

**ALERT**

## **LABOR & EMPLOYMENT**

May 2009

### **Indiana Courts Uphold Non-Compete Agreement**

Reasonable non-compete agreements signed by former employees are still enforceable in Indiana. Recently, the Indiana Court of Appeals upheld a non-compete agreement that prevented an accountant from working for the clients of his former employer.

In the case of *Craig P. Coffman, et al v. Olson & Company*, the accountant/plaintiff had an agreement that restricted his work for two years, in two counties, with his employer's clients and former clients. But, within months of leaving his employer, the plaintiff worked for 17 of his employer's former clients after each of these clients terminated their relationship with the defendant. The former employer sued.

After the trial court enforced the non-compete agreement, the accountant appealed. The appeals court also sided with his employer. The court reiterated the principles that Indiana law recognizes "a protectable interest in the goodwill generated between a customer and a business;" and that an "element of goodwill is the advantage acquired through representative contact." Indeed, the court found "it is *because of the prior working relationship* that the clients sought out [his] services." Judge Crone, however, dissented on this point, arguing that the former employer's protectable interest ceased to exist after each of the seventeen clients terminated their relationship with the defendant.

Importantly, the trial and appellate court both rejected the non-compete agreement's "liquidated damages" provision because it was a "penalty" and not a measure of damages.

This case reaffirms the legality of carefully drafted restrictive covenants in Indiana. We encourage our clients to review and/or prepare non-competition agreements, making sure they are reasonable in time and geography, they guard a protectable interest, and their damages provisions are based on the calculation of damages.

To obtain more information about this decision, non-compete agreements or any other labor and employment issues, please contact the Barnes & Thornburg Labor and Employment attorney with whom you work, or a leader of the firm's Labor and Employment Law Department in the following offices: Kenneth J. Yerkes, Chair (317) 231-7513; Norma W. Zeitler, Chicago (312) 214-8312; William A. Nolan, Columbus (614) 628-1401; Eric H.J. Stahlhut, Elkhart (574) 296-2524; Mark S.

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