

WilmerHale Attorneys Fend Off SEC Claims in Fraud Trial

By Ross Todd

A team from Wilmer Cutler Pickering Hale and Dorr led by partners Randall Lee and Heather Tewksbury beat back claims this week from the U.S. Securities and Exchange Commission on behalf of two former executives of failed New Mexico mortgage lender Thornburg Mortgage Inc.

After a three-week trial and three days of deliberations, an Albuquerque federal jury on Wednesday acquitted the Wilmer clients—former Thornburg CEO Larry Goldstone and chief financial officer Clarence Simmons—on five civil accounting fraud claims. The jury returned a hung verdict on five additional SEC claims.

“I think this case is a perfect illustration of the dangers of second guessing and hindsight by the federal government,” said Wilmer’s Lee in a phone interview Friday. “It took [the SEC] four years to bring the case and another four years to get to trial and in light of the jury’s verdict we think enough is enough.”

The SEC initially filed its complaint against Goldstone, Simmons and Thornburg’s chief accounting officer Jane Starrett in U.S. District Court for the District of New Mexico in March 2012. The SEC claimed that the executives fraudulently overstated Thornburg’s income by more than \$400 million. The agency also claimed that they had falsely recorded a profit rather than an actual loss in the fourth quarter of 2007 at the mortgage lender. Thornburg, once the largest publicly

traded company in New Mexico, filed for Chapter 11 protection in 2009 with \$36.5 billion in assets in one of the largest bankruptcies in U.S. history at the time.

Starrett, who was represented by counsel at Milbank, Tweed, Hadley & McCloy, settled with the SEC in the run-up to trial and agreed to pay a \$25,000 penalty and to be barred from serving as an officer or director at a public company for three years.

Lee, however, said that his clients knew going into trial that the SEC didn’t have a single witness from within Thornburg who believed the government’s theory that fraud was behind the company’s problems. He said the government lawyers attempted to put on their case through taking “snippets of a handful of emails” and presenting them to multiple witnesses who had never seen them before. Lee said that on cross examination and in direct testimony from the authors of the emails, his team would introduce their full text and elicit testimony about what “they meant and what [employees] understood” at the time. Lee said that three experts the government paid a total of \$2 million



Heather Tewksbury, left, and Randall Lee, right, of Wilmer Cutler Pickering Hale and Dorr.

didn’t seem to hold much sway with jurors whom the Wilmer team spoke with after the verdict. “They strongly believed that our clients had acted in good faith at all times,” Lee said. “Our view has always been that the SEC badly overplayed its hand and made promises it couldn’t deliver.”

In an emailed statement, SEC enforcement division director Andrew Ceresney said, “We believe strongly in our case and we will continue to explore all options, including a prompt retrial.”

Lee said Friday that he hopes “with the benefit of some further discussion and reflection that they come to the right result and dismiss this case.”

Contact the reporter at rtodd@alm.com.

Reprinted with permission from the July 1, 2016 edition of THE RECORDER © 2016 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. For information, contact 877-257-3382 or reprints@alm.com. # 501-07-16-02