

Ohio Business Litigation Blog

A blog about Ohio business litigation and beyond.

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Effect of a Company Merger or Consolidation on the Enforceability of Non-Competition Agreements Under Ohio Law

Under Ohio law there are many different factors that control [whether a non-competition agreement is enforceable](#). Enforceability may depend on the reasonableness of the agreement, whether there is mutuality of obligation between the parties, or the industry or profession in which the agreement takes place. But are non-competition agreements still enforceable if a business consolidates or mergers with another company? This post covers a recent ruling by Ohio's First Appellate District that addresses this issue directly.

In [Acordia of Ohio, L.L.C. v. Fishel, 2010-Ohio-6235 \(1st Dist. Hamilton Co., Dec. 17, 2010\)](#), Acordia, an insurance agency, filed an injunctive relief action against a competitor company and four former employees for violation of non-competition agreements that the employees had signed when they initially began their employment with the company.

However, Acordia was a company that was the product of various corporate mergers, and all of the non-compete agreements were signed with predecessor companies. In fact, Acordia was the product of 6 different mergers, acquisitions, or name changes over an eight year period.

Under Ohio law, noncompete agreements transfer to a successor corporation in a merger or consolidation. Ohio Revised Code 1701.82(A)(3) specifically provides that "[w]hen a merger or consolidation becomes effective * * * [t]he surviving or new entity possess all assets and property of every description,



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and every interest in the assets and property, wherever located, and the rights, privileges, immunities, powers *** each constituent entity." Therefore, successor companies inherit all assets and rights of the predecessor corporation, including the rights of any valid noncompete agreements.

However, just because a successor company inherits the rights to a predecessor's noncompete agreements, this does not necessarily mean that they have the right to enforce them. In [Acordia](#), the court looked at the specific language of the non-competition agreements of the predecessor business that the successor company had inherited. What the court found was that the agreements specifically prohibited the employee from competing *only with the predecessor corporation* and not the successor.

More specifically, the court found that since each predecessor company had either changed its name or merged into a new organization, the time limitations attached to each non-competition agreement began to run at the time of each merger or name change. This happened because each predecessor company ceased to exist following each respective mergers. Therefore, the four employees employment with the predecessor companies was necessarily terminated at that time of each respective merger, which subsequently triggered the time period on each employee's non-competition agreement.

When Acordia finally brought its lawsuit when its employees left for a competitor, all four of the non-competes had already been triggered and had expired. Accordingly, the court found the non-competes to be unenforceable.

So what can businesses learn from this decision? Non-competition agreements can survive mergers and other business formation changes. However, the event of a merger or acquisition of a company can trigger the beginning of time limitations attached to noncompetes. If your company has recently undergone a merger, acquisition, consolidation, or some other change in business formation or name, check your business's agreements. Make sure that the language in the agreement allows for some flexibility in its enforceability in the event of a change in form. Also, be proactive. Consider including specific language in agreements that take in to account the possibility of merger, consolidation, and acquisition.

Posted by Aaron Minc at 12:36 PM    

Labels: [1st Appellate District](#), [Litigation](#), [Non-competition agreement](#)

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