MEMORANDUM

To: Professor Jonathan Moore
From: Warren Carr
Date: November 25, 2024
Re: Mark Mathers; Enforceability of Non-compete Clause in Employment Agreement

Introduction

Mark Mathers wants to accept a better, higher-paying, sales representative position for Slim Tires Inc., a tire distributor in the greater Detroit area. He is currently a "run-of-the-mill" sales representative for 8-Mile Auto Parts, Inc. Mathers is looking for advice on his employment agreement with 8-Mile, which includes a non-competition clause restricting him from working for a competing business within his sales territory for two years.

Questions Presented

i. Is a non-competition provision of a salesperson's employment agreement enforceable as written where the provision does not specify any particular job title or role, but broadly prevents the employee from taking any employment whatsoever with any company that is remotely a competitor?
ii. If a non-competition provision is not enforceable as written, would the court likely enforce the provision where their employee did not own, manage, operate or control the business?

Brief Answers

i. Probably not. The non-compete provision in this case is likely unenforceable as written. Here, the court would likely decide that the limitations on type of employment and line of business are overreaching but that the two-year duration and geographical scope are reasonable. According to Michigan law, the clause must be reasonably drawn concerning duration, geographical scope, type of employment and line of business.
ii. Probably not.. The purpose of non-compete clauses is to protect legitimate business interests, such as preventing an employee with trade secrets or protected information from gaining an unfair advantage in competition with the employer. In Mathers' case, he did not manage or control the company or have access to any confidential information; all that Mathers learned about 8-Mile's product line and business, including pricing, was available to the public. The court would therefore likely conclude that the non-compete clause is overreaching in balancing the interest of the company to prevent unfair competition and Mathers's ability to find future employment.

Statement of Facts

Mathers has a potential job opportunity at Slim Tires Inc., which operates in the same industry as 8-Mile but focuses solely on tire sales with no auto part division. He currently works as a sales representative for 8-Mile Auto Parts, and they distribute their merchandise nationwide. Mathers works exclusively in the auto parts division, which is separate from their tire division. Before he began his career with 8-Mile, Mathers signed the company standard employment agreement with a non-competition clause. The agreement Mathers signed contains a non-competition clause, as follows:

> During the term of this Agreement and for a period of twenty-four (24) months following the termination of this contract, Employee shall not, within any sales territory in which Employee worked during employment with Employer, directly own, manage, operate, join, control, or participate in or be connected with, as an officer, employee, partner, stockholder,

> or otherwise, any other entity that is at the time engaged principally or significantly in a business that is, directly or indirectly, in competition with the business of Employer.

The non-compete employment clause prohibited Mathers from joining any business that directly or indirectly competes with 8-Mile in any geographic sales territory where he worked for a duration of two years after the termination of his employment. The clause was broad and did not specifically define which future opportunities he could pursue.

Discussion

Mathers's non-compete agreement is likely unenforceable, in part, because its restrictions on the type of employment and line of business are overreaching. Section 445.774 of the Michigan Compiled Laws states that non-compete laws must reasonably protect competitive business interests, but they must be narrowly tailored to balance the employer's need for protection with the employee's ability to exercise general knowledge and skills in their career. *Follmer, Rudzewicz & Co, PC v. Kosco*, 420 Mich. 394, 402-404 (1984). The court examines three factors in determining whether a non-compete provision is reasonable: (1) duration; [3] (2) geographical area; [4] and (3) type of employment or line of business. *Mich. Comp. Laws* § 445.774a(1) (2024).The topics to be addressed in this discussion are: (1) reasonableness of the non-compete clause in restricting employment within a specific line of business; and (2) whether the courts will enforce an employer's competitive business interests against the employee's right to work and general occupational experience.

