

## Commercial & Securities Litigation

### PRACTICE CONTACTS

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### RELATED PRACTICES

Antitrust

Appellate Law

Arbitration & Mediation

Aviation Litigation

Class Action Litigation

Construction Litigation

E-Discovery Team

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False Claims Act & Qui Tam  
Litigation

Financial Services Litigation

Insurance Coverage &  
Litigation

Intellectual Property  
Litigation

Mass Tort

Mass Tort Bankruptcy

Mass Tort Settlement Trusts

Personal Injury / Wrongful  
Death

Product Liability

A substantial number of lawsuits handled by our firm involve general commercial and contract problems such as breaches of contract, disputes arising from acquisitions and divestitures, business torts, executive employment matters and financing disputes. In recent years, litigation arising under federal and state securities laws has become quite pervasive. We are routinely involved in suits including securities fraud, breach of fiduciary duty, securities arbitrations and FINRA proceedings, mergers, acquisitions and divestitures, financial institutions and banking, shareholder class actions, derivative suits and other contested corporate matters and ERISA claims.

We have tried cases in state and federal courts across the country including California, Colorado, Delaware, Illinois, Indiana, Kentucky, Michigan, New York, Tennessee and Texas. Our lawyers are often appointed lead and/or liaison counsel by various courts in these types of cases.

### CASE STUDIES

- **Covenant Dove LLC et al v. Mariner Health Care et al**

### EXPERIENCE

- **Analect LLC v. Fifth Third Bancorp, et al., United States District Court, Eastern District of New York, Case No. CV 06 0891 (JFB), Appeal No. 09-4068-cv.**

Plaintiff alleged that Fifth Third Bancorp and Fifth Third Bank (Michigan) violated an alleged confidentiality and exclusivity contract with Plaintiff relating to the distribution of SVSA BOLI insurance when Fifth Third purchased SVSA BOLI for its own account from a company other than Plaintiff. Plaintiff sought a multi-million dollar damages award. Fifth Third filed a Motion for Summary Judgment which was granted on the underlying contract claim. Plaintiff filed a Motion to Reconsider the Court's ruling granting summary judgment, or in the alternative, certification for interlocutory appeal, which was denied. Plaintiff dismissed its remaining claims against Fifth Third with prejudice and appealed the final order to the United States Court of Appeals for the Second Circuit. After extensive briefing and argument, the District Court's decision was affirmed on appeal, and the case has been dismissed with prejudice.

- **CCB Ohio, LLC, et al., v. Chemque, Inc., Case No. 1:07-CV-00541 (S.D. Ohio)**  
Represented clients in a dispute seeking \$3.2 million relating to an allegedly defective product manufactured by the Defendant and used in the Plaintiffs'. This case was grounded in breach of warranties, product liability and negligence claims and was settled following summary judgment decision.

## Commercial & Securities Litigation (Continued)

- **Certified Engineering Systems, Inc. v. National City Commercial Capital, LLC, Case No. 2:07-cv-293 (C.D. Utah)**  
Defended client in \$3 million dispute over sale of used wide format copiers and printers, alleging that goods that did not conform to contract for sale entered into by parties. Following resolution of Daubert and summary judgment motions, case was resolved.
- **Fifth Third Bank v. Zayat Stables, LLC, et al., Case No. 5:09-cv-401 (E.D. Ky.)**  
Representing Fifth Third Bank in a dispute relating to \$38 million in loans and other lender liability issues.
- **In re Atricure, Inc. Securities Litig., Case No. 1:08-CV-00867 (S.D. Ohio)**  
Currently defending client in securities class action litigation.
- **In re Cincom iOutsource Inc., (Greenberger v. Cincom Systems, Inc. et al.) Case No. 06-12778 (Adv. Case No. 08-1049 (S.D. Ohio Bankr.) (Related cases: Case No. 2:06-cv-03823 (E.D.N.Y.), Case No. 2:06-cv-2389 (D.N.J.), Case No. 2:08-cv-2880 (D.N.J.); Case**  
Representing Cincom Systems, Inc. in several actions arising from failed equipment lease financing transactions between various financial institutions and Allserve Systems Corporation in which a fourth tier subsidiary, Cincom iOutsource, Inc., purportedly acted as a broker.
- **Local 295/Local 851 IBT Employer Group Pension Trust and Welfare Funds and District No. 9, et al. v. Fifth Third Bancorp, et al., Cons. Case No. 1:08-CV-421 (S. D. Ohio)**  
Currently defending client in securities & “stock drop” class action litigation.
- **Slone v. Fifth Third Bancorp, et al., Case No. 1:03-CV-211 (S.D. Ohio)**  
Defended clients in securities class action litigation.
- **UNITE HERE v. Cintas Corp., Case No. 06-CV-7061 (S.D.N.Y.)**  
Defended shareholder litigation seeking injunction and declaratory judgment related to SEC violations.
- **William LaWarre; John Papa; Eagle Flight Investments, Inc.; LAJ, Inc.; Property Asset Management, Ltd.; Elizabeth Papa; Alexander Papa; Vaughan Dabbs; Escrow Funds Management, LP; Griffin Enterprises, LLC; and Augusta Jane Snider. v. Fidelity Brokerage Se**  
Defending FINRA arbitration claims.

### NEWS

- Four Keating Muething & Klekamp Attorneys Named Best Lawyers' 2012 Lawyers of the Year
- Ohio First District Court of Appeals Affirmed 2009 Judgment of \$1.3 Million in Favor of Keating Muething & Klekamp's Client Covenant Dove
- Keating Muething & Klekamp Receives 12 First Tier Rankings in Best Law Firms Survey (Metropolitan Cincinnati) by U.S. News Media Group and Best Lawyers
- Keating Muething & Klekamp PLL Announced that Litigation Partner Rachael A. Rowe to Have Dual Role as She Joins Its Labor & Employment Group
- KMK Attorneys Michael L. Scheier and Benjamin G. Stewart Won a Judgment of \$1.3 Million Plus Award of Attorneys' Fees for their Client