

AFFIRM; and Opinion Filed March 24, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-14-01151-CV

**ACCESS INTERNATIONAL, INC., Appellant
V.
BAKER BOTTS, L.L.P., Appellee**

**On Appeal from the County Court at Law No. 5
Dallas County, Texas
Trial Court Cause No. CC-13-01301-E**

MEMORANDUM OPINION

Before Justices Lang-Miers, Evans, and Schenck
Opinion by Justice Schenck

Access International, Inc. (“Access”) appeals the trial court’s take-nothing judgment in favor of its former attorneys, Baker Botts L.L.P. (“Baker Botts”), in its suit against the law firm stemming from Baker Botts’s non-disclosure of its prosecution of patents for Access’s chief competitor, Savi Technologies, Inc. (“Savi”), at the same time it was prosecuting patents for Access.

At the close of Access’s case-in-chief, the trial court directed a verdict in favor of Baker Botts on Access’s breach-of-fiduciary duty and fraud claims because they were impermissibly fractured professional-negligence claims. As a result, the trial court submitted only Access’s negligence and gross-negligence claims to the jury, which found Baker Botts liable for simple, but not gross, negligence, and found Access knew or should have known of the injury causing event more than two years prior to filing suit. The trial court then granted Baker Botts’s motion

for judgment and entered a take-nothing judgment in favor of Baker Botts in view of the governing limitations period.

On appeal, in two issues, Axxess argues the trial court erred in granting Baker Botts's motion for directed verdict on its breach-of-fiduciary-duty and fraud claims, and by refusing to instruct the jury on its fraudulent-concealment defense to Baker Botts's claim that Axxess's claims were barred by the applicable statutes of limitation.

Baker Botts, in four cross-points, raises grounds independent from the "anti-fracturing doctrine" and limitations in support of the trial court's judgment. *See City of Austin v. Whittington*, 384 S.W.3d 766, 789 (Tex. 2012) (holding that an appellee may raise independent grounds for affirmance by cross-point so long as it does not seek greater relief than that awarded by the trial court). Among those grounds is a lack of legally sufficient evidence of causation.

We conclude Axxess's causation evidence is legally insufficient to support Axxess's claims. We, therefore, pretermitt the remaining issues and affirm the trial court's judgment. Because the issues of law are well settled, we issue this memorandum opinion. TEX. R. APP. P. 47.2(a), 47.4.

BACKGROUND

FACTS

Axxess is in the business of providing active-radio-frequency identification ("RFID") products and services. Axxess's RFID products use battery powered wireless tags, some form of a reader, and a computer. In the 1990s the RFID technology was changing. By the late 1990s, Axxess was developing a new and improved method for tags and readers to communicate. This concept became known as "dual-frequency" RFID.

In order to protect its inventions, Axxess hired Baker Botts in 1998 to act as its general intellectual-property counsel. A year later, Savi also hired Baker Botts to prosecute patents on

its behalf. Baker Botts attorney Terry L. Stalford represented Axxess, and Baker Botts attorney T. Murray Smith represented Savi.

When Axxess hired Baker Botts, it had one patent application pending. Baker Botts took over pursuing that application and filed additional applications, all of which related to Axxess's dual-frequency RFID-system concept. Each of the applications included substantially the same description of the dual-frequency RFID system, but sought different claim coverage for different parts of the system. These applications eventually became known as the Axxess 6,034,603 ('603); 6,294,953 ('953); 6,570,487 ('487); 7,005,985 ('985); and 7,271,727 ('727) patents.

On September 7, 2000, after Axxess's applications for the '603, '953, '487, and '985 patents had been filed, Baker Botts filed a provisional patent application on behalf of Savi that described a dual-frequency RFID system.¹ On April 24, 2001, Baker Botts filed four full patent applications for Savi, which eventually became known as Savi's 6,542,114 ('114); 6,720,888 ('888); 6,765,484 ('484); and 6,940,392 ('392) patents. The patent application that became Savi's '114 patent, the patent Axxess claims should have been challenged by an interference proceeding, was approved on August 29, 2002.

