CHAPTER 1. INTRODUCTION

- § 1:1 Introduction
- § 1:2 Topics featured
- § 1:3 Forms provided

CHAPTER 2. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS

I. ANALYSIS

- § 2:1 Overview
- § 2:2 Practice considerations—Reasons to include tortious interference claims
- § 2:3 Practice considerations—Reasons not to include tortious interference claims
- § 2:4 Practice considerations—Evidentiary advantages
- § 2:5 —Trial drawbacks
- § 2:6 Elements of a claim
- § 2:7 —Existing contractual relations
- § 2:8 —Prospective contractual relations
- § 2:9 —Who counts as a "third party"?
- § 2:10 —What is "impropriety"?
- § 2:11 —What counts as a "prospective" contractual relation?
- § 2:12 Damages
- § 2:13 —Lost profits
- § 2:14 —Punitive damages
- § 2:15 Defenses—Privilege of competition
- § 2:16 —Other privilege-like defenses

II. FORMS

A. JURY INSTRUCTIONS

- § 2:17 Jury instructions—Tortious interference with existing contractual relations—Pennsylvania
- § 2:18 ——Texas
- § 2:19 —Tortious interference with prospective contractual relations
- § 2:20 Jury interrogatories—Tortious interference with existing contractual relations
- § 2:21 —Tortious interference with prospective contractual relations

B. PLEADINGS

- § 2:22 Annotated complaint alleging tortious interference with existing and prospective contractual relations
- § 2:23 Answer with affirmative defenses

C. DISCOVERY

- § 2:24 Interrogatories
- § 2:25 Plaintiffs' Verified Second Amended Complaint alleging fraud in the inducement, intentional interference with contractual relations, and intentional interference with prospective economic advantage, among other causes of action; MJC America, Ltd., et al. v. Gree Electric Appliances, Inc., et al., No. CV13-04264-SJO*
- § 2:26 Plaintiffs' Trial Brief; MJC America, Ltd., et al. v. Gree Electric Appliances, Inc., et al., No. CV13-04264-SJO*
- § 2:27 Defendants' Trial Brief; MJC America, Ltd., et al. v. Gree Electric Appliances, Inc., et al., No. CV13-04264-SJO*
- § 2:28 Requests for production of documents
- § 2:29 Requests for admission
- § 2:30 Deposition checklist

CHAPTER 3. COMMON-LAW FRAUD AND NEGLIGENT MISREPRESENTATION

I. ANALYSIS

- § 3:1 Overview
- § 3:2 Fraud
- § 3:3 False representation of material fact
- § 3:4 Intent
- § 3:5 Justifiable reliance
- § 3:6 Damages
- § 3:7 Negligent misrepresentation
- § 3:8 Duty of care

