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# Law Alert

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# The Supreme Court of Ohio Clarifies Rule on Enforcement of Noncompete Agreements by The Surviving Company in a Merger

On October 11, 2012, the Supreme Court of Ohio reconsidered and reversed in part its May 24, 2012 decision, *Acordia of Ohio L.L.C. v. Fishel (Acordia I)*, that a surviving company in a merger may not be able to enforce employees' noncompete agreements if the agreements failed to contain an assignment clause. The Court determined that a partial correction of the lead opinion in *Acordia I* was required because the lead opinion was based on a misreading of a 1971 Ohio Supreme Court decision, *Morris v. Investors Life Insurance Co. ("Morris")*.

Writing for a 6-1 majority, Justice Lanzinger stated that an assignment clause was not needed for the surviving company to have the power to enforce the noncompete agreements, "upon further consideration, we now recognize that the lead opinion's reading of *Morris* was incomplete. While *Morris* does state that the absorbed company ceases to exist as a *separate* business entity, the opinion does not state that the absorbed company is completely erased from existence. Instead, the absorbed company becomes a part of the resulting company following merger. The merged company has the ability to enforce noncompete agreements as if the resulting company has stepped into the shoes of the absorbed company. It follows that omission of any 'successors or assigns' language in the employees' noncompete agreements in this case does not prevent the L.L.C. from enforcing the noncompete agreements." The Court concluded that "[t]he language in *Acordia I* stating that the L.L.C. could not enforce the employees' noncompete agreements as if it had stepped into the original contracting company's shoes or that the agreements must contain 'successors and assigns' language in order for the L.L.C. to enforce the agreements was erroneous." Justice Lanzinger also clarified that *Acordia I* applied only to noncompete agreements and did not address the effect of a merger on any other company contracts.

The Supreme Court of Ohio went on to rely on Justice Cupp's dissent in *Acordia I* and held that enforcement of the employees' noncompete agreements by the surviving company in the merger remained subject to the condition that the noncompete agreements are reasonable under the circumstances, "Therefore, while we hold today that the L.L.C. has the right to enforce the employees' noncompete agreements as if it had stepped into the shoes of the original contracting companies, we recognize that whether the noncompete agreements are reasonable remains an open question. "

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The partial reversal of *Acordia I* by the Supreme Court of Ohio is consistent with Ohio's century-old precedent that in a merger, the surviving company steps into the shoes of the company merged out of existence and that by operation of law, and in the absence of explicit contract language to the contrary, the surviving company is vested with all of the assets and obligations of the company merged out of existence, including agreements such as noncompete agreements.

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