



Weston Hurd Client Advisory - June 2012

ASSURING YOUR EMPLOYEES' NONCOMPETE STILL APPLIES POST-MERGER

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In a close 4-3 vote, the Ohio Supreme Court has 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.

In *Acordia of Ohio, L.L.C. v. Fishel*, the relevant noncompete agreements did not contain provisions that it would benefit and be enforceable by successors or assigns of the original company that entered into the noncompete with particular employees. This original company/employer went through a series of mergers resulting in the surviving company being Acordia of Ohio, L.L.C. Some of the employees who entered into the noncompete agreement with the original company continued to be employed by Acordia. When they left to work for a competitor, Acordia sought to enforce the noncompete provisions against them.

The Ohio Supreme Court ruled that without successors and assigns language, Acordia could not enforce the noncompete. Thus, these former Acordia employees could "compete" against Acordia.

A lesson for employers is that their noncompete agreements should contain language that the agreement (including its noncompete provisions) will benefit any successor or assignee. Alternatively, after a merger, a surviving company continuing to employ at will employees of the merged entity, could require that they sign a new noncompete agreement.

Ohio Supreme Court Decision
[*Acordia of Ohio, L.L.C. v. Fishel*](#)



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