

Delaware Court Of Chancery Refuses To Enforce Both Choice of Law Provision And Nationwide Non-Compete

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On August 31, 2023, the Delaware Court of Chancery held, with respect to a non-compete provision in an employment agreement, that: (1) the choice of law provision selecting Delaware was “not necessarily binding”; and (2) the non-compete was unenforceable. [Centurion Service Group, LLC v. Wilensky, No. 2023-0422-MTZ](#). This is that court’s [second decision in a week](#) invalidating a non-compete.

Factual Background

Earlier this year, Centurion Service Group filed a breach of contract action and motion for a preliminary injunction against its former Vice President of Marketing and Operations after he left Centurion and acquired another business that Centurion viewed as a direct competitor. Centurion sued to enforce the non-compete contained in his employment agreement, claiming the former employee violated its terms. The non-compete prevented him from engaging in business for (1) two years following termination of employment, (2) anywhere in the United States, (3) that was competitive with Centurion’s business. The former employee argued the provision was unenforceable based on its broad geographic scope and duration, that it failed to advance a legitimate business interest, and that the provision was vague.

The employment agreement contained a Delaware choice of law provision. And it prevented the former employee from directly or indirectly engaging in business that Centurion was actively involved in *and* prevented him from engaging in business that Centurion was “planning to design, develop, sell or provide.” The employment agreement defined “business” as not only “the buying and selling of medical equipment” and “providing medical surplus management” but also as “activities in which ... [Centurion] is actively planning to engage in.” The employment agreement also defined the “Restricted Area” as any area within the United States where Centurion currently engages *and* actively plans to engage in business, and defined the “Restricted Time” as the two year period following the former employee’s termination.

Ruling

Though the agreement selected Delaware as the choice of law, the court held that *Illinois law* should apply because the choice of law provision was not necessarily binding on the court’s decision. The court pointed to various facts showing Illinois’ materially greater interest in the issues than Delaware, including: Centurion is an Illinois LLC with its principal place of business in Illinois; the former employee is in Illinois resident; the employment agreement was executed in Illinois; the alleged breach occurred in Illinois; and the competitive business is headquartered in Illinois. But despite finding Illinois law governed, the court concluded that Illinois and Delaware common law are “mostly in step” concerning the enforceability of restrictive covenants.[\[1\]](#)

The court then found that the above-noted geographic scope and duration taken together “casts a limitless net over [the former employee] in both geography and scope of conduct.” The court took particular issue with prohibiting the former employee from working in any geographic field where Centurion “planned to enter.”

The court concluded that a non-compete with “a greater scope must be supported by a greater interest” to be enforceable. However, the court was unpersuaded by Centurion’s argument that the former employee “f[ound] deals, foster[ed] relationships” and had “access to Centurion’s confidential information including lists of buyers, sellers, and vendors”; the court characterized them as “vague and everyday concerns.”

Implications

This ruling is yet another example of this court heavily scrutinizing a choice of law provision and a non-compete in an executive-level employment agreement. We will continue to monitor the Delaware Court of Chancery's rulings in the non-compete context.

[\[1\]](#) The court's rejection of the parties' choice of law provision is the second notable example of such a rejection this year, with the Court of Chancery similarly rejecting a choice of law provision in February for similar reasons as those articulated here. See *Hightower Holding, LLC v. Gibson*, No. 2022-0086-LWW (Feb. 9, 2023).

[View original.](#)

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