I. Enforceability of Non-Compete Clauses: Reasonableness to Type of Employment or Line of Business

Michigan courts are likely to rule that the non-compete is unenforceable or to modify its terms to align with the principle of reasonableness Under Michigan law, non-compete clauses are typically disfavored and must be reasonable in scope, duration, and type of employment or line of work to be enforceable. *Coates v. Bastian Bros., Inc.*, 276 Mich. App. 498, 508 (2007); § 445.774a(1). The primary test for enforceability centers on reasonableness while considering whether the clause protects a legitimate business interest. *Total Quality, Inc. v. Fewless*, 332 Mich. App. 681, 700 (2020).,.

Non-competition clauses are "only enforceable to the extent they are reasonable." *Bastian Bros., Inc.*, 276 Mich. App. at 508. While the courts have not established "any bright line rules", they have upheld

[3] The duration of the noncompetition provision in Mathers's employment agreement is likely reasonable. Michigan courts generally uphold durations ranging from six months to three years as reasonable, provided they are tailored to protect legitimate business interests. *Robert Half Intern., Inc. v. Van Steenis*, 784 F. Supp. 1263, 1274 (E.D.Mich. 1991) (finding a twelve-month period reasonable); *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 547 (6th Cir. 2007) (holding that limitations up to 36 month are reasonable). Given that the term of Mathers's noncompete is 24 months, the court is likely to find the duration reasonable.

[4] The geographic scope in the non-compete clause is probably reasonable as it appropriately limits Mathers employment to outside his sales territory. "Such an agreement [an agreement that prevents an employee from working in a specific sector anywhere in the world] can be reasonable". *Sigma Chemical Co. v. Harris*, 586 F. Supp. 704, 710 (1984) (holding that the global enforcement of a restrictive non-compete clause is reasonable when the employer conducts operations on a worldwide scale). The courts have considered the employers business reach when deciding reasonableness for geographic range. If the employer operates locally, a non-compete agreement restricting the employee from working within a specific city, county, or region may be reasonable. *Basicomputer Corp. v. Scott*, 973 F.2d 507,507 (1992); *Van Steenis*, 784 F. Supp. at 1270. Here, the geographic scope of the non-compete clause is likely enforceable, as it reasonably protects the company's competitive business interests within the employee's previous sales territory.

employment clauses that range in duration, scope and limitations. *Service First v. Lee*, No. 19-CV-12616-TGB, 2022 WL 3448036, *6. To determine whether a non-compete agreement is reasonable, and therefore enforceable, the court considers a two-prong analysis: The court will first analyze the clause to see if the contract and non-compete clause are "reasonably drawn as to duration, geographical scope, and line of business." § 445.774a; *St. Clair Med., P.C. v. Borgiel*, 270 Mich. App. 260, 266 (2006). Limitations in non-competition agreements must be tailored so that the scope of the agreement is no greater than is reasonably necessary to protect the employer's legitimate business interests. *Service First*, 2022 WL 3448036, 6. The court will secondly then consider the need for the business to "protect the legitimate business interest of the party seeking enforcement." *Apex Tool Grp., LLC v. Wessels*, 119 F. Supp. 3d 599, 607 (E.D. Mich. 2015); § 445.774a(1). In *Borgiel,* the court gives some guidance as to what is considered reasonable in scope and limitation of the clause with a four-factor analysis; the contracts should be: (1) honest and just; (2) protect the legitimate business needs; (3) be reasonable between the parties, [and]; (4) not injurious to the public. *Borgiel*, 270 Mich. App. at 266. These factors laid out in *Borgiel*, will help the court determine the reasonableness of the non-compete clause and provide guidance given the specific facts of the situation. In multiple cases the courts have concluded that reasonable geographic scope can vary in distance depending on the circumstances of the facts. *See Borgiel*, 270 Mich. App. at 264 (holding that a physician was prohibited from practicing within a seven-mile radius). Also, geographic scope can be reasonable in as little as a few miles, to upwards of hundreds of miles or entire states should the facts of the situation require it. *See Bastian Bros., Inc.,* 276 Mich. App. at 505, 07-09 (holding a 100-mile restriction for one year was reasonable given that the employee was a manager who went accepted a position with a competitor after leaving the company). In doing so, the court considers factors such as the duration of the agreement, with typical enforcement ranging from six months to three years, and the geographic scope, which may be adjusted based on the employer's operations. *Lowry Computer Products, Inc. v. Head*, 984 F. Supp. 1111, 1116 (1997) (holding that non-compete agreements covering time periods of six months to three years are reasonable and enforceable.) These factors help courts determine what is reasonable in non-compete cases. There is also the additional nuance in § 445.774a that "prohibits an employee from engaging in employment or a line of business" that would cause unfair "competitive business interests". § 445.774a(1). The court will consider the reasonableness of duration and geographic scope. It will also consider the reasonableness to restrict the type of employment *or* line of business. If even one of those factors are met, the court could find cause to enforce the entire non-compete clause. *Wessels*, 119 F. Supp. 3d 599, 607 (E.D. Mich. 2015).

