

# IN-HOUSE TEXAS

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## WILL THE HIGH COURT DROP THE VALIDITY BAR?

Case Involving Microsoft Could Reshape Patent Litigation Landscape **BY JOE MULLIN**

Sometime this spring, most likely in April, the U.S. Supreme Court will hear oral arguments in the case captioned *Microsoft Corp. v. i4i Limited Partnership and Infrastructures for Information Inc.* Should the court wind up ruling in Microsoft's favor, it will upend a \$290 million patent infringement award won by Canadian software maker i4i Inc. in 2009 and upheld by the U.S. Court of Appeals for the Federal Circuit. Even more important, such a ruling could

fundamentally alter the country's patent litigation landscape.

That's because, in asking the court to reverse the i4i award, Microsoft's appellate team — which includes lawyers from Weil, Gotshal & Manges and Gibson, Dunn & Crutcher, as well as in-house attorney Andy Culbert — has homed in on one of patent litigation's most crucial elements: the standard used to determine a patent's validity. Microsoft, whose inability so far to get

the i4i award tossed out post-trial is an anomaly in the company's patent litigation efforts, wants that standard revised in a way that's more favorable to defendants in infringement cases. In essence, the software giant wants the Supreme Court to lower the bar when it comes to what it takes to prove a patent invalid.

Current rules require defendants in infringement cases to provide "clear and convincing" **see Will, page 6**



**MATTHEW N. HUDNALL**

For Stratford Land GC  
Matthew N. Hudnall,  
Negotiating Is the  
Name of the Game

**BY JEANNE GRAHAM**

**D**uring the recent economic slump, many Texas real estate lawyers saw a slump in their practices, too. But for Matthew N. Hudnall, general counsel of Stratford Land, business has been brisk. "In this real estate distressed market we're seeing a lot of opportunities," Hudnall says.

Stratford Land is a privately held land investment company founded in 1998 that manages four funds with about \$600 million in assets, Hudnall says. In addition to its Dallas headquarters, the 30-employee company has offices in Atlanta; Denver; Jacksonville, Fla.; Phoenix; and Raleigh, N.C. Hudnall says Stratford Land's strategy is to acquire land, either directly or through joint ventures; hold the land for three to seven years while preparing it for development by future purchasers; then sell the land at a profit. "What gets you in trouble in our business is using a lot of leverage," he says. "With the available capital through our funds we are able to make land acquisitions really on an all-cash basis."

Hudnall and two other lawyers make up Stratford Land's legal department. He says together they handle general real estate transactions, land acquisitions, entitlements, sales, joint venture agreements, fund formation and investor relations. In addition to tax issues, Hud-

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# FOR STRATFORD LAND GC, NEGOTIATING IS THE NAME OF THE GAME

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nall uses outside counsel for help on local land use, zoning and entitlement matters, mineral and water rights issues, and securities law issues.

Hudnall says that working out joint venture agreements is his favorite part of the job. "I like the negotiation aspect of what I do. . . . I like making deals," he says. Typically, one of the company's market managers will negotiate specific terms in an agreement such as the amount of capital to be contributed by each partner and the distribution of profits, while on the legal side, Hudnall negotiates terms such as whether Stratford will be a general or limited partner and what rights the company has in either capacity. Hudnall says it's his job as GC to make sure joint venture partners "are comfortable with us and know that we are going to be a good partner."

Hudnall also sits on the company's seven-member investment committee, which approves company investments. "I like being involved in the decision-making process," he says.

## FROM TEXAS TO TENNESSEE

Hudnall has been interested in the real estate business since his childhood in Dallas, because his mother was a residential real estate agent. After earning an undergraduate degree in economics at Vanderbilt University in Nashville, Tenn. in 1990, he was undecided about whether to continue his education in business or law. "Honestly,



**STRATFORD LAND GC MATTHEW N. HUDNALL TURNS TO WINSTEAD SHAREHOLDER THOMAS R. HELFAND (ABOVE) AS HIS PRIMARY OUTSIDE COUNSEL.**

I almost flipped a coin," he says.

After seeking advice from professors, family and friends, he says he decided on a law degree because "I could practice in a law firm, work in a company, or simply utilize my law school education and still pursue a job in business." But before earning his J.D. from Vanderbilt University Law School in 1994, he spent a year teaching economics at Salzburg International Preparatory School (now the American International School-Salzburg) in Salzburg, Austria. "I decided to take a year

off and, instead of joining a company, thought it would be fun to do something abroad," he says.

After graduation, Hudnall worked as an associate with the transactional practice group at Hill Ward Henderson in Tampa, Fla., where he had been a summer associate. But in 1996, he and his wife moved to Dallas to be closer to their families. Hudnall says he interviewed with several firms in Dallas and joined the real estate group at Haynes and Boone. Then in 1998, he joined Winstead Sechrest & Minick (now known as Winstead). He had worked on some deals with Winstead lawyers while he was at Haynes and Boone, and Winstead's large real estate practice group offered him a chance to handle a variety of transactions, says Hudnall, who became a shareholder at the end of 2001.

Hudnall had represented client Stratford Land while he was a shareholder in Winstead. During that time, he says he and the chief executive officer and founder of Stratford Land, Phillip Wiggins, began talking about Hudnall joining the company. After several months of discussions, in 2004 Hudnall became the company's first general counsel.

"I liked the idea of coming in to a small company that was in a growth stage and starting at the ground floor," he says. At that time Stratford was managing \$50 million in assets, he says. Wiggins did not return a telephone call seeking comment.

