Katten Muchin Rosenman LLP

The Litigation Reporter

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Recent Noteworthy Decisions

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Bankruptcy

Conversion From Chapter 7 To Chapter 13 May Be Denied Due To Debtor's Bad Faith

The Sixth Circuit has rejected a debtor's argument that 11 U.S.C. § 706(a) provides an absolute right to convert a Chapter 7 proceeding to Chapter 11, ruling that conversion may be denied due to the debtor's bad faith. While acknowledging a split in authority, the court found the requirement of good faith consistent with its earlier ruling requiring good faith in the filing of a Chapter 13 petition. The court also noted the language of the statute that a debtor "may" rather than "shall be entitled to" convert. Finding the legislative history of § 706(a) inconsistent, the court ruled that "common sense dictates that the bankruptcy court should have authority to police the integrity of its proceedings." (In re: *Copper*, 426 F.3d 810 (6th Cir. 2005))

Business Law

Actual Knowledge Required For Claims Of Tortious Interference

A tour boat company brought multiple claims, including tortious interference with current and prospective business relationships, against the lessee and driver of a motor coach for the alleged dumping of waste off a local bridge that landed on the tour boat. The trial court dismissed the tortious interference claims against the defendants, in part because the plaintiff had not alleged that defendants had actual knowledge of the business relationship with which they had allegedly interfered. The court rejected the plaintiff's "constructive knowledge" argument that, given the amount of tour traffic along the river, defendants should have known that the dumping of waste would interfere with plaintiff's contracts with currently ticketed passengers or future contracts with prospective passengers. Rather, the court found it necessary that a plaintiff plead actual knowledge of the specific contract or business relationship with which a defendant has allegedly interfered. (*Mercury Skyline Yacht Charters v. Dave Matthews Band, Inc.,* No. 05 C 1698, 2005 WL 3159680 (N.D. Ill. Nov. 22, 2005)) (slip copy)

Employment

Supervisor May Not Be Discharged For Failing To Dissuade Employee From Seeking Worker's Compensation

The Supreme Court of Pennsylvania held that a supervisory employee, even though employed on an at-will basis, may not be terminated for refusing to discourage another employee from seeking worker's compensation benefits. Prior Pennsylvania case law established a "clear public policy" that prohibits employers from terminating an employee for seeking worker's compensation benefits. In the matter at bar, the Court held that as a "self-evident" and "necessary corollary" an employer may not fire a supervisory employee

for failing and refusing to dissuade a subordinate from seeking such benefits. In affirming the trial court's wrongful discharge award to the supervisory employee, the Court noted that it was loathe to "erode an employer's inherent right to operate its business as it chooses," but that exceptions to the at-will employment doctrine are needed in limited circumstances to further legitimate public policy goals. (*Rothrock v. Rothrock Motor Sales*, 883 A.2d 511 (Pa. 2005))

Court Invalidates Ordinance Requiring "Labor Peace Agreements"

An association of transportation providers sought to enjoin enforcement of a county ordinance that would have required that businesses contracting with the county to provide transport services to the elderly and disabled negotiate "labor peace agreements" with any union seeking to organize employees working under those county contracts. The Seventh Circuit reversed the trial court's ruling in favor of the defendant county and held that the ordinance was preempted by the National Labor Relations Act. The court recognized that the ordinance -- the stated rationale of which was avoidance of work stoppages -- might have been upheld if the agreements constituted "a reasonable, good-faith measure" to enable the county to get better service from its contractors. The court determined, however, that the challenged agreements were overbroad, affecting all employees of companies working on the county contracts, and not just those employees whose work exclusively related to the county contracts. Furthermore, the court found that the agreements were not narrowly tailored to avoid work stoppages, which could be reduced through contractual remedies such as strong sanctions for service interruptions. Based on these factors, the court found that the ordinance was calculated to result in increased unionization and was therefore preempted by the NLRA. (*Metro. Milwaukee Assoc. of Commerce v. Milwaukee County*, No. 05-1531, 2005 WL 3275787 (7th Cir. Dec. 5, 2005))

Employer's Alleged Oral Promise Found Unenforceable For Vagueness

A district court found that a former employee was not entitled to a termination payout of two percent of the value of her former employer based on a prior statement by the firm's president that the employee was "going to get two percent of" the business. Although the court found that an oral employment contract had been formed and the employee had been eligible for and was paid a bonus under an executive bonus program, it held that there was an insufficient factual basis to find that she was also entitled to a payout tied to the value of the firm upon her termination. The court relied on the fact that the statement failed to specify what type of interest was created or how that interest would be calculated, and that the plaintiff failed to provide any evidence, other than her own subjective belief, supporting her interpretation of the president's statement. (*Hull v. Paige Temp. Services, Inc.*, No. 04 C 5129, 2005 WL 3095527 (N.D. Ill. Nov. 16, 2005)) (slip copy)

Insurance

Subrogated Insurer Entitled To Prejudgment Interest

A New York Federal Court has granted a subrogated insurer prejudgment interest on its claim against a shipper that failed to deliver goods destroyed in a truck fire. Noting that under the applicable federal law, the timing and rate of prejudgment interest are left to the court's discretion, the court awarded interest from the date of expected delivery and at a rate calculated with reference to "interest on short-term risk free obligations," which the court found to be 2.1%, rather than at the higher New York State statutory rate of 9%. (*Atlantic Mutual Insurance Co. v. Napa Transportation, Inc.,* N.Y.L.J., December 1, 2005 at 28, col. 1 (S.D.N.Y. 2005))

Seventh Circuit Distinguishes Between "Duty to Defend" And "Duty To Indemnify"

A plaintiff sought indemnification from its insurer for a payment it made to reimburse another business for costs arising from the insured's defective product. The trial court had granted summary judgment for the insurer, finding that because the insurer's duty to defend had not been triggered -- because the payment did not arise from "a suit" as required by the policy -- the insurer automatically had no duty to indemnify the reimbursement payment. The Seventh Circuit, however, found that the trial court had erred in holding that the duty to indemnify is automatically eliminated when no duty to defend is triggered. In particular, the court focused on the fact that the policy's language regarding the insurer's duty to indemnify, in contrast to its duty to defend, was not limited to payments made pursuant to "suits." (*Sokol and Co. v. Atlantic Mutual Ins. Co.*, 430 F.3d 417 (7th Cir. 2005))

Patent

Cease And Desist Letter Does Not Confer Personal Jurisdiction

The U.S. District Court, District of Utah, held that a New York-based defendant patent holder did not subject itself to the personal jurisdiction of Utah courts merely by sending to a Utah-based plaintiff letters offering to license the patent and demanding that the Utah plaintiff cease and desist from alleged patent infringement. In dismissing plaintiff's action for a declaratory judgment, the court held that defendant's correspondence, alone, does not satisfy the due process inquiry concerning contact with the forum state sufficient to warrant the exercise of personal jurisdiction. Basic principles of fair play and substantial justice permit a patentee to inform foreign parties of the patentee's patent rights, and to identify suspected infringement, without subjecting the patentee to suit in that foreign forum. (*Overstock.com v. Furnace Brook*, No. 2:05-CV-00697, 2005 U.S. Dist. LEXIS 25983 (D. Utah. Oct. 21, 2005))

The Litigation Reporter summarizes noteworthy decisions selected by the Contributors. Its contents do not constitute legal advice. For more information on any of the decisions discussed, contact Bruce M. Sabados at bruce.sabados@kattenlaw.com, Jay W. Freiberg at jay.freiberg@kattenlaw.com, or Gil M. Soffer at gil.soffer@kattenlaw.com.

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