

CONTINENTAL CABLEVISION FOUND NOT LIABLE IN SUIT BY LIMITED PARTNERS

Boston, Massachusetts March 17, 1993

**Plaintiffs, seeking \$180 million, receive \$2 million dollar award
from co-defendant, Shearson, Lehman**

A Federal jury in Boston today returned a verdict in favor of Continental Cablevision, Inc., the nation's third largest cable company, and a defendant in a civil law suit brought by a group of disgruntled investors. The investors claimed that they had not been given fair market value for the limited partnerships that the company, acting as general partner, had bought from them. Under the terms of the partnership, the general partner had the right to buy out the limited partners if the majority agreed to the price. Continental decided to exercise that right and hired an independent firm, Malarkey-Taylor, to value the limited partnerships. Continental also retained Shearson, Lehman to issue a fairness opinion, and to contact investors and encourage them to vote to sell.

About 75% of the investors agreed to sell, having made a substantial return on the investment. Nevertheless, Continental, Shearson and Malarkey-Taylor were sued for fraud and breach of fiduciary duty by a small number of disgruntled investors who were given class status.

The case was a difficult one for the defense because during discovery Shearson had produced the proverbial 'smoking gun' memo, which implied that the price Continental paid for the partnerships was lower than Shearson's valuation. The existence of this document also created the impression that Continental must of known that the price offered to investors was below market value, since Continental had hired Shearson.

In the end, however, the jury decided to exonerate Continental and its Chairman Amos Hostetter. The jury found that the process had been fair: investors were given 30 days to contact their advisors and vote; three out of four voted to sell; and every investor made a substantial return on the investment. In addition, Malarkey-Taylor, using standard discounted cash flow techniques, had valued the partnership lower than Continental's offer, and the plaintiffs were never able to prove that Continental knew about the Shearson memo.

Most jurors sided with the defense from the start of deliberations, which lasted two and a half days. One juror, an Irishman in his 50's, had delayed the verdict, arguing that the investors had been given a 'raw deal'. But he could not overcome the fact that in the four years after the deal closed, the actual cash flow of the partnerships matched Continental's projections, and thus supported Continental's valuations. Around noon on the third day of deliberations, which also just happened to be St. Patrick's Day, this juror agreed to a token compromise, awarding the plaintiffs the value of Shearson's fees, about \$2.5 million. Shocked, the plaintiff attorneys, who had sought \$180 million, vowed to appeal, but later settled for a sum less than the cost of that appeal.

Litigation Strategies provided pre-trial jury research, graphics, witness preparation and consultation throughout the trial to Thomas J. Dougherty of Skadden, Arps' Boston office.

- Strategic Research
- Witness Preparation
- Demonstrative Exhibits



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