II. FORMS

A. JURY INSTRUCTIONS

§ 3:9 Jury instruction for fraud

B. PLEADINGS

§ 3:10 Defendant's answer to alleged common-law fraud

C. DISCOVERY

§ 3:11 Interrogatories

CHAPTER 4. SECURITIES FRAUD AND BROKERAGE DISPUTES

§ 4:1	History of statutes and scope of discussion
§ 4:2	Practice considerations—Preparation and pleading
§ 4:3	—Dealing with agreements for binding arbitration
§ 4:4	—Discovery
$\S 4:5$	—Asserting claims under state or federal law
§ 4:6	—Advantages of federal securities laws
§ 4:7	—Disadvantages of federal securities laws (Why you won't miss $10(b)(5)$)
§ 4:8	Elements of federal securities claims
§ 4:9	—Failure to register under section 12(a)(1) of the Securities Act
§ 4:10	—Misrepresentations or omissions under sections 11 and 12(a)(2) Securities Act and 18 of the Exchange Act
§ 4:11	—Claims under Rule 10b-5
§ 4:12	Burden of proof in federal securities fraud claims
§ 4:13	What is a security?
§ 4:14	What claims are connected with a <i>purchase or sale</i> ?
§ 4:15	What is required to plead and prove "intent"?
§ 4:16	What is a <i>material</i> misstatement or omission?
§ 4:17	When is someone liable for participating in a violation?
§ 4:18	Damages—Generally
§ 4:19	Rescission
§ 4:20	Federal law and loss causation
$\S 4:21$	Supplementing pleadings with common-law claims
§ 4:22	Punitive damages
§ 4:23	Attorneys' fees
§ 4:24	Defenses—Statute of limitations
§ 4:25	—In pari delicto (Did your client participate in the misconduct?)
§ 4:26	—Waiver, estoppel, and ratification (Did your client decide to ride the market?)
§ 4:27	—Bespeaks caution and the prospectus defense (Did your client invest after full knowledge of the risks?)
§ 4:28	—Reliance (Did your client have sufficient knowledge of the truth?)

§ 4:29 —Statutory defenses

II. FORMS

A. JURY INSTRUCTIONS

§ 4:30 Jury instructions

B. PLEADINGS

§ 4:31 Securities arbitration claim

C. DISCOVERY

- § 4:32 FINRA document production lists
- § 4:33 Annotated request for information and production of documents as to excessive trading
- § 4:34 Annotated subpoena duces tecum
- § 4:35 Notice of 30(b)(6) deposition; Lawsuit alleging alter ego/de facto merger and successor liability
- § 4:36 Annotated request for information and production of documents as to misappropriation
- § 4:37 Annotated Motion and Order to Appear and Testify in FINRA arbitration

CHAPTER 5. INVESTMENT ADVISER MISCONDUCT

- § 5:1 Introduction—Investment Advisers Act of 1940
- § 5:2 Practice considerations—Obtaining a remedy
- § 5:3 —Federal vs. state regulation
- § 5:4 —Eligibility for registration "mid-sized" advisers
- § 5:5 Definition of an "investment adviser"
- § 5:6 —"Engaged in the business"
- § 5:7 —Providing advisory services concerning securities
- § 5:8 —"For compensation"
- § 5:9 Section 202(a)(11) Advisers Act exclusions
- § 5:10 —(A) Banks and bank holding companies
- § 5:11 —(B) Lawyers, accountants, engineers, and teachers
- § 5:12 —(C) Broker-dealers
- § 5:13 —(D) Bona fide publisher
- § 5:14 —(E) Advisers limited to U.S. government securities
- § 5:15 —(G) Family offices
- § 5:16 Adviser exemptions
- § 5:17 Advisers Act § 206—Antifraud provisions

- § 5:18 —Fiduciary duty of investment advisers
- § 5:19 Remedies for adviser misconduct

II. FORMS

A. JURY INSTRUCTIONS

- § 5:20 Fraud
- § 5:21 Fraud, deceit, and willful defined
- § 5:22 Scienter
- § 5:23 Constructive fraud
- § 5:24 Fiduciary duty
- § 5:25 Fiduciary relationship
- § 5:26 Duties owed to customer

B. PLEADINGS

§ 5:27 Statement of claim against investment advisor

C. DISCOVERY

§ 5:28 Claimant's request for production of documents

CHAPTER 6. EARLY RETIREMENT FRAUD

- § 6:1 Overview
- § 6:2 FINRA arbitration
- § 6:3 FINRA rules [Reserved]
- § 6:4 Suitability and communications
- § 6:5 Discretionary trading
- § 6:6 Federal securities law
- § 6:7 Misrepresentation
- § 6:8 Materiality
- § 6:9 Purchase
- § 6:10 Scienter
- § 6:11 Reliance
- § 6:12 Causation
- § 6:13 State securities law
- § 6:14 Misstatement
- § 6:15 Materiality
- § 6:16 Lack of knowledge
- § 6:17 Breach of fiduciary duty
- § 6:18 Contract fraud
- § 6:19 Brokerage firm liability
- § 6:20 Control person liability

