

6th Circuit Bolsters Employer's Right to Contract for Chosen Law

"... the enforceability of restrictive covenants often depends on which state's law applies to the dispute. For example, California is well known for refusing to enforce employee non-competition agreements and, recently, refusing to honor forum selection clauses in agreements with California employees without the employee first receiving legal advice. In contrast, with limited exceptions, most other states will generally enforce restrictive covenants. Consequently, for employers, controlling and choosing the correct law to apply to its restrictive covenant agreements can be critical to protection of its business interests," writes Marcus Mintz, Jeremy Cohen and Erik Weibust in *Seyfarth's News & Insights*.

"In a recent dispute between an Ohio employer and a California-based employee, the 6th Circuit Court of Appeals affirmed the enforcement of a non-competition covenant over the employee's objection ... The employee appealed the district court's application of Ohio law because of 'California's hostility towards covenants not to compete.' ... In reaching its decision to affirm the lower court's application of Ohio law, the 6th Circuit conducted a choice-of-law analysis and held that because the agreement contained an express choice-of-law provision, the court needed only to examine whether California, the employee's home state, has a 'materially-greater-interest' in the dispute than Ohio ... Applying its own precedent, the 6th Circuit held that while 'California has a meaningful interest in protecting its resident from Down-Lite's desire to restrict competitive conduct,' such interest was not 'materially greater than Ohio's interest in protecting one of its closely held businesses operating in the global economy."

Read the article.