Is your manufacturing business protected against the loss of confidential information to former employees? Manufacturers can protect their valuable business relationships and confidential information by using non-compete agreements. Contrary to the belief of many business people, non-compete agreements are enforceable and can be a very valuable tool to protect a company's core business. Courts in Indiana generally accept that non-compete agreements can be used for a protectable interest. Good drafting is essential, and with proper preparation, can even enable a court to remove certain requirements which it finds unreasonable while preserving others. Manufacturers need to ensure that their non-compete agreements will not only hold up in court, but will also survive any adjustments a court may find necessary.

Non-compete agreements in Indiana
Indiana courts generally recognize that parties have the freedom to contract in a way that does not violate the law or public policy; however, non-compete agreements are not favored by law because they tend to restrain trade. Therefore, Indiana courts require that the non-compete agreements be reasonable with respect to the legitimate protectable interest of the employer; the restrictions the agreement places on the employee and the respective public interests at issue. Specifically, a manufacturer seeking to show that its non-compete agreement is enforceable must first show that it has a legitimate interest that must be protected. If the manufacturer has such a protectable interest, then it must show that the non-compete agreement is reasonable in scope in terms of time, types of activity and the geographic areas that are prohibited.

Goodwill as a protectable interest
One of many recent Indiana cases upholding the validity and enforceability of a non-compete agreement shows an example of a protectable interest. The Court found that an employer, an accounting firm, had a protectable interest in the goodwill that is generated between a customer and a business. The Court rejected the former employee's argument that his former employer had not demonstrated that they had a protectable interest because the former clients voluntarily discharged the accounting firm prior to hiring the employee for accounting services. In enforcing the employer's non-compete agreement, the Court reasoned that the employer had a protectable interest because the clients were only aware of the employee due to the business relationship that he cultivated as an employee of the accounting firm.

"Blue pencil" doctrine
Another important technique followed by Indiana courts allows a judge to strike portions from the non-compete agreement to leave only the reasonable portions. It is called the "blue pencil" doctrine. In the leading Indiana decision, the Indiana Supreme Court found that a non-compete agreement was unreasonable in its geographic restraints, but instead of invalidating the entire non-compete agreement, the Court was able to remove the objectionable language and allow the remainder to be enforced. The ability to benefit from application of the blue pencil doctrine, however, requires a properly drafted non-compete agreement that contains provisions that could be individually stricken, thereby allowing the remaining
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provisions to provide protection to the employer.

The competition in this economic market for quality customers makes it even more important for manufacturers to protect their sizable investment in these customers by preventing the loss of a valuable customer when an employee resigns or is terminated. The risk of losing a valued customer's account should prompt manufacturers to have their non-compete agreements reviewed and updated to ensure that they are enforceable under the ever-changing legal landscape. If you have questions about non-compete agreements, please contact Scott Leisz at 317-686-5215 or another member of the Manufacturing Team at Bingham Greenebaum Doll LLP >>