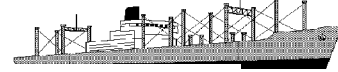




Rollin' On



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NONCOMPETE CLAUSES: Time, scope, options & more

Although we live in an ever changing world, some things never change. Businesses have always tried to protect themselves from departing employees through the use of written noncompetition clauses. At the same time, those departing employees have the need to continue on with their livelihoods and to feed their families. The disputes end up in the courts which are thus confronted with these dilemmas which are themselves competing.

Once you get to court, there are basically three options available. One option is to enforce the clause as written, another option is to throw the entire clause out, and the third is to judicially tailor the clause to be "reasonable", whatever the hell that means. I mean, how tall is a tree? The primary factors are the time and scope. How long is the employee restrained? And for what geographical area? Then other factors get weighed in, like the type of business, the nature of the position held by the employee, the access to information, contact with customers and the public, and so on.

The transportation industry is not a stranger to noncompete clauses. Many of you are employees and in the trenches everyday, and you have access to important information. Many of you brought a lot of trade information with you, and you use that information on a daily basis. On the other hand, many of you are businesses that have invested many years, \$\$, weekends and anxiety building your business, and you don't



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want your efforts compromised.

Even apart from noncompete clauses, the law protects against divulging trade secrets, so the absence of a written agreement doesn't always mean the employee is home free or the business without a remedy.

Mergers and Acquisitions: Close to Home

On a related topic, there has been recent activity on the home front regarding mergers, acquisitions and the change that comes with them. Currently, at least three board members of a transportation association are going through some kind of company change. One is employed for a company that is selling a division to another company. Another board member is experiencing what it feels like to be acquired by an overseas company if certain antitrust hurdles are cleared. And a third board member is going through the traditional acquisition process. Meanwhile, yet another local company, acquired last year by an out-of-state company, has now closed its doors, its usefulness perhaps having been served.

Now these businesses and employees will need to adapt to the changes. Some adjustments will be subtle, perhaps even practically nonexistent, while others will be front and center. Also, there will be ripple effects. Through consolidation, vendors and service providers get squeezed out. I'm still disappointed at losing Thrifty Payless as a client when it was bought by Rite Aid.

Kennedy

No matter what your political leanings may be, the name usually evokes a reaction. I was raised in a Democratic, Irish (grandmother), Catholic household, so JFK basically walked on water. Everyone, even nonbelievers, knows where he or she was when JFK was shot. So when his son died this last weekend, memories and emotions, long since forgotten, resurfaced with intensity.

My closest act of larceny occurred when Bobby Kennedy gave a stump speech on the back of a pickup in Woodburn in May 1968. After watching him walk around during his speech in the pickup bed, the thought occurred to me that it would be neat to "appropriate" the floor mat (the type commonly found inside the door of a business). So after he finished his speech, a couple buddies and I five-fingered the rug. It has sat in the entryway to my parents' house since that date. RFK was killed a few weeks later on my high school graduation night.

JFK had a dream of putting a man on the moon during the 60's, the country responded and we are now observing the 30 year anniversary of the 1969 fulfillment of that dream. Now this decade and century are closing with only one member from that five member family left.

The Kennedy family has provided more than its share of tragedy and sorrow. Let's hope that those dreams and memories, even for nonbelievers, provide a positive influence for ourselves and our children for the next decade and beyond.

That's all for now. To shippers, carriers, agents and other third parties, keep the cargo rollin'!!

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 20 years and emphasizing transportation law, business law and related litigation.