

## KMK Attorneys Michael L. Scheier and Benjamin G. Stewart Won a Judgment of \$1.3 Million Plus Award of Attorneys' Fees for their Client

**In a Breach of Contract Case Filed on Behalf of Nursing Home Group, Covenant Dove, LLC, Judge Granted Directed Verdict to Plaintiffs on Defendants' Counterclaims and Judgment on Plaintiffs' Claims  
December 9, 2009**

CINCINNATI, OH — Keating Muething & Klekamp PLL (KMK®) attorneys, Michael L. Scheier and Benjamin G. Stewart, after 18 months of litigation and an eight-day jury trial, won a judgment of \$1.3 million plus an award for attorneys' fees for their client, a group of related companies in Memphis, Tennessee, known as Covenant Dove, LLC. The case was heard in the Hamilton County Court of Common Pleas before Judge Melba D. Marsh. In all, there were 22 named plaintiffs and 15 named defendants in the case, *Covenant Dove LLC et al v. Mariner Health Care et al*, Case No. A0805955; Court of Common Pleas; Hamilton County, Ohio.

Attorneys Scheier and Stewart tried a breach of contract case representing the plaintiffs, Covenant Dove, and defended against counterclaims of approximately \$2.5 million from the defendants, a group of companies related to Mariner Health Care, Inc. In a rare court resolution, Judge Marsh granted plaintiffs' motion for a directed verdict on the defendants' counterclaims, which were subsequently dismissed, and she granted plaintiffs' renewed motion for summary judgment on claims before giving the case to the jury for decision.

In another exceptional outcome, the Court agreed with Scheier's and Stewart's argument that the defendants acted in bad faith and awarded Covenant Dove attorneys' fees.

"The defendants failed to show that they suffered any damages as a result of any actions taken by our clients, Covenant Dove. There was simply no evidence left for the jury to consider," stated KMK attorney, Scheier.

The claims evolved following the transfer of ownership of seven nursing home facilities located in Mississippi and Tennessee, from Mariner Health Care-related entities to Covenant Dove. The disputes generally revolved around the issues of which party was responsible for paying the bills incurred from the seven facilities prior to the transfer of ownership, and which party was entitled to keep the monies earned from the services provided prior to the transfer.

The case was tried in an Ohio court due to the transfer of ownership contract, which contained a forum selection clause designating Ohio as the state in which any litigation relating to the transfer must take place.

Covenant Dove, the plaintiffs, sought \$1.3 million in damages plus its attorneys' fees based on the defendants' alleged bad faith conduct in breaching its contract. They also sought a judgment ordering Mariner Healthcare to transfer two real property deeds that it had promised to transfer under the contract.

During trial, the defendants sought \$2.5 million in counter claims, alleging that Covenant Dove failed its contractual duty to cooperate with them in their efforts to collect aging receivables generated from the pre-transfer services provided by the facilities.

The original complaint was filed in the Cincinnati-area court in June 2008. The trial began on October 26, 2009, and the defense rested its case on November 4, 2009. After the defense rested, plaintiffs' counsel moved for a directed verdict, arguing that the defendants did not carry their burden of proof on counter claims as a matter of law and that there were no

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questions left for the jury to decide on the counter claims. The Court granted plaintiffs' motion.

Before the Court gave the case to the jury, plaintiffs' counsel asked for summary judgment in Covenant Dove's favor, arguing no issue of disputed fact remained to present to the jury in regard to either liability or damages. The Court agreed and entered judgment on all of the plaintiffs' claims in the complaint for breach of contract and for attorneys fees. Judge Marsh ruled that no factual or legal issues were left in dispute after all of the evidence was presented, and the jury was therefore dismissed. On December 9, 2009, Judge Marsh entered a judgment of approximately \$1.3 million plus attorneys' fees in favor of Covenant Dove and ordered Mariner Health Care to transfer the real property deeds in dispute to Covenant Dove.

The award for attorneys' fees was exceptional due to the stringent requirements that must be met. Ohio law requires that, in the absence of a contractual provision or a statute that allows for fee-shifting, the party requesting the attorney fee award must prove that the opposing party that breached a contract acted in bad faith — defined as an action taken with dishonest purpose or conscious wrongdoing — in order to be awarded attorneys' fees in a civil case.

### **About Michael L. Scheier**

Michael L. Scheier is a trial attorney; he is a partner and co-leader of the Litigation Practice Group at Keating Muething & Klekamp. Scheier's practice is concentrated in the areas of complex banking and creditor's rights disputes, bankruptcy related litigation, complex commercial disputes, and mass tort bankruptcy proceedings. He has extensive experience representing financial institutions and corporate clients in a wide range of matters including banking fraud, lender liability, UCC Article 3 and 4 litigation, insolvency litigation and general enforcement of creditors' rights. He regularly appears in federal and state trial and appellate courts around the country. Scheier is a current member of the firm's diversity committee and associates committee, and a former member of the hiring committee. He also serves as an Adjunct Professor at the University Cincinnati College of Law, where he teaches trial technique and practice. Scheier is licensed to practice law in the state of Ohio. Scheier earned his J.D. from the University of Cincinnati College of Law, *Order of the Coif*, where he was Editor-in-Chief of Law Review. He earned his B.A. from Hobart College. Scheier may be reached at 513.579.6952 and at mscheier@kmlaw.com.

### **About Benjamin G. Stewart**

Benjamin G. Stewart's practice is concentrated in the area of litigation, with a focus on complex commercial matters. Prior to joining Keating Muething & Klekamp, Stewart was an associate in the Commercial, Competition, and Securities Litigation group at the Chicago office of Sidley Austin LLP. There, he represented clients in a wide variety of litigation, including securities cases, class actions, and commercial arbitration. He also represented clients in response to SEC, NASD, and Department of Justice actions, as well as in connection with several internal investigations. Stewart earned his J.D. from The University of Chicago Law School, and his B.A. from Otterbein College, *magna cum laude*. He is licensed to practice law in Ohio and Illinois. Stewart may be reached at 513.579.6405 and at bgstewart@kmlaw.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

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high-quality legal counsel to business clients by meeting their identified needs and developing appropriate solutions.