



Top Business Cases of 2022

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Presenters



Nathan Baum

Partner

Recognized by *D Magazine* as a "Best Lawyer Under 40" and *Thomson Reuters* as a "Texas Rising Star," Nathan Baum is a partner in the firm's commercial litigation group. Nathan has worked his entire career at Norton Rose Fulbright. Nathan has extensive experience successfully representing companies in both federal and state court litigation. In particular, Nathan's practice focuses on complex business litigation, with an emphasis on commercial disputes, employment, oil and gas and antitrust litigation. Nathan has significant trial and arbitration experience, including an arbitration victory for an oil and gas client in which the arbitrator awarded a complete victory including an award of attorneys' fees and costs.



Veronica Kendrick

Senior Associate

Veronica joined the Dallas office of Norton Rose Fulbright in 2016 as a member of the disputes group. Focusing her practice on commercial litigation, she has represented hospital systems, national financial institutions, large movie theater chains, telecommunications companies, and publicly-traded companies in federal, state, and arbitration forums throughout the country. Her experience includes a broad spectrum of subject matters, including healthcare disputes, complex contractual disputes, antitrust cases, theft of trade secrets cases, construction litigation, defending claims under telemarketing and communications laws, and employment disputes.



Jackie Baker

Associate

Jackie Baker is an associate in Norton Rose Fulbright's Dallas office. Jackie joined Norton Rose Fulbright in 2018 and is a member of the firm's commercial litigation practice group. She has experience in a variety of complex commercial and intellectual property matters, including breach of contract, fraud, misappropriation of trade secrets, False Claims Act, copyright infringement and patent infringement cases.

RESTRAINTS OF TRADE

AMC ENTERTAINMENT HOLDINGS, INC., ET AL.
V.
IPIC-GOLD CLASS ENTERTAINMENT, LLC, ET AL.

SUPREME COURT OF TEXAS – JANUARY 14, 2022

Holding: Appellate Court Judgment Reversed; Judgment for Petitioner Rendered

- A plaintiff seeking damages under Section 1 of the Sherman Act—and by extension the Texas Antitrust Act—must present evidence tending to exclude the possibility that the alleged conspirators acted independently.
- Here, Respondent (Plaintiff below) alleged an implausible conspiracy resting on parallel conduct and suspicion.
- Because Respondent’s allegations did not tend to exclude the possibility that Petitioner acted independently, the allegations were not enough to survive summary judgment under federal or Texas antitrust law.

Lessons Learned from AMC v. iPic

- Refrain from communicating with competitors about shared business objectives.
- Ensure that there are justifiable business reasons for corporate actions that could be viewed as anticompetitive. Conduct that makes no business sense for a company acting alone—but makes business sense if a business is acting in concert with another—is evidence of an agreement to conspire.
- Train all employees to consider future litigation before putting anything in writing. Emails, calendar appointments, internal analyses, drafts, chats—all is discoverable in antitrust litigation.

TRADE SECRET PROTECTION



CAE INTEGRATED, L.L.C. v. MOOV TECHNOLOGIES, INC.

FIFTH CIRCUIT – AUGUST 9, 2022

Holding: Denial of Request for Preliminary Injunction Affirmed

- “Without any evidence that Meissner and Moov accessed or used data in the Google Drive” the remaining potential sources of customer identities were “Meissner’s personal knowledge or public sources.”
- “Any injunctions placing conditions on employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows.” Thus, “Meissner’s knowledge of whom he worked with while at CAE, absent other evidence, is insufficient to support a finding that he misappropriated trade secrets.”
- Even if CAE had established that Meissner or Moov misappropriated trade secrets, it failed to show the use or potential use of trade secrets. CAE contended that such use can be *inferred* from Moov’s success. The court found this inference, standing alone, insufficient to show that Moov used CAE’s trade secrets.

Lessons Learned from CAE Integrated v. Moov

- Procedures for wiping computers, including personal computers and cell phones should be implemented and followed.
- Early forensic analysis in trade secret litigation can be key.
- “Personal knowledge” of former customers identities, absent other evidence, may be insufficient to support a finding of misappropriation.

FTC Proposes Rule to Ban Noncompete Clauses

The FTC's new rule would make it illegal for an employer to:

- enter into or attempt to enter into a noncompete with a worker;
- maintain a noncompete with a worker; or
- represent to a worker, under certain circumstances, that the worker is subject to a noncompete.

INSURANCE COVERAGE FOR BUSINESS DISRUPTIONS



TERRY BLACK'S BARBECUE, L.L.C. V. STATE AUTOMOBILE INSURANCE

FIFTH CIRCUIT – JANUARY 5, 2022

Holding: Judgement on the Pleadings in Favor of Insurer Affirmed

- Coverage provision requiring “physical loss of property” means tangible alteration or deprivation of property—not the loss of use of the property for dine-in services.
- Coverage provision requiring a causal connection between property’s exposure to contagious disease and a civil authority order did not apply, because civil authority orders requiring closed dining rooms were not the result of Terry Black’s exposure to COVID-19.

Lessons Learned from Terry Black's v. State Auto

- Policy language (and contract language) is paramount; coverage will be denied where the facts do not match up to the language.
- Understand the limits of your Policy: “loss of property” is not the same as “loss of use of property”; “resulting from exposure of the premises to contagious disease” is not the same as “resulting from a contagious disease.”
- Plan for every eventuality: even the most extraordinary external forces will not override the plain language of a Policy.





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