Armstrong Teasdale

Client Alert

August 15, 2012

Missouri Supreme Court Issues Non-Compete Decision That May Affect Your Business

Yesterday, a non-compete decision was handed down by the Missouri Supreme Court that may affect your business. This decision is only the second time in the past 25 years that the Missouri Supreme Court has decided a non-compete case. As you know, family-owned and closely-held businesses, and also publicly-held companies, often utilize non-compete agreements to protect their businesses.

In *Whelan Security Co. v. Kennebrew, et al.*, decided August 14, 2012, the Missouri Supreme Court enforced a non-compete agreement against a branch manager (covering 2-years and a 50-mile radius). The Court also enforced a non-solicitation provision against both a branch manager and a salesperson as to *existing* customers of the company, but refused to enforce the restrictive covenant with respect to *prospective* customers. However, the Court did acknowledge that, depending on the language that is in a non-compete agreement, and whether trade secrets are at stake, a trial court may still enforce a non-solicitation provision with respect to both existing and prospective customers.

Finally, the Supreme Court reaffirmed that an employee non-solicitation provision (i.e. a provision prohibiting employees from raiding their former employer) is presumed reasonable and enforceable if its duration is one year or less. If the duration of such a restriction exceeds one year, the Court requires a showing as to the purpose for the provision. The Supreme Court indicated that a trial court should look, in part, to the language of the actual agreement in determining the purpose in any given case. Thus, if you have an anti-raiding provision that is longer than one year, your agreement should state the purpose for that provision.

Please feel free to call if you have any questions or would like us to review your existing agreements in light of this most recent Supreme Court decision.

Michael Kass / 314.621.5070
mkass@armstrongteasdale.com

Bill Corrigan / 314.621.5070
wcorrigan@armstrongteasdale.com

John Vering / 816.221.3420
jvering@armstrongteasdale.com