

## **A Twist on Non-Compete Agreements: Don't let your vendors and customers squeeze your margins**

Most non-compete agreements are geared to protect your company's sales and R&D functions from your direct competitors. The agreement basically says: "Don't take a job where you can use our secret playbook to help our rival steal our customers or develop a competing product." What about your operations function?

Your customers and vendors could hurt you too if your proprietary information made it into their hands. What if they learned your profit margins by hiring your controller. Knowing your break-even point, they would demand better terms.

That's what the company in [Hill](#) faced. The company's controller and another employee defected to join an independent consulting firm, which contracted with the company's customers to audit its prices. The consulting firm promised the ex-employees a bonus for the money they could save the customers by negotiating the company's prices down.

Concerned over the obvious conflict of interest, the company sued the ex-employees for stealing its trade secrets. And it won. The court tied down the ex-employees with a temporary injunction.

But there was a better way. A non-compete agreement might have made the lawsuit easier and cheaper. To win on its trade secrets claim, the company had to prove that the ex-employees had used its trade secrets or were in a position to use them. That can be an expensive proposition.

With a non-compete agreement, you have a lighter burden of proof. Your non-compete might say: "No working with the Company's customers or vendors in a position where the employee, directly or indirectly, has input on the prices paid to or by the Company." Instead of proving that what your ex-employee has done or might do with your secret playbook, you would show that his new job violates the non-compete.

Lighter burden of proof, lower attorneys' fees. That's why companies who are serious about protecting their business secrets insist on non-compete and non-solicit agreements.



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