WISCONSIN SUPREME COURT RULES IN FAVOR OF FIRM'S CLIENT

On January 29, 2019, the Wisconsin Supreme Court ruled in favor of our client, Park Bank, in a case of first impression in Wisconsin. In *Koss Corp. v. Park Bank*, 2019 WI 7, Koss Corp. sued Park Bank alleging that Park Bank acted in bad faith under the Uniform Fiduciaries Act ("UFA") in failing to detect an embezzlement being conducted by one of Koss's employees, Sue Sachdeva. Ms. Sachdeva embezzled $34 million from Koss Corp. over a 12-year period. The embezzlement was the largest embezzlement in Wisconsin history, and the ninth largest embezzlement in U.S. history.

Koss Corp. had some of its bank accounts at Park Bank, which Ms. Sachdeva used to embezzle $17 million from Koss Corp. by use of cashier's checks she obtained from those accounts, which she used to pay her creditors for personal items such as jewelry, clothing and travel. Ms. Sachdeva was ultimately caught by an American Express employee, was criminally charged for her actions, and was sentenced to 11 years in prison.

After six years of litigation, the trial court granted Park Bank's motion for summary judgment in 2016, ruling that the evidence did not support Koss Corp.'s claim that Park Bank acted in bad faith.

On December 12, 2017, the Wisconsin Court of Appeals affirmed that ruling.

On January 29, 2019, the Wisconsin Supreme Court affirmed the Wisconsin Court of Appeals' decision in a 2-3-2 decision, with five Justices voting to affirm. The Court held that, to establish bad faith under the UFA, a bank must have acted dishonestly. The Court held that "[b]ad faith requires some evidence of bank dishonesty such as a bank willfully failing to further investigate compelling and obvious known facts that suggest fiduciary misconduct because of a deliberate desire to evade knowledge of fiduciary misconduct." *Decision* at ¶ 55. In so ruling, the Court recognized several foundational principles that form the framework for analyzing a bank's conduct when bad faith under the UFA is alleged:

> First, bad faith is reviewed on a transaction by transaction basis, such that the facts known to each individual bank employee are not aggregated to form collective knowledge of the bank. Second, whether a bank acted in bad faith is determined at the time of the breach of fiduciary duty, not by looking back at transactions that occurred many months earlier.
>
> Third, bad faith is an intentional tort; negligence by a bank is insufficient to show bad faith. Fourth, considerations of bad faith require analyses of a bank's actions to determine its subjective intent.

Id. at ¶¶ 52, 53.

In applying these foundational principles to the facts of the case, the Court held that "[w]hile discovery was extensive and conducted for years, no proof has been proffered from which a factfinder could find that any Park Bank transaction was not honestly done." *Id*. at ¶ 71.

Our firm is proud to have represented Park Bank in this case, and pleased that all of the courts to have considered the matter — the trial court, the Wisconsin Court of Appeals, and the Wisconsin Supreme Court — all held that Park Bank has no liability to Koss Corp. in this matter.

Park Bank was represented by Dean Laing, Greg Lyons and Joe Newbold of our firm. Koss Corp. was represented by Michael Avenatti of California.

DEAN LAING SPEAKS AT SEMINAR

On November 29, 2018 Dean Laing spoke on the topic of "Procedural Issues in Litigation" at a seminar presented by the State Bar of Wisconsin on "Trending Topics in Business Litigation 2018." The panel consisted of some of the top civil litigators in Wisconsin, and the seminar was very well attended. Mr. Laing spoke on various subjects, including the use of errata sheets following depositions, sequestration of persons from depositions, and use of general objections in discovery responses.

Mr. Laing has been a speaker at over 30 legal seminars, authored over 40 journal articles and book chapters, and been involved as counsel in over 75 published/reported decisions. Over the years, Mr. Laing has received numerous recognitions for his legal work, including being selected four times as one of the "Top 10 Lawyers" in Wisconsin by *Super Lawyers*; three times as "Lawyer of the Year in Wisconsin" by *The Best Lawyers in America*; and one time as a "Leader in the Law" by the *Wisconsin Law Journal*.

Mr. Laing can be reached at 414-276-5000 or dean.laing@wilaw.com.

OCHDL ATTORNEYS ARGUE THREE CASES

BEFORE WISCONSIN SUPREME COURT

Attorneys from O'Neil Cannon argued three cases before the Wisconsin Supreme Court this Fall term.

On September 7, 2018, Dean Laing argued the case of *Koss Corporation v. Park Bank*, Appeal No. 2016AP636, which involves the issue of a bank's liability under the Uniform Fiduciaries Act.

On November 7, 2018, Mr. Laing argued the case of *J. Steven Tikalsky v. Terry Stevens*, Appeal No. 2017AP170, which involves the issue of the circumstances under which a constructive trust can be imposed against an innocent party.

A law firm having three arguments before the Wisconsin Supreme Court in a two-month period is a rare feat. O'Neil Cannon is appreciative of the opportunity.

