

MISSOURI LAWYERS WEEKLY

September 27, 2004

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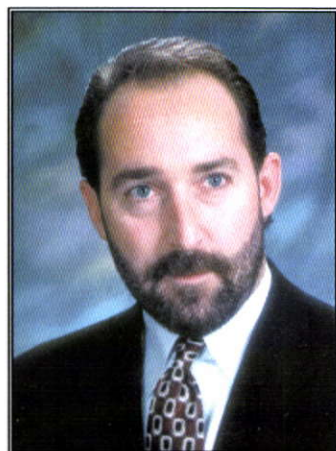
VERDICTS & SETTLEMENTS

Snack Food Company Sues Distributor

Lawsuit Charges Failure To Market



TIM DOLLAR



MICHAEL HEALY

\$8.6 Million Verdict

The owner of a snack food company sued its exclusive distributor, contending that it refused to market its products outside the Kansas City area.

Heartland Snacks was the owner of the Guy's brand name and recipes. In September 2001, McCleary Inc., a manufacturer and distributor of snack foods, approached Heartland and offered to serve as the exclusive distributor of Guy's products. McCleary represented that it had the resources and ability to begin immediate distribution.

The parties signed a contract giving McCleary the exclusive right to sell Guy's products throughout Kansas, Missouri and southern Illinois, in exchange for royalties to Heartland.

Heartland contended that three months after signing the agreement, McCleary stopped distributing outside Kansas City because of a prior business relationship with a rival manufacturer in St. Louis.

Heartland sued for breach of contract and fraudulent concealment. McCleary argued that: the contract was silent as to when and where McCleary was required to distribute; McCleary was entitled to start in Kansas City and gradually expand throughout the territory as profits increased; Heartland did not cooperate and prevented McCleary from performing; and Heartland's lost royalty damages were greatly overstated. In addition, McCleary said Heartland wrongfully terminated the

five-year contract after less than a year and replaced McCleary with another distributor, which took over all the retail shelf space McCleary had obtained.

After a four-day trial, the jury awarded \$4.3 million on each count.

McCleary's post-trial motions assert several claims of error, and contend that the judgment is for \$4.3 million, not \$8.6 million.

Type of Action: Breach of contract, fraud

Type of Injuries: Lost royalty payments

Court/Case Number/Date: U.S. District Court, W.D.Mo./02-0654-CV-W-FJG/Aug. 12, 2004

Caption: Matthew Heady Holdings, LLC v. McCleary Inc., et al.

Judge, Jury or ADR: Jury

Name of Judge: Fernando J. Gaitan Jr.

Verdict or Settlement: \$8.6 million verdict

Special Damages: None

Allocation of Fault: N/A

Last Offer: \$350,000

Last Demand: \$4 million

Attorneys for Plaintiff: Michael Healy, Kansas City; Tim Dollar, Kansas City

Insurance Carrier: None

Plaintiffs' Experts: Ed Crumm, Kansas City (damages)

Defendants' Experts: John Mera, Kansas City (damages) (excluded under Daubert)