



Business Litigation

Theme Introduction

By Gerard V. Mantese

New technologies, new energy forms, and new (artificial) intelligence are on the horizon; and some are already here. They will be harnessed by our clients' inventions and creativity, by our pen, and by our judicial system. And while new business ventures will transform our world, some concepts will remain constant, such as the aspiration for equal justice for all, good faith, and the rule of law. As Cicero said 2,000 years ago, "The foundation of justice is good faith."

Business litigation focuses on the nuances of an ever-developing body of jurisprudence layered on an ever-developing array of commercial activities. This makes our work challenging and vital to business and to the world.

Biographies of Albert Einstein and Nikola Tesla drive home how independent, hardworking, and visionary they were. Business lawyers are also visionaries, as we help business people pursue their goals. Some Native American cultures conceived of dream catchers, a web of material from nature that fostered good dreams. We too foster the dreams of our clients. There can be no faltering or flagging of energy in our quest. Employees, employers, and society at large depend on us. Regret and dreams dissolved await us if we neglect our duty. As the childhood poem says:

Mr. Meant-to has a comrade,
And his name is Didn't-do;
Have you ever chanced to meet them?
Did they ever call on you?

These two fellows live together
In the house of Never-win,
And I'm told that it is haunted,
By the ghost of Might-have-been.

The authors in this issue have researched penetrating articles on business litigation. Douglas Toering and Ian Williamson lead with a discussion of how business courts have operated in the seven years since they were implemented and how they have contributed to specialized and predictable decisions in business cases. Toering was a pioneer in helping to establish business courts, and he and Williamson have been instrumental in the courts' development in their work with the State Bar of Michigan Business Law Section.

Dan Sharkey and Alexandra Stan describe their list of the top 10 cases that have impacted business litigation over the past decade, including issues of shareholder oppression, non-compete agreements, and indemnity agreements.

Emily Fields and I trace the history of the business judgment rule, examine how it has evolved over the past 200 years, and explain how it can be misapplied when directors have a personal stake in the subject transaction.

Finally, Linda Watson and Mariah Mumford discuss different theories of computing lost profits and explain the approaches that courts have taken in evaluating the reasonable certainty of the calculations.

We hope you will find these articles insightful and valuable for years to come. ■



Gerard V. Mantese is a partner at Mantese Honigman, PC, with offices in Troy, Michigan; New York; and Missouri. He practices in the area of business litigation, focusing on shareholder and member disputes, fiduciary duties, contracts, real estate, and partnership litigation, and he has published extensively on these issues.