

Media & Entertainment MVP: Loeb & Loeb's Jonathan Zavin

By **Brandon Lowrey**

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Loeb & Loeb LLP partner Jonathan Zavin is a giant in entertainment litigation whose vigorous defenses of iconic intellectual properties including "Avatar" and "Raging Bull" have earned him a spot on Law360's list of Media and Entertainment MVPs.

With one foot planted in Hollywood and the other in New York, Zavin says he feels at home in both towns, which is no surprise considering the major studios he has represented. The New York-based attorney is well-known enough in Hollywood that entertainment trade publication *Variety* noted Zavin's favorite Japanese restaurants in Los Angeles and New York.

The veteran entertainment industry litigator said his well-known "Avatar" case, in which he won a dismissal in September, was particularly challenging and rewarding.

The suit was basically a standard copyright claim against the \$2.7 billion megahit, except that most typical cases involve just one work. Well-known British artist Roger Dean sued in 2013 alleging "Avatar" — the highest-grossing film of all time — infringed on about 20 different works, forcing Zavin and his team to arrange a sweeping defense covering huge amounts of material.

Here, Zavin says his classical undergraduate education at liberal arts school St. John's College paid off.

He drew upon intimate knowledge of the novel "Gulliver's Travels" to shoot down the artist's contention that *Avatar* ripped off his depictions of floating mountains. Zavin's citation of floating landmasses present in "Gulliver's Travels" swayed U.S. District Judge Jesse M. Furman, who pointed to the old book in his opinion finding the floating mountains were unprotectable under copyright law.

"Plaintiff does not have a monopoly on the idea of floating or airborne land, an idea that has been around since at least 1726, when Jonathan Swift published his classic 'Gulliver's Travels,'" Judge Furman wrote in his September ruling.



Jonathan Zavin

But getting that ruling took far more than a reference to a 300-year-old book. The case was massive, Zavin said.

"I think we had the advantage of a very smart judge, and the challenge there was the amount of material that needed to be compared and looked at because the claims involved many different pieces of art and many different parts of the film. And so the challenge was laying this all out in front of the judge in a way that the judge would be able to piece it together."

Currently, he's defending Metro-Goldwyn-Mayer Inc. and Twentieth Century Fox Home Entertainment LLC on remand from the U.S. Supreme Court in a copyright infringement suit over the film "Raging Bull." In that case, the daughter of Frank Petrella, the co-author of boxer Jake LaMotta's autobiography upon which the movie was based, sued over continued distribution of the film.

The Ninth Circuit had ruled that Paula Petrella was barred by laches from suing MGM for infringement over her father's 1963 script on which the flick was purportedly based. The U.S. Supreme Court then took up the case, and in May 2014 issued its *Petrella v. Metro-Goldwyn-Mayer Inc.* decision reversing the Ninth Circuit's opinion, finding that the equitable laches doctrine is not a bar to pursue damages for intellectual property claims.

Now that the case has given rise to a landmark laches decision, Zavin said the challenge on the remand will be to put the focus back on the copyright issues upon which the case is founded — that is, whether the movie uses any of Petrella's copyrightable material. That basic issue "unfortunately got lost as everyone got caught up in laches," he said.

Zavin has also represented DreamWorks Animation in an appeal of a jury verdict in DreamWorks' favor over the hit film "Kung Fu Panda." A Tai Chi instructor alleged the studio stole his idea for a martial-artist panda bear after he shared his idea with a DreamWorks executive.

Jurors found in DreamWorks' favor. The plaintiff appealed, but the decision was upheld last year. Since then, appeals have been turned down by the California and U.S. supreme courts in August 2013 and January 2014, respectively.

Though Zavin tends to defend movies in court, his life could make a decent screenplay. His father was a playwright and his mother was Theadora Zavin, a distinguished copyright attorney who headed Broadcast Music Inc.'s legal department for decades and was a senior executive at the performing rights firm.

After graduating from St. Johns College with a solid foundation in philosophy and mathematics in 1968, he went on to the Columbia University School of Law. He was drafted out of law school during the Vietnam war, but received an early honorable discharge due to budget cuts. After finishing his degree, Zavin said he didn't want his first job out of school to be at a big law firm because his admittedly "undistinguished" military career soured him on the idea of becoming a cog in a big machine.

Instead, he joined a mid-sized firm as an associate and soon started his own firm with a partner in the 1970s, Stuart & Zavin, which later became Zavin Sinnreich & Wasserman. He joined litigation boutique firm Richards & O'Neill in 1989, then moved to Loeb & Loeb in 2001.

Zavin became a go-to entertainment lawyer after he successfully defended Paramount Pictures Corp.

against claims brought by photographer Annie Leibovitz.

Leibovitz had artistically photographed a pregnant and nude Demi Moore for an iconic 1991 cover of Vanity Fair. Two years later, Paramount gave the photo a comically disturbing twist by creating a similar image with actor Leslie Nielsen's head superimposed on a pregnant woman's body to promote the 1994 film "Naked Gun 33 1/3: The Final Insult."

Leibovitz responded with a lawsuit, which Zavin disposed of using a parody defense. Before long, studios were calling, and his career was set.

"I feel like I'm one of the luckier lawyers who actually enjoys the area I'm practicing in," Zavin said. "It's not because of 'Avatar' or 'Kung Fu Panda.' It is much more just dealing with the clients and being a little part of protecting the creative enterprise."

--Editing by Emily Kokoll.

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