



AUTRY V. ACOSTA, INC.: JUDICIAL LIMITATION OF CONTRACTUAL NON-SOLICITATION PROVISIONS

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The Oklahoma Court of Civil Appeals issued an opinion in February 2018, interpreting OKLA. STAT. tit. 15, § 219A, which govern non-compete and non-solicitation contract provisions in Oklahoma. These types of provisions, which are commonplace in physician and non-physician (and other written) employment agreements, are intended to mitigate disruption to the employer’s business associated with an employee whose relationship with the employer has ended, whether voluntarily or involuntarily. Such provisions are, and have been, subject to reasonable limitations. The Court’s opinion in *Autry v. Acosta, Inc.*, 2018 OK CIV APP 8, 410 P.3d 1017, potentially places additional limits on the scope of non-solicitation provisions in employment agreements.

Autry Opinion – Background

The *Autry* case originated in the District Court of Oklahoma County. The plaintiff, Carrie Autry, sued her former employer, Acosta, Inc., for interfering with her current employment. In response, the employer counterclaimed against Ms. Autry, alleging a breach of certain provisions in her employment agreement with Acosta. The employment agreement contained a non-compete provision prohibiting Ms. Autry from performing similar work for another employer, a non-solicitation provision prohibiting her from “directly or indirectly, engag[ing] in the business of selling, soliciting, or promoting the sale of the Clients that Employee represented while employed by Acosta,” and confidentiality provision prohibiting her from misappropriating or using Acosta’s proprietary business information. Upon Acosta’s application and after an evidentiary hearing, the District Court entered a temporary injunction directing Ms. Autry to cease: (i) soliciting Acosta’s employees, (ii) sharing any information she obtained from her former employer, and (iii) directly soliciting clients identified on Acosta’s then-current client list. Ms. Autry obtained a stay of the District Court proceedings from the Oklahoma Supreme Court and appealed the temporary injunction.

Autry Opinion – Appellate Procedure and Holding

The Court of Civil Appeals reversed the temporary injunction, finding the non-solicitation provision was void and, thus, unenforceable against Ms. Autry. Under Section 219A, an employer may lawfully prohibit a former employee from “directly solicit[ing] ... established customers.” The Court of Civil Appeals determined that the language in Ms. Autry’s non-solicitation provision was overly broad, because, contrary to the statutory language, it prohibited indirect solicitation and was not limited to “established customers.” The Court of Appeals defined “established customer” as a business or customer “wherein a relationship was ongoing and anticipated to continue into the future.” The overly broad language in Ms. Autry’s

agreement potentially reached clients who, although they may have been one-time clients, no longer had a business relationship with Acosta. The Court of Civil Appeals determined that the District Court should not have modified the non-solicitation provision, because the provision could be brought into compliance with the statute only by supplying material terms to the parties' agreement, which was beyond the District Court's or the Court of Civil Appeals' authority.

STEPS TO TAKE

- **Identify all written Employment Agreements (and Employment Agreement templates) containing Non-Solicitation Provisions.**
- **Evaluate the language in the Non-Solicitation Provisions against the applicable statutory language as recently interpreted by the *Autry v. Acosta, Inc.* opinion.**
- **Engage counsel to develop an action plan to revise or amend, as appropriate, non-conforming Non-Solicitation Provisions to bring the language into compliance with *Autry v. Acosta, Inc.***
 - GableGotwals has a team of experienced healthcare and employment lawyers who are ready to assist.

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