



MATTHEW F. PAWA

PAWA LAW GROUP

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Matthew F. Pawa has a record of success in environmental cases, which is why New Hampshire’s Department of Environmental Services reached out to the Newton Centre lawyer in 2003 to go up against an army of the most accomplished lawyers in the country in a contamination case involving more than a dozen powerful corporations.

The state sought cleanup costs for the contamination of its drinking water with MtBE, a gasoline additive that a number of oil companies had used to reduce smog as required by the Clean Air Act. New Hampshire banned the additive in 2007 after the U.S. Environmental Protection Agency classified it as a “possible human carcinogen.” To recover the costs associated with cleaning up dozens of contaminated sites, the state sued a host of oil companies that supplied MtBE gasoline to the state.

The lawsuit kicked off a 10-year odyssey involving hundreds of depositions as well as trips to the N.H.

Supreme Court and the 1st U.S. Circuit Court of Appeals. Fifteen of the defendants settled, while petroleum giant ExxonMobil held out. But after a three-month jury trial and a mere two hours of deliberation, Pawa — along with a small team of state prosecutors and attorneys from an environmental boutique in California — secured a \$236 million award last April, the largest state court verdict in New Hampshire history.

Pawa says the most challenging aspect of the litigation was matching the firepower of the attorneys on the other side, particularly at the motion stage before many of the defendants settled.

“We were litigating against roughly 20 of the largest corporations in the U.S., all at the same time,” he says. “[They] had layers upon layers of lawyers, national counsel from out-of-state mega-firms, and local counsel who were typically the lions of the New Hampshire defense bar. ... It was 60 or 70 suits on the other side versus me and a lone state assistant attorney general.”

Nonetheless, he says, the case shows that you can win even when you’re outgunned.

“When you have the facts and law on your side, you’ll eventually prevail. It can be hard to appreciate that when you’re in the throes of battle, but judges and juries can eventually see through the issues,” he says.

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Q. Some have suggested that it’s unfair to hold ExxonMobil liable for using a product that the government pushed it to use to comply with the Clean Air Act. Are those assertions off base?

A. That argument was disproved by the evidence at trial, which showed that it was an industry choice of which oxygenate to use. [The defendants] chose not to use ethanol [which was a safer alternative] for reasons of cost and profit and foisted the environmental cost of their choice onto the public.

Q. Others claim it’s unfair to hold ExxonMobil accountable for MtBE contamination when it wasn’t actually Exxon that released the contam-

inants into the groundwater, but local entities that stored and handled it. How would you respond?

A. Again, that issue was fully litigated at trial. And the evidence clearly showed that Exxon had access to information that others didn’t have access to, and that information was compelling to the jury in terms of what Exxon knew, when they knew it, and what other oil companies knew. That was an important fact that we proved at trial.

Q. On the other side of the coin, \$236 million — while a huge figure — is still, in effect, pocket change for companies that size. Is it enough to send a powerful message to would-be polluters and other corporate wrongdoers?

A. One would hope that the civil justice system in general encourages companies to do the right thing. ... [The verdict shows] that when a company puts something out into the market that inevitably contaminates the environment, the justice system is there to make them pay and to make it right.

— ERIC T. BERKMAN