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CONFIRMED: NEVADA NON-COMPETE AGREEMENTS MUST BE LIMITED GEOGRAPHICALLY TO AREAS WHERE EMPLOYERS HAVE ESTABLISHED BUSINESS INTERESTS

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It's official. The Nevada Supreme Court recently affirmed its general rule that geographic restrictions within non-compete agreements must be reasonable.[1] More specifically, geographic restrictions must be limited to areas where the enforcing party has "established customer contacts and good will." Employers should take stock of the language used in their non-compete agreements with current and prospective employees that include geographic restrictions. Without setting reasonable geographical restrictions, employers risk having their agreements rewritten and/or stricken as unreasonable by Nevada courts.

Background on the Case

The non-compete agreement at issue in *Landon Shore v. Global Experience Specialists, Inc.* not only restricted former employee Landon Shore ("Shore") from competing against his former employer Global Experience Specialists, Inc. ("GES") for 12 months, but it also included a geographic restriction that applied throughout the entire United States. To support the geographic scope of its non-compete agreement, GES provided the district court with a spreadsheet showing it had conducted business over the last two years in at least one city in each of 33 states, the District of Columbia, and Puerto Rico. Based upon this evidence, the district court granted GES's request for a preliminary injunction, enjoining Shores from performing similar work for a competitor that he had previously performed for GES.

Too Broad for the Nevada Supremes

However, on appeal, the Nevada Supreme Court overruled the district court's preliminary injunction citing to its prior decision in *Camco, Inc. v. Baker*[2]. While *Camco* did not involve an employer with clients in multiple states or a nationwide territorial restriction, it announced the precedent that the geographical scope of a non-compete agreement must be limited to areas where the enforcing party has "established customer contacts and good will." Therefore, in the *Shore* case, the Nevada Supreme Court reasoned that despite GES conducting business in 33 states, the District of Columbia, and Puerto Rico, enforcement of the non-compete agreement as written would mean applying the geographical restriction to areas in which GES had made no showing of established business interests. In other words, the geographical restriction was overbroad in relation to the preliminary evidence presented to the district court.

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[1] *Landon Shore v. Global Experience Specialists, Inc.*, 134 Nev. Adv. Op. 61 (Aug. 2, 2018).
[2] 113 Nev. 512, 518, 936 P.2d 829, 832 (1997).

What Companies Should Do Moving Forward

Employers requiring non-compete agreements of either current or prospective employees need to remember that provisions restricting an individual's ability to earn an income are subject to a higher degree of scrutiny than other types of non-compete restrictions. When deciding which restrictions to include in a non-compete agreement, employers must consider:

1. The temporal duration of the restriction;
2. The geographical scope of the restriction; and
3. The hardship that will be faced by the restricted party.

As confirmed by the Nevada Supreme Court in *Landon Shore v. Global Experience Specialists, Inc.*, the scope of a geographical restriction must be limited to only those areas where the employer can provide evidence of established business interests. Moreover, the evidence of those business interests will be thoroughly examined before a Nevada court upholds a geographical restriction as reasonable.

Aaron Shumway is an attorney in the Las Vegas office of Newmeyer & Dillion. He enjoys advocating for the legal rights of his clients in complex commercial and civil litigation matters. He focuses his practice on construction litigation, employment law, as well as real estate including title/escrow liability. For inquiries on how Aaron can help or questions related to non-compete agreements, please contact him at aaron.shumway@ndlf.com.

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