NEWS RELEASES

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Husch Blackwell Secures Victory for Kafka Granite Before Wisc. Court of Appeals

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Husch Blackwell prevailed on behalf of Kafka Granite when the Wisconsin Court of Appeals affirmed a circuit court's summary judgment in connection with litigation concerning a restrictive covenant that prohibited certain activities on a parcel of land Kafka owns and uses to operate a mineral fabrication facility.

The plaintiff-appellant had brought suit to enforce the terms of a restrictive covenant that was agreed upon and recorded by predecessors in interest to the litigants and that attached to the sale of a land parcel currently owned and used by Kafka Granite. The restrictive covenant states that the owner of the property agrees "not to mine, excavate, sever, sell or remove nonmetallic minerals upon, within or under the surface" of the property. Kafka operates a processing facility on the premises in which large blocks of granite, marble and quartz quarried offsite are turned into finished products and then stored until distribution and sale.

The plaintiff-appellant alleged that such activities were forbidden by the restrictive covenant language. Both at trial and on appeal, the Husch Blackwell team dismantled this legal argument, demonstrating that the specific language of the covenant did not proscribe Kafka's current business activities, especially in light of what the court characterized as "the disfavor with which restrictive covenants are viewed under Wisconsin law."

"The underlying covenant was narrowly drawn, and it seemed clear that the plaintiff was attempting to broaden the scope of the covenant in order to gain a commercial advantage," said Eric McLeod, the lead Husch Blackwell partner on the matter. "Our client was confident that it had abided by all agreements

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and laws in the operation of its facility on the property, and we are pleased the court agreed with our position."

The Husch Blackwell team included Eric McLeod and Joseph Diedrich.

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