In *Total Quality, Inc. v. Fewless*, the court found that the non-solicitation agreement was reasonable and thus enforceable under the requirement embodied where after resigning from the employer's company, the former employees established a competing business, which acquired several of the employer's former clients. § 445.774; *Fewless.*, 332 Mich. App. at 700. The non-solicitation clauses in their employment agreements prohibited them from soliciting the company's customers "[d]uring the [e]mployment period and continuing for two years thereafter." *Fewless.*, 332 Mich. App. at 689. The court then applied the reasonableness standard set forth in *Mich. Comp. Laws* § 445.774, which requires non-compete agreements to be "reasonable in scope, duration, and geographic reach." § 445.774a(1). In applying this standard, the court determined that the non-solicitation clause, which prohibited the brothers from soliciting previous customers for two years, was reasonable under the law.

In *Service First*, the court held that a non-compete clause was inappropriate and not fully enforceable because the former employee was a senior, integral member that had "years of training and clientele information within the company." LEXIS 147274, 10 (2022). *Lee* involved a breach-of-contract action by a logistic service company against a former employee *Id.* at *1. On a motion on partial summary judgment, the trial court found that if the non-compete provision was unreasonable, it should therefore not be enforceable. *Id.* at *6. The enforceability of a non-compete clause in *Lee's* case "hinge[d] on the reasonableness of its duration, its geographic scope, and the extent of its reach to particular types of employment or lines of business." *Id.* at *6.

Here, If Mathers decides to take the job at Slim Tires, the courts will likely find the aspects of duration and length of time reasonable, but the non-compete clause is likely to be unenforceable because it is overly broad with respect to line of employment and type of business. *Fewless.,* 332 Mich. App. at 689. The court will consider whether preventing Mathers from working within his sales territory at 8-Mile and the duration of the contract would be reasonable to prevent unfair competition. While the two-year duration and geographical limitations align with industry norms and protect 8-Mile's customer relationships, the restriction on Mathers's ability to work in Slim Tires' tire business in any capacity goes beyond what is reasonable. *See Borgiel*, 270 Mich. App. at 266. The two-year duration and geographical restrictions, at face value, while reasonable, are overshadowed by the overly expansive prohibition of Mathers working "in any capacity" for a competitor. *Walling*, 851 F. Supp. at 847. Courts have ruled that non-compete agreements must strike a balance between protecting an employer's legitimate interests and allowing employees to pursue their careers. *Bastian Bros*, 276 Mich. App. at 506-507.

