

Injunctions as a Business Tool

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With the advent of e-mail, Blackberries, cell phones, instant messaging and other technologies, business today moves at an incredibly fast pace. Decisions are made and strategies implemented quickly and efficiently. Unfortunately, the deliberate pace of the traditional lawsuit has not kept pace.

We are a society which seeks to resolve disputes in courtrooms, not on the street. Unfortunately for most businesses initiating litigation, however, what they hoped to be a blitzkrieg strike often bogs down into trench warfare, with attrition and endless delays seemingly the norm. By the time that the case is finally resolved, many initial participants are gone, the initial reasons for fighting largely forgotten and the costs of continuing the battle disproportionate to the likely gain. Yet, there seem to be few viable alternatives when parties are at an impasse. One approach to consider is the possibility of seeking injunctive relief from a court.

Injunctions are court orders either compelling a party to do something or prohibiting it from doing something. They can be powerful devices, up to and including shutting down a competing business (such as in the Napster case a few years ago). Common situations calling out for injunctions are those in which even a brief delay will render any litigation useless, such as when a salesman walks out the door with a customer list and new product specs, or the strikers are blocking the entrances to the plant, or a competitor is wrongfully using a trademark to compete.

There are many reasons to seek injunctive relief: (1) it expedites the process by forcing all involved, including the court, to focus on the case very quickly. This attention will, alone, often result in early substantive settlement discussions, thus significantly reducing overall litigation costs and generating a faster ultimate disposition; (2) the entire case could be resolved within a month or two since, in most instances, the grant or denial of injunction effectively disposes of the case; and (3) the mere existence of the case compels the defendant to commit considerable time and resources into defending a matter where there is likely little or no "upside." The need to defend against a request, combined with the pressures of the threatened injunction, will often expedite serious settlement discussions.

The McNees Injunction Group was created to serve clients' needs for immediate resolution of important disputes. The Group, consisting of ten litigators from various practice groups in the firm (such as Business Litigation, Intellectual Property, Labor and Employment, and Construction) is uniquely poised to represent clients in these types of cases. They can utilize extensive firm resources dedicated to this practice area and can draw on our relationship with the American Law Firm Association to be in court anywhere in the country within an extremely short time, moving almost as fast as the client can convey the needed information.

As disputes arise, and options are considered, then, businesses should not forget to weigh the possibility

of seeking injunctive relief. In doing so, the McNees Injunction Group stands ready to assist in deciding how to proceed.

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