BARNES & THORNBURG LLP

Behind "Obnoxious" Headlines, A Good Non-Compete Strategy Reminder

March 18, 2014 | | Non-competes And Trade Secrets,Labor And Employment

William A. Nolan
Partner
Columbus
Managing Partner

We have written often on this blog about the importance of the difference in state laws on non-compete agreements to drafting and enforcement strategies. A New York case involving one such case recently went somewhat viral, probably because of the court's use of the term "truly obnoxious" four times in the opinion to refer to the employer's Florida choice of law clause.

Far be it from me to stand in the way of a good headline, but in context the court was simply using language from prior New York case law to state the fairly common legal rule that a court in state A will likely not enforce a contractual clause to follow the law of state B where state B's law would be contrary to the public policy of state A. This principle comes up often in non-compete law, such as when "state A" is a state where the court will not modify an overly restrictive non-compete to make it enforceable and state B will. A state A court will likely reject a state B choice of law clause and simply flat out refuse to enforce an overly broad non-compete agreement. In the New York case, the New York court refused to enforce a non-solicitation clause under New York law, even though the parties specified the application of Florida law in their agreement.

As always, employers who do business in multiple states, or even can be competed with from outside their home state, should work with counsel to craft a strategy to maximize enforcement in light of the various state laws that may apply to them. Choice of law decisions can be critical. In addition, choice of forum clauses – specifying where disputes must be litigated – are also critical and, while not bulletproof, tend to be enforced more by out of state courts than choice of law clauses. (It is not evident from the New York decision that there was such a clause there.)

RELATED PRACTICE AREAS

Labor and Employment
Non-Compete and Trade Secrets

RELATED TOPICS

New York