TRO Issued Enjoining Breach Of Non-Compete Agreement Clauses

August 5, 2011

California Business and Professions Code Section 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." As discussed in this [legal alert](#), the California Supreme Court in *Edwards v. Arthur Andersen,* 44 Cal. 4th 937 (2008), shut the legal door on non-competition agreements that do not fit within specific statutory exceptions.   In doing so, the California Supreme Court considered the so-called "narrow-restraint" exception applied in several Ninth Circuit Court of Appeals decisions.

Thus, it was interesting to see that U.S. District Court Judge [Lucy H. Koh](#) recently issued a temporary restraining order enjoining breach of certain provisions of a non-compete agreement. In *Richmond Technologies, Inc. v. Aumtech Busines Solutions*, 2011 U.S. Dist. LEXIS 71269 (July 1, 2011), Judge Koh found that the non-solicitation and non-interference provisions of a non-disclosure agreement were likely to be found unenforceable under California law.

However, Judge Koh did find some provisions of the non-compete agreement likely to be enforceable. For example, one clause prohibited competition with the plaintiff with a similar product and/or service using its technology. While noting that this language is "not entirely clear", she found the clause likely to be enforceable to the extent that it is construed to bar only use of confidential source code, software, or techniques. Similarly, she also found that a clause prohibiting use of confidential information is likely to be enforceable to the extent that the claimed confidential information is protectable as a trade secret.

Judge Koh's decision to issue a TRO highlights the tension between Section 16600 condemnation of most noncompetition agreements and California case law protecting businesses from the theft of trade secrets. Courts seem to view the protection of trade secrets as either an exception to Section 16600 or the remedy for an independent wrong.

This decision involved the issuance of a TRO and Judge Koh had scheduled a hearing on whether to issue a preliminary injunction. However, I can't report on that hearing because before the hearing date the plaintiff filed a notice of voluntary dismissal.

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