# REMEDIES: Injunctions, money damages, mediations and others

Peter Letzmann

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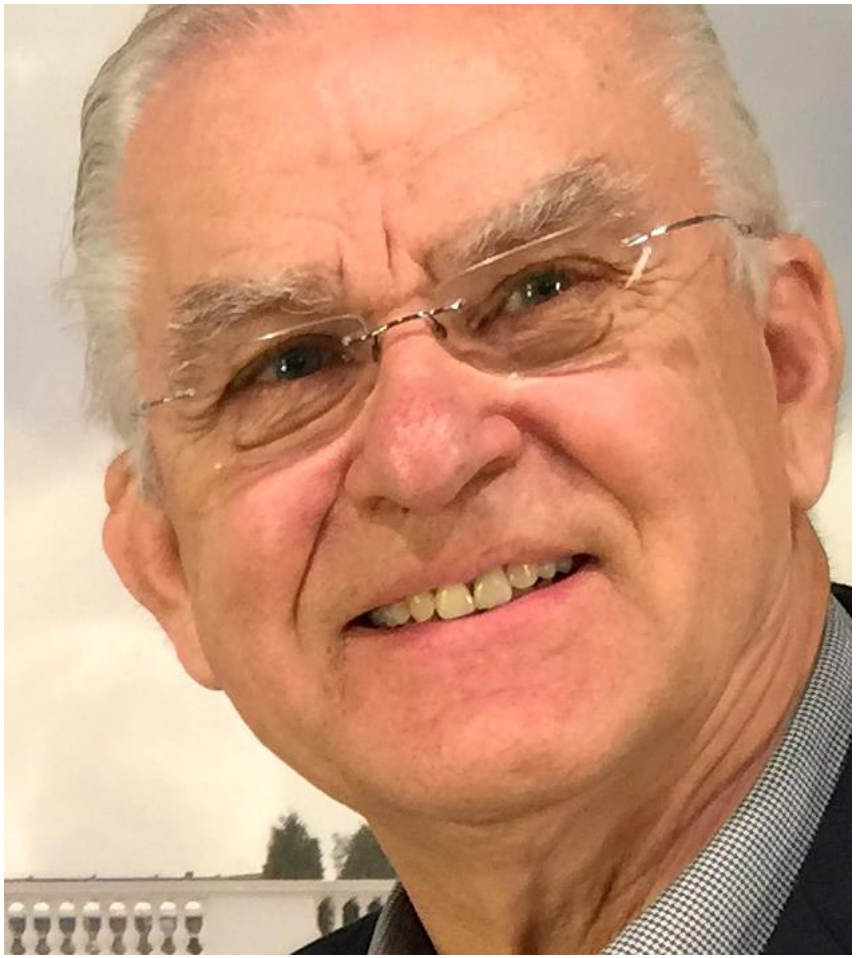
# Peter Letzmann



- 248 705-9901
- peter@letzmann.com
- www.letzmann.com
- See conference program/agenda for bio information

# INJUNCTION

- An injunction is a court order requiring a person to do or cease doing a specific action.

# Two Types of Injunctions

- Basically, there are two types of injunctions: a *preliminary injunction* and a *temporary restraining order* (TRO).
- The purpose of both is to maintain the status quo -- to insure a plaintiff that the defendant will stop from acting in the harmful, complained-of way until further judicial proceedings are available.

# Temporary Injunctions

- Temporary restraining orders and preliminary injunctions are temporary injunctions. They are issued early in a lawsuit to maintain the status quo by preventing a defendant from becoming insolvent or to stop the defendant from continuing his or her allegedly harmful actions.
- Choosing whether to grant temporary injunctive relief is a discretionary power of the court.

# Extraordinary

- It is an extraordinary remedy that courts utilize in special cases where preservation of the status quo or taking some specific action is required in order to prevent possible injustice.

# Balance

- Injunctive relief is a discretionary power of the court in which the court, upon deciding that the plaintiff's rights are being violated, **balances** the irreparability of injuries and inadequacy of damages if an injunction were not granted against the damages that granting an injunction would cause.

# Discretion/Balance/Test

- There is a balancing test that courts typically employ in determining whether to issue an injunction. The defendant's 5th Amendment due process rights are weighed (heavily) against the immediacy of the harm allegedly done to the plaintiff (i.e., how badly does the plaintiff need the injunction).

# Bond

- In many jurisdictions, plaintiffs demanding an injunction are required to post a bond.

# Notice

- When it is possible, the defendant must always be put on notice of the injunction hearing, and the duration of the injunction is typically as temporary as possible.

# Permanent Injunction

- Permanent injunctions are issued as a final judgment in a case.

# Enforcement

- An individual who has been given adequate notice of an injunction but fails to follow the court's orders may be punished for contempt of court.
- Failure to comply with an injunction may result in being held in contempt of court. *See, e.g.,* Roe v. Wade 410 US 113 (1973).

# Equity Remedy

- An injunction is an equity remedy and as such is available only in cases of *in-personam* jurisdiction (not in *in-rem* proceedings).
- See. Rule 65 of the Federal Rules of Civil Procedure.

# MONEY DAMAGES

- A remedy in the form of monetary compensation to the harmed party.

# Cause of Action: Negligence

- Duty
- Breach (or Violation) of Duty
- Proximate cause (related or cause of the injury)
- Damages

# Damages

- Damages, in a legal sense, is the sum of money the law imposes for a breach of some duty or violation of some right.

# Two types of damages

- Generally, there are two types of damages: compensatory and punitive. (The term "damages" typically includes both categories, but the term, "actual damages" is synonymous with compensatory damages, and excludes punitive damages.)

# Compensatory damages

- Compensatory damages, like the name suggests, are intended to compensate the injured party for his loss or injury.

# Punitive damages

- Punitive damages are awarded to punish a wrongdoer. There are other modifying terms placed in front of the word damages like "liquidated damages," (contractually established damages).
- There are general principles governing what types of damages are awarded. It is generally recognized, for instance, that punitive damages are not available for breaches of contract except when it is proven that the breach was wanton, willful and deliberate

# Multiple damages

- For certain types of injuries statutes provide that successful parties should receive some multiple of their "actual damages" -- e.g., treble damages.

# Nominal damages

- “Nominal damages" (where the court awards a nominal amount such as one dollar).

# MEDIATION

- Mediation is a voluntary process that restores communication so people can solve their own problems and make peace with each other. We provide a neutral environment in which a trained peacemaker (mediator) leads people through a process of discussion so that they can resolve their differences. We help people communicate with each other so that they can reach agreement

# What it is not?

- Arbitration
- Litigation



# Advantages of Mediation

- Does not alienate the parties, most of the time
- Costs less
- Takes less time
- Decisions usually on the same day
- Decision is made by the parties, not imposed by a third person
- Greater chance for compliance with agreement.

# How it works?

- There is an issue that needs to be decided
- To court or directly to mediation
- If to court the order or stipulate to mediation
- At mediation talk to an intake worker
  - Describe the nature of the dispute
  - Identify the parties
  - Set time and place for location
  - Mediate

# Get ready for mediation

- Familiarization with the process
- Gather documents that relate



# The mediator's role

- Keep parties with in the process
- Not to make a decision
- Explore solutions
- Write up an agreement
- Give the agreement to the court (that will usually end the case)

# Show up for the mediation

- Present your case; what you want and why
- Listen to the respondent's case
- Identify the issues
- Negotiate the issue
- Write up the agreement
- Submit the agreement to the court

# Enforcement