

Client Alert



ARMSTRONG TEASDALE LLP

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COVENANTS NOT TO COMPETE/UNFAIR COMPETITION PRACTICE GROUP

**MISSOURI SUPREME COURT ISSUES FIRST NON-COMPETE CASE IN 21 YEARS;
UPHOLDS NON-COMPETE AGREEMENT; CITES ARTICLE AUTHORED BY
ARMSTRONG TEASDALE LAWYERS, CORRIGAN AND KASS**

**Background of the Case -Healthcare Workers With
Non-Competes Join Competitor**

Pearl Copeland and LuAnn Helms were employees of Healthcare Services of the Ozarks, a company providing home healthcare services. Copeland and Helms supervised field employees, such as nurses and other healthcare workers, who in turn had direct contact with patients. Both Copeland and Helms signed non-compete agreements providing that, for two years after their employment ended, they could not engage in competition with Healthcare Services, or solicit patients or employees of Healthcare Services. Copeland and Helms eventually left Healthcare Services to join a competitor, Integrity.

Soon after Copeland and Helms began working for Integrity, several of their former subordinate employees at Healthcare Services joined them as employees of Integrity. Those employees successfully diverted to Integrity some of the patients they had serviced on behalf of Healthcare Services. As a result, Healthcare Services filed a lawsuit to enforce its non-compete agreements.

Because Copeland and Helms had influence over their subordinate field employees, who in turn successfully solicited patients to switch to their new employer, the trial court granted the plaintiff's request for an injunction. The Court of Appeals for the Southern District of Missouri, however, reversed the decision of the trial court. Healthcare Services then appealed to the Missouri Supreme Court.

**Missouri Supreme Court Upholds Trial
Court Decision**

Non-Competes Enforceable

The Supreme Court of Missouri disagreed with the Court of Appeals. The Supreme Court confirmed the principle that, in the healthcare context, patient relationships are a protectable interest giving rise to enforcement of a non-compete, just as customer relationships are protectable in a business context where a salesperson is calling on customers of the prior employer. Since Copeland and Helms could (and did) successfully exert significant influence over the employees they supervised to solicit patients to switch providers, the non-compete agreements were enforceable.

*Healthcare Services Failed to Prove it Had
"Trade Secrets"*

Although Healthcare Services was successful in convincing the Court to protect its current patient relationships, it was not successful in proving that it had any trade secrets to support enforcement of the agreements. In rejecting Healthcare Services' claim, the Supreme Court set out certain factors to be examined by a court in determining whether information constitutes a trade secret for the purpose of enforcing a non-compete agreement. Those factors include: (1) how the identified business information was valuable to the business or could be valuable to a competitor; (2) what steps were taken to maintain the confidentiality of the information; and (3) how easily the information could be lawfully acquired or duplicated by others. Without evidence in

Healthcare Services' favor on those issues, the Court was not able to find the information in question constituted a trade secret entitled to protection under a non-compete agreement.

Conclusion: Review Your Non-Competes and Confidentiality Practices and Policies

Although the Missouri Supreme Court enforced the non-compete agreement in the *Copeland* decision, employers are reminded by the Supreme Court that, just because they have non-compete agreements in place, or just because they think their business information is confidential and valuable, does not necessarily mean they are protected under the law from competition by departing employees. If you are a business with employees in positions of influence over customers and co-workers or who have access to valuable business information, it would be prudent to

have your legal counsel analyze your existing agreements and policies and practices to determine whether you have taken the necessary and appropriate steps to protect your business from unfair competition in light of this most recent pronouncement of the law by the Missouri Supreme Court. It also bears noting that, even without non-compete agreements, under certain circumstances, companies may be protected by laws prohibiting use or disclosure of trade secrets, computer tampering, theft of data (even if not confidential), and competitive activity by an employee while still employed.

If you have any questions concerning this article or the topics contained in the article, please contact Williams M. Corrigan, Jr. wcorrigan@armstrongteasdale.com or Michael Kass mkass@armstrongteasdale.com in our St. Louis office or John Vering jvering@armstrongteasdale.com in our Kansas City office.

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