- § 6:21 Respondent superior § 6:22 Agency
- § 6:23 Regulatory liability

II. FORMS

A. JURY INSTRUCTIONS

- § 6:24 Jury instruction for federal securities claim
- § 6:25 Jury instruction for Blue Sky Law claim
- § 6:26 Jury instruction for breach of contract claim
- § 6:27 Jury instruction for contractual fraud claim
- § 6:28 Jury instruction for breach of fiduciary duty claim
- § 6:29 Jury instruction for punitive damages claim

B. PLEADINGS

- § 6:30 Statement of arbitration claim against broker and brokerage firm
- § 6:31 Complaint to confirm arbitration award in federal court

C. DISCOVERY

- § 6:32 NASD Notice to Members 99-90
- § 6:33 Responses and objections to Rule 12506 document production list no. 2
- § 6:34 Claimants' first request for documents in arbitration proceeding
- § 6:35 Claimants' second request for documents and request for information in arbitration proceeding
- § 6:36 Claimant's motion to compel discovery
- § 6:37 Claimant's witness list and document letter a/k/a 20day exchange letter

CHAPTER 7. BREACH OF FIDUCIARY DUTY (GENERALLY)

- § 7:1 Legislative history and scope of discussion
- § 7:2 Practice pointers—Strategy, preparation, pleading, and proof
- § 7:3 Who owes fiduciary duties?
- § 7:4 Who owes fiduciary duties? Agents
- § 7:5 Who owes fiduciary duties? Trustees
- § 7:6 Who owes fiduciary duties? Partners

§ 7:7	Who owes fiduciary duties? Controlling corporate officers, directors, and shareholders
§ 7:8	Who owes fiduciary duties? Creditors
§ 7:9	Who owes fiduciary duties? Attorneys
§ 7:10	What constitutes a <i>breach of fiduciary duty</i> ? Duties of loyalty, full disclosure, and reasonable care
§ 7:11	Are you required to plead and prove "intent"?
§ 7:12	Secondary liability—When is someone liable for participating in a breach of fiduciary duty?
§ 7:13	Burden of proof
§ 7:14	Consequential damages
§ 7:15	Forfeiture of compensation
§ 7:16	Constructive trust
§ 7:17	Punitive damages
§ 7:18	Defenses—Statute of limitations
§ 7:19	—Ratification, waiver, and estoppel
§ 7:20	Uniform Fiduciaries Act—Third parties, acting in good faith, are permitted to rely on fiduciaries

II. FORMS

A. FORMS: JURY INSTRUCTIONS

- § 7:21 Fiduciary relationship as a matter of law
- § 7:22 Fiduciary relationship not established by law
- § 7:23 Liability of fiduciary (fraud, self-dealing, conflict of interest)
- § 7:24 Liability of fiduciary (sophisticated, commercial parties)
- $\S~7:25$ $\,$ Fiduciary liability where no fraud, self-dealing, conflict of interest alleged
- § 7:26 Jury instructions in lawsuit against corporate trustee alleging multiple counts and instances of breach of fiduciary duty (depleting trust assets); Morriss, et al. v. Wells Fargo Bank, et al., No. 12SL-PR0305

B. PLEADINGS

- § 7:27 Complaint alleging breach of fiduciary duty (trustee)
- § 7:28 Complaint against corporate trustee alleging multiple counts and instances of breach of fiduciary duty (depleting trust assets); Morriss, et al. v. Wells Fargo Bank, et al., No. 12SL-PR0305
- § 7:29 Plaintiff's memorandum opposing summary judgment by corporate trustee alleged to have committed breach of fiduciary duty (depleting trust assets);

Morriss, et al. v. Wells Fargo Bank, et al., No. 12SL-PR0305

C. DISCOVERY

- § 7:30 Interrogatories from plaintiff to defendant trustee
- § 7:31 Plaintiff's request for production of documents by defendant trustee
- § 7:32 Plaintiff's request for admissions by defendant trustee
- § 7:33 Subpoena duces tecum from plaintiff to principals of corporation

