

The Big Picture

Corporate law, in-house lawyers and the chatter among the state's largest law firms

Confidential Informant

Sibling rivalry

A “mini-Demoulas.”

That’s how **Davis, Malm & D’Agostine** — the Boston law firm that represented the winning side of the Demoulas supermarket family in its epic legal battle almost a decade ago — describes the recent victory it secured on behalf of yet another fighting-mad sibling.

Earlier this month, Worcester Superior Court Judge **James R. Lemire** awarded \$11 million in damages to Paul Pantazis, finding that his siblings, Alice Tsourides and John G. Pantazis, had improperly raided their joint trust fund throughout the 1990s.

Joining Davis Malm colleagues **Gary S. Matsko** and **Joshua S. Grossman** on the case was **Carol R. Cohen**, a former member of the Demoulas team and the reason that Pantazis hand-picked the firm to represent him.

“I think our client in this case actually sought out Carol Cohen because he’d read about the Demoulas case,” Matsko says. “I

think it’s not completely fortuitous out of the sky.”

Paul Pantazis first sued his siblings in 1999 for breaching the terms of a family trust of which they were all beneficiaries. He accused John of using the trust as a personal piggy bank and Alice of mortgaging it to fund a boat business she launched with her husband’s family.

In 2005, after years of working with another attorney, Paul Pantazis hired Cohen to take the case to trial.

During a cumulative six days over the course of two months in early 2007, the Davis Malm attorneys attempted to prove that much of Alice’s business profits belonged to the trust. That strategy, Matsko says, took fiduciary law in “a new direction” by showing that Alice had effectively used the trust’s money even though none of it had actually been spent.

“No money was lost as a result of the mortgages,” he says. “The defendant’s first approach to this whole thing was, ‘No harm, no foul.’”

But the Davis Malm team convinced the judge that using a trust as collateral without permission is “something the trustee cannot do,” Matsko says. At the “high water mark,” he adds, Alice had committed the trust to more than \$1 million in obligations.



MATSKO

“Even though the benefit was indirect to the trustee, she individually could be called upon to return whatever amount of profits should have belonged to the trust,” he explains.

Doing the math for that equation proved far from simple. In order to show what portion of the boat

business owed its existence to the trust, the plaintiff’s attorneys had to borrow a theory from patent law.

“I had been involved in a copyright case some years ago,” Matsko says. “We took the lead from the way a copyright damage is proven — that is, if somebody profits from the misuse of a copyright, the copyright holder is entitled to the profits that they get.”

The complexity of the argument and the formulas involved kept the judge laboring over his ruling for more than two years. When the 43-page decision was finally good to go, he found on behalf of the plaintiff, awarding him a complicated list of calculated totals designed to account for the trust’s portion of the profits from the boat business.

Matsko says there’s a lesson here for other lawyers, as well as for the next family that lands in court.

“I think it’s important, while I don’t think it is surprising, that mortgaging assets is treated the same as taking assets,” he says.

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