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Sixth Circuit Upholds Non-Compete Agreement Based on “Flexible Language” in Preliminary Injunction

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A recent Sixth Circuit decision upholding an employer’s non-compete agreement with a former employee highlights the need for legal counsel to craft preliminary injunction language in such matters which reflects the unique facts of the subject employee and the employee’s new job position with the competitor.

In 2013 and again in 2022, Jafar Abbas entered into non-competition, non-solicitation and confidentiality agreements with Stryker Employment Company, LLC, a spinal implant company. Under the Stryker agreements, Abbas was prohibited from rendering services for “any Conflicting Organization in which the services [he] may provide could enhance the use or marketability of a Conflicting Product or Service by application of Confidential Information which [he] had access to during [his] employment” for one year after leaving Stryker. The agreement defines a “Conflicting Organization” as “any person or organization which is engaged in or about to become engaged in research on, consulting regarding, or development, production, marketing, or selling of a Conflicting Product or Service.” It defines “Conflicting Product or Service” as “any product, process, technology, machine, invention or service of any person or organization other than Stryker in existence or under development which is similar to, resembles, competes with or is intended to resemble or compete with a product, process, technology, machine, invention or service upon which” Abbas worked or was knowledgeable about within the last two years of his time with Stryker, “or while providing products or services to a Stryker customer.”

In May 2022, Abbas resigned from Stryker to commence employment in a sales role with Alphatec Spine, Inc., a Stryker competitor in the spinal surgery implant industry. In June 2022, Stryker filed a lawsuit to prohibit Abbas from working for Alphatec. Stryker also alleged that Alphatec was raiding Stryker’s top sales personnel. The U.S. District Court for the Western District of Michigan granted a preliminary injunction prohibiting Abbas from working or rendering services in any capacity for Alphatec. The district court found Abbas worked for Stryker in both finance and sales, and that he had persistent and unfettered access to Stryker’s sensitive customer, sales, and financial information. The court also found that the Alphatec projects on which Abbas planned to work were similar to the work he performed at Stryker. Abbas appealed.

On February 16, 2023, the Sixth Circuit Court of Appeals affirmed the preliminary injunction. The issue on appeal was whether the scope of the preliminary injunction, prohibiting Abbas from working in any capacity for Alphatec, was too broad. Abbas's argument that the injunction's non-competition prohibition was overly broad failed for at least three reasons, the most important of which was the district court's issuance of a preliminary injunction which explicitly encouraged Abbas to work with Alphatec and Stryker to create an agreement that would not violate the Stryker agreement. The court also said it would entertain a subsequent motion to vacate the preliminary injunction if Alphatec created a new position that Stryker found unacceptable. In other words, the district court crafted a preliminary injunction to preserve the status quo, and it reserved the possibility of considering whether other prospective jobs Abbas might be offered are consistent with the terms of the Stryker agreement.

Secondly, the district court selected the language in the injunction knowing Abbas often worked well beyond the scope of his official position while at Stryker. Thus, the court, in its discretion, used broad language to maintain the status quo.

Third, the injunction only enforced the Stryker agreement - no more, no less. The court rejected Abbas's argument that the injunction amounted to an industry-wide ban because such did not align with the district court's flexible language approach to preserving the status quo, and because the preliminary injunction was, again, consistent with the agreement. The Sixth Circuit also added - "The district court correctly observed that the public interest lies in enforcing contracts," and "the balance of equities tips in [Striker's] favor because they simply seek to enforce their contractual rights."

The key takeaway from the *Stryker v Abbas* case is just as important as knowing the limits of enforceability of the non-competition agreement at issue: legal counsel must focus on crafting and proposing preliminary injunction language which reflects the specific and unique facts of the subject employee and the new job position with the competitor.

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