D. MISCELLANEOUS

§ 7:34 List of jurisdictions that have adopted the Uniform Fiduciaries Act

CHAPTER 8. ERISA FIDUCIARY LITIGATION

I. ANALYSIS

- § 8:1 Overview
- § 8:2 ERISA's contents
- § 8:3 Preemption of State Law Claims
- § 8:4 Fundamental fiduciary duties
- § 8:5 Loyalty
- § 8:6 Prudence
- § 8:7 Accordance
- § 8:8 Monitor
- § 8:9 Specific fiduciary duties
- § 8:10 Prohibited transactions
- § 8:11 Exemptions
- § 8:12 Bringing a claim

II. FORMS

A. JURY INSTRUCTIONS

§ 8:13 Fiduciary duty, fiduciary relationship, and breach of fiduciary duty

B. PLEADINGS

- § 8:14 Complaint
- § 8:15 Complaint Alleging Breach of Fiduciary Duty Violations against Employer and Plan Administrator

- under ERISA for inter alia Charging Excessive Administrative Fees; Abraha, et al. v. Colonial Parking, et al., Case No. 1:16-cv-00680-CKK
- § 8:16 Defendant Plan Administrator's Motion to Dismiss and Motion to Strike; Abraha et al. v. Colonial Parking, et al.; Case No. 1:16-cv-00680-CKK
- § 8:17 Plaintiffs' Memorandum Opposing Defendant Pan Administrator's Motion to Dismiss and Motion to Strike; Abraha et al. v. Colonial Parking, et al.; Case No. 1:16-cv-00680-CKK
- § 8:18 Defendant Employer's Memorandum Supporting Motion to Dismiss for Failure to State a Claim; Abraha et al. v. Colonial Parking, et al.; Case No. 1:16-cv-00680-CKK
- § 8:19 Plaintiffs' Memorandum Opposing Defendant Employer's Motion to Dismiss; Abraha et al. v. Colonial Parking, et al.; Case No. 1:16-cv-00680-CKK

C. DISCOVERY

§ 8:20 Request for production of documents

CHAPTER 9. BAD FAITH FAILURE TO DEFEND/SETTLE

I. ANALYSIS

- § 9:1 Overview
- § 9:2 Practice considerations—Standing, and the assignment of rights to third parties
- § 9:3 —Reasons for not pursuing bad faith claims
- § 9:4 —Strategic issues
- § 9:5 Elements of bad faith claims—Common-law bad faith
- § 9:6 —Statutory bad faith claims
- § 9:7 —Compensatory damages
- § 9:8 —Punitive damages
- § 9:9 Discovery in bad faith claims
- § 9:10 Defenses in bad faith claims—Statutes of limitation
- § 9:11 —Bona fide disputes of law
- § 9:12 —Plaintiffs' conduct

II. FORMS

A. PLEADINGS

§ 9:13 Complaint for first-party bad faith

§ 9:14 Complaint for bad faith refusal to settle third-party lawsuit

B. DISCOVERY

§ 9:15 Request for production of documents in first-party bad faith claim

C. MISCELLANEOUS FORMS

- § 9:16 Demand letter with deadline in third-party liability action
- § 9:17 Assignment of rights in third-party bad faith failure to settle/defend action

D. MOTIONS

- § 9:18 Annotated motion to compel production of documents in first-party bad faith action
- § 9:19 Annotated motion to compel production of documents in third-party bad faith action

CHAPTER 10. BUSINESS DEFAMATION

I. ANALYSIS

- § 10:1 Overview
- § 10:2 Business defamation
- § 10:3 False defamatory statement concerning plaintiff
- § 10:4 Publication
- § 10:5 Fault
- § 10:6 Injury
- § 10:7 Defamation per se
- § 10:8 Defenses
- § 10:9 Public v. private status
- § 10:10 Truth or substantial truth
- § 10:11 Privilege

