

# CLIENT ALERTS

## Michigan Supreme Court Reaffirms That the Implied Covenant of Good Faith and Fair Dealing Does Not Create an Independent Cause of Action for Breach of Contract

### Client Alert

3.28.2025

In its opinion in *Kircher v. Boyne USA, Inc.*, issued on March 27, 2025, the Michigan Supreme Court unanimously reaffirmed the principle that, under Michigan law, the implied covenant of good faith and fair dealing does not create an independent cause of action under Michigan law. In *Kircher*, the Court found that a contractual provision stating the parties *could* agree to different terms did not create the type of unilateral discretion that would trigger a duty to depart from the parties' agreement. This case supports the consistency and predictability of contract law in Michigan.

The Plaintiff and Defendants in *Kircher* were parties to 2014 and 2019 settlement agreements pursuant to which Plaintiff's stock in Defendant Boyne Ski Resorts would be redeemed over a period of years. Under the first agreement, the redemption price each year would be determined according to a formula based on a multiple of Boyne's previous year earnings before interest, taxes, depreciation, and amortization ("EBITDA") less company debt. The formula was to be used "unless otherwise agreed." Under the second agreement, shares were redeemed for the years 2014 through 2018 at a fixed price per share; but the repurchase for 2019 was listed as "to be determined" ("TBD") because the company's financial statements for the previous year weren't yet available. The 2019 price was to be determined in accordance with the formula in the first agreement.

In 2018, Boyne decided to purchase the operating properties it had previously leased, financing the purchase with significant debt. The debt caused the 2019 value under the repurchase formula to turn negative. Nothing under either settlement agreement prohibited the purchase, but Plaintiff sued, alleging that once the formula turned negative, the phrase "unless

### Related People

Justin G. Klimko  
Shareholder

Maxwell G. Shuart  
Associate

Shanika A. Owens  
Shareholder

Jennifer E. Consiglio  
Shareholder

Laura E. Johnson  
Shareholder

### Related Services

Business

Corporate and Finance

## CLIENT ALERTS

---

otherwise agreed” obligated Defendants to negotiate an alternative valuation formula. Defendants moved to dismiss Plaintiff’s claim, but the trial court and the Court of Appeals allowed the claim to proceed, finding there was a question of fact as to whether the covenant of good faith and fair dealing applicable to all contracts was breached by Defendants’ refusal to negotiate an alternate valuation formula.

The Michigan Supreme Court, in a unanimous decision (with one recusal), reversed the lower courts, finding that the parties “agreed to an unambiguous formula to calculate the plaintiff’s redemption price.” The Supreme Court took note of earlier Court of Appeals cases holding that where a contract makes the manner of performance a matter of one party’s own discretion, the covenant of good faith and fair dealing applies to the exercise of that unilateral discretion. Here, the phrase “unless otherwise agreed by the Parties” created no unilateral discretion. The phrase simply allowed the parties to revise the contract, if they *mutually* agreed, in the future. The Supreme Court ruled that the lower courts’ holdings in this case would have “effectively transformed the implied covenant of good faith and fair dealing into an independent cause of action that [could] be asserted in the absence of an underlying contractual duty or obligation.” The Court held that such a finding would exceed the scope of the implied covenants as laid out in prior Michigan Court of Appeals precedent, and that the Plaintiff did not state a valid claim for breach of contract on that basis. Stated plainly, an express contractual term cannot be replaced by the implied covenant of good faith and fair dealing. The Supreme Court’s entire opinion can be read [here](#).

The Michigan Supreme Court’s ruling is consistent with existing Michigan contract law. Parties to a contract may always mutually agree to modify their agreement. The phrase “unless otherwise agreed” simply articulated that right, but the parties would have had the right whether or not that phrase was included. It did not confer on Boyne the ability to unilaterally determine the purchase price and could not compel Boyne to negotiate a formula different than the one on which the parties had already agreed.

Members of Butzel’s Corporate and Finance Team participated in the preparation of an amicus brief submitted in this case by the Business Law Section of the State Bar of Michigan at the invitation of the Michigan Supreme Court. The Court’s opinion was in accordance with the positions taken in the amicus brief.

Please contact the authors of this Client Alert or any other member of our Corporate and Finance Team with any questions.

**Justin G. Klimko**

313.225.7037

[klimkojg@butzel.com](mailto:klimkojg@butzel.com)

**Maxwell G. Stuart**

313.983.6935

[stuart@butzel.com](mailto:stuart@butzel.com)

## CLIENT ALERTS

---

**Shanika A. Owens**

313.983.6908

[owens@butzel.com](mailto:owens@butzel.com)

**Jennifer E. Consiglio**

248.593.3023

[consiglio@butzel.com](mailto:consiglio@butzel.com)

**Laura E. Johnson**

248.593.3014

[johnson@butzel.com](mailto:johnson@butzel.com)