

Joanne Zack, Leading Class Action Attorney, Dies

By Amaris Elliott-Engel

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Joanne Zack, an attorney specializing in complex commercial litigation including representing authors in their copyright class action over Google's efforts to build the largest digital library in the world, was a brilliant attorney who was never boastful or conceited about her accomplishments, colleagues said in the wake of Zack's death last week.

Zack, 58, died after a fight of several years with breast cancer.

Michael J. Boni, who formed a law firm partnership with Zack in 2007, said Zack was so brilliant that other attorneys would say they felt stupid around her.

But she never set out to make anyone feel that way, Boni said.

"She spoke softly," Boni said. "There was no flourish. There was no sense of self in her work, no superlative. She didn't boast, no conceit. She was just a brilliant attorney for its own sake."

Zack would come up with simple and elegant solutions to thorny problems, leaving "everyone thinking, 'I must be so dumb that I haven't thought of that,'" Boni said.

Joseph C. Kohn of Kohn, Swift & Graf, where Zack worked for 18 years, said that "so many trial lawyers, class action lawyers, have egos that precede them by a few miles. Joanne would be the smartest attorney sitting around the room but not have to prove it. She could say one sentence at one point and solve the whole problem."

Jeffrey J. Corrigan, a partner with Spector Roseman Kodroff & Willis, said that when his firm was the lead counsel in a price-fixing case involving nine manufacturers of the oriented strand board home-building material, he picked Zack out of all the lawyers from 30 firms involved in the case to depose an expert.

The expert witness was highly respected by the plaintiffs' expert witness and the plaintiffs counsel thought the defense was the best of all of the defense experts, Corrigan said.

Zack's deposition got enough dust on the expert to bring that particular defendant to the settlement table, Corrigan said.

"In my business there are a lot of 'geniuses' and 'experts' and I put both of those terms in quotes," Corrigan said, but Zack, despite her high competence and intelligence, never acted like a know-it-all.

Boni described watching Zack in a three-and-a-half-hour oral argument before the U.S. Court of Appeals for the Third Circuit in an antitrust case over businesses distributing roofing and siding materials in northern New Jersey.

Judge Edward R. Becker, one of the judges sitting on the panel, and Zack went toe-to-toe to dissect the record to ultimately determine if summary judgment in favor of the defendants should be reversed, Boni said.

"To hear Joanne and Judge Becker go back and forth, back and forth, citing this voluminous record," was something Boni said he never saw before and he thinks he will not see again.

"Joanne's ability to articulate the facts and evidence so fluidly and fluently, that was just awe-inspiring," Boni said. That case was *Rossi v. Standard Roofing*.

Zack recruited Boni to join Kohn Swift around 1994 after they were co-counsel on a case from different firms.

Even though Zack had retired from work because she was first diagnosed with breast cancer, Boni said he convinced her to come out of retirement and form Boni & Zack. The firm specializes in antitrust, consumer protection and copyright law.

Boni had brought the Google case with him when they formed their new firm, but Zack stepped into the fray when Boni had his own fight with Hodgkin's lymphoma cancer.

Zack negotiated a complex settlement, Boni said. Although the settlement was rejected by U.S. District Judge Denny Chin of the Southern District of New York, Zack successfully argued to Chin that the case should be certified as a class action. The decision is now on appeal to the Second Circuit.

Alex Macgillivray, general counsel for Twitter, helped negotiate the settlement with Zack in the Google book search case.

Macgillivray said in an email interview that, while he disagreed with Zack about what was good for authors, Zack was "fierce" as opposing counsel but a "sweet person" outside of her role as an advocate.

Zack also established very strong precedent in the Second Circuit for book authors, whose books were published in the 1960s, '70s and '80s, that, when contracts are silent regarding electronic rights, those rights are retained by authors, Boni said. That case was *Random House v. Rosetta Books*.

Zack was a shareholder at Kohn Swift from 1988 to 2004, and was associated with Cleary Gottlieb Steen & Hamilton in New York from 1981 to 1986.

Zack also was deeply involved with Community Legal Services of Philadelphia, CLS Executive Director Cathy Carr said.

Zack served on the board from 1994 to 2001, including as treasurer; co-chaired the fundraising campaign; worked on attorney fees issues for CLS; and volunteered when she first got ill with cancer and was not working as an attorney at CLS's North Philadelphia office doing intake work of clients.

Carr said of Zack that she was "an amazing combination of someone, both kind and generous, with lots of grace and someone who was an outstanding lawyer's lawyer."

She also clerked for U.S. District Judge Charles L. Brieant of the Southern District of New York.

Zack graduated from Carleton College and attended New York University School of Law.

A celebration of Zack's life is scheduled from 6 to 9 p.m. Monday at Hilltop House, 570 Beaumont Road, Devon, Pa.