II. FORMS

A. JURY INSTRUCTIONS

§ 10:12 Injurious falsehood

B. PLEADINGS

- § 10:13 Complaint for business defamation
- § 10:14 Complaint for business defamation—False e-mail

statement that developer of dietary supplement sells controlled substances

DISCOVERY

§ 10:15 Trade libel interrogatories

CHAPTER 11. UNFAIR COMPETITION

I. ANALYSIS

- § 11:1 Overview
- § 11:2 Uniform Deceptive Trade Practices Act of 1964
- § 11:3 The Clayton Act
- § 11:4 Passing off
- § 11:5 False advertising
- § 11:6 Price discrimination
- § 11:7 Tying and exclusive agreements
- § 11:8 Interlocking directorates
- § 11:9 State legislation
- § 11:10 Adoptions
- § 11:11 Remedies, damages, and penalties

II. FORMS

A. JURY INSTRUCTIONS

§ 11:12 Tying Agreement instructions

B. PLEADINGS

§ 11:13 Complaint—By competitor, for treble damages— Predatory pricing

C. DISCOVERY

§ 11:14 Annotated request by plaintiff for information and production of documents

CHAPTER 12. ANTITRUST VIOLATIONS

- § 12:1 Overview
- § 12:2 Sherman Antitrust Act of 1890
- § 12:3 Federal Trade Commission
- § 12:4 Rule of reason, per se violations, and the quick look analysis

- § 12:5 Restraint of trade
 § 12:6 Price-fixing
 § 12:7 Market allocations
 § 12:8 Boycotts
 § 12:9 Monopolies
 § 12:10 —Attempt to monopolize
 § 12:11 —Actual monopolization

§ 12:12

II. FORMS A. JURY INSTRUCTIONS

Merger Guidelines

- § 12:13 Jury instruction for price-fixing
 - B. PLEADINGS
- § 12:14 Complaint for monopoly
 - C. DISCOVERY
- § 12:15 Plaintiff's interrogatories for group boycotts

CHAPTER 13. INFRINGEMENT ON INTELLECTUAL PROPERTY

§ 13:1	Overview
§ 13:2	Elements of a patent infringement claim
§ 13:3	Elements of a trademark infringement claim—Use requirements
§ 13:4	—Likelihood of confusion
§ 13:5	—Trademark dilution
§ 13:6	Elements of a copyright infringement claim
§ 13:7	Damages/injunctive relief—Patent infringement
§ 13:8	—Trademark infringement
§ 13:9	—Copyright infringement
§ 13:10	Patent infringement defenses—Reverse doctrine of equivalents
§ 13:11	Trademark infringement defenses—Trademark abandonment
§ 13:12	Copyright infringement defenses—Fair use
§ 13:13	—Invalidity of copyright
§ 13:14	—Independent creation

II. FORMS

- A. JURY INSTRUCTIONS
- § 13:15 Jury instructions for patent infringement claim
 - B. PLEADINGS
- § 13:16 Complaint for copyright infringement
 - C. DISCOVERY
- § 13:17 Defendant's interrogatories in trademark dispute

CHAPTER 14. MISAPPROPRIATION OF TRADE SECRETS

I. ANALYSIS

- § 14:1 History of statutes and scope of discussion
- § 14:2 Practice considerations—Seeking injunctive relief
- § 14:3 —Pleading alternative theories of recovery
- § 14:4 Elements of a claim
- § 14:5 —What is a trade secret?
- § 14:6 ——Trade secret law protects "information"
- $\$ 14:7 ——Trade secrets must have identifiable economic value
- § 14:8 ——The information must be secret
- § 14:9 —What is misappropriation?
- $\S 14:10$ ——Improper acquisition of a trade secret
- § 14:11 ——Unauthorized use or disclosure of a trade secret
- § 14:12 —Burden of proof
- § 14:13 Damages—Compensatory damages
- § 14:14 —Disgorgement
- § 14:15 —Statutory penalties
- § 14:16 —Attorney's fees
- § 14:17 —Injunctions
- § 14:18 Defenses
- § 14:19 —Failure to meet required element of secrecy
- § 14:20 —Failure to prove misappropriation
- § 14:21 —Statute of limitations

