



Alabama Supreme Court Reverses Overly-Broad Injunction Prohibiting Competition Among Defense Contractors

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Earlier this year, the Alabama Supreme Court reversed a preliminary injunction entered by the trial court in a case involving competing defense contractors at the Redstone Arsenal in Huntsville.

[See *Monte Sano Research Corp. v. Kratos Defense & Securities Solutions, Inc.*, — So. 3d —, 2012 WL 1890693 \(Ala. May 25, 2012\)](#). The underlying litigation remains on-going, but the Alabama Supreme Court's ruling can provide insight for those involved in non-compete litigation in Alabama courts or in non-compete disputes involving government contracts. By way of background to *Monte Sano*, the U.S. government awards certain defense contracts (in this case, "Army Aviation and Missile Command Express" contracts) via multi-year "blanket purchase agreements" awarded to "prime contractors" in four different "domains": (i) logistics, (ii) programmatic, (iii) technical, and (iv) business and analytical. In 2005, the Army awarded one such blanket purchase agreement in the technical domain to Computer Science Corporation ("CSC"), who thus became a prime contractor for certain work to be performed at the Redstone Arsenal. One of the plaintiffs in *Monte Sano*, Kratos Defense & Securities Solutions, Inc. ("Kratos"), via a predecessor corporation, was part of CSC's team (i.e., a potential sub-contractor) in obtaining this blanket purchase agreement for the technical domain. However, simply being a member of the team does not guarantee that individual tasks will be awarded to a particular sub-contractor; additional bidding is involved at the task level. In *Monte Sano*, two of the defendants, Steven Thornton and Steven Teague, previously worked for Plaintiff Kratos. Thornton and Teague both left employment with Kratos in 2011 to work for defendant Monte Sano Research Corp. ("MSRC"). MSRC was formed in 2009 and was allegedly partially owned by Teague (but not Thornton) at the time of its formation. Prior to the departure of Thornton and Teague, CSC had entered into various sub-contracts with both Kratos and MSRC to perform work for a "task" under its "blanket purchase agreement" for the "technical" domain at the Redstone Arsenal. Upon the departure of Thornton and Teague, Kratos immediately filed suit against MSRC, Thornton, and Teague, and obtained from the trial court a preliminary injunction prohibiting MSRC, Thornton, and Teague from procuring work from any "prime contractor" at the Redstone Arsenal. Notably, although Thornton and Teague had previously entered into non-competition agreements with Kratos, these

agreements were of limited duration and expired at the end of 2010. As such, there were no explicit non-competition agreements in force when Thornton and Teague left Kratos's employment. There were, however, more generalized provisions in Kratos's employee handbook regarding the duty to maintain confidential information and not to solicit Kratos's employees or otherwise encourage employees to leave Kratos's employment. The handbook provisions regarding the duty to maintain confidential information had no time limit, and the duty not to encourage other Kratos employees to leave purported to last one-year beyond the end of employment. Moreover, in *Monte Sano*, Kratos alleged that Teague had arranged lunches in which Kratos employees were informed of new opportunities with MSRC. In bringing claims against Thornton and Teague, Kratos alleged that they had (i) breached their duties of loyalty and their fiduciary duties; (ii) tortiously interfered with Kratos's contractual relations with the "prime contractor" CSC; and (iii) breached their contractual obligations as set out in Kratos's employee handbook and elsewhere. Kratos also brought tortious interference claims against MSRC. The Alabama Supreme Court, however, reversed the preliminary injunction, noting that the injunction was overly broad because it prohibited MSRC from performing work for any prime contractor at the Redstone Arsenal, in any domain, and **not** just the technical domain implicated by Kratos's contract with CSC. (The evidence in this case showed that MSRC had also been negotiating with prime contractors, other than CSC, in other domains.) The Alabama Supreme Court also noted that the trial court's injunction order did not comply with [Rule 65\(d\)\(2\)](#) of the Alabama Rules of Civil Procedure because it did not provide specific reasons for its decision and did not address why Kratos did not have an adequate remedy at law. In a concurring opinion, Justice Murdock noted that, because the preliminary injunction would have prevented MSRC from performing its sub-contract with CSC, CSC should also have been named as a party to the litigation. As to "take aways" from the *Monte Sano* decision, the Alabama Supreme Court's holding demonstrates the importance of having written non-competition agreements, such that employers faced with departing employees are not forced to rely on more generalized duties of loyalty and more generalized handbook provisions. *Monte Sano* also emphasizes the risks of bringing "tortious interference" claims against a competitor who hires away employees when such claims are **not** supported by non-competition agreements with specific employees. This said, the fact that the *Monte Sano* litigation made it as far it did (and is still on-going) shows that employers without explicit non-competition agreements are not without hope. Had the preliminary injunction in *Monte Sano* been limited to the technical domain work covered by Kratos's contracts with CSC, the Alabama Supreme Court's decision might have been different, even in the absence of a non-competition agreement. Thus, perhaps the biggest take away from *Monte Sano* is that it helps to be specific (and not over-reach), whether in drafting a non-competition agreement at the outset of employment or in seeking relief from a court after a competitor has hired away a key employee. For more clarification on the topic of non-compete agreements and clauses, please contact one of the [Burr & Forman team members](#) for assistance.

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