SIXTH CIRCUIT ENFORCES NON-COMPETE'S AGREED UPON CHOICE OF LAW FAVORING MICHIGAN'S LESS RESTRICTIVE ENFORCEMENT OF SUCH AGREEMENTS

As attacks on the use of non-competition provisions roll on nationwide, choice-of-law provisions in those agreements will likely come under even closer scrutiny. A recent Sixth Circuit decision however, determined that such a choice-of-law provision was valid, even though the law chosen by the parties was far more favorable to enforcement of such provisions than was the state's that had the closest relationship with issues in the lawsuit. In *Stone Surgical, LLC v. Stryker Corporation*, Nos. 16-1434/1654, 2017 U.S. App. LEXIS 9031 (6th Cir. May 24, 2017), the Sixth Circuit affirmed the judgment of the Western District of Michigan upholding the validity of both a non-compete agreement and a choice-of-law provision contained in that agreement, even though the chosen Michigan law favored the enforcement of non-competes while the state with the most significant relationships to the transaction and the parties, Louisiana, has far more restrictive non-compete law.

Christopher Ridgeway was employed as a sales representative for Stryker, a Michigan based corporation, from 2001 to 2013, where he sold medical device products in his Louisiana-based territory. Stryker's original employment offer was contained in a 16-page letter that included, among other things, an offer letter, a form non-compete agreement used for all employees, which contained a one-year non-compete clause, a non-disclosure clause and a non-solicitation clause. It also had a Michigan choice-of-law clause and a Michigan forum-selection clause. His employment was contingent on his signing and returning the documents, which he did. As will be seen, the choice-of-law provision was more pivotal than it appears at first glance

because Michigan law liberally favors enforcing non-competes and Louisiana law severely restricts such enforcement.

In 2013, Ridgeway began considering going to work for Biomet, a Stryker competitor. He claimed that he asked Stryker's HR director whether a non-compete agreement was in his file and was told several times one was not. He claimed that based on that representation, he began talking to Biomet about employment opportunities. Not surprisingly, Stryker's version of the story was quite different. It claimed that it never told Ridgway that no non-compete existed and asserted that the conversations with Stryker regarded his inquiry about whether he had signed a *new* non-compete to receive stock options associated with a 2012 promotion to district sales manager, not his original non-compete. Stryker argued that its HR director told Ridgeway that she saw no *new* non-compete in his file and then followed up that conversation with an email titled "Stock." Moreover, Stryker argued that all its employees were required to sign non-competes or they would not be hired so that it was impossible that he would not have signed one.

When Stryker discovered that Ridgeway was considering a move to Biomet, it fired him and in the termination letter reminded him of his obligations outlined in the various agreements, which apparently had no effect on his choosing to go to work with Biomet. Soon thereafter, Stryker sued Ridgeway in the Western District of Michigan claiming breach of contract, breach of fiduciary duties and misappropriation of trade secrets. Ridgeway counterclaimed, alleging fraud under Louisiana law and also moved to dismiss for lack of personal jurisdiction, which the trial court denied based on the forum-selection cause in the non-compete agreement. While that suit was pending, his company, Stone Surgical, filed suit in the Eastern District of Louisiana against Stryker and that action was transferred to the Western District of Michigan and consolidated with the original case. After consolidation, Stryker moved for a preliminary injunction. While that

motion was denied, the actions effectively ended the relationship with Biomet and Ridgeway due to Biomet's fear of liability.

The case was eventually tried to a jury, which returned a verdict in Stryker's favor on all its claims, awarded it $745,195.00 in damages and denied any relief on Ridgeway's counterclaims. Ridgeway and Stone Surgical appealed, challenging the forum-selection clause, the court's exercise of personal jurisdiction over him and the choice-of-law provision.

The appeals court quickly disposed of the challenge to the forum-selection clause and personal jurisdiction issues because it determined that the forum-selection clause was valid under Michigan law and that by signing the agreement containing that clause, Ridgeway consented to personal jurisdiction in a Michigan court.

As to the choice-of-law provision, the court began its analysis by stating that Michigan law looks to the Restatement (Second) of Conflicts of Law, specifically section 187, when resolving choice of law issues. That section states, in pertinent part, that the law chosen by the parties will be applied "unless the application of the law of the chosen state would be contrary to a fundamental policy of a state which has a *materially greater interest* than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties." (emphasis added). As such, the court determined that its analysis had to start by determining whether, absent the choice-of-law provision in the Stryker agreement, another state's law would apply, by taking into consideration the place of contracting, the place where the contract was negotiated, the place of performance, the location of the subject matter of the contract and the domicile, residence, nationality, place of incorporation and place of business of the parties.

Analyzing the specific facts of the case, the court could not determine the place of contracting or the place of negotiation. It stated that the place of performance and location of the subject matter favored Louisiana and that the final prong did not favor either state. As such, it determined that the state with the most significant relationship to the transactions and the parties was Louisiana but it went on to state that the inquiry also required it to determine whether Louisiana had a "*materially greater* interest than the chosen state in the determination of the particular issue." (emphasis in original). It noted that Stryker was a Michigan corporation with its headquarters and management centered there, that Michigan had a strong interest in protecting its businesses from unfair competition and that Ridgeway's breach of the non-compete agreement would cause Stryker economic loss, which Michigan had an interest in preventing. Taking these issues into consideration, the court determined that Louisiana's interest in protecting its citizen from unfair non-compete clauses was not *materially greater* than Michigan's interest in protecting its businesses from unfair competition. As such, it determined that the choice-of-law provision was valid and properly applied by the trial court and let the jury verdict stand.

In light of this ruling, and the continued questioning of the use of non-competition agreements, those employers that have not chosen to include a choice-of-law provision should probably re-examine that decision.