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Fifth Circuit Affirms Reformation of Overly Broad Non-Compete

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The Fifth Circuit's recently released opinion in *Brock Services, L.L.C. v. Richard Rogillio*, No. 19-30363 (5th Cir. Aug. 27, 2019) provides valuable guidance regarding non-compete provisions that can impact both employers and employees alike no matter the industry.

According to the opinion, Richard Rogillio ("Rogillio") worked for Brock Services, L.L.C. ("Brock") until he resigned to work for a direct competitor, Apache Industrial Services, L.L.C. ("Apache"). At the time of his resignation, Rogillio was subject to a non-compete provision contained in his employment agreement with Brock. That particular provision prohibited Rogillio from working within a 100 mile radius of any actual, future, or prospective customer, supplier, licensor, or business location of Brock that he conducted business within the last year of his employment at Brock, either physically, via mail or via electronic means, including, but not limited to, certain parishes of Louisiana and the municipalities of New Orleans (the "Restricted Area"). Significantly, the severability provision set forth in the employment agreement authorized a court to step in and revise any provision deemed to be overly broad.

Upon learning that Rogillio was managing Apache customers in at least some of the parishes in the defined Restricted Area, Brock filed suit against Rogillio to enforce the non-compete provision. The district court determined that the definition of "Restricted Area" was overbroad and therefore reformed the scope of that definition to include only the specified parishes and municipalities. Additionally, the district court found that the non-compete was ambiguous as to whether Rogillio had to be physically present in the Restricted Area to violate the employment agreement. To resolve this ambiguity, the district court permitted evidence of both sides' intent and ultimately adopted the meaning set forth by Brock.

On appeal, the Fifth Circuit ruled that the district court was right to modify the employment agreement and to factor in evidence about the parties' intent to determine how the non-compete should be applied. This holding not only underscores the importance of carefully crafting restrictive covenants in an employment agreement, but opens the door for employers and employees to present evidence of intent if they believe the language of an agreement is ambiguous.