WSGR ALERT

FEBRUARY 2012

NINTH CIRCUIT CHOICE-OF-LAW RULING HAS IMPORTANT EMPLOYMENT AND TRADE SECRET RAMIFICATIONS

On February 8, 2012, the United States Court of Appeals for the Ninth Circuit issued a decision in *Ruiz v. Affinity Logistics Corporation* with important consequences for the choice-of-law terms that companies often place in employment agreements. In short, the decision may make it more difficult for companies headquartered outside of California to choose non-California law to govern trade secret and other employment-related disputes that involve California-based employees.

In *Ruiz*, the question in dispute turned in part on whether Ruiz was Affinity's employee or its independent contractor. Ruiz, a truck driver, was based in California and signed his contract with Affinity in California. The contract, however, stated that the law of Georgia applied because Affinity is a Georgia-based corporation. The agreement defined Ruiz as an independent contractor rather than an employee.

Ruiz filed a class action lawsuit under federal and California law. Resolving the dispute required the court to determine whether Georgia law or California law applied. Georgia and California have different approaches to determining whether an individual is an independent contractor or an employee when the contract states that the individual is a contractor.

The lower court decided that the contract's choice-of-law provision was valid, and that Georgia law thus applied because Affinity is a Georgia corporation. The Ninth Circuit reversed, holding that under California's choice-of-law test, the Georgia approach conflicted with a fundamental California policy "in favor of ensuring worker protections." The court also held that California had a materially greater interest in the dispute because the contract was negotiated, signed, and largely performed in California, and one of the two parties resides in California.

The *Ruiz* case is not a trade secret case, but it has important ramifications for out-of-state companies that place non-California choice-of-law clauses in employment contracts with California-based employees. California's trade secret and employee mobility rules differ in some respects from the laws of other states. Most importantly, California prohibits non-competition covenants and the "inevitable disclosure" theory of post-employment injunctive relief. The California courts have based these distinctions on the fundamental policy in favor of employee mobility expressed in Business & Professions Code Section 16600.

For companies seeking to hire employees based in California from competitors, or for founders of new ventures in California who are leaving their former employers, the *Ruiz* decision likely will make it easier to argue that California law applies to any trade secret or mobility dispute that arises, even if the employment contracts specify that the law of another state is controlling. For companies based outside of California that use non-California choice-of-law clauses in contracts with California employees, the ability to apply non-California law may turn on the strength of a similar choice-of-forum clause specifying that the employee agrees to a forum elsewhere.

The decision also may affect other employment-related disputes involving California employees if the contract contains a choice-of-law provision specifying non-California law.

Wilson Sonsini Goodrich & Rosati actively is following developments with respect to California employee mobility and trade secret law, and the firm is available to assist employers, employees, newly formed businesses, and investors with protecting trade secrets and addressing any questions or issues raised by the *Ruiz* decision or similar matters. For more information, please contact Rico Rosales, Marina Tsatalis, Charles Tait Graves, or another member of the firm's trade secrets and employee mobility practice.

Wilson Sonsini Goodrich & Rosati
PROFESSIONAL CORPORATION

This WSGR Alert was sent to our clients and interested parties via email on February 13, 2012. To receive future WSGR Alerts and newsletters via email, please contact Marketing at wsgr_resource@wsgr.com and ask to be added to our mailing list.

650 Page Mill Road
Palo Alto, CA 94304-1050
Tel: (650) 493-9300 Fax: (650) 493-6811
email: wsgr_resource@wsgr.com

www.wsgr.com