Hudnall's relationship with Winstead continues to this day. Although he says he tries to handle as much legal work in-house as possible, he turns to Thomas R. Helfand, a shareholder in Winstead's Dallas office, as his primary outside counsel. Helfand says he communicates with Hudnall via e-mail or telephone almost daily on fund creation, joint ventures and tax matters.

"He's very focused and detail-oriented," Helfand says of Hudnall. Helfand adds that Stratford Land often creates joint ventures to invest in property with owners who may need capital but will continue to manage the property for Stratford. "He's a tough negotiator on behalf of Stratford, but he's not unfair to joint venture partners," Helfand says.

Hudnall says, "In most states I try to maintain two or three firms that I keep on a short list that we might use." A firm he uses in Atlanta is Arnall Golden Gregory. [See "Best Practices: Inside and Out," this page.]

"Basically he [Hudnall] has multiple transactions going at all times, with all different types of issues and problems, and he's expected to be up to speed and conversant on the situation on all of those deals and attempted resolutions of all of those problems," says Arnall Golden partner Philip G. Skinner.

He's a "do-what-it-takes kind of person," Skinner says of Hudnall. ■ ■ ■

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## BEST PRACTICES: INSIDE AND OUT

Matthew N. Hudnall, general counsel for Stratford Land, expects he will rely more on outside counsel as his Dallas-based, privately held company continues to grow. So what does he look for when hiring outside counsel and how does he feel about alternative billing? Those are just some of the best-practices questions Texas Lawyer research editor Jeanne Graham e-mailed Hudnall. His answers are below, edited for length and style.

**Texas Lawyer:** What are the most important factors you consider when hiring outside counsel?

**Matthew N. Hudnall, general counsel for Stratford Land:** Outside counsel must 1. have the appropriate level of experience and expertise in the specific area of law for which they are retained; 2. offer thorough, in-depth legal analysis and creative problem-solving; 3. be technically proficient in document drafting and other legal work product, with attention to detail; 4. be responsive in returning phone calls and correspondence and having work completed when requested; 5. be proactive in keeping our legal department and market managers apprised of the status of each transaction; 6. take the time necessary to understand our business and what we are trying to accomplish, both generally and with each transaction; 7. establish a good working relationship with our legal department and everyone in our company involved in a particular transaction; 8. possess good negoti-

ating and communication skills; 9. demonstrate the ability and willingness to develop a productive, friendly rapport with opposing counsel and the business professionals on the other side of a transaction, even during tough negotiations; and 10. provide their services at a reasonable price (based not only on billing rates, but also considering efficiency and the overall value of the services provided).

**TL:** Under what circumstances do you expect outside counsel to offer alternative billing?

**Hudnall:** If we plan to retain a firm to assist with a relatively high volume of work or to assist with particularly large transactions, which, in either case, may generate substantial legal fees, then I may request some type of fee discount. We also may request a set fee or fee range for certain types of debt transactions, such as closing loans (or providing local counsel assistance in closing loans) originated by our fund. The fee range is often based on the amount of the loan, the complexity of the loan, the degree of loan document comments, the volume of title exceptions and other factors. This provides some certainty to a borrower with respect to the amount of legal fees for which they will be responsible in connection with a loan closing. Alternative billing arrangements (i.e., other than on an hourly basis) are not customary for the other types of real estate transactions we undertake. We have discussed internally,

however, the possibility of entertaining other task-oriented billing arrangements if it makes sense for a particular matter.

**TL:** Do you pay for the work of first-year associates?

**Hudnall:** Yes, although I often limit the scope of work to be performed by first-year and other lower-level associates. In selecting counsel, I inquire as to which attorneys will work on each aspect of a transaction and their level of experience. I find that more senior attorneys are usually more efficient and require less supervision and oversight from our legal department. So, with the volume of transactions we handle on a daily basis, we typically prefer to have more experienced counsel perform the work.

**TL:** What percentage of your company's legal work is done in-house and what areas of work does that include?

**Hudnall:** At least 75 [percent to] 80 percent of our company's legal work is done in-house. This includes general real estate matters, as well as joint venture negotiations and partnership matters for our funds. Most often the need to utilize outside counsel is for assistance with tax issues; land use/zoning/entitlement matters; mineral or water rights issues; securities law issues associated with our private placement offerings and fund formation; entity formation (to the extent not handled internally); and local counsel assistance for transactions

in states other than Texas. Basically, we seek outside counsel assistance if there is an area of law in which we do not have the internal expertise to properly advise the business team. However, if we have multiple transactions occurring simultaneously, then we may delegate even routine real estate work to outside counsel. As our company continues to grow, we likely will have to rely more on outside counsel.

**TL:** Which one thing from your previous legal experience is helping you most on the job today?

**Hudnall:** If I had to choose one thing, it would be that I wanted to learn as much as I could in order to understand the full spectrum of the real estate practice — from the inception of a real estate project (entity formation, land acquisition, land planning and entitlements) to the financing, development, leasing and ultimate sale. I did not want to become too specialized in any one area. Many real estate attorneys find themselves, even early in their careers, handling only certain types or categories of real estate transactions. My goal was to become a well-rounded real estate attorney, able to handle a variety of transactions, while at the same time gaining sufficient technical experience in each area of real estate to handle complex transactions. Fortunately, during my law firm years, I was given the opportunity to achieve this which has helped me immensely in my general counsel role.