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CLIENT ALERT

Illinois Federal Court Dismisses Non-Compete Claim Based on Facially Overbroad Activity Restraint

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Last week, a federal district judge in Chicago dismissed a non-compete case—at the pleading stage—finding that the non-competition covenant at issue was overbroad, as a matter of law, because the covenant restricted the employee from taking any position with another company that engaged in the same business as the employer, without regard to whether that position was similar to a position the employee held with the employer, or was otherwise competitive with the employer. *Medix Staffing Solutions, Inc. v. Dumrauf*, Case No. 17-cv-6648 (N.D. Ill. April 17, 2018).

The decision marks a departure from the weight of authority in Illinois that would traditionally allow development of a factual record before finding such a covenant overbroad, and that would enforce such a covenant in appropriate circumstances, particularly given that the covenant was limited to a 50-mile radius from the office where the employee worked. Although this district court opinion will not constitute binding authority on any court, employers utilizing restrictive covenants governed by Illinois law should consider whether their existing covenants warrant reformation in light of this opinion.

The Facts

Medix is a staffing agency headquartered in Chicago that specializes in placing employees in the healthcare, scientific, and information technology industries. Dumrauf rose to be the Director of Medix Scientific. In this role, Dumrauf was responsible for Medix's sales and recruiting strategy within the pharmaceutical, biotechnology, and medical device fields. Dumrauf worked out of Medix's Scottsdale, Ariz. office. During his employment, Dumrauf signed a non-compete agreement that provided, among other things, that for a period of 18 months following his termination from Medix, he would not:

> within a radius of 50 miles from any Medix office(s) where [he] performed services as an employee of Medix, directly or indirectly, own, manage, operate, control, be employed by, participate in or be connected in any manner with the ownership, management, operation or control of, any business that either: (1) offers a product or services in actual competition with Medix; or (2) which may be engaged directly or indirectly in the Business[1] of Medix.

Dumrauf resigned from Medix to take a position with ProLink, a direct competitor of Medix. While 90 percent of ProLink's business was apparently in Kentucky and Ohio, ProLink maintained an office in Phoenix, within 50 miles of the Medix Scottsdale office where Dumrauf had worked, and Dumrauf worked out of ProLink's Phoenix office for at least a short period of time.

The District Court's Ruling

Under well-established Illinois law, the enforceability of a non-competition covenant is assessed under a three-prong test of reasonableness, under which a covenant will be enforced where it (i) is no greater than necessary for the protection of the promisee's legitimate business interest; (ii) does not impose undue hardship on the promisor; and (iii) is not injurious to the public. The Illinois Supreme Court has cautioned against a formulaic application of the three-prong test:

> Each case must be determined on its own particular facts. Reasonableness is gauged not just by some but by *all* of the circumstances. The same identical contract and restraint may be reasonable and valid under one set of circumstances, and unreasonable and invalid under another set of circumstances. *Reliable Fire Equip. Co. v. Arredondo*, 965 N.E.2d 393 (Ill. 2011).

Taking their cue from this and similar authority, courts applying Illinois law have traditionally resisted dismissing non-compete claims at the pleading stage on the grounds that the covenant at issue is overbroad as matter of law. Indeed, the district court in *Dumrauf* acknowledged that pleading stage dismissal on these grounds is limited to "extreme cases" where the covenant is "patently unreasonable." Yet, the district court found that Dumrauf's covenant met this exacting standard.

Specifically, the district court found that the covenant lacked an adequately limited activity restraint, finding that the covenant "would prevent Dumrauf from taking any number of … roles at another industry player, no matter how far removed from actual competition with Medix." "Such a prohibition," the district court held, "is unenforceable." For this proposition, the district court cites only to a 2002 district court opinion—*Stunfence, Inc. v. Gallagher Sec. (USA) Inc.*, 2002 WL 1838128 (N.D. Ill. Aug. 2002)—in which the non-competition covenant at issue not only contained a similarly broad activity restraint, but also lacked any geographic restriction whatsoever. Indeed, in finding the covenant in that case unenforceable, the district court in *Stunfence* emphasized that the covenant would have prevented the employee from "participating in any way in the security fencing business anywhere in the world." In *Dumrauf*, by contrast, the covenant was limited to a 50-mile radius surrounding a single facility in Scottsdale, Ariz., where Dumrauf in fact had worked.

In *dicta*, the district court went on to find that even if the covenant could be read to relate only to positions in ownership, management, operation or control, it was still overbroad as a matter of law because, the district court found—somewhat remarkably given the lack of factual record—"there are numerous positions that could fit under such a requirement that are entirely non-competitive."[2] The district also rejected arguments from Medix that the covenant should be afforded lesser scrutiny because Dumrauf was a high level employee, and that the district court should reform, or "blue pencil," the agreement to cure any overbreadth. Instead, the district court dismissed the case with prejudice and entered judgment for Dumrauf.

Time will tell whether the district court's opinion in *Dumrauf* represents the emergence of a new, even more mobility-friendly line of authority in Illinois, or whether it will simply be considered an outlier. In the meantime, employers in Illinois should consider whether their existing restrictive covenants warrant reformation in light of this opinion.

If you have questions, please contact any of the Labor and Employment Department attorneys listed on the next page or your usual Winston & Strawn contact.

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[1] "Business" is defined in the agreement as "the business of providing staffing and recruiting options for clients and candidates across the professional services, life sciences, healthcare and information technology industries."

[2] In support of the proposition that this fact rendered the covenant unenforceable as a matter of law, the district court cites to an Illinois appeals court opinion–Cambridge Eng'g, Inc. v. Mercury Partners 90 BI, Inc., 378 Ill. App. 3d 437 (2007)—which found (based on trial testimony) that the "blanket bar on all activities for competitors" at issue in that case was "excessive in light of the limited arenas in which [the employee's knowledge] would be competitively useful" (emphasis added).

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