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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.
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> 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.