Weston Hurd Client Advisory - October 2012

ENFORCING EMPLOYEE NONCOMPETE AGREEMENTS POST-MERGER

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In June, 2012, the Ohio Supreme Court ruled that if a noncompete agreement of a company and its employee fails to contain language indicating it will apply to successors and assigns, that employee can leave and compete against the company into which his original employing company ultimately merges.

The Supreme Court has now altered and "clarified" that ruling in an updated opinion for the case of *Acordia of Ohio, L.L.C. v. Fishel*.

Essentially, the Court now states that noncompete agreements do not have to contain successors and assigns language for an acquiring company to enforce its noncompete provisions. However, the Court reiterated the rule for all noncompete agreements that an employee will still have the right to challenge the noncompete based upon its reasonableness. Further, it could be challenged if "numerous mergers . . . created additional obligations or duties so that the agreements should not be enforced on their original terms."

Subject to the foregoing rules and reservations, a surviving company in a merger can enforce a noncompete agreement against an employee of the company that merges into it. Still, it does not take much to add the language that the noncompete agreement is enforceable by successors and assigns. As a matter of caution, why not include it?

Ohio Supreme Court Opinion

Acordia of Ohio, L.L.C. v. Fishel

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