In Mathers's case, the non-compete clause imposed by 8-Mile is likely unenforceable due to its overly broad terms preventing working in any capacity for any competitor. Mathers is transitioning to a role in an adjacent but distinct industry, selling tires rather than auto parts, making direct competition unlikely. *Bristol Window & Door v. Hoogenstyn*, 250 Mich. App. 478, 486-87 (2002); *Borgiel*, 270 Mich. App. at 266. Despite 8-Mile's potential argument that Mathers's use of its resources to build his customer base warrant enforcement, the clause's overly broad scope with regards to the lack of direct competition between the two businesses make it unreasonable under Michigan law. § 445.774. While the courts may find that the two-year duration and geographical limitations align with industry norms and protect 8-Mile's customer relationships, the restriction on Mathers's ability to work in Slim Tires' tire business goes beyond what is necessary to fairly protect 8-Mile's business interests. *Borgiel*, 270 Mich. App. at 266. The overreach of 8-Mile's non-compete, in this instance, fails to set appropriately restrictive limits to Mathers's type of employment and line of business, particularly in light of 8-Mile's lack of legitimate concerns of competitive business interests. *Wessels*, 119 F. Supp. 3d 599 at 606; *Bastian Bros., Inc.,* 276 Mich. App. at 507.

II. Enforceability of Non-Compete Clauses: Whether courts will prioritize an employer's business interests over an employee's right to work.

The courts try to analyze the legitimacy of the competitive business interest and the restriction a non-compete clause imposes on an employee's ability to use their general skills and knowledge in employment. *Bastian Bros., Inc.,* 276 Mich. App. at 507*; Fewless.,* 332 Mich. App. at 700. In Mathers's case, the courts are likely to rule that the non-compete is unenforceable due to his current position within 8-Mile not being one of operating or managing the company. He also did not have any knowledge of trade secrets or specific information that would allow him to significantly impact 8-Mile's competitive advantage against other companies.

Under Michigan law, provided the agreements are reasonable in terms of duration, geographical area, and type of employment, the courts will then try to balance the company's competitive business interests and employees' interest in finding work. § 445.774a(1). If the court finds the contract or any clause of the contract to have been unconscionable at the time it was made the court "may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause" or "limit the application . . . as to avoid" an overreaching result. § 445.774a(1). The non-compete clause should protect the company's competitive business interests and attempt to prevent an "employee's gaining some unfair advantage in competition with the employer." *Borgiel,* 270 Mich. App. at 266. However, it is not enough for the clause to simply protect company interests by restricting any and all competition; To be enforceable the non-compete clause must also meet the criterion laid out in cases like *Wessels*. *Wessels*, 119 F. Supp. 3d 599 at 606, (holding that the clause needs to protect the legitimate business interest of the

party seeking enforcement). *Walling*, 851 F. Supp. at 847. The court "will attempt to strike an appropriate balance" between the employees and the "claims of employers seeking to discourage employees possessing valuable know-how" from accepting employment with their competitors. *Cadillac Overall Supply Co*., 396 Mich. at 404; *Couch v. Administrative Committee of Difco Laboratories*, *Inc. Salaried Employees Profit Sharing Trust*, 44 Mich. App. 44, 49. A restrictive covenant must protect against the employee's gaining some unfair advantage in competition with the employer, but not "prohibit the employee from using general knowledge or skill." *Borgiel*, 270 Mich. App. at 266.
Courts examine whether the agreement protects a legitimate business interest and balance the reasonableness based on several factors, such as whether the employee had knowledge of trade secrets that could cause unfair competition, whether the clause imposes undue hardship on the employee, or is injurious to the public. *Borgiel*, 270 Mich. App. at 266; *Fewless.,* 332 Mich. App. at 700. The agreement must be narrowly tailored to avoid unnecessary restrictions, as demonstrated in *Superior Consulting Co. v. Walling*. *Superior Consulting Co. v. Walling*, 851 F. Supp. 839, 847 (E.D. Mich. 1994) (holding that non-competition agreements must be tailored so that the scope of the agreement is no greater than is reasonably necessary). If the agreement is deemed overly broad or unreasonable, courts have the authority to modify it to make it enforceable. *Borgiel*, 270 Mich. App. at 270 (holding that a physician was prohibited from practicing within a seven-mile radius). Courts also weigh the specific circumstances of the business and the employee's role. They will try to limit restrictions to those necessary to protect the employer's legitimate interests without imposing excessive hardship on the employee. *Couch v. Administrative Committee of Difco Laboratories, Inc. Salaried Employees Profit Sharing Trust,* 44 Mich. App. 44, 50.

