

And The Defense Wins

Published 5-17-17 by DRI

Jason M. Hill, Jessica E. Schwie and Morgan A. Godfrey



[Jason M. Hill](#) and [Jessica E. Schwie](#) of **Jardine, Logan & O'Brien, P.L.L.P.**, both DRI members, recently secured a significant defense win on summary judgment in *Brinkman Claim Service, LLC v. Jeremy Korn and Pharmacists Mutual Insurance Company*, State of Minnesota, Mower County District Court, Court File No.: 50-CV-16-128. DRI member [Morgan A. Godfrey](#) of **O'Meara, Leer, Wagner & Kohl, P.A.**, also successfully advised defendant Pharmacists Mutual Insurance Company prior to the commencement of suit.

Plaintiff, an independent adjusting firm, argued that a former employee/adjuster breached non-compete and non-solicitation covenants and violated a duty of loyalty by seeking and obtaining employment with defendant insurance company. Prior to leaving plaintiff's employment, the defendant employee had adjusted claims for the insurance company. Plaintiff also claimed the insurance company tortuously interfered with its former employee's contract, claiming that it intentionally procured its breach by enticing the employee to begin working "in-house." The court found the restrictive covenants to be invalid because 1) it was undisputed that defendant employee signed the covenants after he had started working for plaintiff, and 2) the covenants were not supported by necessary independent consideration.

Even if plaintiff had presented evidence of independent consideration, the court determined its claims would fail because 1) defendant employee's right to earn a livelihood outweighs plaintiff's legitimate business interests, and 2) any loss of revenue to plaintiff's business was not caused by the employee's decision to work for the insurance company. The court highlighted the fact that plaintiff did not have a sufficient business interest because its customers (various insurance companies) were not the same as the defendant insurance company's customers (policyholders), and therefore, there was no competition. Further, the court acknowledged the insurance company's independent business decision to hire an in-house claims adjuster and noted that the insurance company would have filled the position regardless of defendant employee's interest in the position.

The court also found no breach of the duty of loyalty. In effect, the plaintiff sought to create an implied covenant not to compete—asking the court to establish a cause of action against an employee who simply begins looking for work and interviewing with a new employer while still being employed by the old employer. The court rejected plaintiff's argument, finding that defendant employee was merely seeking a job change and that he should not be unduly hindered in that process.

To learn more about DRI, an international membership organization of attorneys defending the interests of business and individuals in civil litigation, visit dri.org.