

2015

THE NATIONAL LAW JOURNAL

# TRAILBLAZERS

ENERGY & ENVIRONMENTAL

## TRISTAN L. DUNCAN

SHOOK, HARDY & BACON L.L.P.

**PIONEER SPIRIT** One of Tristan Duncan's first assignments as a lawyer was a propane explosion case. "I wasn't mechanical, so I wasn't embarrassed to ask simple questions: 'What does this do? How does propane get out of the ground and into the appliance?'" She was able to learn the science and mechanics of how energy is provided, and this knowledge led her from one case to another.

**TRAILS BLAZED** In 2006, Duncan saw a report in a local newspaper claiming that gasoline retailers were taking advantage of consumers because gas at a higher temperature has a greater volume, and consumers were paying more for less gasoline. She alerted some clients that a major class action might be on the horizon. "Selling gasoline by volume is an industrywide practice, so the case was ripe for a joint defense arrangement." Thirteen major wholesalers and retailers signed up, and the reduced defense costs allowed them to take the case from beginning to end, winning against a bellwether group of plaintiffs and then getting a summary judgment in California, after which the plaintiffs dismissed the other cases. "This was the kind of case to fight to the death. What is advertised is that you pay for a gallon of gas and you get a gallon. Plaintiffs tried to make the argument that they are paying for 'energy content,' but a gallon is a statutorily defined measure."

**FUTURE EXPLORATIONS** Duncan is currently involved in climate change litigation. "Climate change will be a cutting-edge issue." There will also continue to be consumer class actions challenging industry practices. "So the strategy we employed in the hot fuels cases will be used again."

