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# Injunctive relief: recent developments in Illinois law

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While many of us tend to think of the body of law addressing injunctive relief in Illinois as generally static, in actuality, like the rest of the common law, it is constantly evolving. True, the developments are usually modest and right at the margins, but like any changes in the law, practitioners need to keep abreast of them. To that end, every practitioner in this area should be aware of these five recent developments in the Illinois state and federal courts.

1) Illinois appellate courts split over whether irreparable harm is contingent upon a finding of no adequate remedy at law.

Most of us understand that the preliminary injunction movant must establish both irreparable injury and no adequate remedy at law in order to succeed. The 2nd and 4th District appellate courts are now at odds about whether irreparable harm is contingent on the absence of an adequate remedy at law. In *Hensley Const., LLC v. Pulte Home Corp.*, 399 Ill. App. 3d 184 (2d Dist. 2010), the 2nd District held that these two factors are interdependent. Specifically, the court found that the plaintiff could not show irreparable harm, opining that irreparable harm "occurs only where the remedy at law is inadequate, meaning that monetary damages cannot adequately compensate the injury and the injury cannot be measured by pecuniary standards."

Subsequently, in *Clinton Landfill, Inc. v. Mahomet Valley Water Authority,* 2010 WL 5387487 (Ill. App. Ct. 4th Dist. Dec. 23, 2010), recognizing the opinion in Hensley, and noting that "[s]uch approach appears to combine the irreparable-harm factor with the no-adequate-remedy-at-law factor, the 4th District took the opposite stance.

Choosing to join the current state of the law in the 1st District, the *Clinton Landfill* court concluded that whether a party can show irreparable harm and whether it has an adequate remedy of law are two distinct factors, to be analyzed separately by the court.

2) In noncompete cases, status quo maintained from date of employment termination.

In *Citadel Investment Group, LLC v. Teza Technologies LLC*, 398 Ill. App. 3d 724 (1st Dist. 2010), the 1st District held that the violation of a post-employment noncompete does not extend the duration of a restrictive covenant.

Citadel sought to enjoin its former employee from violating such a covenant for the prescribed nine-month period, starting on the date the injunction issued. The court held that, absent a contractual provision that stated otherwise, the period of time during which injunctive relief was appropriate ran from the date of termination, not from the date the injunction issued. Thus, by seeking injunctive relief five months after termination of employment, the employer was only entitled to an injunction for the balance of the restricted period — four months in this case.

3) Jurisdictional questions are key for courts to enjoin state agencies and entities they oversee.

Two recent cases emphasized the general rule that Illinois circuit courts do not have original jurisdiction over certain administrative proceedings, such that they may enjoin the actions of the entities that state administrative bodies oversee. In *Sheffler v. Commonwealth Edison Co.*, 399 Ill.App.3d 51 (1st Dist. 2010), the plaintiff sought injunctive relief in the Cook County Circuit Court against ComEd's failure to provide emergency service to Chicago residents with medical needs during a power outage. The court held that it lacked original jurisdiction to issue such relief since it is the Illinois Commerce Commission that has authority to hear issues relating to utility service.

In a related case, *Bartlow v. Shannon,* 399 Ill.App.3d 560 (5th Dist. 2010), the plaintiffs sought to enjoin the enforcement of the Illinois Employee Classification Act (IECA) by the Illinois Department of Labor (DOL) for alleged due process violations. The trial held that it lacked jurisdiction to enjoin the actions of the DOL granted by the IECA. Reversing, the 5th District held that the plaintiffs did not seek to enjoin the decision of the DOL, but rather the enforcement of the IECA until its constitutionality could be assessed on the merits. Accordingly, the court held, the circuit court had jurisdiction to address the due process challenges.

4) What to do when preserving the status quo is problematic in its own right?

While preliminary injunctions are intended to preserve the status quo pending the outcome of a dispute, a unique situation arises when the status quo itself is problematic, or even illegal. The 7th U.S. Circuit Court of Appeals recently faced this dilemma in *Int'l Br. Of Teamsters Airline Div. v. Frontier Airlines, Inc.,* 628 F.3d 402 (7th Cir. Dec. 13, 2010). In *Frontier,* the Teamsters union brought suit after Frontier announced that it would be shifting certain maintenance work from away from its organized employees.

The Teamsters successfully procured a preliminary injunction to keep Frontier from moving the work. However, at the time of the suit the Teamsters were only supported by roughly 25 percent of the bargaining unit they were representing. The 7th Circuit criticized the district court for exercising its equitable jurisdiction in a manner that preserved "what may well be an illegal status quo — a union supported by only a fourth of the bargaining unit yet acting as the bargaining representative of that minority."

5) Agreed injunctions do not yield prevailing parties.

It is not uncommon for parties to negotiate an agreed injunction. Does the party receiving the benefit of the injunction become a prevailing party for purposes of an award of attorney's fees? The Northern District of Illinois held that the answer is no.

Over the course of the litigation in *RNA Corp. v. Proctor & Gamble, Co.,* No. 08 C 5953, 2010 WL 4237838 (N.D. Ill. Oct. 21, 2010), the parties entered into an agreed preliminary and then a permanent injunction. Both parties subsequently sought attorney fees, asserting that they were the prevailing party under the contract. In denying the claims for attorney fees, the court held that "[w]ithout a finding of liability or its absence, no prevailing party can be determined and, without a prevailing party, no attorneys' fees can be awarded according to statute."

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