In May 2002, Savi publicly announced its "EchoPoint Series 600 RFID System." Axxess's inventor—Wayne Steeves—saw the announcement and thought the Savi system infringed upon certain patents that Baker Botts was prosecuting for Axxess, and upon two previously-issued patents—the Axxess '603 and '953 patents. Steeves emailed Stalford at Baker Botts seeking advice on the situation, and asking how to identify the specifics of which Axxess patent claims Savi was violating. According to Axxess, Baker Botts either did not respond to Steeves's email, or refused to accept new assignments because Axxess was behind on paying its

¹ A provisional application acts as a place holder for a later-filed full application, securing a particular filing date without having to disclose all of the material aspects of the invention.

bills. Consequently, in June 2002, Axxess hired another law firm, Haynes and Boone, LLP (“Haynes and Boone”), to provide advice concerning Savi. In this regard, Haynes and Boone represented Axxess until April 2004.

On behalf of Axxess, Haynes and Boone sent two letters to Savi, one in October 2002—suggesting Savi might be interested in licensing Axxess’s ‘603 and ‘953 patents—and one in July 2003—suggesting Savi might be interested in licensing Axxess’s ‘487 patent. Savi faxed the October letter, along with copies of the Axxess ‘603 and ‘953 patents, to Smith at Baker Botts. Smith saw that Baker Botts had prosecuted the patents for Axxess and recognized the potential conflict if Baker Botts were to represent Savi in responding to the letter. He therefore declined to advise Savi regarding the Axxess patents, and Savi hired another law firm to respond to the letters. Savi responded by informing Axxess it had no interest in licensing the referenced patents, taking the position its system did not infringe upon Axxess’s ‘603, ‘953, and ‘487 patents. Before Haynes and Boone’s representation of Axxess ended, Haynes and Boone patent attorney, David O’Dell, prepared a memorandum analyzing Axxess’s patents and patent applications for possible claims against Savi, and recommending steps to improve Axxess’s claims against Savi. His advice included applying for broader patent claims that would target Savi’s products for infringement claims.

In February 2004, Axxess returned to Baker Botts as a patent client, but never sought advice about or legal action against Savi. Also in February 2004, Smith left Baker Botts and later joined Haynes and Boone. The Savi representation followed him there. Stalford resigned from Baker Botts in April 2004, and joined the law firm of Fish & Richardson P.C. (“Fish & Richardson”). After Stalford left Baker Botts, Axxess continued to use Baker Botts as its patent prosecution counsel, and after Haynes and Boone’s representation ended, Axxess hired Fish & Richardson to be its counsel concerning an infringement claim against Savi.

Despite being counseled by Haynes and Boone and Fish & Richardson concerning actions Axxess might take relative to Savi, Axxess instead considered a strategy of pursuing a deal with Savi to integrate Axxess's technology into Savi's product offerings. Ultimately, Axxess worked a deal with Savi, but it was not this deal. Instead, in 2007, Axxess entered into an agreement with Savi whereby Axxess obtained a non-exclusive license to use Savi's patents. Copies of Savi's patents, identifying Baker Botts as its attorneys, were attached to that license agreement.

On February 10, 2009, AeroScout Inc. ("AeroScout"), another competitor in the RDIF industry, issued a subpoena, commanding Axxess to testify and produce evidence, in connection with a lawsuit it filed against Savi challenging the validity of Savi's patents, and raising the issue of Baker Botts's simultaneous prosecution of patents for Axxess and Savi.² By amended complaint, AeroScout claimed, in part, that Savi's patents were unenforceable because Baker Botts's attorneys did not disclose to the United States Patent and Trademark Office ("USPTO") material applications for Axxess when prosecuting patents for Savi. On May 11, 2009, AeroScout and Savi settled the lawsuit with AeroScout making a lump-sum payment to Savi, agreeing to pay Savi a royalty, upon generating a specified volume of revenue from the sale of its tags, readers, and excitors, and issuing Savi warrants for preferred AeroScout stock.

Axxess terminated Baker Botts's representation in 2009 and hired the law firm of Fay Kaplun & Marcin, LLP ("FKM") in its place. On October 27, 2009, FKM filed a patent application to continue the application of the Axxess '985 patent. That application became patent no. 8,232,868 ('868), which issued on July 21, 2012.

² AeroScout sued Savi in response to Savi's threat of an infringement suit. Savi filed a counterclaim against AeroScout alleging AeroScout was infringing upon Savi's patents.

