes. Does the county deserve any money from IP? No."

Despite the defense verdict, Carter's work on the case isn't over. The county has said an appeal is likely, and Morgan Lewis is also defending International Paper in related tort cases brought by local fishermen and homeowners. Carter already has three trials under his belt since July. The remaining International Paper trials will bring him back in front of Harris County juries early next year.

If the case left him with one lasting impression, Carter said, it was the might of government officials to tempt a jury with vast civil penalties. "That is a very powerful tool," Carter said. The same could be said for a good trial lawyer.