

Non-Solicitation Clauses Face Antitrust Scrutiny: Key Takeaways from *St. Joseph's v. NAPA*



ALERTS

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Introduction

A recent decision from the United States District Court underscores the antitrust risks of non-solicitation clauses in service agreements. In *St. Joseph's Hospital Health Center v. American Anesthesiology of Syracuse, P.C. et al.*, No. 5:24-cv-276 (BKS/ML), 2024 U.S. Dist. LEXIS 217703 (N.D.N.Y. Dec. 2, 2024), the court allowed antitrust claims to proceed against defendants that used a two-year non-solicitation clause with its customers.

Case Background

In February 2024, Plaintiff St. Joseph's Hospital Health Center (St. Joseph's) brought several claims against Defendants American Anesthesiology of Syracuse, P.C., American Anesthesiology, Inc., NMSC II, LLC, and North American Partners in Anesthesiology, LLP (together, NAPA), including antitrust claims under federal and state antitrust laws. The dispute involves an exclusive services agreement under which NAPA provides anesthesiology services for St. Joseph's patients.

The agreement included a two-year non-solicitation clause that forbid either party from taking any action to induce any employee to cease their employment with the other party. St. Joseph's alleged that the non-solicitation clause violated the antitrust laws by restraining competition and creating monopolistic control over anesthesia services. Specifically, the non-solicitation clause read:

During the Term of this Agreement and for two (2) years from the date of termination of this Agreement, either Party will not directly or indirectly, whether as an individual advisor, employee, agent, or otherwise take any action to induce any employee to cease his or her employment with the other Party.

The non-solicitation provision had no exceptions or other limitations.

Court's Ruling and Analysis

St. Joseph's alleged that its non-solicitation clause with NAPA (to which it agreed) violated the antitrust laws by restraining competition and creating monopolistic control over anesthesia services. NAPA moved to dismiss St. Joseph's antitrust claims arguing St. Joseph's failed to plead it had standing to sue. The court disagreed and allowed the claims to proceed stating that St. Joseph's had standing because it plausibly alleged that the non-solicitation foreclosed competitive alternatives, which caused financial harm and operational inefficiencies.

On the other hand, the court also observed the non-solicitation clause *might* be justified, albeit the court observed this in considering a separate breach of contract counterclaim filed by NAPA. St. Joseph's moved to dismiss this counterclaim arguing the contract is unenforceable given the non-solicitation violates New York law. In considering that motion to dismiss, the court analyzed whether the non-solicitation provision is reasonably justified under New York law and held that there was a legitimate business interest alleged for the provision.

Specifically, the court reasoned that non-solicitation clause (at least plausibly) protects the value of NAPA's business that NAPA created with its employees. The court ruled that this is a sufficiently legitimate justification, at this stage of the litigation, to enforce the clause under New York law. In so reasoning, the court observed that New York law recognizes four legitimate interests that may be asserted to enforce a non-solicitation clause: 1) protection of trade secrets, 2) protection of confidential customer information, 3) protection of the employer's client base, and 4) protection against irreparable harm where the employee's services are unique or extraordinary. Here, the clause plausibly falls under this last interest.

Takeaways

While much of the court's decision did not focus squarely on the merits of the antitrust claim, the decision still highlights some key antitrust considerations:

1. This case illustrates that courts may allow antitrust claims based on the use of non-solicitation clauses to proceed past the motion to dismiss stage (even when the claim is brought by one of the companies that agreed to it). These clauses come with significant antitrust risk, and companies should consult with antitrust counsel regarding the use of these clauses before agreeing to them (or even proposing such a clause).
2. This case comes on the heels of another [federal court ruling](#) that the Federal Trade Commission could not regulate to ban "non-compete" provisions. Given the new administration is unlikely to pursue an appeal of that ruling the agencies and private parties are more likely to resort to litigation like *St. Joseph's* to attack non-solicitation clauses.
3. In *St. Joseph's*, the plaintiff brought a claim under New York's antitrust statute (the Donnelly Act) in addition to the federal antitrust statute (the Sherman Act). This case is an important reminder that private plaintiffs have various tools, including state antitrust laws, to pursue antitrust claims. We are seeing an uptick in antitrust claims under state law, and we should expect this trend to continue.
4. The keys to mitigating the antitrust risks of non-solicitation clauses are i) ensuring the clauses serve a legitimate (pro-competitive) business purpose and ii) limiting the scope of the clause to only what is necessary for that purpose. It is important to document the pro-competitive purpose of the clause and always keep it in mind in negotiating the scope of such clauses.

Conclusion

This case serves as a warning for companies relying on non-solicitation clauses in service or employment agreements. While courts may uphold such provisions when they serve legitimate purposes, overly broad or ambiguous clauses can lead to exposure under antitrust law. Proactive legal review and careful drafting remain critical. For further guidance or to discuss your specific agreements, contact [Jeff VanHooreweghe](#), [Jeffrey C. Bank](#), or any other member of Wilson Sonsini's [antitrust and competition practice](#).