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# The World Is Not Enough … But Maybe It's Too Much For Noncompetes

February 12, 2015 | Non-competes And Trade Secrets,Labor And Employment

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While many companies agree with this James Bond family motto (taken from the epitaph of Alexander the Great) when it comes to noncompetes, such untethered restrictive covenants can be vulnerable to savvy plaintiffs (or their lawyers), as the Eighth Circuit recently reminded us in *NanoMech, Inc. v. Suresh*. In *NanoMech*, the company specialized in nanotechnology products related to lubrication, energy, biomedical coatings, and strategic military applications. One is hard-pressed to think of technology more worthy of protection by a covenant not to compete. The problem, however, was that NanoMech's noncompete provision commanded the following in its entirety:

> COVENANT NOT TO COMPETE: The Employee agrees that during the term of this Agreement, and for two (2) years following termination of this Agreement by the Company, with or without cause; or, for a period of two (2) years following a termination of this Agreement by the Employee, the Employee will not directly or indirectly enter into, be employed by or consult in any business which competes with the Company.

When the plaintiff left to work with a competitor and NanoMech brought suit attempting to enforce this noncompete, the federal district court, and then the Eighth Circuit, found the barebones language to be overbroad. The noncompete was analyzed under Arkansas law, which, like many states that recognize noncompetes, requires employers to have a valid interest in need of protection, as well as reasonable time and geographical limits. Although NanoMech argued that a broad noncompete was necessary to protect its sensitive technology (and indeed the court agreed that trade secrets deserve increased protection), this particular covenant spanned a bridge too far. The problem here is that under the language at issue, plaintiff "would be prohibited from working for any company that is a competitor of NanoMech, in any capacity, anywhere in the world." Although preventing plaintiff from working as a janitor for a competing company in Sri Lanka was not likely the intent of the drafters, that would be the effect of the restriction as worded, and the Court's finding of overbreadth is hardly surprising. The court did allow for the possibility of an enforceable non-compete without geographic borders if it was properly limited by some other means (e.g., customer or client-specific restrictions), and gave some credence to the notion that a worldwide company might need worldwide protection. However, the fact that this agreement prohibited plaintiff "from working in *any* capacity for *any* business that competes with the company" was simply unreasonable. Finally, because Arkansas courts do not modify or blue-pencil non-competes, the entire clause was unenforceable. The moral of this story is straightforward – take a look at your non-competition agreement. Is it reasonably tethered to some geographical or other natural limitation? Would it technically prevent your vice president of sales from sweeping floors in Swaziland for a "competing" company? If so, or if you're not sure, it's time to call your favorite employment attorney.