DEAN P. LAING NAMED 2019 BEST LAWYERS "LAWYER OF THE YEAR®"

O'Neil Cannon is pleased to announce that Attorney Dean Laing was recently selected as the 2019 "Lawyer of the Year" for Product Liability Litigation–Defendants in the Milwaukee area. This is the third time that *Best Lawyers* has recognized Dean as the "Lawyer of the Year." In 2016 he was selected for the honor in Product Liability Litigation–Defendants, and in 2012 he was selected for the honor in Personal Injury Litigation. Dean is believed to be the only attorney in Wisconsin to receive "Lawyer of the Year" as both a plaintiff's attorney and a defense attorney.

Only a single lawyer in each practice area and designated metropolitan area is honored as the "Lawyer of the Year," making this accolade particularly significant. These lawyers are selected based on particularly impressive voting averages received during the peer-review assessments.

Receiving this designation reflects the high level of respect a lawyer has earned among other leading lawyers in the same communities and the same practice areas for their abilities, their professionalism, and their integrity.

In addition to the Lawyer of the Year award, Attorney Laing was also listed in the 2019 Edition of *The Best Lawyers in America* in three categories: Commercial Litigation, Personal Injury

Litigation–Plaintiffs, and Product Liability Litigation–Defendants.

Since the list was first published in 1983, *Best Lawyers* has become universally regarded as the definitive guide to legal excellence.

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20 OCHDL ATTORNEYS NAMED 2019 BEST LAWYERS IN AMERICA

O'Neil Cannon is pleased to announce that 20 lawyers have been named to the 2019 Edition of *Best Lawyers*, the oldest and most respected peer-review publication in the legal profession.

Best Lawyers has published their list for over three decades, earning the respect of the profession, the media, and the public as the most reliable, unbiased source of legal referrals. Its first international list was published in 2006 and since then has grown to provide lists in over 75 countries.

"For more than a third of the century," says CEO Steven Naifeh, "Best Lawyers has been the gold standard of excellence in the legal profession." President Phil Greer adds, "We are extremely proud of that record and equally proud to acknowledge the accomplishments of these exceptional legal professionals."

Lawyers on *The Best Lawyers in America* list are divided by geographic region and practice areas. They are reviewed by their peers on the basis of professional expertise, and undergo an authentication process to make sure they are in current practice and in good standing.

O'Neil Cannon would like to congratulate the following attorneys named to the 2019 *Best Lawyers in America* list:

- Douglas P. Dehler – Litigation – Insurance
- James G. DeJong – Mergers and Acquisitions Law, Corporate Law, Securities / Capital Markets Law
- Seth E. Dizard – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law, Litigation – Bankruptcy
- Peter J. Faust – Mergers and Acquisitions Law, Corporate Law
- Robert R. Gagan – Municipal Law
- John G. Gehringer – Real Estate Law, Construction Law, Commercial Litigation, Corporate Law
- Joseph E. Gumina – Litigation – Labor and Employment
- Dennis W. Hollman – Trusts and Estates, Corporate Law

- Grant C. Killoran – Litigation – Health Care
- Dean P. Laing – Commercial Litigation, Personal Injury Litigation – Plaintiffs, Product Liability Litigation – Defendants
- Gregory W. Lyons – Commercial Litigation, Litigation – Insurance
- Gregory S Mager – Family Law
- Patrick G. McBride – Commercial Litigation
- Thomas A. Merkle – Family Law
- Chad J. Richter – Business Organizations (including LLCs and Partnerships)
- Steven J. Slawinski – Construction Law
- John Schreiber – Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Litigation – Bankruptcy

Additionally, Attorney Dean P. Laing has been named the 2019 Milwaukee Lawyer of the Year in Product Liability Litigation–Defendants.

Since it was first published in 1983, *Best Lawyers* has become universally regarded as the definitive guide to legal excellence. *Best Lawyers* is based on an exhaustive peer-review survey. Over 54,000 leading attorneys cast more than 7.3 million votes on the legal abilities of other lawyers in their practice areas. Lawyers are not required or allowed to pay a fee to be listed; therefore inclusion in *Best Lawyers* is considered a singular honor. *Corporate Counsel* magazine has called *Best Lawyers* "the most respected referral list of attorneys in practice."

BEST LAWYERS® HONORS 18 ATTORNEYS IN 2018

O'Neil, Cannon, Hollman, DeJong and Laing S.C. is pleased to announce that 18 lawyers have been named to the 2018 Edition of *Best Lawyers*, the oldest and most respected peer-review publication in the legal profession.

