

Thomas F. Fleming

Shareholder

Naples
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Practice & Industry Areas

- Business Litigation
- Intellectual Property Litigation
- Health Care

Education

- Brooklyn Law School, J.D., magna cum laude, 1987
- New York University, B.A., cum laude, 1984

Bar & Court Admissions

- New York
- Florida
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Federal Circuit
- United States District Court for the Southern District of New York

Overview

Thomas Fleming is based in Naples, Florida and a shareholder in Gunster's Litigation practice group. A veteran trial lawyer, Tom has extensive experience as both a general commercial litigator representing clients in trials, arbitrations and mediations, and as a patent litigator. In both roles, he primarily counsels pharmaceutical and life sciences clients, including numerous high-profile, Fortune 500 companies. He has directed several successful trademark and Lanham Act litigations on behalf of international clients and their U.S. subsidiaries.

Tom has co-chaired numerous jury patent trials in the areas of biotechnology, medical devices, pharmaceuticals and wireless technology, and has been lead counsel in patent and

trade secret litigation matters in the areas of chemical products, devices and genetically modified crops. He has also argued numerous appeals, including before the Federal Circuit.

As a practitioner, he strives to integrate the tactical decisions that are a fundamental element of litigation with his clients' larger business goals. He understands, and teaches the teams he leads, that litigation is always a business decision for his clients, and works closely with them to ensure that his case management, litigation strategy and negotiation posture are consistently focused on his clients' business needs. He strives to be responsive and alert to what matters to his clients, and uses that knowledge to guide his teams.

He is also a senior attorney who prioritizes efficient management of the litigation teams he leads. Particularly with major litigation, it not uncommon for litigation teams to, as Tom puts it, "fall into an abyss of litigation". In this scenario, budgets are exceeded, clients are overcharged, and litigation is pursued without adequate client input, communication and alignment. Tom applies his experience to this by keeping budgets firmly in mind, and by prioritizing frequent communication with clients, emphasizing tight integration with the decision making process. If Tom believes, for example, that a deposition can be handled by an associate at a lower rate, and save the client money, he'll suggest and discuss it.

His experience, and the judgment it engenders, also enables Tom to innovate at every stage of litigation, and to understand that situations are often not what they appear. This can be an invaluable insight. A party on the other side of litigation may, for example, actually be using litigation as a means to negotiate the sale of a company from a position of strength. Conversely, Tom, in consultation with his client, may apply tactics such as deposing senior management or seeking sensitive financial information to force a speedier resolution of a dispute. The goal, always, is to both manage disputes and conclude them in a way that harmonizes with and supports the clients' business objectives.

Honors

- The Legal 500 U.S.
- Best Lawyers in America
- Best Lawyers in New York
- Legal Aid Society Pro Bono Publico Award, 2010

Publications & Presentations

- "Masters Conference on Data Privacy Issues," lecturer, 2012
- NY County Lawyers Association, "Expert Witnesses at Trial," 2012
- Thomson/Reuters "Recent Trends in Patent Infringement Lawsuits," contributor, 2010

- West Publications treatise, “Commercial Litigation in New York State Courts,” 2010
- New York State Bar Association articles “Federal Rules of Civil Procedure: Amendments,” co-author
- New York State Bar Association articles, “Expert Witness Disclosure and Core Work Product,” co-author
- Director’s Round Table for Corporate Counsel, “E-Discovery,” October 2010
- JPPCLE, “NY Ethics Rules in Patent Litigation,” April 2010
- BrightTalk Seminar, “Winning Strategies in IP Litigation,” 2009
- Association of Corporate Patent Counsel, “Pre-Filing Investigations,” June 2009

Professional Associations & Memberships

- Intellectual Property Owners Association: Patent Law Committee
- CPR Institute: Task Force on Mediation of Patent Disputes
- American Bar Association Sections on Litigation and Intellectual Property