II. FORMS

- A. JURY INSTRUCTIONS
- § 14:22 Jury instruction

B. PLEADINGS

- § 14:23 Complaint
 - C. DISCOVERY
- § 14:24 Interrogatories
- § 14:25 Requests for production of documents

CHAPTER 15. CIVIL CONSPIRACY

I. ANALYSIS

- § 15:1 Overview and practice considerations—Role of conspiracy theory in civil litigation
- § 15:2 —Preparation and pleading
- § 15:3 —Related claims
- § 15:4 Elements of a conspiracy claim
- § 15:5 —What unlawful agreements support conspiracy claims?
- § 15:6 —Who has capacity to conspire and can be found liable?
- § 15:7 —Requirement of an overt act in furtherance of the conspiracy
- § 15:8 —What is required to plead and prove "knowledge" and "intent"?
- § 15:9 Burden of proof
- § 15:10 Damages—Consequential damages—Joint and several liability
- § 15:11 —Attorney's fees and statutory damages
- § 15:12 —Punitive damages
- § 15:13 Defenses
- § 15:14 —Substantive defenses; failure to meet required elements
- § 15:15 —Statute of limitations

II. FORMS

A. JURY INSTRUCTIONS

- § 15:16 Jury instructions for civil conspiracy
 - B. PLEADINGS
- § 15:17 Civil conspiracy complaint
 - C. DISCOVERY
- § 15:18 Plaintiff's first set of interrogatories

§ 15:19 Plaintiff's request for production of documents

CHAPTER 16. CIVIL RICO

I. ANALYSIS

§ 16:21

§ 16:22

§ 16:23

§ 16:24

§ 16:25

§ 16:26

§ 16:1	Overview
§ 16:2	Practice considerations—Reasons not to bring Civil RICO claim
§ 16:3	—Advantages of state racketeering laws
§ 16:4	—Disadvantages of state racketeering laws
§ 16:5	—Preparation and pleading
§ 16:6	Elements of a claim
§ 16:7	—Who can be a "culpable person"?
§ 16:8	—What is required to plead and prove intent?
§ 16:9	—What is a "pattern" of racketeering activity?
§ 16:10	—What is "racketeering activity"?
§ 16:11	—What is a RICO "enterprise"?
§ 16:12	—How do you prove a RICO "conspiracy"?
§ 16:13	Damages
§ 16:14	—Treble damages
§ 16:15	—Attorney's fees
§ 16:16	Defenses—Statute of limitations
II. FO	ORMS
A.	JURY INSTRUCTIONS
§ 16:17	Pattern Jury Instructions—Civil RICO Claims
§ 16:18	Pattern Jury Interrogatories—Civil RICO Claims
В.	PLEADINGS
§ 16:19	Annotated RICO Standing Order for Case Statement
§ 16:20	RICO Case statement

Annotated RICO complaint
Answer with affirmative defenses

Plaintiff's first set of interrogatories

Plaintiff's request for production of documents

Requests for admission and genuiness of documents

DISCOVERY

Deposition checklist

CHAPTER 17. BREACH OF COVENANT NOT TO COMPETE

I. ANALYSIS

§ 17:1	Overview
-	
§ 17:2	No greater than required

- § 17:3 Undue hardship
- § 17:4 Geographic and temporal proximity
- § 17:5 Other means of support
- § 17:6 Injurious to the public
- § 17:7 Remedies
- § 17:8 Reformation
- § 17:9 Lost profits
- § 17:10 Liquidated damages
- § 17:11 Defenses—Waiver and selective enforcement

