

## LITIGATION DEPARTMENT OF THE YEAR 2015

WINNER ■ GENERAL LITIGATION

### AZA: Small Firm, Big Results

by MARY ALICE ROBBINS

For the 35 lawyers at Houston trial boutique Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, the slogan that appears on the firm's website—"Tough Name. Tougher Opponent"—sums up its philosophy.

"We play to win," said John Zavitsanos, a founder of the firm and its managing partner.

Whether the firm represents the plaintiff or the defendant in a case, its lawyers think like plaintiffs lawyers and try to move the case forward, Zavitsanos said.

"We always look for a way to win the case, whether at trial or pretrial," he added.

In *Versata Software v. SAP America*, AZA

lawyers helped Austin-based Versata secure a \$391 million judgment in 2011 in the second of two trials over infringement of its product pricing patent and helped the company defend the award in subsequent appeals,

according to Demetrios Anaipakos, AZA's lead partner on the case.

"It was a good lawyer case," Anaipakos said, noting that he had the opportunity to work with a wide variety of skilled lawyers from McKool Smith in Dallas as well as Molo Lamken and Rothwell, Figg, Ernst & Manbeck in Washington, D.C.

In 2013, the U.S. Court of Appeals for the Federal Circuit affirmed the judgment of the U.S. District Court for the Eastern District in Marshall in *SAP*, and the U.S. Supreme Court denied SAP's petition for writ of certiorari on Jan. 21, 2014.

But the courts are not the only forum where the high-stakes legal battle has been fought.

Anaipakos said that SAP challenged the validity of Versata's patents in the first petition for covered business methods review filed with the U.S. Patent Trial and Appeal Board

under the America Invents Act. In June 2013, the PTAB found Versata's patents "too abstract" and declared them invalid, he said.

Versata appealed the PTAB's findings to the Federal Circuit, which held in June 2014 that the subsequent invalidation of Versata's patents did not affect the judgment against SAP. Anaipakos said the parties reached a confidential settlement in August 2014.

"We eventually got a very complicated case resolved, at least mostly resolved," he said.

Anaipakos said the settlement allowed the parties to continue part of the dispute. Versata appealed to the Federal Circuit, arguing, among other things, in a Dec. 3, 2014, hearing that the PTAB did not have authority to review Versata's product pricing patent. That appeal is pending.

Jeffrey Lamken, a partner in Molo Lamken, said he began working with Anaipakos on the SAP case when Versata filed a



brief in opposition to SAP’s petition for cert at the Supreme Court and during Versata’s appeal of the PTAB’s findings to the Federal Circuit. Things were happening fast, and Anai-pakos knew what and when to file to get the best result, Lamken said.

“He is really savvy in terms of what can be done,” Lamken said. “He not only can get the verdicts, he can make them stick on appeal.”

Also in 2014, AZA successfully defended Versata in a licensing dispute filed by its largest customer in the U.S. District Court for the Northern District of Georgia. In *Equifax v. Versata*, Atlanta-based Equifax sought a declaratory judgment that would “clarify” its rights to the Versata software and a finding that Versata received “unjust enrichment” under the contracts and should be forced to refund more than \$4 million to Equifax, according to the complaint filed in January 2013.

However, the case ended in a multimillion-dollar victory for Versata.

Steven Mitby, the AZA partner who represented Versata in the case, said, “Our strategy when Versata got sued was to try to find a counterclaim that

we could assert.”

In its amended answer and counterclaim, filed in May 2013, Versata asserted, among other things, that Equifax had infringed Versata’s copyrighted software.

When software is copyrighted, the owner has to prove only that a party is using the software and can seek disgorgement of the offender’s profits, Mitby said. The challenges that AZA faced included figuring out how Equifax was using Versata’s software and how much money Equifax was making as a result of using the software, he said.

“We had to push to get the discovery needed,” Mitby said.

Henry D. Fellows, a partner in Fellows LaBriola in Atlanta and local co-counsel on the case, said Mitby and other AZA attorneys “developed penetrating discovery requests” that enabled Versata’s team to discover the information needed from the opponents. Fellows also said that Mitby developed a strategy to efficiently prevail in the case.

“He’s an excellent strategist,” Fellows said of Mitby.

Versata’s attorneys put together a team of technical and economic experts for the case. Mitby said that among

other things, the technical experts looked at how often Equifax’s software called on Versata’s software during a transaction. With the help of the economic experts, AZA put together an eight-figure damages model, he said.

In August 2014, the parties finalized a confidential settlement favorable to Versata.

One of AZA’s clients said he has been so impressed with the firm’s work that he has used it for more than a dozen years. Larry Dreyfuss, general counsel for litigation and commercial at Plains All American Pipeline in Houston, said AZA lawyers have a good command of court procedures and rules and are thorough in their case preparation.

“They really are just a good group of dedicated people,” Dreyfuss said. ■

Mary Alice Robbins is an Austin freelance writer and former senior reporter with Texas Lawyer.

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