Can Non-Compete Agreements Be Classified As Personal Services Contracts?

The 8th Circuit Court of Appeals recently addressed an issue that frequently arises in the non-compete context: what happens when a company buys the assets of another and then tries to enforce non-compete agreements?

Michael Elkon of Fisher & Phillips LLP explains in **the article**: Two employees worked as mobile x-ray technicians for Ozark Mobile Imaging. Both signed non-compete agreements saying they could not work in the mobile diagnostic business in a set geographic area for a two-year period after the end of their employment. Mobilex later bought Ozark in an asset purchase, and both employees declined offers to work for Mobilex, citing inferior terms of employment, and instead took positions with a competitor. Mobilex filed suit against the ex-employees for breach of contract, but the district court granted summary judgment to Greenbaum and Tabanag, finding that because they had not consented to the assignment of their contracts at the time of the asset purchase.

The appellate court reversed, providing a reminder that "it is important to pay attention during the sale process to ensure that there will be no issues with the purchaser enforcing the seller's restrictive covenant rights with employees," Elkon writes.

Read the article.