Covenants Not To Compete are Strictly Construed Against Company

Increasingly, companies are requesting employees to enter into provisions which restrict the employee's right to leave the company's employment, and compete against the company. While the validity of non-competition agreements turns on the specifics of each agreement, covenants not to compete are restraints on trade and are not generally favored by the law. *Ackerman v. Kimball International, Inc.*, 652 N.E.2d 507, 509 (Ind. 1995).

In explaining these provisions, the court first determines whether the employer has asserted a legitimate interest that may be protected by a covenant. *Unger v. FFW Corporation*, 771 N.E.2d 1240, 1244 (Ind. Ct. App. 2002) (finding that protectable goodwill includes right to restrict former employee from enticing away employer's customers). If the employer has asserted a legitimate, protectable interest, a court next determines whether the scope of the agreement is reasonable in terms of time, geography and types of activities prohibited. *Id.*

Indiana courts have not determined that a certain time period is or is not reasonable; rather, the reasonableness of the time restriction depends on the entire agreement. *Ackerman*, 652 N.E.2d at 510. However, it is important to note that a covenant not to compete that is without a geographic limitation is presumably void. *Vukovich v. Coleman*, 789 N.E.2d 520, 525 (Ind. Ct. App. 2003). Nonetheless, a covenant without a geographic limitation may be reasonable if it is limited by other means, such as limitations on the group of persons the former employee is prohibited from contacting. *Id.* at 526. Under this reasoning, an Indiana court held that a covenant not to compete with a geographic limitation which restricted a former employee from soliciting any present, past or prospective client (prospective client defined as a person or business previously contacted at least once) of the employer for three years after termination of the former employee's employment was reasonable. *Seach v. Richards, Dieterle & Co.*, 439 N.E.2d 208, 214 (Ind. Ct. App. 1982).