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# Lessons Learned

*A continuing column drawing lessons for franchise systems from franchise litigation and other sources.*

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## Arbitration Panel Enforces Post-Term Non-Compete; Denies Franchisor's Lost Profits Claim; Related Non-Competition Cases

Most of the cases on which we report are those decided by trial judges or appeals courts. Therefore, it's interesting to see how an arbitration panel handles similar cases, particularly since such a large proportion of Franchisor/Franchisee disputes today are resolved through arbitration, and the results of those decisions are not normally publicly available. A summary of a recent Georgia arbitration decision (Wilcox v. Pirtek USA, LLC) gives us several insights into the thinking of the arbitrators.

In this case, a hydraulic hose business Franchisor was able to enforce, against terminated Franchisees, the post-term obligations of their franchise agreements, including non-competition provisions. Those provisions, which prohibited operation of a similar business within 15 miles of the Franchisee's territory, were found to be reasonable. Also, reflecting some business realities not always apparent to courts, the arbitrators cited the fact that the goodwill associated with the Franchisor's system was a legitimate business interest justifying enforcement of the post-term non-compete.

On the other hand, the Franchisor was denied the right to recover lost profits in the form of potential future payments of royalties and product purchases, the arbitrators concluding that the losses were the result of the Franchisor's termination of the franchise agreements, rather than the Franchisees' breaches of those agreements. Note that this is a position taken by some, but not all, courts.

In the non-competition area, of interest also is a similar decision (Caring Senior Service Partnership LP v. Batson) by a Tennessee court, deciding that a Franchisor's claims for enforcement of a non-compete provision were likely to

succeed. In that case, the non-compete provision lasted for one year after termination and covered a territory 75 miles from the Franchisee's former location or from the location of any other Franchisee, significantly broadening the reach of the non-compete clause.

Demonstrating that different courts can reach opposite conclusions, in an comparable Illinois case (Papa John's Int'l v. Rezko), a court determined that a non-competition clause contained in a Franchisee's 37 franchise agreements and prohibiting competition within 10 miles of the franchised business or within 10 miles of any other Franchisee's businesses, for two years after termination or expiration, was overly broad and unenforceable.

As the court noted, the clause would have prevented competition in approximately 2000 of the largest cities in the country. Therefore, although the two year duration of the clause was reasonable, its geographic scope was not.

Here the lesson may be to think carefully about your Franchise Agreement's non-competition clause and perhaps be conservative in designing its scope and reach.

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