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Battle among beer baron's heirs brews up trouble for law firm

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John "Bud" Koons III and Richard "Dick" Ward were classmates and buddies at Walnut Hills High.

As adults, they used that friendship and reliance on each other to make their names and build their fortunes.

Koons became an executive with Cincinnati's Burger Beer brewery and the majority shareholder in its succes-

Online: Read Cundall's lawsuit and other documents at Cincinnati.Com.

Search: Koons

sor company, which sold four soft-drink bottling businesses in 2005 for \$340 million.

Ward became a prominent Cincinnati lawyer, a former president of the Cincinnati Bar Association who started his own firm in 1958. He was Koons' personal and business lawyer for more than four dec-

ades, work for which he earned millions of dollars, court documents note.

Now, Koons' estate and Ward, 85, are prime players in a \$300 million legal drama unfolding in Hamilton County and Florida involving three bitter lawsuits.

They deal with broken confidences established over generations and accusations concerning huge dollars and even bigger egos.

The numbers involved are eye-popping - followed by six,

seven and eight zeroes - with the centerpiece transaction exceeding a third of a billion dollars.

The accusations include a lawyer retaliating against a client for being removed from a consulting job that paid him \$250,000 per year for no more than 10 hours work per month. They come from an estate that would pass to a Florida politician and the widow of rock icon Jerry Garcia.

See BATTLE, Page A6

Battle: Heirs say they were forced to sell

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The suits also shine a light on a rare public fight in Cincinnati's legal community as the law firm of Drew & Ward is accused of legal malpractice, violating its attorney-client relationship and fabricating documents to defend itself.

"In my 33 years of doing this, I have never seen anything as unethical and illegal by any lawyer in Cincinnati," said James Helmer Jr., an attorney who is defending Koons' estate against the \$300 million suit filed by Ward's firm.

What's at stake?

The ongoing battles include:

- Koons' considerable estate, which could range in value from tens of millions to perhaps hundreds of millions of dollars.

- Koons' relatives' internecine fight over his estate and a business deal more than 20 years old.

- Allegations that Ward's firm used confidential documents and information obtained while serving as Koons' attorneys to sue his estate on behalf of his unhappy relatives.

Dick Ward and his son and law partner, Nick Ward, refused comment for this story, as did all the attorneys involved except Helmer.

In legal documents, the Wards' firm insists it has done nothing improper, but simply is providing a service to Michael Cundall, Koons' nephew, by filing his \$300 million suit against the estate.

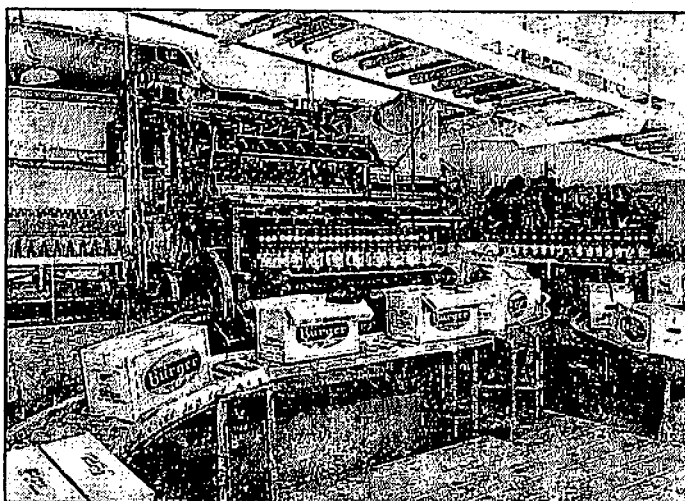
The genesis of the lawsuits dates to the 1960s, when executives of Burger Beer - including president and chief executive officer John F. Koons Sr., Bud Koons' father - saw beer sales decline and decided to diversify. Burger was owned by shareholders of Central Investment Corp., or CIC.

To diversify, CIC bought Pepsi bottling and distribution companies in Canton and Mansfield, Ohio, in 1965. The next year it added Pepsi bottling companies in Fort Lauderdale and Palm Beach, Fla.

Eventually, CIC became the nation's seventh-largest Pepsi bottler.

Bud Koons eventually became president and chief executive officer of both Burger and CIC. He loved Burger's relationship with the Cincinnati Reds, and the brewery sponsored the team's radio and television broadcasts.

An avid jogger, Koons once ran San Francisco's Bay to Breakers



Provided photo

Cincinnati's Burger Beer was the foundation of the Koons family's \$300 million-plus fortune.

On the Web

- Central Investments LLC:
centralinvestment.com

- Drew & Ward law firm:
www.drewlaw.com

Cundalls sell stock

In 1984, seven years after Betty Lou Cundall died, the Cundalls sold the CIC stock in their trusts back to the company for \$3.6 million, saying they wanted to invest in something that provided a greater return.

That stock today would be worth more than \$22 million, Helmer said.

About the same time, Bud Koons relied on his attorney, Dick Ward, to help him plan his estate, establishing several trusts and serving as a trustee on many of them.

More than 20 years later, in February 2005, CIC sold its four Pepsi bottling companies to PepsiAmericas Inc. for \$340 million.

A month later, Bud Koons died at age 80.

Michael Cundall, his nephew, developed concerns about the trusts and asked a Hamilton County court to put him in charge of his mother's trust.

Cundall filed a lawsuit in 2006 - 22 years after the Cundall family sold its shares.

"They didn't complain for 22 years," Helmer said. "Now, all of a sudden, they want to do it all over."

Cundall hired a firm familiar with all of the Koons' trusts and business dealings: Drew & Ward.

