

## NEWS RELEASE

DiRenzo & Bomier

[www.direnzolaw.com](http://www.direnzolaw.com)

Contact: Lisa Fernandez  
Account Executive  
Seroka Public Relations  
262-523-3740  
[lisa@seroka.com](mailto:lisa@seroka.com)

### **DiRenzo & Bomier Recommend Companies Review Non-Compete Agreements**

*Recent ruling provides more direction, better protection for Wisconsin employers*

**Neenah, Wis., September 23, 2009** – DiRenzo & Bomier, LLC is recommending Wisconsin employers review, and possibly revise, their non-compete agreements in the wake of a recent Wisconsin Supreme Court decision that has significantly altered the law in regards to the enforcement of these provisions. The Supreme Court's July ruling in *Star Direct v. Dal Pra* has eliminated previous inconsistencies with the interpretation of these agreements and in turn, made it much easier for Wisconsin companies to draft and enforce non-compete agreements going forward.

According to the ruling, covenants restricting post-employment activities deemed 'reasonable' will now be enforceable under a non-compete agreement that also contains other unenforceable covenants, as long as all covenants in the agreement are 'divisible.' As a result, companies should revisit current non-compete agreements to determine whether or not they lump a number of provisions under one clause or clearly separate provisions into stand-alone clauses. Having separate and distinct clauses in a non-compete agreement will eliminate ambiguity and make it easier for courts to decide if each clause should be upheld or not.

"The Wisconsin Supreme Court's ruling in this matter provides Wisconsin employers more direction and the ability to protect themselves from unfair competition by former employees," said Roy Fine, Partner at DiRenzo & Bomier. "As long as the proper steps are taken to review non-compete agreements and make appropriate revisions to new ones, employers are in a much better position to enforce them."

In the case of *Star Direct v. Dal Pra*, it was determined that a clause prohibiting the former employee from working for a substantially similar business was unenforceable and unreasonable. However, another clause was determined to be reasonable which prohibited the former employee from soliciting his former employer's customers. Since this "customer" clause was not seen as intertwined or linked to the other clauses of the overall agreement, the Supreme Court was able to uphold it. This classification by the court is a significant change from previous decisions in which one unreasonable clause could make the entire non-compete agreement unenforceable and therefore, void.

Because the old law was so harsh – wherein one bad clause could have been found and then the whole agreement was stricken – employees generally viewed non-compete agreements as unenforceable and employers often wondered whether it was worth the effort to try and prevent former employees from competing. Now, it seems much more likely that at least some portions of a well-drafted agreement will survive a court challenge.

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“Currently, we are working on a matter for an employee who has been asked to sign a comprehensive and voluminous non-compete agreement for a major multinational corporation,” said Phil Munroe, Partner at DiRenzo & Bomier. “Under the old law, our first reaction would have been to advise the employee that she may not need to be too concerned because the agreement contained unnecessary restrictions and thus the whole thing could be voidable.

“Under the *Star Direct* case, however, there may very well be portions of the non-compete that a court would save. We are counseling our corporate clients to take a look at their covenants more strategically and technically.”

With the current economic downturn forcing many companies to downsize their workforces, it is an ideal time to consider the impact of the Supreme Court ruling and what it means for your business. Eventually, former employees will be working for other companies – perhaps even a competitor – and new employees will be brought on board as the economy improves. Now is the time to strengthen your company’s non-compete agreements and ensure each clause can stand on its own, divisible from other agreement clauses.

“Wisconsin businesses will definitely want to firm up their non-compete agreements and seek legal counsel as needed,” said Fine. “The creation of multiple, separate clauses to address the post-termination activities of former employees is critical if any kind of legal action is required down the road.”

For more information call 800-725-8464 or log on to [www.direnzolaw.com](http://www.direnzolaw.com).

#### **About DiRenzo & Bomier, LLC**

For more than 50 years, the law firm of DiRenzo & Bomier, LLC has provided sound legal advice and representation to individuals, families, and businesses throughout Northeastern Wisconsin. It provides clients with the best of both worlds - the expertise of lawyers with big firm credentials and experience in a law firm sized to deliver individualized, practical and cost-effective legal solutions. As a full service law firm, it offers clients a diverse range of legal services ranging from the simple to the complex.

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