II. FORMS

A. JURY INSTRUCTIONS

§ 17:12 Jury instruction for claim of covenant not to compete—Damages

B. PLEADINGS

§ 17:13 Complaint for declaratory relief from covenant not to compete

C. DISCOVERY

§ 17:14 Plaintiff-employer interrogatories

CHAPTER 18. INTERNET AND SOFTWARE PIRACY

- § 18:1 Overview
- § 18:2 Elements of a claim
- § 18:3 —Burden of proof
- § 18:4 —Direct evidence of copying
- § 18:5 —What constitutes "substantially similar"
- § 18:6 —Distribution of unauthorized copies
- § 18:7 —Digital Millennium Copyright Act of 1998
- § 18:8 Damages—Injunctive relief

§ 18:9	——Preliminary injunction
§ 18:10	——Seizure of infringing copies
§ 18:11	——Permanent injunction
§ 18:12	——Destruction of infringing copies
§ 18:13	—Statutory damages
§ 18:14	—Actual damages
§ 18:15	—Attorney's fees and costs
§ 18:16	Defenses—Affirmative defenses—Innocent infringer
§ 18:17	— —Estoppel
§ 18:18	——Misuse of Copyright
§ 18:19	— —Fair use
§ 18:20	— — Making additional copies
§ 18:21	——Statute of limitations
§ 18:22	—The Digital Millennium Copyright Act of 1998— Safe harbor for internet service providers
§ 18:23	——Safe harbor for enhancing interoperability with other software
§ 18:24	 —Limitations on liability for material available online
§ 18:25	——Safe harbor for reverse engineering
§ 18:26	— —Exemptions
§ 18:27	— —Defense for copyright management information liability
§ 18:28	—Implied license
§ 18:29	—Abandonment
§ 18:30	—Common source and independent creation
II. FO	ORMS
A.	JURY INSTRUCTIONS
§ 18:31	Jury instructions for copyright infringement
В.	PLEADINGS
§ 18:32	Complaint for copyright infringement
§ 18:33	Answer with affirmative defenses for copyright infringement claim
C.	DISCOVERY
§ 18:34	Plaintiff's interrogatories to defendant
§ 18:35	Plaintiff's request for production of documents

CHAPTER 19. DISCOVERY IN BUSINESS TORT LITIGATION

I. ANALYSIS

§ 19:1	Overview
§ 19:2	Practice considerations—The expense of discovery in business tort cases
§ 19:3	—The changing landscape of discovery in the digital age
§ 19:4	—Increased discovery demands on counsel in business cases
§ 19:5	—Discovery abuses in business litigation
§ 19:6	Tools of discovery—Interrogatories
§ 19:7	—Requests for production from parties
§ 19:8	—Subpoenas for testimony and documents from third parties
§ 19:9	—Requests for admission
§ 19:10	—Depositions
§ 19:11	—Motions to compel discovery

II. FORMS

A. JURY INSTRUCTIONS

§ 19:12 Jury Instructions—Use of depositions in trial
 § 19:13 —Adverse inference instruction for failure to produce document

B. MOTIONS

- § 19:14 Annotated motion to compel answers to interrogatories and production of documents
 § 19:15 Annotated motion to compel answers to requests for admission
- § 19:16 Annotated motion to compel deposition

CHAPTER 20. TRIAL OF A BUSINESS TORT CASE

§ 20:1	Overview
§ 20:2	Practice considerations—The importance of themes in
	business tort cases
§ 20:3	—Demonstrative evidence
§ 20:4	—Motions in limine

§ 20:5 —Conduct of counsel during trial
§ 20:6 Elements of trial—Focus groups
§ 20:7 —Voir dire
§ 20:8 —Opening statements
§ 20:9 —Direct examination of fact and expert witnesses
§ 20:10 —Cross-examination
§ 20:11 —Closing argument

II. FORMS

A. JURY RESEARCH

- § 20:12 Sample prompting questions for focus group discussion
- § 20:13 Sample special jury questionnaire

