



Case study: Court finds in favor of client in dispute over restrictive covenants

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Problem

Our client ("Client") hired various managerial level sales employees from a competitor ("Competitor"). The Competitor's restrictive covenants prohibited these employees from working with any of their competitors anywhere in the United States in a position similar to that they held with the Competitor. The restrictive covenants also precluded the Competitor's employees (now the Client's) from soliciting away other employees of the Competitor.

According to the Competitor, the Client's new hires breached both of these covenants by soliciting other employees of the Competitor to work with them for the Client and by working in a similar role for the Client as they held with the Competitor. The Competitor filed suit against the Client's new employees in federal court in Lexington, Kentucky, and it also sued the Client for tortious interference with the new employees' restrictive covenants.

Solution

Frost Brown Todd's (FBT) trial team, led by [Barry Hunter](#), defended the claims against the Client on numerous grounds. With regard to the non-solicit claims, FBT argued at summary judgment that to prove a non-solicit violation, the Competitor needed to demonstrate that the Client's new employees had initiated the contacts with the allegedly solicited employees. The court agreed with FBT's argument, dismissing the non-solicit claims based on undisputed evidence that the allegedly solicited employees initiated first contact regarding the potential for employment with the Client.

On the non-compete claim, FBT argued at summary judgment that the nationwide scope of the Competitor's non-compete was overbroad for sales employees. The court agreed, limiting the

covenant to the regions in which the new employees had previously worked for the Competitor. Finally, FBT argued that the Competitor had failed to establish any actual damages as a result of the supposed violations. The court agreed, holding that the Competitor would be limited, at trial, to seeking nominal and punitive – but not actual – damages.

Client Benefit

After the Client prevailed on summary judgment on a vast majority of the claims, the Competitor settled the remaining claims without seeking any injunction and only seeking payment of a nominal sum.

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