

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

BKY Case No. 04-40580-NCD

George Klus and Anne Klus,

Debtors,

Chapter 7

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John R. Stoebner, Trustee  
of the Bankruptcy Estate of  
AK Medical, Inc.,

ADV Case No. \_\_\_\_\_

Plaintiff,

vs.

**COMPLAINT**

George Klus and Anne Klus,

Defendants.

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John R. Stoebner, Trustee (“Trustee”) of the Bankruptcy Estate of AK Medical, Inc.  
 (“Debtor” or “AK Medical”) as and for his Complaint against Defendants George Klus and Anne  
 Klus states and alleges as follows:

**I. THE PARTIES.**

1. The Trustee is the duly appointed Chapter 7 Trustee of the Bankruptcy Estate of  
 the AK Medical, Inc.

2. This bankruptcy case was commenced on February 6, 2004, by the Debtor’s filing  
 of a voluntary Chapter 7 petition (“Petition Date”).

3. The Debtors are former officers, directors, and shareholders of AK Medical, Inc.

## **II. JURISDICTION.**

4. This Complaint is brought under Bankruptcy Rules 4007 and 7001 and this action arises under 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4) and 523(a)(6).

5. This Court has jurisdiction over this adversary proceeding and the adversary proceeding is authorized under 28 U.S.C. §§ 157 and 1334 and Bankruptcy Rule 7001(6). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

6. Venue is properly before the Court pursuant to 28 U.S.C. § 1409.

## **III. FACTS.**

7. AK Medical, Inc., is a Minnesota corporation that supplied surgical products to hospitals, including Veterans Administration (“VA”) hospitals. AK Medical’s principal place of business was 5100 Eden Avenue, Suite 112, Minneapolis, MN 55436.

8. Trinity Medical Solutions, Inc., is a Minnesota corporation that supplies surgical products to hospitals, including VA hospitals. Trinity’s principal place of business is 5100 Eden Avenue, Suite 112, Minneapolis, MN 55436.

9. AK Medical entered into multiple contracts with the United States Government to provide various supplies to VA hospitals (the “VA Contracts”).

10. Each of the various VA Contracts provided a five-year term during which AK Medical would provide various medical supplies to the VA hospitals, with the various contracts expiring at the earliest, in August 2006, and at the latest, in February 2008.

11. At all relevant times, Defendants were officers, directors and 100% shareholders of AK Medical, Inc.

12. At all relevant times, Defendants owed fiduciary duties to AK Medical.
13. By “Agreement to Assign Rights to Agreements” dated January 10, 2003 (the “Assignment Agreement”), Defendants effectuated an assignment by AK Medical to Trinity of all of AK Medical’s rights to the VA Contracts.
14. By the Assignment Agreement, Defendants enabled themselves to effectuate a fraudulent transfer of AK Medical’s assets in exchange for only nominal consideration.
15. Defendants are officers, directors and 84% shareholders of Trinity Medical Solutions, Inc.
16. Pursuant to the Assignment Agreement, AK Medical received from Trinity the following consideration in exchange for the assignment of all rights to the VA Contracts: (i) \$1.00; and (ii) two percent (2%) of the “gross proceeds” under the VA Contracts (defined as gross sales price, less cost of products sold, discounts, taxes, credits and allowances).
17. Upon information and belief, Defendants allowed Trinity to take over all other aspects of AK Medical’s business, including but not limited to its property, equipment, employees, and supplies, in exchange for no consideration whatsoever.
18. The Assignment Agreement was not negotiated on an arms-length basis; Anne and George Klus negotiated both sides of the Assignment Agreement and the same legal counsel represented both parties to the transaction.
19. The employees of AK Medical were Anne Klus, George Klus, Ryan Bies and Tom Buell. The employees of Trinity are Anne Klus, George Klus and Ryan Bies.
20. The Assignment Agreement was executed without any formal valuation of the assets assigned to Trinity and without any analysis of current or future sales.

21. The Assignment Agreement contains one or more representations that the Defendants knew to be false; namely, the representation that “there are no actions, suits or proceedings pending, or to the knowledge of Seller, threatened against or affecting Seller”; in reality, at the time of the Assignment Agreement, AK Medical was being sued by Precept Medical Products, Inc., for more than \$310,000.

22. In the first two (2) quarters after execution of the Assignment Agreement, Trinity generated sales of at least \$30,000.

