

## KMK Attorney Richard Creighton Helps Secure \$46.5 Million in International Antitrust Class Action Case Settlements

**Co-Lead Counsel in Antitrust Price-Fixing Class Action Case, Richard L. Creighton, Jr. of Keating Muething & Klekamp PLL, Wins Major Settlement Awards for Clients Against Avery Dennison Corporation, MACtac, and Finland-based UPM and Raflatac**

**November 13, 2009**

Keating Muething & Klekamp PLL (KMK®) attorney, Richard L. Creighton, Jr., announced that six years of class action antitrust litigation has ended with court approval of two settlements totaling \$38.25 million (USD) in what plaintiffs referred to as the “Plant for Paper” deal among competing companies in the international Pressure Sensitive Labelstock industry. The latest settlements bring the total recovered by plaintiffs to \$46.5 million.

Creighton’s client, Bertek Systems, Inc. of Vermont, was one of five plaintiff class representatives in the lawsuit. Bertek Systems is a label converter – a producer of specialty labels. It buys labelstock, the paper product from which labels are made, from various competing manufacturers such as California-based Avery Dennison Corporation, Ohio-based MACtac, and Raflatac which is based in Finland and runs its North American operations out of North Carolina.

The class members in the price-fixing lawsuit alleged that, in the mid-1990s, Avery and MACtac were concerned that Raflatac was poised to make serious inroads into the North American labelstock market. The American companies feared Raflatac because it had successfully expanded its market share in Europe by aggressively pricing its products – largely at Avery’s expense. Rather than try to compete with Raflatac, Avery and MACtac (together or independently) approached the paper manufacturer UPM-Kymmene Corporation (the Finnish parent company of Raflatac) with an offer to purchase significant quantities of the paper needed to manufacture labelstock from UPM, if UPM would agree to keep Raflatac from building a labelstock manufacturing plant in North Carolina (thus the “Plant for Paper” moniker). The defendant companies never admitted to any wrongdoing and maintained that their actions were legal.

The fact that Avery, MACtac, and UPM were communicating about sensitive competition issues came to light in 2002-2003, when UPM attempted to purchase MACtac and merge it with Raflatac. The U.S. Department of Justice reviewed and then subsequently denied permission for the proposed merger. The companies challenged the government’s denial of clearance to merge, but a federal judge in Chicago, citing evidence of inappropriate communications, sided with the Department of Justice and blocked the proposed merger.

KMK’s client, Bertek Systems, filed suit against UPM, Raflatac, Avery, and MACtac in federal court in Philadelphia. Several other label converters filed suits in federal courts in other jurisdictions. The cases were eventually consolidated and sent to the U.S. District Court for the Middle District of Pennsylvania in Scranton. Judge Thomas I. Vanaskie, who presided over the six-year long litigation, certified the case as a class action in 2007.

The class plaintiff attorneys in the case reviewed more than four million pages of documents, and from those, singled out a relatively few key documents they alleged proved the defendants conspired to keep a viable competitor out of the North American market. As part of their evidence discovery process, Creighton and other lead counsel travelled across the U.S. and to Helsinki, Finland, to interview and depose witnesses, review documents, and meet with experts.

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In 2007, UPM and Raflatac agreed to a settlement of \$8.25 million to avoid the substantial risks inherent in this type of litigation; as part of the settlement, they agreed to cooperate with the plaintiff attorneys.

Earlier this year, Avery agreed to attempt a settlement mediated by Kenneth R. Feinberg, one of the leading mediators in the U.S. Feinberg served as Special Master of the Federal September 11th Victim Compensation Fund and was recently named by the Obama administration as Special Master of Executive Compensation for corporations that received TARP funds.

After a long and hard-fought legal battle and intensive negotiations, final settlements were hammered out: Avery agreed to pay \$36.5 million, plus up to an additional \$500,000 to offset the administrative costs of the class action. MACtac agreed to pay \$1.25 million.

On September 17, 2009, Judge Vanaskie approved the settlements.

The Pressure Sensitive Labelstock class action antitrust case is the 18th antitrust price-fixing case in Creighton's career in which he acted as lead class counsel or co-counsel; combined settlements in these cases have totaled more than \$500 million.

### **About Richard L. Creighton, Jr.**

Richard L. Creighton, Jr. is a trial attorney with Keating Muething & Klekamp PLL. His practice is concentrated in general civil litigation, with particular emphasis on complex business, antitrust, and tort litigation, including class actions. In recent years, he has served as lead class counsel in several class action cases, including antitrust price-fixing cases. In the business law arena, he has successfully represented a wide variety of clients in contract and/or fraud cases. Creighton also is recognized for his experience in counseling clients and serving as trial counsel in matters involving libel, invasion of privacy, and other First Amendment issues. A licensed instrument rated private pilot, he has successfully represented numerous clients in aviation-related matters, including aviation crash cases and administrative proceedings before the Federal Aviation Administration. Prior to joining Keating Muething & Klekamp PLL, he served as a law clerk to the late Honorable John W. Peck, United States Court of Appeals for the Sixth Circuit. Creighton earned his B.A. from Xavier University, *cum laude*, and his J.D. from St. Louis University School of Law, *cum laude*. He can be reached at 513.579.6513 or at [rcreighton@kmklaw.com](mailto:rcreighton@kmklaw.com).

### **About Keating Muething & Klekamp PLL**

The law firm of Keating Muething & Klekamp PLL (KMK®), based in Cincinnati, Ohio, was founded in 1954. KMK has approximately 115 lawyers and a support staff of 150 employees. For the past 55 years, KMK has contributed to the success of many businesses, from Fortune 500 corporations to start-up companies. KMK's mission is to provide high-quality legal counsel to business clients by meeting their identified needs and developing appropriate solutions.

### **Additional Documentation**