

# *Key Recent Developments in Technology Law*

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Mari L. Myer  
Senior Counsel  
Friend, Hudak & Harris, LLP  
3 Ravinia Drive, Suite 1450  
Atlanta, Georgia 30346  
(770) 399-9500  
mmyer@fh2.com

# Antitrust

- Employment is At Will
- Employee May Be Terminated At Any Time and For Any (Legal) Reason
- Once Employee Has Departed, Conduct Cannot Be Controlled Absent Written Agreement

# When Is It Necessary to Control Conduct of Former Employee?

- Highly Skilled
- Strong Client Contacts
- Expensive Training
- Access To Information Crucial to Business

# Solution: Employment Agreement

# Employment Agreement Basics

- No Blue Pencil
- Strict Scrutiny
- Invalidity of One Covenant Will Render  
Other Covenant Invalid
- Lodge Copy of Executed Agreement With  
Counsel

# Covenant Not to Solicit Customers

- Scope
  - Tie to Employee's Material Contact
- Duration
- Employer Cannot Prohibit Acceptance  
of Unsolicited Customer

# Covenant Not to Solicit Employees

- Scope
- Duration

# Covenant Not to Compete

- Territory
  - Tie to Employee, Not to Company
- Scope
  - Avoid “Any Capacity”
- Duration

# Nondisclosure Agreement

- Duration
- Can Function as a Noncompete Without a Territorial Limit

*(Lee v. Environmental Pest Control)*

# Return of Company Materials

# Notice of Resignation

- Damages Available for Breach

# Definition of Trade Secret

Information, without regard to form, including, but not limited to, technical or non-technical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information ...

# Definition of Trade Secret (Cont.)

... derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

# Misappropriation of Trade Secrets

- Prohibited Conduct:
  - Acquisition
  - Disclosure
  - Use
  - Knowledge

# Misappropriation of Trade Secrets (Cont.)

- Acceptable Conduct:
  - Independent Development
  - Reverse Engineering

# Employment Agreement Not Necessary for Protection of Trade Secrets

# Inevitable Disclosure

- *Essex*
- *Tronitec*

# Production of Trade Secrets in Discovery

# Return of Company Materials

# Notice Provisions

# Restrictive Covenants in Partnership Agreements

- Middle Level of Scrutiny

# Restrictive Covenants in Context of Sale of Business Interest

- Lowest Level of Scrutiny
- Blue Penciling Allowed
- Covenant Must Be With Actual Seller

# Non-Circumvention Agreements

*Employment and Independent Contractor Agreements for  
Technology Companies*