In May 2010, Axxcess sued Savi for infringement of the Axxcess ‘603 and ‘953 patents. Axxcess later dropped its claim concerning the ‘603 patent. Savi thereafter initiated a proceeding in the USPTO seeking a re-examination of Axxcess’s ‘953 patent. Ultimately, the USPTO rejected all of the claims of the ‘953 patent because others had already invented them. Thus, the subject matter as claimed by ‘953 was considered unpatentable.

PROCEDURAL HISTORY

Axxcess initially sued Baker Botts in federal court on July 15, 2010, alleging Baker Botts breached its fiduciary duty, was negligent, and failed to disclose material information. Shortly before trial, the United States Supreme Court issued its opinion in *Gunn v. Minton*, holding breach-of-fiduciary-duty and legal-malpractice cases that arise under applicable state law, do not result in federal question jurisdiction, even if the substance of the claims involves the application of federal patent law. 133 S.Ct. 1059 (2013). Based upon this holding, the federal court dismissed Axxcess’s case for lack of subject-matter jurisdiction.

When it became apparent that the federal court would dismiss the federal case, Axxcess filed this suit against Baker Botts in state court.

The state case proceeded to trial; and, when Axxcess rested its case-in-chief, Baker Botts moved for a directed verdict on all of Axxcess’s claims arguing: (1) a lack of legally sufficient evidence of causation; (2) a lack of legally sufficient evidence of damages; and (3) the application of the “anti-fracturing doctrine.” The trial court granted Baker Botts’s motion for directed verdict on Axxcess’s breach-of-fiduciary-duty and fraud claims based upon the “anti-fracturing doctrine” and submitted the case to the jury on Axxcess’ negligence and gross-negligence claims only. The jury found, among other things, that Axxcess knew or should have

known about the “wrongfully caused injury” by May 17, 2007, the date Axxess entered into the license agreement with Savi.³

Both parties filed motions for judgment. The grounds for Baker Botts’s motion were limitations and lack of legally sufficient evidence of causation and damages. Without specifying the grounds for its decision, the trial court entered a take-nothing judgment in favor of Baker Botts. Axxess moved for a new trial, which the trial court denied. This appeal followed.

STANDARD OF REVIEW - DIRECTED VERDICT

In its first issue, Axxess argues that the trial court erred in granting Baker Botts’s motion for directed verdict because Axxess did not fracture its negligence claim and because evidence existed that would allow reasonable and fair-minded people to differ about whether Baker Botts breached its fiduciary duties and committed fraud. Baker Botts responds that the trial court properly directed a verdict in its favor because (1) Axxess fractured its negligence claim, (2) Axxess failed to present legally sufficient evidence to establish causation or damages, (3) Haynes and Boone’s representation of Axxess severed any causal link between Baker Botts’s acts or omissions and Axxess’s alleged damages, (4) no conflict of interest existed, and (5) Axxess’s claims are barred by limitations.

This Court may affirm the trial court’s directed verdict regardless of the grounds asserted by Baker Botts or upon which the trial court granted the directed verdict if the record establishes any ground that entitles Baker Botts to judgment as a matter-of-law. *Victory Park Mobile Home Park v. Booher*, No. 05-12-01057-CV, 2014 WL 1017512, at *4 (Tex. App.—Dallas 2014 Feb. 24, 2014, no pet.) (mem. op.) (citing *Westchester Fire Ins. Co. v. Admiral Ins. Co.*, 152 S.W.3d 172, 191 (Tex. App.—Fort Worth 2004, pet. denied). We conclude Baker Botts was entitled to

³ Thus, the jury rejected Axxess’s argument that it did not know and should not have known of Baker Botts’s representation of Savi until 2009, when it received the subpoena from AeroScout.

judgment as a matter-of-law because Axxcess failed to establish an essential element of its claims, that being causation. Based upon this conclusion, we need not determine whether Axxcess's breach-of-fiduciary-duty and fraud claims were impermissibly fractured legal malpractice claims. *See* TEX. R. APP. P. 47.1.