The type of restricted employment or work that an employee is prevented from taking can be reasonable if the competition that they would create would take advantage of the employer's good will. It can be reasonable to enforce a non-compete if the ex-employee was trained or had knowledge that could create unfair business competition. *See Hoogenstyn,* 250 Mich. App. at 495 (holding that a non-compete agreement, preventing an ex-employee to work in the home improvement industry was reasonable given his training).

Ultimately, the courts in Michigan cases seem to attempt to balance both the employer's competitive interests and the employee's freedom to work and use their general skills and knowledge that are not detrimental to the company's goodwill or competitive interests. As shown in cases like *Thermatool Corp. v. Borzym* non-compete agreements can be modified to ensure fairness, reinforcing the principle that courts will not uphold provisions that are excessively unfair to either the company or the employee. *See Thermatool Corp. v. Borzym*, 227 Mich. App. 366, 371 (holding that a non-compete could be modified and extended the terms of the noncompetition agreement for an additional eighteen months to give the company the benefit of its contract).

The court in *Lee* emphasized that the provision was enforceable and reasonable because it prevented the employee from "gaining some unfair advantage in competition with the employer" but does not stop the individual from "using general knowledge or skill." *Service First v. Lee*, No. 19-CV-12616-TGB, 2022 WL 3448036, *4 (2022). *Lee* involved a breach-of-contract action by a logistic service company against a former employee who was a Senior Transportation Broker and was tasked with "developing new and maintaining existing relationships with both customers and carriers." The Michigan court explained that the company had a reasonable [] interest in protecting . . . and [] restricting its former employees from enticing away the employer's old customers." *Id.* at *6 (2022). The court found "a competing interest . . . to prevent the 'anticompetitive use of confidential information.'" *Id.* at *6. The court, therefore, decided that an appropriate limitation would be to restrict the employee from "obtaining employment in the field of managing and conducting [] business" in the logistics industry. *Id.* at *6. As the employee was more than a typical employee with regular common knowledge of the business, the company had a right to "protect its business interests" by "restricting its former employees [future employment via the non-

compete]". *Id.* at *1. On a motion on partial summary judgment, the trial court found that the non-compete provision was unreasonable therefore not enforceable. *Id.* at *6. It concluded that it would be appropriate to render the non-compete "reasonable in light of the circumstances in which it was made." *Id.* at *6.

The court in *Fewless* noted that "[t]he scope of the activity" was narrowly tailored to prevent the employees from leveraging confidential business information and "employers have legitimate business interests in restricting former employees from soliciting their customers." *Fewless.*, 332 Mich. App. at 700. The court emphasized that while the defendants could still "compete with [the company]", they could not "solicit [] customers, employees, and business relationships." *Fewless.*, 332 Mich. App. at 700. The court additionally highlighted that a "restrictive covenant must be reasonable as between the parties, and [] not be specially injurious to the public." *Fewless.*, 332 Mich. App. at 700. The employer's interest in protecting its client relationships was a legitimate business interest; however, the court emphasized that any restrictive covenant must balance the business interest with the employee's right to work and compete in their field. *Fewless.*, 332 Mich. App. at 699. The company has an interest in protecting its customer base which outweighed any potential negative impact the ex-employees might face in future employment. The employees were not prevented from working, or even competing against the company; they were only prevented from interfering with their employer's customer base. Thus, the court found the non-solicitation provision enforceable, affirming that it balanced the competing interests of the parties involved. *Fewless.*, 332 Mich. App. at 700.

