



Ohio Supreme Court Reverses Key Decision On Noncompete Agreements.

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In 2011, I wrote an article about an important decision out of the Ohio First District Court of Appeals concerning the enforceability of a noncompete agreement following a corporate merger or acquisition. In *Acordia of Ohio, L.L.C. v. Fishel*, the First District held that while a noncompete agreement is a transferable corporate asset, a merger or acquisition will trigger the time period for the restriction. Thus if an employee has an agreement with Company A that they will not compete against Company A for one year after their employment ends and Company A is later acquired by Company B, the one year restriction will begin to run on the date Company A is officially acquired.

The case was pending before the Ohio Supreme Court as of the date of the article. In May 2012, the Supreme Court affirmed the First District's ruling in favor of the former employees. The Supreme Court held that, "By their terms, the noncompete agreements are between only the employees and the companies that hired them." The noncompete agreements made no mention of successors or assigns. The Court concluded that the original company no longer existed after the merger.

The case did not end there though. In October 2012, the Ohio Supreme Court issued another opinion "clarifying" its initial decision. This time, the Court held that a company does not cease to exist after a merger but instead is absorbed and becomes a part of the successor company. Based on this holding, the Court explained that a noncompete agreement acquired in a merger may be enforced "as if [the new employer] stepped into the shoes" of the original company. This rule applies regardless of whether there is language in the noncompete that extends the agreement to other employers, such as the company's successors or assigns.

While the final decision in *Accordia* preserved the right of an employee to challenge noncompete agreements based on the reasonableness of the contract's scope, the end result undoubtedly favors companies. Now, if an Ohio company acquires or merges with another company, the noncompete agreements of the former company may be enforced by the surviving company.