



Business Litigation 2010:
Unlocking Successful Strategies
for Wisconsin Companies

**Preparing For Immediate Action:
Expedited Proceedings And
Injunctive Relief**
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**When Crises Dictate Immediate
Litigation Solutions**

- Theft of trade secrets
- Violations of employee/executive non-competes
- Patent, copyright, trademark and trade dress infringement
- Termination of dealerships and other business relationships
- Supply interruption
- Change of business entity control
- Antitrust
- Impending bankruptcy

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When Expedited Judicial Relief May Be Necessary

- The other side behaves unreasonably
- Negotiations have failed or are not possible
- Delay is unacceptable, and judicial help is the only available remedy
- A need to take firm action and demonstrate strong will



Anticipation of Injunction Proceedings

- Educate and prepare management
- Build a good record
- Evaluate impacts of business decisions and plan for the possibility of expedited proceedings
- Outline and organize your case and prepare your team in advance
- Plan a strategy
- Consider the attorney-client privilege
- Preserve documentation and gather evidence
- Identify and interview potential witnesses
- Consider and plan for possible expert testimony
- Select qualified legal counsel with the necessary time and resources
- Manage internal and external communications
- Consider options



Temporary Restraining Orders

- At a minimum certify that a good faith attempt has been made to give notice to the defendant or its counsel or, if not, why notice should not be required
- Evidentiary support in the form of an affidavit or verified pleading is required
- A TRO will be issued only if necessary to preserve the status quo and minimize irreversible harm pending a preliminary injunction hearing
- A TRO will be of limited duration
- A TRO must be specific and narrowly tailored



Preliminary Injunctions

- Notice required
- Factual support
- Potential evidentiary hearing
- Preliminary Injunction Criteria
 - Whether plaintiff has some likelihood of succeeding on the merits of any of its claims at trial
 - Whether plaintiff will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue
 - Whether the threatened injury to plaintiff outweighs the threatened harm the injunction may inflict on the defendant
 - Whether the granting of the injunction will disserve the public interest
- Bond
- Appealable



Enforcement of Preliminary Injunction

- Civil contempt
- Damages caused by the violation plus costs, including reasonable attorneys' fees