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‘Janitor rule’ sweeps away overly broad noncompete

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A recent federal decision from the Northern District of Illinois again illustrates the perils of drafting and attempting to enforce overly broad restrictive covenants.

In the case of *Medix Staffing Solutions Inc. v. Dumrauf*, the pharmaceutical, biotech and medical device company Medix attempted to enforce a noncompete agreement against a former director, Daniel Dumrauf, who had been responsible for its medical sales and recruiting strategies and had left to work for a direct competitor, ProLink.

In relevant part, Medix’s noncompete purported to prohibit Dumrauf from being “connected in any manner with the … operation … of any business that either: (1) offers a product or services in actual competition with Medix; or (2) which may be engaged directly or indirectly in the business of Medix” within a 50-mile radius of any office in which Dumrauf worked for Medix.

According to the noncompete, the legitimate business interest on which it was premised was the need to protect Medix from Dumrauf’s personal relationships with its customers (presumably which it had paid him to develop on its behalf).

Although Dumrauf insisted that 90 percent of his activities for ProLink would be in Ohio and Kentucky when he had been employed in Medix’s Arizona office, he did in fact work periodically from ProLink’s Arizona office. Thus, it appeared that Dumrauf’s employment with ProLink violated the letter of his Medix noncompete.

Dumrauf filed a motion to dismiss the complaint, arguing that the noncompete was unenforceable as overly broad, in part because it would keep him from performing any services whatsoever for a competitor of or business like Medix, regardless of whether it related to or implicated Dumrauf’s prior position with Medix or, by extension, its purported interests in customers.

Dumrauf argued that the noncompete violated the so-called janitor rule, as it would preclude him from performing janitorial services for a competitor.

Although U.S. District Judge Sara L. Ellis noted that ordinarily an employer should have an opportunity to develop a factual record to support its restrictions (the issue of whether a restriction is necessary vis-a-vis a former employer's legitimate business interests is typically an issue of fact), she dismissed the claim at the pleading stage as patently too broad as a matter of law.

In doing so, she first noted the starting premise that restrictive covenants are disfavored in Illinois and that the proponent of the restriction must show that its full extent is necessary to protect its purported interests.

According to the court, this covenant was patently unreasonable because an employer cannot prevent a former employee from "working for a competitor in a noncompetitive capacity."

Moreover, the court refused to "blue pencil" the agreement, citing cases stating that a court should refrain from modifying a covenant that is so broad as to be patently unfair as written.

The case thus again illustrates the principle that employers should draft restrictions narrowly, considering their most important interests and go no further, particularly since Illinois courts rarely save overly broad restrictions by modifying them per blue-penciling clauses.