

Trade Secrets and Noncompete Blog

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Ohio Supreme Court Reverses Itself, Holding That Noncompete Agreements Do Transfer To The Successor Corporation After A Corporate Merger

Earlier this year, we [wrote](#) about the Ohio Supreme Court's decision, *Acordia of Ohio, L.L.C. v. Fishel et al.*, ("Acordia I"), in which the Court held that when a company that was the original party to a noncompete agreement merges in to another company, unless the noncompete agreement contained a "successors and assigns" clause, the merger was a termination of employment which triggered the running of the restrictive period in the noncompete.

Last week, in *Acordia II*, the Ohio Supreme Court reversed that decision, holding that after a merger, an "absorbed company ceases to exist as a *separate* business entity," but that it is not "erased from existence." Rather, "the absorbed company becomes a part of the resulting company following merger" and therefore the "merged company has the ability to enforce noncompete agreements as if the resulting company had stepped into the shoes of the absorbed company."

The Court nevertheless explained that "the employees still may challenge the continued validity of the noncompete agreements based on whether the agreements are reasonable and whether the numerous mergers in this case created additional obligations or duties so that the agreements should not be enforced on their original terms."

Accordingly, notwithstanding the Court's change of opinion, this case continues to illustrate the attention which should be placed on the enforceability of a noncompete following a corporate transaction and whether a fresh noncompete agreement should be signed.

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