



## Injunctive Relief Summary

### **I. Types of Injunctive Relief.**

Generally speaking, there are two types of relief a plaintiff can ask for in civil cases. The first is money damages. Most cases fall into this category. A good example is an auto accident. The jury decides, at a full trial on the merits, whether the plaintiff is entitled to money damages and, if so, in what amount.

The second type of relief is injunctive relief. An injunction is a court order that directs a party to do a particular thing or prohibits a particular thing. Injunctions are extraordinary remedies. They are not available in all cases; they are reserved for the extraordinary case.

There are three types of injunctions. First, a temporary restraining order, or TRO. These orders are only in place for a short time, such as ten days. They can be obtained ex parte, depending on the judge. This means that the plaintiff could go see the judge, without the defendant or the defendant's counsel being present, and get a TRO. If a TRO is granted, the plaintiff generally must post a bond. The bond is supposed to cover all harm that results from the wrongful issuance of a TRO, and can include attorneys' fees incurred in getting rid of the wrongful TRO. In short, a TRO is a high risk/high reward option. Success or failure in obtaining a TRO does not necessarily mean success or failure in obtaining a preliminary injunction.

The second type of injunction is a preliminary injunction (also called a temporary injunction in Kansas state courts). These injunctions are granted only after a full evidentiary hearing before a judge. Preliminary injunction hearings are held at the convenience of the court, usually within 30 60 days after a case is filed. Both sides

are present with counsel; and both sides have the opportunity to present evidence. Preliminary injunctions remain in place until a full trial on the merits, or until further order of the court. In Kansas and Missouri, a full trial on the merits generally happens 12 years after a case is filed. Like TROs, a bond must be posted.

Permanent injunctions are awarded by the court, but only after a full trial on the merits. The judge makes the decision, but may be guided by the jury's decision on factual issues. For example, if the jury decides that there are no trade secrets in a particular case, a judge is unlikely to grant a permanent injunction protecting trade secrets.

## **II. Standards Necessary to Obtain Injunctive Relief.**

Of the three types of injunctive relief, the most important is a preliminary injunction. To obtain a preliminary injunction, a plaintiff must generally show four things: (i) a likelihood of success on the merits; (ii) irreparable injury; (iii) a balancing of the harms to the parties weighs in favor of the plaintiff; and (iv) the public interest favors the injunction.

First, success on the merits. The plaintiff must show that the plaintiff is likely to win on the merits of whatever claims the plaintiff is advancing, plus a likelihood of success on the merits of whatever defenses the defendant is advancing. In a trade secrets case, for example, plaintiff must convince the court that there is a likelihood of success in establishing that there is a trade secret, something that is actually secret, and derives economic value from being secret.

Second, irreparable injury. Injunctive relief is extraordinary; most cases award damages. Plaintiff must show that money damages cannot be readily ascertained or calculated, and that an injunction is necessary to protect the plaintiff.

Third, a balance of the harms. Injunctions are equitable, and subject to the court's discretion. The court must weigh the harm to the plaintiff if an injunction is not granted, and the harm to the defendant if an injunction is granted.

Finally, the public interest. If the parties have a contract, there is a strong public policy favoring the enforcement of contracts. If there are trade secrets involved, public policy favors protecting trade secrets. Competition, and all that implies, is also

a strong public interest.

To obtain a preliminary injunction, a plaintiff must persuade the court to rule in its favor on all four factors. To defeat an injunction, a defendant must win on only one factor.