September 15, 2011 by Peter Steinmeyer

Ohio Court of Appeals Upholds Usage of Undefined, Industry "Term-of-Art" in No-Compete

When drafting no-competes, questions about the required level of detail always arise; more detail is generally better than less, but not always. The required level of detail in a no-compete was among the questions addressed by the Ohio Court of Appeals last week in Osei-Tutu Owusu, M.D. v. Hope Cancer Of Northwest Ohio, Inc., a no-compete case involving a physician, Dr. Owusu.

During negotiations over the terms of his no-compete, Dr. Owusu rejected a proposal that he be restricted from practicing within a specific 35-mile radius. Nevertheless, he ultimately signed a no-compete which defined his post-employment restricted area as "the primary service area of Lima, Ohio and the primary service area of Van Wert, Ohio."

At trial, "Dr. Owusu acknowledged that he was aware that the Agreement he signed contained a Non-Compete Clause referring to the 'primary service area,' but claimed he did not understand what that meant and argued that it was vague and unenforceable." His former employer, in contrast, argued that the term "'primary service area' was a term commonly used in the healthcare industry, and that it could easily be ascertained by using patient zip codes to statistically determine what was the geographic area from which a hospital or practice drew the majority of its patients."

The trial court sided with Dr. Owusu, holding that "the language of 'primary service area' was too indefinite and uncertain to be enforceable," based partly on testimony that the signers of the agreement "did not know specifically what geographical area that terminology encompassed at the time they signed the Agreement."

The Ohio Court of Appeals, however, disagreed, holding that the "[l]ack of a specific definition for this phrase did not make the contract void or indefinite but merely required the trial court to use rules of construction to determine what would be a reasonable meaning for the terminology." It further explained that "[t]here are numerous examples of cases where a contract contained an industry 'term-of-art' that may not have been defined in the agreement, but could easily be construed based upon industry standards and common usages." Thus, rather than invalidating a key portion of the no-compete, "[t]he trial court should have determined the meaning and the extent of the primary service area . . ."

While this case does not set down any universal guideposts on the required degree of detail in a no-compete, it certainly highlights the issue and the accompanying risks for all parties.