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Illinois Court Leaves Former Employer Without Remedy After Invalidating Its Overly Broad Restrictive Covenants

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Just days before Halloween, the Illinois Appellate Court sent a scary message to employers: *We will not enforce or judicially modify your overly broad restrictive covenants!* In *AssuredPartners, Inc. v. Schmitt*, No. 13 CH 19264 (October 26, 2015), the Illinois Appellate Court affirmed a circuit court's holding that an employer's restrictive covenants were overbroad and unreasonable as a matter of law. Adding insult to injury, the appellate court also affirmed the court's refusal to judicially modify the restrictive covenants, despite the parties' agreement authorizing judicial modification. That decision left the employer holding a bag of rocks.

Background

The employee worked at a wholesale insurance brokerage firm as a wholesale insurance broker. Soon after resigning, he began brokering wholesale insurance and sending his new contact information to the customers named in his former employer's customer expiration list that he had serviced during his employment. His former employer filed suit to enforce the provisions of an employment agreement and for damages and injunctive relief. The circuit court denied the former employer's request for a temporary restraining order and ultimately held that the noncompetition, nonsolicitation, and confidentiality provisions of the employee's restrictive covenants were overbroad and unreasonable as a matter of law.

In affirming these holdings, the appellate court faulted the noncompetition provision because it did not contain qualifying language limiting the former employee's prohibited activities to those related to the specific kind of professional liability insurance practice he had developed during his employment. The nonsolicitation provision was found to be overly broad because it prohibited the former employee from servicing customers with whom he had never had contact while working for his former employer. Lastly, the confidentiality provision was deemed unenforceable because it purported to protect virtually every kind of information that the employee might have learned during the period of his employment, even nonconfidential information.

Key Takeaways

Does this decision leave employers with any goodies? Yes, because it reinforces some clear parameters for employers in drafting restrictive covenants.

1. First, employers should devote care and attention when drafting these agreements at the outset. Identify the interests to be protected and draft the agreement to protect those interests and nothing more.
2. Second, when drafting a noncompetition provision, limit the prohibition to those activities the employee developed during employment and avoid blanket prohibitions on competition.
3. Third, when drafting a nonsolicitation provision, ensure that the agreement does not extend to customers with whom the employee never had contact .
4. Fourth, take care in defining "confidential information" in your confidentiality provision. Defining everything under the sun as "confidential," when it isn't, will not protect you and may be unenforceable even as to the use of truly confidential information.
5. Lastly, don't think that a provision in an agreement permitting a court to judicially modify any overbroad provision will save the day from sloppy draftsmanship. In determining whether modification is appropriate, the fairness of the restraints in the agreement is a key consideration. If the deficiencies in the agreement are too great, a court may refuse to modify it, leaving the employer without remedy.

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