B. MOTIONS

- § 20:14 Motion in limine to preclude evidence
- § 20:15 Motion to exclude expert witnesses as irrelevant and cumulative
- § 20:16 Motion to preclude inflammatory references during trial
- § 20:17 Motion to exclude expert witnesses based on Daubert

CHAPTER 21. MONEY DAMAGES AND PENALTIES IN BUSINESS TORT CASES

- § 21:1 Overview
- § 21:2 Practice considerations—Accounting support
- § 21:3 Proof of damages—Damage models
- § 21:4 —Profits
- § 21:5 —Damages multipliers
- § 21:6 Punitive damages—Generally
- § 21:7 —Availability
- § 21:8 —Conflict of laws
- § 21:9 —Case law
- § 21:10 —Limits on recovery
- § 21:11 Attorney's fees—The American rule
- § 21:12 Attorney's fee awards—Common fund and common benefit awards
- § 21:13 —By contract
- § 21:14 —By statute
- § 21:15 Damages defenses—Overview

- § 21:16 —The economic loss rule
- § 21:17 —Speculative damages

II. FORMS

- § 21:18 Sample verdict form in business torts case
- § 21:19 Sample trial court documents—Sample verdict form
- § 21:20 Motion for preliminary injunction
- § 21:21 Answer to motion in limine to exclude plaintiff's damages evidence

CHAPTER 22. PROVISIONAL REMEDIES AND EQUITABLE RELIEF IN BUSINESS TORT CASES

- § 22:1 Practice considerations—Equitable relief, provisional remedies, and other noneconomic relief
- § 22:2 Provisional remedies—Generally
- § 22:3 —Injunctive relief
- § 22:4 —Attachment
- § 22:5 —Garnishment
- § 22:6 —Sequestration
- § 22:7 —Receivership and dissolution
- § 22:8 —Other remedies
- § 22:9 Lien creation—Generally
- § 22:10 —Under common law and statute
- § 22:11 Statutory liens—Construction liens
- § 22:12 —Enforcement and priority of construction liens
- § 22:13 —Maritime
- § 22:14 —Enforcement and priority of maritime liens
- § 22:15 Lien creation—By contract
- § 22:16 Restitution—Availability of remedy
- § 22:17 —Money judgments
- § 22:18 —Asset-based relief
- § 22:19 Asset-based relief—Constructive trusts
- § 22:20 —Equitable liens
- § 22:21 —Subrogation
- § 22:22 Restraining, rescinding and compelling action by corporations—Mandamus, quo warranto, or civil actions in federal courts seeking similar relief

II. FORMS

A. PLEADINGS

- § 22:23 Complaint for preliminary & permanent injunctive relief, declaratory judgment & writs of quo warranto
 - B. MOTIONS
- § 22:24 Proposed findings of fact and conclusions of law in connection with motion to appoint a trustee or an examiner
- § 22:25 Memorandum in support of motion to appoint a chapter 11 trustee or examiner

CHAPTER 23. COLLECTING FROM INSOLVENT CORPORATIONS

I. ANALYSIS

- § 23:1 Overview
- § 23:2 Piercing the corporate veil
- § 23:3 —Factors
- § 23:4 —Undercapitalization
- § 23:5 —Statute of limitations and timing of claim
- § 23:6 Single business enterprise
- § 23:7 De Facto merger and mere continuation
- § 23:8 Product line liability
- § 23:9 Fraudulent conveyance
- § 23:10 Breach of fiduciary duty to creditors

II. FORMS

- § 23:11 Complaint to Pierce the Corporate Veil
- $\$ 23:12 Model Discovery for Veil-Piercing Claim—Requests for production of documents
- § 23:13 —Interrogatories
- § 23:14 Model Discovery for *De Facto* Merger Claim— Requests for production of documents
- § 23:15 —Interrogatories

Table of Laws and Rules

Table of Cases

Index