

STEVEN MALITZ - EMPLOYMENT LITIGATION VICTORIES

- **Jury Trial Victory for Company in Commissions Case.** Malitz successfully tried a jury case on behalf of a large printing company against a sales executive for repayment of draws exceeding his commissions, and defended the company in the salesman's counterclaim for unpaid commissions. The victory was noteworthy because under Illinois law, compensation paid is considered earned. Malitz convinced the jury the salesman's draws exceeded his commissions earned, and he had agreed to repay draws exceeding commissions.
- **Arbitration Decision Upholding Termination of Employee.** Malitz obtained a favorable arbitration award for one of the largest U.S. metals manufacturers upholding the termination for just cause of a union employee who was reprimanded twice for using his cellphone in the plant during work hours, in violation of company policy. On one occasion, the employee contended he received permission from the shift manager to use the cellphone for the purpose of calling another manager to complain about the dangerous condition of his forklift, and on the second occasion denied using the cellphone altogether, supporting his defense with phone bills. Malitz proved knowledge of the policy, unauthorized use of the cellphone, and necessity of the penalty of termination by clear and convincing evidence.
- **Successfully Defended Employer in Race and Disability Discrimination Case.** Malitz defended a large metals manufacturing company in federal court in Chicago, where the employee claimed discrimination, hostile work environment, and retaliation based on disability and race, when he was terminated after an on-the-job injury limiting his physical ability. With the aim of avoiding costly litigation, Malitz conducted an investigation that revealed the employee was not fulfilling his job description, had no history of back injury or other disability, and previously had his probationary period extended because he was underperforming. Armed with these details, Malitz forced a settlement for nuisance money before any depositions were taken. Malitz has defended multiple employment cases in state, federal, and administrative courts for multiple employers.
- **Successfully Defended Company Against Onerous Employment Contract Terms.** Malitz defended a large Chicago electrical contractor in an employment contract case brought by a discharged employee. The employment contract which was drafted by another law firm prohibited the contractor from firing the employee for any grounds other than willful misconduct or gross negligence. The contract further provided if the contractor wrongfully terminated the employee, he would be entitled to his entire compensation for the multi-year term of the agreement. The contractor, and its shareholders, officers and directors, faced personal liability of \$600,000 in compensation under the contract, plus treble damages and attorneys' fees under state employment law an uninsured financial hit that would destroy the business. Despite that the client's employment practices liability insurance policy denied coverage for any breach of the employment agreement, Malitz persuaded the insurer to defend and indemnify the claim, then obtained a settlement from the insurer for the malpracticing attorney who drafted the employment agreement, and persuaded the discharged employee to accept a low settlement.
- **Successfully Defended Sex Harassment Claim and Bought-Out Shareholder.** Malitz defended a security consulting company facing a series of sexual harassment charges brought by a shareholder and former officer of the company in the Illinois Department of Human Rights (IDHR) and in the Illinois Department of Labor. The shareholder and officer contended she was unlawfully terminated for complaining about alleged acts of criminal activity and sexually harassing behavior, all of which allegedly occurred years before she filed her charges. In defense, Malitz and his team first demonstrated IDHR had no power to adjudicate her claims, and then countered with multiple fiduciary breaches she made in the course of her job as well as instances of poor work performance. This combination of evidence and arguments led to a settlement of her claims for retaliation, harassment, commissions, bonuses, wages and unpaid distributions, together with a repurchase of her shares. The total payout in settlement of her claims and for repurchase of her shares was nominal, given the value of the company. Malitz has handled multiple cases on behalf of companies where a shareholder has claimed a breach of an employment or shareholders agreement, and Malitz has either expelled the rogue shareholder or negotiated the purchase of the shares for a reduced price.
- **Obtained Summary Judgment for Company in Discrimination Claim.** Malitz defended a large plastic bottle

manufacturer facing a sexual harassment and retaliation claim filed in federal court in Chicago by the only female in its apprenticeship program. She alleged she was denied training opportunities, disciplined more frequently than males, and removed from the apprenticeship program because she was female, when she was actually removed for violating the attendance policy. She additionally alleged she was subjected to a hostile work environment and was retaliated against for complaining to management about her treatment in the program. After discovery, where Malitz debunked the employee's claims, the district judge granted summary judgment for the company, dismissing every claim. The federal judge ruled the evidence was convincing that the employee was actually treated more favorably, not less favorably than male workers.