DISCUSSION - DIRECTED VERDICT

A directed verdict may be granted if the plaintiff fails to present evidence raising a fact issue on one or more elements that are essential to the plaintiff's right of recovery. *See Propst v. Martinez Goodland*, No. 05-04-01324-CV, 2005 WL 1120014, at *1 (Tex. App.—Dallas May 12, 2005, no pet.) (mem. op.). Causation is an essential element of breach-of-fiduciary-duty and fraud claims. *See Las Colinas Obstretics–Gynecology–Infertility Ass'n, P.A. v. Fillalba*, 324 S.W.3d 634, 645 (Tex. App.—Dallas 2010, no pet.); *Wise v. SR Dallas, LLC*, 436 S.W.3d 402, 409 (Tex. App.—Dallas 2014, no pet.). Proximate cause may not be established by mere conjecture, guess, or speculation. *HMC Hotel Props. II Ltd. P'ship v. Keystone-Tex. Prop. Holding Corp.*, 439 S.W.3d 910, 913 (Tex. 2014). In this case, we find no legally sufficient evidence that Baker Botts's acts or omissions caused Axxcess to suffer a compensable injury.

If the causation issue is not one within the experience of a lay person, the plaintiff must ordinarily produce expert testimony of proximate causation. *Creech v. Columbia Med. Ctr. of Las Colinas Subsidiary, L.P.*, 411 S.W.3d 1, 5–6 (Tex. App.—Dallas 2013, no pet.). The parties did not dispute that expert testimony of proximate cause was required in this case. In that regard, Axxcess relied upon the testimony of Thomas Scavone (“Scavone”), a patent attorney licensed to practice law in the state of Illinois.

For expert testimony to be competent, the expert must substantiate his opinion with “objective, evidence-based support” for his conclusions. *Wal-Mart Stores, Inc. v. Merrell*, 313 S.W.3d 837, 840 (Tex. 2010). Expert testimony that is conclusory, speculative, or based on

assumed facts contrary to the evidence is legally insufficient to prove the facts testified to. *Thompson & Knight LLP v. Patriot Exp., LLC*, 444 S.W.3d 157, 162 (Tex. App.—Dallas 2014, no pet.). Expert testimony fails if there is “simply too great an analytical gap between the data and the opinion proffered.” *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 726 (Tex. 1998).

Scavone testified that had Baker Botts disclosed to Axxess in 2002, when Baker Botts received a copy of Axxess’s letter offering to license patents to Savi, that Baker Botts was prosecuting patents for Axxess’s competitor, Axxess would have hired other counsel; and, with conflict-free counsel, Axxess could have threatened to file or actually filed an interference proceeding with the USPTO, and amended the claims of its existing patent applications. He explained that *if* Axxess pursued an interference proceeding and if it had succeeded, the patent rights of Savi would have shifted to Axxess and Savi’s lucrative government contracts utilizing the patent would be at risk. Scavone testified that *had* Axxess taken these actions, it would have then been in a better position to negotiate a business solution with Savi, and some unspecified business deal would have been reached.

Thus, Scavone’s testimony concerning causation hinged upon (1) what he believed the USPTO *would have done*, *had* Axxess suggested an interference, and (2) what Savi *would have done*—as a rational business person—had Axxess suggested an interference and expanded its patent claims. In other words, Axxess’s causation evidence depended upon how third parties would react under different hypothetical circumstances. Under such circumstances, Axxess had to prove—not just suggest or theorize, but prove with competent, non-speculative evidence—that the third parties *would* have actually taken such action. See *Elizondo v. Krist*, 415 S.W.3d 259, 264 (Tex. 2013) (rejecting expert opinion that client would have recovered a higher settlement but for lawyer’s negligence); *Thompson & Knight LLP v. Patriot Expl., LLC*, 444 S.W.3d at

162–67 (reversing legal-malpractice judgment when no evidence that property would have sold for higher price if malpractice had not delayed sale); *HMC*, 439 S.W.3d at 914–17 (reversing judgment when no competent evidence of what title insurers would have agreed to do under different circumstances); *Taylor v. Alonso, Cersonsky & Garcia, P.C.*, 395 S.W.3d 178, 188 n.5 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (expert affidavit that proper representation would have led to a more favorable settlement did not raise a fact issue when there was no evidence that opposing party *would* have agreed to such a settlement); *Pierre v. Steinbach*, 378 S.W.3d 529, 534-35 (Tex. App.—Dallas 2012, no pet.) (without proof counter-party would have agreed to different terms, judgment in legal-malpractice case depended on “impermissible inference stacking” and would be reversed and rendered for defendant); *Tolpo v. Decordova*, 146 S.W.3d 678, 684 (Tex. App.—Beaumont 2004, no pet.) (affirming summary judgment on claim of negligent drafting when there was no evidence that the other party *would* have agreed to different terms; conclusory testimony by plaintiff and plaintiff’s expert failed to raise fact issue on causation).