Cundall's \$300 million suit was

trustee, he is required to give his first loyalty to the trust's beneficiaries, Koons' heirs, something the Ward firm denies.

If the allegations against Drew & Ward are true, one expert calls it a "classic, textbook" example of lawyer conflict.

"This is a no-brainer sort of conflict of interest situation," said Christopher Fairman, an Ohio State University law professor. "It's as if (the Wards) are suing to undo the trusts (they) set up."

"This is the toughest area of ethics. The rules are very complex but the principles are very, very simple. Things that often smell bad are bad."

Helmer and the other lawyers representing Koons' estate and trusts agree.

They said Ward's law firm was paid over \$2 million to do legal work for CIC and Koons' estate, with Dick Ward being paid \$540,000.

Helmer contends Dick Ward allowed his firm to represent Cundall against Koons out of spite because Bud Koons replaced Ward as the co-executor of his estate in 2004.

Dick Ward, who sat on the CIC board of trustees for 10 years, was paid \$250,000 per year for five years to serve as a consultant, working no more than 10 hours per

month, court records indicate.

"The idea was that Dick Ward had institutional knowledge of Bud's company (CIC). Bud wanted to make sure that the guys running his company had access to that knowledge," Helmer said. "Most people would say that a quarter of a million dollars for no heavy lifting is a pretty good deal. Dick Ward didn't think it was good enough."

Nick Ward, 53, also worked for Koons on his estate and trusts, Helmer said, at the same time he was preparing Cundall's \$300 million suit against Koons.

In addition to conflicts of interest, the Wards are accused of creating fake legal documents to support their work on Cundall's suit.

Roger Fry, the attorney representing Drew & Ward, called that assertion "absolutely false."

Fighting over type size

That suit, before Common Pleas Court Judge Steve Martin, is so contentious the judge has had to make rulings on such issues as the size of the type to be used on documents.

Drew & Ward is fighting Helmer's attempts to get the firm to turn over all the documents it has from its 40 years of representing Koons.

Helmer believes those documents will prove the Wards used that "confidential" information to sue their old client.

Helmer said the fight over the documents in Ohio is probably because Cundall, a Florida resident, wants to use them in a similar suit he filed in Florida.

That suit is pending in Florida, where John "Jeff" Koons IV is a former West Palm Beach mayor and current Palm Beach County commissioner. He didn't return repeated calls.

His sister, Deborah Koons Garcia, is a California filmmaker and widow of Jerry Garcia, guitarist for the Grateful Dead.

In addition to the \$300 million, Michael Cundall wants an accounting of both of the trusts dating back to the 1984 stock sale.

The Hamilton County trial is set for Oct. 14.

race wearing Reds regalia. He was a member of Alcoholics Anonymous for 20 years and served on the board of the Betty Ford Center. By the time Bud Koons succeeded his father at Burger, the elder Koons set up trust funds – consisting solely of CIC stock – for the heirs of his children, Bud Koons and Betty Lou Cundall.

Betty Lou Cundall's son, Michael Cundall, now accuses Bud Koons of bullying Cundall family members into selling CIC stock back to the company in 1984 by telling them if they didn't he would make sure the company wouldn't pay dividends, making their stock almost worthless.

At that time, Bud Koons was CIC president, but also served as a trustee of the trust his father established. That meant he had the sole power to distribute dividends, but also that he had the legal obligation to give his undivided loyalty to the trust's recipients – his children and his sister's children.

Bud Koons was the majority shareholder of CIC, owning so much of its stock that he controlled the company.

thrown out by Hamilton County Common Pleas Court Judge Ethna Cooper in January 2007, but reinstated 11 months later by the Cincinnati-based Ohio 1st District Court of Appeals.

"If the Cundalls are able to prove their allegations, they will be entitled to compensatory and perhaps punitive damages," Appeals Court Judge Mark Painter wrote.

The Ohio Supreme Court agreed last month to hear the case.

Lawyers targeted

Now, attorneys representing Koons' estate are suing Drew & Ward for at least \$10 million and the return of all documents the firm acquired from its dealing with Koons.

They allege Dick Ward and his son, Nick, improperly used information and documents they obtained while working for Koons to turn on his estate.

"The son accessed these documents that his father had collected over these years," Helmer said.

The estate's attorneys also accuse Dick Ward of violating his duty as a trustee for Koons' trusts. As



Enquirer file

Bud Koons, seen with the Bengals' Paul Robinson in 1969, diversified Burger Beer by becoming a Pepsi bottler and distributor.

The major players

Generations of the Koons family and their lawyers are involved in the lawsuits. Here are their relationships and roles:



Koons



Koons Jr.

■ John Fletcher Koons Sr. – former president of Burger Beer.

■ John F. "Bud" Koons Jr., also known as John F. "Bud" Koons III – president of Burger Beer. Burger formed Central Investment Corp. and bought four soft drink bottling companies. He is accused by his sister's heirs of bullying them into selling their share of two

trusts – funded by CIC stock – back to CIC. He also was CIC president.

■ Betty Lou Cundall – Bud Koons' sister, mother of Michael Cundall.

■ Michael Cundall – nephew of Bud Koons, filed the first lawsuit, alleging his side of the family, the Cundalls, was cheated in 1984 by Bud Koons.

■ Dick Ward – founding partner of the Cincinnati law firm of Drew & Ward, served as the Koons' family attorney for 40 years, personal friend of Bud Koons, served as a trustee of many of the trusts set up by Koons.

■ Nick Ward – Dick Ward's son, also an attorney at Drew & Ward. Accused of improperly filing a lawsuit against the Koons estate and trusts – his former clients – on behalf of his new client, Michael Cundall.

Sources: Court documents