HEALTH CARE PROVIDER ALERT

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Restrictive Covenants in Non-Compete Agreements: Broader is Not Better

By David Hochman, Shareholder

The decision by the Federal District Court for the Northern District of Illinois in *Medix Staffing Solutions, Inc. v. Dumrauf* serves as a reminder to employers why restrictive covenants should be limited in scope and duration to what is necessary to protect the employer's business. The District Court, applying Illinois law, granted the defendant's motion to dismiss Medix' suit with prejudice and without providing the plaintiff an opportunity to present evidence or to pursue discovery. The Court held that the covenant was overbroad on its face and, therefore, unenforceable because it prohibited the defendant from taking any position with another company engaged in the same business as Medix—without regard to whether his new position was similar to his position with Medix or whether his new employer competed with Medix.

Medix provides staffing for healthcare and technology companies. Dumrauf was the Director of Medix Scientific and was responsible for Medix's sales and recruiting strategy in the pharmaceutical, biotechnology and medical device industries. He worked primarily out of the Medix office in Phoenix. Dumrauf entered into an Employment-At-Will Confidentiality and Non-Compete Agreement in March 2011. In December 2012, in consideration of his continued employment, he signed an Employee Confidentiality/Non-Compete Agreement which provided that for a period of 18 months after his termination of employment, he would not, within a radius of 50 miles of any Medix office at which he performed services for Medix, be employed by or connected in any manner with, any business that either offered a product or service in actual competition with Medix or which may be engaged, directly or indirectly, in the same business as Medix.

Dumrauf voluntarily terminated his employment with Medix in August 2017 and accepted a new position with ProLink overseeing operations of its Health Care Division. At the time of his departure from Medix, Dumrauf informed Medix that 90% of his activities for ProLink would be in Ohio and Kentucky and he would be relocating from Arizona by the end of 2017.

ProLink is a direct competitor of Medix and has an office in Phoenix, which is within 50 miles of Medix's Scottsdale office. After leaving Medix, Dumrauf periodically worked out of ProLink's Phoenix office.

Dumrauf argued that the covenant not to compete was overbroad and, therefore unenforceable because it was a blanket prohibition on engaging in any activity for a company in the same business as Medix within 50 miles of a Medix office, even if that company is not an actual competitor of Medix. He argued that the covenant would prohibit him from even working as a janitor at another company in a competing business. While the Judge remarked that this example is a bit far-fetched, she agreed that there is nothing in the covenant that made it an inaccurate statement of the scope of the prohibition.

The Judge noted that, under Illinois law, restrictive covenants are "disfavored and held to a high standard." A restrictive covenant, by its terms, must be reasonable and necessary to protect a legitimate business interest of the employer, and the employer must demonstrate that the restriction is necessary to protect its interest. Medix argued that the determination of reasonableness should not be made at this early point in the litigation and that it should have the opportunity to present evidence regarding its position. However, the Judge found that the covenant was so broad that it was unreasonable on its face and there was no "factual scenario under which it would be reasonable." In this regard, the Judge was influenced by the fact that the covenant was not remotely limited to the kind of work that Dumrauf had done for Medix.

Medix also sought to have the Court modify the restrictive covenant to the extent necessary to make it enforceable. The Judge declined to do so, citing Illinois judicial decisions limiting such a remedy to cases in which the restrictions on post-employment activities are reasonable, but the geographic scope is overbroad. Here, the modification would go beyond those criteria and would require rewriting the activities which are proscribed.

The impact of this case on the enforceability of restrictive covenants in Illinois is unclear. Illinois state courts are not required to follow this decision, and cases involving small Illinois employers can often only be pursued in state court because the jurisdictional requirements to file an action to enforce a restrictive covenant in federal court cannot be met. Nevertheless, the *Dumrauf* opinion demonstrates why it is so important to limit the activities prohibited by a restrictive covenant, as well as the geographic scope and duration, to what is reasonably needed to protect the employer.

Should you have any questions in regard to restrictive covenants in non-compete agreements, please do not hesitate to contact any of the listed Roetzel attorneys.

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