INTERFERENCE PROCEEDING AND THE USPTO

Before discussing Scavone’s opinion concerning how the USPTO would have reacted to a suggestion of interference, we consider the nature of such a proceeding.

An interference proceeding is a unique and complex proceeding to determine the priority issues of multiple patents or patent applications. *See* 35 U.S.C. §135(a) (2015). It applies to all applications filed before March 16, 2013, the effective date of the Leahy-Smith America Invents Act of 2011, which changes the U.S. Patent system from a first-to-invent to a first-to-file system. Pub.L. No. 112–29 § 6, 125 Stat. 284, 299–305 (2011). An applicant or a patent examiner may *suggest* an interference based on apparently overlapping patents and applications (sometimes referred to as “provoking” an interference). A patent interference is appropriate only when both

inventors claim the same or closely related subject matter. *Brown v. Braddick*, 595 F.2d 961, n.1 (5th Cir. 1979). Such a proceeding must be instituted within a year of the issue date of the opponent inventor's patent, or within a year of the publication of the opponent inventor's application. 35 U.S.C. 135(b). A USPTO Interference Practice Specialist then decides whether to refer the suggested interference to the Board of Patent Appeals and Interferences ("Board"), a quasi-judicial body. If the Interference Practice Specialist refers the suggested interference to the Board, which is comprised of a panel of administrative patent judges, the matter proceeds to trial and is ultimately resolved by the Board. Appeals from this tribunal are usually heard by the United States District Court for the District of Columbia. *Kappos v. Hyatt*, _____ U.S. __, 132 S.Ct. 1690, n.1, 182 L.Ed 2d 704 (2012).

Initially, we note that the subject of the hypothetical interference proceeding was the Savi '114 patent. Axxess did not claim an interference should have been suggested as to Savi's '888, '484, and '392 patents. Scavone relied upon the opinions of Allan Heller ("Heller"), an electrical engineer with RDIF experience, concerning similarities of the claims and specifications in the Savi '114 patent and those set forth in certain Axxess patents and pending applications, including the Axxess '603, '953, '985 and '868 patents, in concluding that had Axxess pursued an interference proceeding, Axxess would have been the victor. But Heller's opinions are simply ungrounded in any explanation as to how the USPTO, including the Interference Practice Specialist and the panel of administrative patent judges, would have viewed the hypothetical suggestion of interference. Heller is not an Interference Practice Specialist or an administrative patent judge. He admitted that reasonable people might differ from his conclusions about the similarities of the claims and specification in the Savi and Axxess patents. Thus, Heller's testimony in no way establishes what a third-party body, the panel of administrative patent judges, would have actually concluded had an Interference Practice Specialist, in the first

instance, referred the hypothetical suggested interference to the Board. Axxess presented no evidence of a case similar to this one being referred by an Interference Practice Specialist to the Board of Patent Appeals and Interferences, and no evidence that the Board has resolved a similar case in favor of the challenger. Moreover, Heller testified that the disclosures in the Axxess '953 and '985 patents are similar;⁴ and, as we previously noted, the USPTO in fact rejected the claims of the '953 patent when Savi actually sought a re-examination of the patent. In addition, the record shows that when Axxess sued Savi, it dropped its claims concerning the '603 patent, an action that is at least consistent with recognizing the lack of viability of the claim. Thus, Scavone's assumption that Axxess would have prevailed in an interference proceeding, is based not only on speculation by Heller—who forthrightly admitted that “reasonable minds might differ” as to his conclusions—but also upon assumed facts contrary to the evidence. As such, it cannot be the basis for further speculation by Scavone as to how Savi would react to an adverse ruling by the Board.

As to Scavone's opinion that a mere threat of pursuing an interference proceeding would have caused Savi—as a rational business person—to enter into a favorable business agreement with Axxess, there simply is no evidence to support such a conclusion.