Here, 8-Mile's non-compete agreement is unlikely to prevent Mathers from accepting the position at Slim Tires because it fails to strike an appropriate balance between 8-Mile's legitimate business interests and Mathers's interest in future employment, which Michigan courts emphasize in evaluating such agreements. *Walling*, 851 F. Supp. at 847; *Borgiel*, 270 Mich. App. at 265. While 8-Mile's interests include protecting its investment in Mathers, the agreement must be narrowly tailored to address specific competitive harms and not impose broad sweeping restrictions; Slim Tires exclusively sells tires, a product explicitly excluded from Mathers's portfolio at 8-Mile, and does not directly compete with 8-Mile's auto parts business. Emphasized in *Fewless*, *Wessels*, and *Bastian Bros*, non-compete clauses must be constructed to protect legitimate business interests, which in this case are not sufficiently demonstrated to justify such a restrictive employment limitation. *Fewless.*, 332 Mich. App. at 689; *Wessels*, 119 F. Supp. 3d 599 at 606; *Bastian Bros., Inc.,* 276 Mich. App. at 507. Courts have consistently ruled that agreements restricting employment without justification of specific harm are unreasonable, emphasizing that they should not prevent the use of "general knowledge or skill" gained through experience, nor impose limits on unrelated industries. *Walling*, 851 F. Supp. at 847; *Borgiel*, 270 Mich. App. at 266. Unlike *Borgiel*, where the restriction was narrowly drawn to a radius necessary to protect the employer's interests, the agreement here is overly broad, particularly given the absence of confidential information or trade secrets that Mathers could exploit to unfairly harm 8-Mile. *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp*., 511 F.3d 535 (6th Cir. 2007).

If the Michigan court finds the non-compete clause enforceable, it would likely focus on the reasonableness to the clause's limits. The most problematic fact is that Mathers's business contacts, developed with 8-Mile's training, could be seen top possible leverage 8-Mile's goodwill. *See Hoogenstyn,* 250 Mich. App. at, 486-87. In the case of *Hoggenstyn*, the court ultimately enforced a non-compete based on specialized training, which gave the employee a competitive edge, a situation arguably applicable to Mathers's customer relationships. *Id.* at 486-87. Contacts developed while at 8-Mile coud potentially give Slim Tires an unfair competitive advantage. Restrictive covenants to protect client relationships, which 8-Mile could claim as its own legitimate interest, have also been upheld. *Fewless.*, 332 Mich. App. at 689. However, unlike *Hoogenstyn* and *St. Clair*, Mathers did not receive specialized training, making the argument a less compelling one, though 8-Mile might still argue the risk of customer overlap. *Borgiel*, 270 Mich. App. at 266; *Hoogenstyn*, 250 Mich. App. at 486-87.

Despite the arguments for enforceability, the facts favor unenforceability due to the lack of direct competition between Mathers's new role and 8-Mile's auto parts business, as he would be selling tires exclusively instead of auto parts in general. This distinction is significant, as demonstrated in *Coates v. Bastian Bros.*, where the non-compete was enforced because the employee joined a direct competitor in the same market. *Bastian Bros., Inc.*, 276 Mich. App. at 507. In this case, however, Mathers is entering a distinct but related market, which raises questions about whether enforcing the non-compete reasonably protects the employer's interests or imposes an unnecessary restriction. His lack of access to proprietary business data and role as a regular employee further distinguish this case from *Service First v. Lee* and other precedents. The overly broad restrictions imposed by 8-Mile's non-compete clause appear to be unreasonable and to be enforceable; non-compete agreements must be reasonable in scope, duration, and type of employment and line of work. *Wessels*, 119 F. Supp. 3d 599 at 607; *Mich. Comp. Laws* § 445.774a(1).

The court could enforce the non-compete if it finds that 8-Mile's business interests, bolstered by its substantial investment in Mathers, outweigh the hardship imposed on him by the restrictions. Michigan courts have recognized the importance of protecting employer investments when employees leverage such gains in competition where the balance favored the employer's need to prevent harm to its business. *Lee*, 2022 U.S. Dist. LEXIS 147274 at *11. While Slim's focus on tires eliminates direct competition with 8-Mile, 8-Mile could counter that Slim shares a similar customer base, and Mathers's strong relationships with these customers, developed under 8-Mile's brand, could harm its market share.

