

## **CONTINUED EMPLOYMENT IS SUFFICIENT CONSIDERATION FOR NON-COMPETITION AGREEMENTS**

In a recent decision, the Ohio Supreme Court resolved the conflict among various appellate courts on the issue of covenants not to compete, or Non-Competition Agreements. Specifically, the Supreme Court ruled that such an agreement is supported by valid consideration even though an employer offers no other consideration than continued employment.

Employers have utilized non-competition agreements to protect their company's competitive advantages. Employers might have certain key employees who have access to sensitive information or develop long-standing relationships with valued clients. Non-competition agreements may prevent such employees from leaving to open a competitive business in the same city or joining the employer's major competitor.

Ohio has recognized that non-compete agreements were valid, as long as they restricted the employees' competition by time and geography. For example, a non-competition agreement would not be valid if it lasted for 15 years and encompassed the Midwestern region, whereas a year term for a 50-mile radius would be valid.

When faced with a similar issue in 1991, the Supreme Court held that sufficient consideration existed for a non-competition agreement when the employee was offered a specific term of employment (one year) and the employer limited the employee's grounds for possible termination. Since that decision, courts of appeals throughout Ohio have struggled with the validity of an agreement not-to-compete signed by the employee with no monetary consideration or other tangible benefit to the employee. The minority of courts in Ohio held that consideration in the amount of money or in some other form is necessary to support a non-competition agreement. The majority of Ohio courts, however, held that continued employment in an at-will context constitutes a sufficient consideration to enforce a non-competition agreement, even if it is entered into after the commencement of the employment relationship.

The Supreme Court reviewed a certified question from the Court of Appeals for Summit County, Ohio in *Lake Land Employment Group v. Columber* (2004), 101 Ohio St. 3d 242, to address this issue. The Court found that either an employer or employee in an at-will relationship can change the terms of their relationship at any time. When an employer presents a non-competition agreement to its employee, it is a proposal to renegotiate the terms of their agreement. The employee can either accept the employment on those new terms, or decline them. Therefore, new consideration or consideration supporting that non-competition agreement exists. That consideration is the employee's assent to the agreement in exchange for his employer's promise to continue to employ him. The Court, therefore, resolved the conflict among the various appellate districts by declaring continued employment is sufficient consideration to support a non-competition agreement.

The Court, however, left open one window regarding non-competition agreements. The court explicitly stated that it would weigh a number of factors in determining the validity of restraining contracts, such as a non-competition agreement. The focus, however, would not be upon the adequacy of consideration, but upon the extent of the restrictions placed on the employee as to

whether they are necessary to protect the employer's legitimate interests. Therefore, the time and geographic restrictions must still be reasonable.

**- R. Eric Smearman  
Smith Marshall, LLP  
April 2004**

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