EXPANDED PATENT CLAIMS

We now address Scavone's opinion that had Axxess been represented by conflict-free counsel it would have enhanced its patent claims and Savi would have—as a rational business person—entered into a deal with Axxess. As an initial matter, we note that, as of June 2002, as to issues concerning Savi and its products, Axxess was represented by conflict-free counsel, and

⁴ The '868 patent is a continuation of the '985 patent. Additional claims were added in that patent.

these actions were not taken.⁵ In addition, whether the USPTO would have granted new patents to Axxess that targeted Savi's existing products is a complex determination reserved exclusively for the USPTO. While the prospect of a patent grant is a legitimate and, perhaps necessary goal, given Axxess's theory here, the answers can neither be assumed nor proven by an expert's conclusory opinion. *See McMahon v. Zimmerman*, 433 S.W.3d 680, 688 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (rejecting legal malpractice expert's conclusory opinion as to how trial judge would have ruled, because it “failed to connect his opinion regarding the expected judicial division of community debt to actual divisions made in factually-similar divorces”). Here, Scavone offered no factual basis to support his opinion as to how the USPTO would have responded to hypothetical patent applications and submissions in 2002—in particular, no evidence from the USPTO and no connection to the USPTO's decisions in any similar cases.

The only comparison mentioned by Axxess—the issuance of the Axxess '868 patent in 2012—cannot serve as factual support for the opinion that earlier application for that patent would have posed a threat to Savi or that Savi would have paid money to Axxess. Axxess offered no testimony from Savi and presented no evidence that Savi had capitulated when threatened by other competitors. Instead, the evidence shows, when challenged, Savi fought back on the merits and prevailed. For instance, when Axxess sued Savi in 2010, Savi succeeded in getting the USPTO to reject the claims of Axxess's patent. It did not enter into a business deal with Axxess. When Axxess made demands upon Savi to license Axxess's patents, Savi refused. And when AeroScout sued Savi, Savi countersued and ultimately received payment from AeroScout.⁶

⁵ O'Dell testified that the focus of his representation of Axxess was on Savi, that he represented Axxess zealously, competently and with reasonable care, and that he advised Axxess of the available options.

⁶ Axxess argues Savi's settlement with AeroScout shows what Axxess could have gotten had it been represented by conflict-free counsel. The damages Axxess sought were not the money Savi obtained from AeroScout, but rather the money it claims Savi would have paid Axxess had it put Savi's government contracts at risk. Thus, this argument does not support a finding of causation or damages in this case.

Scavone’s testimony about how Savi would have responded to a demand under the shadow of an enhanced patent is simply speculative. As such, his testimony is no evidence at all. *See HMC*, 439 S.W.3d at 917 (“But in the end, all of this testimony is simply speculation about what the title insurers *might have* done had Host handled itself differently. Testimony based on nothing but speculation is evidence of nothing at all. . . . Testimony about what the insurers *might have* done differently is conclusory—‘[b]are, baseless opinions [that] will not support a judgment even if there is no objection to their admission in evidence.’”).

Axcess adduced legally insufficient proximate cause evidence against Baker Botts. The trial court did not err in directing a verdict for Baker Botts on Axcess’s breach-of-fiduciary duty and fraud claims. Likewise, because causation is an essential element of Axcess’s negligence claim, the trial court did not err in entering judgment for Baker Botts on Axcess’s negligence claim. *Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 S.W.2d 472, 477 (Tex. 1995). Accordingly, we sustain Baker Botts’s first cross-point.

CONCLUSION

We conclude Scavone’s expert opinion on causation is speculative and constitutes legally insufficient evidence of causation. Thus, there is no evidence Baker Botts’s conduct proximately caused any damage. We pretermite the remaining issues and affirm the trial court’s judgment.

TEX. R. APP. P. 47.1.

/David J. Schenck/

DAVID J. SCHENCK
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

AXCESS INTERNATIONAL, INC.,
Appellant

No. 05-14-01151-CV V.

BAKER BOTTS, L.L.P., Appellee

On Appeal from the County Court at Law
No. 5, Dallas County, Texas
Trial Court Cause No. CC-13-01301-E.
Opinion delivered by Justice Schenck.
Justices Lang-Miers, and Evans
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee BAKER BOTTS, L.L.P. recover its costs of this appeal from appellant AXCESS INTERNATIONAL, INC..

Judgment entered this 24th day of March, 2016.