

## Litigator of the Week: Heather Tewksbury

Harry Phillips  
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Wilmer Cutler Pickering Hale and Dorr partner Heather Tewksbury joined from the DoJ in January

When lawyers from the Michigan attorney general's office asked a state court in May to put a bid-rigging case against Chesapeake Energy before a jury, they stressed the "minimal standard" the Cheboygan County judge had to apply. Despite this, though, the company will now avoid a great chunk of the criminal antitrust charges against it thanks in no small part to the tenacious former government litigator they have representing them.

At a probable cause hearing in May, lawyers for Attorney General Bill Schuette repeatedly stressed that conflicting evidence was irrelevant to the standard of review. They argued it was enough for the state to present some evidence

backing up the allegations of a conspiracy to rig bids for shale gas leases, with questions of credibility and strength reserved for the trial court. Judge Maria Barton, though, didn't see it that way. To the delight of the company, she ruled in an order last week that despite evidence that might suggest Chesapeake and its rival Encana had discussed colluding to drive the price down for private land leases, conflicting evidence was more persuasive.

This was a victory for Chesapeake, even though separate charges over state auctions were allowed to continue. Unlike Encana, it chose not to settle the charges Michigan first brought after reading a *Reuters* report; instead it rolled the dice against a state prosecutor armed with the kinds of documents that would make any antitrust lawyer wince. The state produced e-mails from the time that appear to show plotting over the bids, including one from Chesapeake chief executive Aubrey McClendon boasting the companies should co-operate to "save ourselves a billion dollars on lease competition." At another point, McClendon implored his rival to "smoke the peace pipe".

In court, Wilmer Cutler Pickering Hale and Dorr partner Heather Tewksbury dismissed the e-mails as "colourful language". Last week, the judge said despite the e-mail exchanges, there was more evidence that the two fracking giants in fact competed against one another during these talks. In an embarrassing twist, she pointed to the attorney general's own papers to back up her findings. Schuette has said he will appeal.

Credit for slashing the charges is due also to Thomas Mueller – the WilmerHale antitrust head, not his top-scoring German namesake – and New York partner Molly Boast, both of whom had a hand in drafting the briefs. No doubt they too also helped persuade the Department of Justice to close its own investigation of the fracking leases well before Michigan's case got to court. But it was Tewksbury, who left the antitrust division in January, who argued the case in court and picked apart government witnesses. Against the odds, Chesapeake is now free of a real burden and can focus its fight on the one remaining antitrust charge.