

1986

## Table of Contents, Volume 24, Number 3, Spring 1986

Follow this and additional works at: <https://dsc.duq.edu/dlr>



Part of the [Law Commons](#)

---

### Recommended Citation

*Table of Contents, Volume 24, Number 3, Spring 1986*, 24 Duq. L. Rev. [ix] (1986).

Available at: <https://dsc.duq.edu/dlr/vol24/iss3/2>

This Front Matter is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

# Duquesne Law Review

Volume 24, Number 3, Spring 1986

© COPYRIGHT DUQUESNE UNIVERSITY, 1986

## Articles

### IMPLIED ASSERTIONS AND FEDERAL RULE OF EVIDENCE 801: A QUANDARY FOR FEDERAL COURTS

*David E. Seidelson* 741

Federal Rule of Evidence 801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." A "statement," according to Federal Rule of Evidence 801(a) requires an "assertion." Moreover, the Advisory Committee Notes to Rule 801(a) provide that in order for the assertion to fall within the definition of hearsay, it must be "intended as an assertion." This article explores the five categories of extrajudicial declarations or conduct identified in the Advisory Committee Notes to Rule 801(a): verbal assertions; nonverbal conduct intended to be assertive; nonverbal conduct not intended to be assertive; nonassertive verbal conduct; and, assertive verbal conduct. The author concludes that the Advisory Committee's desire to have "implied assertions" characterized as nonhearsay should be rejected by the courts for several reasons. First, he finds that it is unsupported by the reasoning behind the Advisory Notes, the language of Rule 801 and the legislative history of the Rules. Second, he believes that this characterization is incompatible with the sixth amendment. Finally, it interferes with the efficacy of cross-examination which, the author argues, must be preserved.

### A TALENT IS A TERRIBLE THING TO WASTE: TOWARD A WORKABLE SOLUTION TO THE PROBLEM OF RESTRICTIVE COVENANTS IN EMPLOYMENT CONTRACTS

*Angela M. Cerino* 777

Employment contracts often contain provisions which seek to limit the employee's right to compete directly or indirectly with the employer when the employment terminates. The Pennsylvania Supreme Court has generally enforced covenants not to compete which are reasonable in scope, necessary for the protection of the employer and not unduly burdensome to the employee. This article reviews the Pennsylvania Supreme Court's recent decisions regarding covenants not to compete. Specifically, the article discusses the impact of these decisions on three major employment groups: salespersons, doctors and executives. The author concludes that the court's application of the reasonableness standard has been inconsistent, tending to favor more highly skilled and paid employees while indiscriminately enforcing the employment restrictions against lower paid employees. Finally, the author proposes a statutory and a judicial approach to covenants not to compete designed to introduce more certainty into this area.

**EXPANDING THE CARRIER'S RIGHT TO CLAIM INDEMNITY  
UNDER SECTION 3(5) OF COGSA FOR INACCURATE BILLS  
OF LADING**

*Robert M. Jarvis* 811

For the fifty years since its enactment, the Carriage of Goods by Sea Act has provided a detailed legal regime governing the respective rights and duties of shippers and carriers engaged in international trade. Section 3(5) of the Act (the guarantee clause) requires the shipper to provide the carrier with accurate information regarding the quantity and weight of the cargo and enables the carrier to bring a suit for indemnity against the shipper should the information prove inaccurate and cause a third party to bring an action against the carrier for misrepresentation. This article discusses the guarantee clause in the context of international bills of lading and the general purposes of the Act. The author concludes that the guarantee clause should be amended to expand the carrier's right to indemnity from any third party which has provided the inaccurate information contained on the bill of lading. Expanding the carrier's protection under the guaranty clause, the author argues, would be more reflective of the Act's goal of balancing the rights and duties of shippers and carriers.