23. Upon information and belief, the VA contracts will produce revenues in excess of \$300,000.

24. Thus, in exchange for a total investment of \$1.00 and 2% of gross profits (not gross revenues), the Defendants fraudulently transferred to Trinity AK Medical’s rights under the VA Contracts to provide medical supplies to the VA hospitals that will produce revenues in excess of \$300,000.

#### **IV. LEGAL CLAIMS.**

##### **COUNT ONE**

25. Plaintiff restates, realleges, and adopts by reference the allegations contained in paragraphs 1 through 24, inclusive, herein.

26. As a result of the Defendant’s fraudulent transfer of AK Medical’s assets, Plaintiff is a creditor of the Defendants in an amount in excess of \$300,000.

27. Defendants were acting in a fiduciary capacity in their relationship with AK Medical and were obligated to act in the best interests of AK Medical and its creditors, rather than acting in their own best interests.

28. The indebtedness owed by Defendants to Plaintiff arose from Defendants' fraud or defalcation while acting in a fiduciary capacity by making transfers which benefited themselves personally in an amount in excess of \$300,000, during a period when AK Medical was insolvent.

29. Defendants' defalcation of their fiduciary duties did cause injury to the creditors of AK Medical and thus, to Plaintiff, in an amount in excess of \$300,000.

30. Defendants' debt is excepted from discharge under 11 U.S.C. § 523(a)(4).

### **COUNT TWO**

31. Plaintiff restates, realleges, and adopts by reference the allegations contained in paragraphs 1 through 30, inclusive, herein.

32. The indebtedness owed by Defendants to Plaintiff arose from Defendants' intentional, willful, and malicious conduct in making transfers which benefited themselves personally in an amount in excess of \$300,000, during a period when AK Medical was insolvent.

33. Defendants knew or should have known that their intentional, willful, and malicious actions would cause injury to the creditors of AK Medical and thus, to Plaintiff.

34. Defendants' intentional, willful, and malicious actions did cause injury to the creditors of AK Medical and thus, to Plaintiff, in an amount in excess of \$300,000.

35. Defendants' debt to Plaintiff is excepted from discharge pursuant to 11 U.S.C. § 523(a)(6).

### **COUNT THREE**

36. Plaintiff restates, realleges, and adopts by reference the allegations contained in paragraphs 1 through 35, inclusive, herein.

37. In whole or in part, the indebtedness owed by Defendants to Plaintiff was effectuated by false pretenses, a false representation, or actual fraud, which conduct is described with specificity in paragraphs 7 to 24 herein.

38. Defendants knew the pretenses or representations were false at the time they were made.

39. Defendants' false pretenses, false representations or fraud were made with the intention and purpose of deceiving AK Medical and/or its creditors.

40. AK Medical and its creditors justifiably relied upon the false pretenses or false representations made by Defendants.

41. Defendants knew or should have known that their false pretenses, false representations or fraud would cause injury to the creditors of AK Medical and thus, to Plaintiff.

42. Defendants' false pretenses, false representations or fraud did cause injury to the creditors of AK Medical and thus, to Plaintiff, in an amount in excess of \$300,000.

43. In whole or in part, Defendants' debt to Plaintiff is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A).

**WHEREFORE**, Plaintiff respectfully requests the following relief against Defendants:

A. A determination and adjudication that Plaintiff's claims against the Debtors George Klus and Anne Klus, jointly and severally, are excepted pursuant to the provisions of 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4) and/or 523(a)(6) from any discharge which the Debtors may receive;

B. Judgment against Defendants George Klus and Anne Klus, jointly and severally, in an amount in excess of \$300,000;

C. Judgment against Defendants George Klus and Anne Klus, jointly and severally, awarding Plaintiff his reasonable costs and disbursements; and,

D. Such other and further relief as is just and equitable.

Dated: April 23, 2004

LAPP, LIBRA, THOMSON, STOEIBNER  
& PUSCH, CHARTERED

/e/ John R. Stoebner  
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Attorneys for Plaintiff

#### **VERIFICATION**

John R. Stoebner, Trustee, Plaintiff herein, declares under penalty of perjury that he has read the foregoing Complaint and that the facts set forth therein are true and correct according to the best of his knowledge, information, and belief.

/e/ John R. Stoebner  
John R. Stoebner