Ultimately, the balancing test favors Mathers, as his need for employment and the limited competitive harm to 8-Mile outweigh the restrictions imposed by the non-compete, which is overly broad and lacks tailoring to 8-Mile's legitimate interests. Michigan courts have consistently required that non-compete clauses be "no greater than is reasonably necessary" to protect the employer's business. *Walling*, 851 F. Supp. at 847. Mathers's ability to work in a field where his experience is relevant but does not directly overlap with 8-Mile's operations would be hindered if the courts were to enforce the contract. *Walling*, 851 F. Supp. at 847. Unlike cases where trade secrets or proprietary information justified enforcement, Mathers's general industry knowledge and lack of exposure to confidential information further weaken 8-Mile's claim. *Restat 3d of Unfair Competition*, § 42. However, unlike *Burns*, where enforcement caused disproportionate harm to the employee, 8-Mile must show specific competitive harm. *Burns*, 457 F. Supp. 2d at 813. Mathers's lack of access to trade secrets complicates 8-Mile's argument, as courts generally view reliance on general knowledge or skills as insufficient grounds for enforcement. *Borgiel*, 270 Mich. App. at 266. Slim Tires' focus on tire sales and Mathers's better compensation underscore the disproportionate hardship the agreement imposes on him, particularly when courts prioritize balancing both parties' interests. *See Couch v. Administrative Committee of Difco Laboratories, Inc. Salaried Employees Profit Sharing Trust*., 44 Mich. App. 44, 50 (1972).

In light of the balancing test required under Michigan law, the court is likely to find that the non-compete agreement between Mathers and 8-Mile is unreasonable and unenforceable. Courts consistently emphasize that non-compete agreements must balance the employer's legitimate business needs against the employee's right to work, as reflected in *Borgiel*, where the court held that restrictions should not prohibit an employee from using general knowledge or skills. *Borgiel*, 270 Mich. App. at 266. Here, 8-Mile's interests in preventing competition are diminished by the absence of confidential information or trade secrets and Slim Tires' exclusive focus on tire sales, which does not directly overlap with Mathers's prior role. Unlike *Woodward v. Cadillac Overall Supply Co.*, where the employer's significant investment in the employee justified certain restraints, 8-Mile's investments, while notable, are insufficient to support a blanket restriction on Mathers's ability to work for a non-competing business. *Woodward v. Cadillac Overall Supply Co*., 396 Mich. 379, 406 (1976). Michigan courts require that restrictions be "no greater than is reasonably necessary" to protect the employer's interests and the overly broad terms unreasonably

burden Mathers's ability to secure better employment. *Walling*, 851 F. Supp. at 847. Balancing Mathers's right to work, his lack of competitive harm to 8-Mile, and the undue broad limits imposing hardship by the agreement, the court is likely to conclude that the non-compete is unenforceable under Michigan law.

Conclusion

While the court is ultimately likely to find in favor of Mathers if he were to take the new opportunity with Slim Tires, Mathers should not take the new role. If the type of employment or line of business verbiage protect the company's competitive interest and good will, and are reasonable, the courts are then likely to enforce the contract as written. In Mathers's situation, the factors of unfair competition are not present, due primarily to Mathers's position in the company and lack of trade secrets or protected information, but the new role and line of business are similar enough to his previous position 8-Mile may see it as enough reason to pursue legal action.

If he were to take the new role, Mathers should communicate with Slim Tires about the non-compete clause to ensure transparency, in preparation if 8-Mile decides to pursue legal action. This would allow for the company to prepare for any potential legal challenges. While 8-Mile might argue that Mathers's business contacts and potential use of company resources could give Slim Tires an unfair advantage, cases like *Hoogenstyn* and *Borgiel* support the notion that non-competes must only restrict unfair competitive advantages. Additionally, Mathers should also seek written confirmation that Slim Tires will support him in the event of a legal dispute with 8-Mile, thus helping to ensure a transparent and smooth start to his new career.