**Comments**

**THE ASBESTOS CLAIMS FACILITY - AN ALTERNATIVE  
TO LITIGATION**

833

The dramatic rise in asbestos-related litigation has created a myriad of problems for plaintiffs, asbestos producers and insurers. These difficulties have included inequitable awards, bankruptcies and the ineffective application of worker's compensation statutes. The author examines a novel, private sector approach, the "Asbestos Claims Facility," and concludes that while this alternative to litigation may be viewed with some scepticism by plaintiffs, it is an equitable and comprehensive program that may, given time, alleviate some of the difficulties currently facing asbestos-related litigation.

**ACQUISITION OF CORPORATIONS: THE RAMIFICATIONS OF  
FEDERAL REGULATION OF STATE TENDER OFFER STATUTES**

867

The last twenty years have witnessed an explosion of corporate takeovers, mergers and acquisitions. Some of these takeovers were friendly; some were hostile. Because of the tremendous costs incurred in avoiding hostile takeovers, and because hostile takeovers frequently resulted in the dismantling or withdrawal of various industries from entire geographic areas, many states enacted paternalistic legislation designed to aid incumbent management in their fight against acquisition. This type of state legislation, however, collides with federal regulation of securities and, therefore, is constitutionally suspect. The author summarizes the various types of state regulation enacted to control the mechanics of the corporate takeover process, and examines why these statutes fail constitutional analysis under the Supremacy Clause and federal preemption doctrines.

Recent NLRB decisions have permitted union members to resign from a union and return to work without being subject to union discipline, and have also forbidden the honoring of another union's picket line where the union member's collective bargaining agreement contains a broad no-strike clause. The author examines prior caselaw and underlying principles in this area and concludes that these recent NLRB decision, when viewed as a whole, signify a departure from the Board's reasoning in prior cases, and could effectively eliminate the efficacy of union strikes as a means of protesting unfair labor practices.

## Recent Decisions

- CONSTITUTIONAL LAW—FIRST AMENDMENT—ESTABLISHMENT  
CLAUSE—*Estate of Thornton v. Caldor, Inc.*,  
105 S. Ct. 2914 (1985). 923
- FEDERAL COURTS IMPROVEMENT ACT—LEGISLATIVE  
HISTORY—EQUITABLE AUTHORITY IN PRE AND POST-AWARD  
GOVERNMENT CONTRACT DISPUTES—*Coco Brothers,  
Inc. v. Pierce*, 741 F.2d 675 (3d Cir. 1984). 945
- LABOR LAW—NATIONAL LABOR RELATIONS ACT—SECTION  
8(b)(1)(A)—UNION RESTRICTION ON RESIGNATION AND  
POST-RESIGNATION CONDUCT—*International Association  
v. Machinists, Local 1414*, 270 N.L.R.B. 1330 (1984). 959

---

The Duquesne Law Review is published quarterly at Pittsburgh, Pennsylvania. Editorial Offices: 132 The Edward J. Hanley Hall, 900 Locust Street, Pittsburgh, Pennsylvania 15282. Subscriptions: \$15.00 per year. Subscriptions are automatically renewed unless otherwise stipulated.

Single issues of the current volume are available from Duquesne Law Review at \$5.00 per copy. Other back issues are available through William S. Hein Co., Inc., 251 Main Street, Buffalo, N.Y. 14203.

Citations conform to *A Uniform System of Citation* (13th ed. 1981).

Readers are invited to submit manuscripts for possible publication. Manuscripts should be addressed to the Executive Article Editor at the above address. Views expressed in articles published in this law review are to be attributed solely to the authors thereof and not to the law review, its editors, or Duquesne University.

When authors of articles published herein are known to have other than a scholarly interest in their writings, that fact will be discussed in the note preceding the first numbered footnote to the article.

DUQUESNE UNIVERSITY  
SCHOOL OF LAW  
1985-1986

*Administration*

REV. DONALD S. NESTI, C.S.Sp., S.T.D.

President of the University

REV. HENRY J. McANULTY, C.S.Sp.,  
D.Ed.

Chancellor of the University

A. WILLIAM CAPONE, B.S.B.A.

Chairman of the Board of Directors

JOHN J. SCIULLO, B.A., J.D.

