

## THE AM LAW LITIGATION DAILY

### A Case Study in Getting an Associate Stand-Up Experience in a High-Stakes Trial

By Ross Todd

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Earlier this year we named a **Shook, Hardy & Bacon** team led by partners **Charlie Eblen** and **Eric Hobbs** as runners-up for Litigator of the Week after they won a \$189 million jury verdict for home security client CPI Security Systems in a federal court showdown in Charlotte, North Carolina with rival Vivint Smart Home. What was left unsaid in our breezy one-paragraph treatment of the whopping nine-digit win, was that associate **Caroline Gieser** sat third-chair at trial and played a critical role in making the case that Vivint should be held liable for deceptive trade practices. She took the lead on examining customers who testified that Vivint officials suggested to them that the company was somehow associated with CPI or that CPI had gone out of business before they signed new contracts with Vivint.

Yesterday, the Litigation Daily sat down with Eblen, Hobbs and Gieser to discuss their division of labor on the case and Shook's overall approach to training up its next generation of trial lawyers.



Courtesy photos

(L-R) **Charles Eblen, Eric Hobbs and Caroline Gieser of Shook, Hardy & Bacon.**

Hobbs, who made partner at the firm in 2020, said that with the firm primarily focused on litigation, that effort really begins with recruiting people who have a desire and aptitude to do trial work. "It starts from the beginning," Hobbs said. "We have a trial focus. That's our bread and butter."

Eblen, a member of the American College of Trial Lawyers who has been practicing for 20 years, said the keys to developing new trial lawyers are giving the right mentoring, training and, crucially, opportunities.



Courtesy photo

**(l-r) Jason Scott, Kim Ross, Charlie Eblen, Caroline Gieser, and Eric Hobbs of Shook, Hardy & Bacon following a win for their client in Charlotte, North Carolina, February 17, 2023.**

“The partners I’ve always been around in my career are always very committed to ensuring that young lawyers get opportunities,” Eblen said. “And the sooner the better, because the sooner you start getting those opportunities, the sooner you build your competence, and can add to the skill set that builds out your ability to be a first-chair trial lawyer.”

At trial, with Gieser focusing on the customers, Eblen focused on the liability and damages portion of the case since he had handled other cases against Vivint. Hobbs, meanwhile, focused on the company’s side of the story with an eye toward damages, as well as the experts. But Hobbs said by the time trial rolled around, any one of the team members could have handled any witness. Indeed, he said there were some times where he and Gieser flipped witness preparation and examination duties on the fly.

“There’s no shortcuts to trial work. You’ve got to know the case like the back of your hand. You’ve got to know every document, every deposition, what every person’s going to say,” Hobbs said. “That resulted in a lot of flexibility in our case.”

Gieser, who was staffed on the case at its onset as a fourth-year associate, said that from

the beginning she felt like more than just someone dedicated to responding to discovery. She said she had the advantage of being licensed to practice in North Carolina where the case was filed, and having practiced earlier in her career at **Willson Jones Carter & Baxley** in Charlotte. There she handled some trial work in cases with less than \$25,000 were at stake, but nothing on the scale of the CPI case. She still took the position that she needed to advocate for herself internally.

“As an associate, it’s not necessarily who you know, it’s who knows you,” said Gieser, who had not worked with Eblen or Hobbs prior to this case. “My focus was on making them know who I was and know my work and know that they could trust me to not just prep witnesses, but handle them at trial.”

She said she took a similar approach with the client. Whenever a request came in to review a document or a brief, she said she was quick to jump on it. She said she wanted the client to associate her name with the case and know that she was responsive, all in the hopes of building up trust. “Then I had to put my trust in Charlie and Eric that they would go to bat for me,” she said.

Gieser also had the advantage of having been through the firm’s internal trial practice program, which focuses on direct and cross-examination of fact witnesses, and its advanced trial practice program, which focuses on opening statements, closing arguments and expert examination. She completed an external training put on by the International Association of Defense Counsel at Stanford University in August 2022, just as the team was gearing up for its February 2023 trial

date. “I had been practicing my skills and itching for an opportunity to use them in real life,” she said.

Hobbs said Gieser’s “fearlessness” helped her get even more opportunities. He said earlier in his career he had “a perfectionist mentality” that led him to want to have a skill down pat before volunteering for an assignment. “Caroline’s willing to commit and figure it out,” he said. “She was willing to dive in and put in some late nights—sometimes the night before witnesses went on taking on some very complex issues and important facts in the case.”

Eblen said that when you have someone like Gieser who is constantly doing excellent work as the case progresses, and seeking out the right training, the responsibility is on the senior lawyers to make sure they get the next opportunity. But Gieser said it’s also important for associates to ask for opportunities. “I’m not afraid to be shut down,” she said. “I don’t have any problem saying, ‘Hey, I’d like to help on this. Let me know where I can plug in.’”

“If someone tells me no, that’s fine,” she said. “At least I know I cast the net out there and tried to get that opportunity because you have to take responsibility for your own development in addition to associating yourself with fantastic mentors.”

Hobbs and Eblen said that there were also strategic advantages to having Gieser, the only woman at counsel table for either side, on the team. “Sometimes the jury just wants to see a different face, hear a different voice in and get

a different flavor,” Hobbs said. Eblen also noted that the jury pool included people of varied ages. “I think when you mix up—in addition to gender and diversity—having different ages communicate with different members of the jury, everybody just connects differently,” he said. “And that’s another form of diversity that can be very helpful in a jury trial.”

On top of that, Gieser had worked with the customer witnesses since early in the case, in some cases helping them schedule their depositions, so she had built up a rapport with them that would be hard for someone else on the team to recreate.

Eblen said that when you look at the composition of a team, some want to default to lawyers with more experience because they think that’s the less risky move. “But that’s not always the right thing to do and that’s not always the most strategic, prudent thing to do,” he said. Eblen said there has to be dialogue between lead lawyers and their clients to get everyone on board with the value both to the firms and to the presentation of the case of having more junior lawyers in stand-up roles. “Many times some of the younger lawyers on the case are the ones who know the case the best and have put the most investment into the full breadth of the case and will probably do a better job than somebody who’s just jumping in at the last minute,” he said. “It’s very much incumbent on firm leadership, relationship partners and clients to ensure that those people who are a valuable member of the team also get the on-their-feet experience of trial.”