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- Douglas P. Dehler – Litigation-Insurance
- James G. DeJong – Corporate Law, Mergers and Acquisitions Law, Securities/Capital Markets Law
- Seth E. Dizard – Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Litigation-Bankruptcy
- Peter J. Faust – Corporate Law, Mergers and Acquisitions Law
- Robert R. Gagan – Municipal Law
- John G. Gehringer – Commercial Litigation, Construction Law, Corporate Law, Real Estate Law
- Joseph E. Gumina – Litigation-Labor and Employment
- Dennis W. Hollman – Corporate Law, Trusts and Estates
- Grant C. Killoran – Litigation-Health Care
- Dean P. Laing – Commercial Litigation, Personal Injury Litigation-Plaintiffs, Product Liability Litigation-Defendants
- Gregory W. Lyons – Commercial Litigation, Litigation-Insurance
- Gregory S. Mager – Family Law
- Patrick G. McBride – Commercial Litigation
- Thomas A. Merkle – Family Law
- Steven J. Slawinski – Construction Law

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FIRM OBTAINS BIG WIN FOR CLIENT

From 1997 to 2009 Sujata Sachdeva embezzled over $36 million from her employer, Koss Corporation, in one of the Top 10 Largest Embezzlements in U.S. history. The embezzlement was reported all over the world, including on the cover of *The National Enquirer*.

Ms. Sachdeva was criminally convicted of embezzlement and is currently serving a prison term. In an attempt to recoup its loses, Koss sued its auditor, credit card company, and banks. Its auditor, Grant Thornton, settled the claim for $8.5 million, and its credit card company American Express, settled the claim for $3 million. Those lawsuits were filed in Illinois and Arizona, respectively.

Koss also sued its local bank, Park Bank, in Milwaukee, arguing that Park Bank acted in bad faith under the Uniform Fiduciaries Act by failing to discover and report the embezzlement. In the lawsuit, Koss sought damages of $43,749,400 from Park Bank. After five years of litigation, on March 11, 2016, the trial court dismissed the case in a 24–page written decision, finding that "Park Bank did not act in bad faith." The court held that, under the Uniform Fiduciaries Act, bad faith "requires a showing of some indicia of dishonest conduct or a showing of facts and circumstances so cogent and obvious that to remain passive would amount to a deliberate desire to evade knowledge because of a belief or fear that inquiry would disclose a defect in the transaction," and "there must be some factual basis—whether an allegation of monetary self-interest or compelling evidence of wrongdoing—to suggest the bank acted intentionally to avoid knowledge of the fiduciary's wrongdoing." Here, the court held, "Koss has not provided any evidence that Park Bank intentionally ignored Sachdeva's embezzlement," and it "declines to require banks to act as detectives, whether they be Sherlock Holmes, Columbo, or Andy Sipowicz."

Dean Laing of our firm was Park Bank's lead attorney. Also working on the case were Greg Lyons and Joe Newbold.

DEAN P. LAING NAMED 2016 BEST LAWYERS "LAWYER OF THE YEAR®"

O'Neil, Cannon, Hollman, DeJong and Laing S.C. is pleased to announce that Attorney Dean Laing was recently selected as the 2016 "Lawyer of the Year" for Product Liability Litigation–Defendants in the Milwaukee area. This is the second year that *Best Lawyers* has recognized Attorney Laing as the "Lawyer of the Year." In 2012, he was honored as Milwaukee's Personal Injury Litigation "Lawyer of the Year."

Only a single lawyer in each practice area and designated metropolitan area is honored as the "Lawyer of the Year," making this accolade particularly significant. These lawyers are selected based on particularly impressive voting averages received during the peer-review assessments.

Receiving this designation reflects the high level of respect a lawyer has earned among other leading lawyers in the same communities and the same practice areas for their abilities, their professionalism, and their integrity.

In addition to the Lawyer of the Year award, Attorney Laing was also listed in *The Best Lawyers in America* 2016 in Commercial Litigation and Personal Injury Litigation–Plaintiffs.

Since the list was first published in 1983, *Best Lawyers* has become universally regarded as the definitive guide to legal excellence.

LAING RECOGNIZED BY THE NADC AS ONE OF THE FINEST LAWYERS IN THE COUNTRY

Dean P. Laing, of O'Neil, Cannon, Hollman, DeJong and Laing S.C, has been selected to the 2015 list as a member of the Nation's Top One Percent by the National Association of Distinguished Counsel. NADC is an organization dedicated to promoting the highest standards of legal excellence. Its mission is to objectively recognize the attorneys who elevate the standards of the Bar and provide a benchmark for other lawyers to emulate.

Members are thoroughly vetted by a research team, selected by a blue ribbon panel of attorneys with podium status from independently neutral organizations, and approved by a judicial review board as exhibiting virtue in the practice of law. Due to the incredible selectivity of the appointment process, only the top 1% of attorneys in the United States are awarded membership in NADC. This elite class of advocates consists of the finest leaders of the legal profession from across the nation.

ATTORNEY LAING SPEAKS AT MARQUETTE UNIVERSITY LAW SCHOOL SEMINAR

On March 6, 2015, Dean Laing spoke at the 2015 Marquette University Law School Civil Litigation and Evidence Conference for attorneys. The topic of his presentation was "Deposition Practice," and included discussion on errata sheets, sequestration, videotape depositions, telephonic depositions and behavior at depositions. The presenters at the Conference included some of the top trial attorneys in Wisconsin.