Dean of the School of Law and  
Professor of Law

PATRICK J. BASIAL, B.A., J.D.

Associate Dean and  
Professor of Law

RAYMOND F. SEKULA, B.S., J.D., LL.M.

Director of Admissions and  
Professor of Law

FRANK YINING LIU, LL.B., M.C.J., M.L.S.

Head Law Librarian and  
Associate Professor of Law

AGNES F. ROBINSON, B.S., M.L.S.

Assistant Law Librarian

DORIS CORSELLO, B.A., M.L.S.

Catalog Librarian

VIRGINIA ESKRIDGE, B.A., M.A., M.L.S.

Reference Librarian

AMY R. SWANSON, B.A.

Director of Placement and  
Law Alumni Coordinator

MOLLY ANN SACKS, B.A.

Registrar

*Faculty*

THOMAS ARBOGAST, B.S., J.D.

Adjunct Professor of Law

SAMUEL J. ASTORINO, B.A., M.A., Ph.D.,  
J.D.

Professor of Law

CYNTHIA A. BALDWIN, B.A., M.A., J.D.

Adjunct Professor of Law

ROBERT S. BARKER, B.A., M.A., J.D.

Associate Professor of Law

KENNETH J. BENSON, B.A., J.D.

Adjunct Professor of Law

JAMES T. CARNEY, B.A., LL.B.

Adjunct Professor of Law

HENRY C. COHEN, B.S., J.D.

Adjunct Professor of Law

BARTON Z. COWAN, B.A., J.D.

Adjunct Professor of Law

DARA A. DeCOURCY, B.A., J.D.

Adjunct Professor of Law

WILLIAM A. DONAHER, A.B., LL.B.

Professor of Law

ROBERT L. EBERHARDT, A.B., J.D.

Adjunct Professor of Law

NICK S. FISFIS, A.B., J.D.

Professor of Law

JOHN L. GEDID, B.A., J.D., LL.M.

Professor of Law

KENNETH E. GRAY, B.A., J.D., M.P.A.

Professor of Law

STANLEY W. GREENFIELD, B.A., J.D.

Adjunct Professor of Law

KENNETH L. HIRSCH, B.A., J.D., LL.M.

Professor of Law

JOEL KAUFMAN, A.B., J.D.

Adjunct Professor of Law

THOMAS M. KERR, A.B., LL.B.

Adjunct Professor of Law

GERARD J. KOEHEL, B.A., J.D.

Adjunct Professor of Law

MARGARET K. KRASIK, A.B., M.L.S., J.D.

Associate Professor of Law

MAUREEN LALLY-GREEN, B.S., J.D.

Adjunct Professor of Law

BRUCE S. LEDEWITZ, B.S.F.S., J.D.

Professor of Law

JOHN WILLIAM LYTTLE, JR., B.S., LL.B.,  
LL.M.

Professor of Law

JOSEPH S. MISTICK, B.A., J.D.

Adjunct Professor of Law

CORNELIUS F. MURPHY, JR., B.S., J.D.,  
LL.M.

Professor of Law

THEODORE R. PALADINO, D.D.S., J.D.

Adjunct Professor of Law

ALFRED S. PELAEZ, B.A., J.D., LL.M.

Professor of Law

JACK W. PLOWMAN, A.B., LL.B.

Adjunct Professor of Law

E. KEARS POLLOCK, B.S., M.S., J.D.

Adjunct Professor of Law

IRVING M. PORTNOY, B.A., J.D.

Adjunct Professor of Law

ROBERT V. RACUNAS, B.S., J.D.

Adjunct Professor of Law

SAMUEL J. REICH, B.A., LL.B.

Adjunct Professor of Law

RONALD J. RICCI, B.S., J.D.

Associate Professor of Law

WILLIAM C. RIES, A.B., J.D.

Adjunct Professor of Law

WILLIAM S. SCHWEERS, SR., B.A., LL.B.

Adjunct Professor of Law

ILA JEANNE SENSENICH, B.A., J.D.

Adjunct Professor of Law