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About WBS

Williams, Bax & Saltzman, P.C. is a full-service law firm, representing and advising businesses, nonprofits, fiduciaries and other individuals. Our attorneys are committed to providing value-added services to our clients in a cost-effective manner.

Practice Areas

- Commercial Litigation
- Corporate
- Labor and Employment
- Real Estate
- Insurance
- Professional Liability
- Estate Planning, Trust Administration and Probate

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U.S. Supreme Court Reins In Insurance Regulator

In July of this year, Rob Muriel and Jay Zenker left an insurance coverage boutique that represented policyholders in complex, high-value insurance recovery matters and joined WBS. In 2019, Governor Pritzker appointed Rob as Director of the Illinois Department of Insurance, where he served for two years. Rob played an important role as well at the National Association of Insurance Commissioners, where he collaborated with other state insurance regulators and guided Illinois through the COVID-19 pandemic. WBS has insurance depth and represents clients across the Country in insurance matters ranging from coverage disputes to regulatory matters. WBS keeps an eye on new insurance cases as well as regulatory activity at the national level.

The U.S. Supreme Court gave us one such insurance regulatory case this summer. In *National Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175 (2024), the Court reminded government officials, at every level of government, that there are bounds to their policymaking authority.

In 2018, political passions were high in the wake of the mass shooting in Parkland, Florida. Maria Vullo was the Superintendent of New York's Department of Financial Services, which regulates over 1,900 New York-domiciled insurance companies. She used her vast regulatory authority to dissuade insurers from doing business with the National Rifle Association. The Court found that the Superintendent was entitled to her opinions and to her prerogative to persuade people of the justice in her antipathy to the NRA. But, Ms. Vullo did more: she advised insurers that she'd be less likely to enforce legal infractions if those same insurers stopped affiliating with the NRA and other pro-firearms groups.

In this, Ms. Vullo went too far – her threat of prosecution of insurers encroached on the free speech rights of the NRA. The Supreme Court held the Superintendent's acts constituted coercion. Government officials in and beyond Illinois should take heed, as should any commercial or non-profit entity operating in Illinois. The government is as entitled to its free speech as is any individual or entity, but the line between persuasion of a policy position and coercion against entities holding the opposite position is fine.

Banning Non-Competition Agreements: The Battle is Over but The War Goes On

On October 18, 2024, the Federal Trade Commission (the FTC) filed an appeal with the Fifth Circuit Court of Appeals. The FTC's appeal seeks to overturn a decision by a U.S District Court in Texas which enjoined the FTC from implementing a proposed rule banning non-competition agreements across the country (the "Rule").

Had the FTC's efforts not been enjoined, the proposed Rule would have prevented employers from entering into any new non-competition agreements with their employees. The Rule also would have nullified approximately 30 million existing non-competition agreements. The only exception to the ban would have been agreements signed by "senior executives." The Rule defines senior executives as workers who are in a "policy making position" and earn a total annual compensation of at least $151,164. The Rule also requires employers to provide notice to all affected workers that their non-competition agreements were no longer effective.

The District Court's August 20, 2024 decision to set aside the Rule was based on two findings. First, the Court found that the FTC exceeded its rulemaking authority when it promulgated the Rule. Second, the Court found that even if the FTC did have the authority to promulgate the Rule, the Rule was still too unreasonably overbroad to be enforceable.

Recent WBS Cases

Employee Discharge Dispute

At trial **David Strubbe** defended a suit against a national retail fulfillment company filed by a former employee. The Cook County Circuit Court ruled against the employee who had forfeited a sign-on bonus by being absent on his first scheduled day of work, later claiming the bonus policy violated the IL Wage Payment & Collection Act. The court denied the claim based on the employee's "at will" employment status.

Close Corporation Shareholder Dispute

Representing a major Midwest limousine company in a shareholder oppression suit in DuPage County Circuit Court, **Tom Koessl** and **Spencer Giffin** forced the minority shareholder plaintiff to voluntarily dismiss the case by using pre-trial discovery methods to demonstrate to the plaintiff that no basis for the suit existed.

Contract-to-Make-Will / Constructive Trust Dispute

After trial in Will County Circuit Court, **Mitch Bryan** and **Spencer Giffin** obtained a ruling for recovery of assets exceeding $3.2 million in a suit for breach of a contract to make a Will and for an investment account constructive trust on behalf of a WBS client whose life partner died in a motorcycle accident.

Insurance Disputes

Rob Muriel and **Jay Zenker** assisted in drafting an *amicus curiae* brief filed in the in the Illinois Appellate Court on behalf of a non-profit entity that appears in insurance coverage cases to support the policyholder's position. The appeal presents a novel question of when pollution conditions should be considered "related" under a pollution exclusion. The parties are awaiting the Court's ruling.

After obtaining an order vacating a seven-figure federal court default judgment entered against a WBS client in favor of an insurer, **Rob Muriel** and **Jay Zenker** negotiated settlement with the plaintiff insurer for a minimally small fraction of the claim. The did this by developing a strong defense to the claim and filing a motion to dismiss the insurer's lawsuit for failure to file a legally sufficient complaint.

Surety Bond Agreement Dispute

After protracted federal court litigation against a WBS national mortgage loan originator client in liquidation, **Joel Goldblatt**, **Mitch Bryan** and **Spencer Griffin** negotiated settlement for a fraction of the client's alleged liability under a $10 million bond indemnity agreement. WBS first staved-off an injunction motion seeking to compel a $650,000 cash deposit to protect the insurer/surety from potential bond claims.

By filing the appeal, the FTC revived the possibility of a nationwide ban on non-competition agreements. The war against non-competition agreements also rages on in separate battlegrounds. For example, before the nationwide ban went into effect, a District Court in Florida issued a preliminary injunction on the basis that the FTC did not have the authority to enact the Rule. In contrast, a District Court in Pennsylvania declined to enjoin the Rule from going into effect, concluding that the FTC did not act unreasonably in issuing the Rule. If these cases create a split in the circuits, the issue could be resolved by the United States Supreme Court.

For now, employers don't have to worry about complying with the Rule. Employers should, however, remain careful to abide by existing state laws and judicial precedent concerning the enforceability of non-competition agreements. Most jurisdictions will not enforce non-competition agreements that are unnecessarily overbroad, and many jurisdictions have enacted laws that require additional protections for employees who sign non-competition agreements.

Illinois, for example, recently passed the Illinois Freedom to Work Act, which requires that employees earn at least $75,000 a year and receive additional consideration on top of their salary to support a covenant not to compete. The Illinois statute also requires that employees be advised in writing to consult with an attorney before signing the agreement and that employees be given at least fourteen days to consider the agreement before signing it.

California, Minnesota, North Dakota and Oklahoma have already issued bans on the use and enforcement of non-competition agreements except in very limited situations, such as when agreements are made in connection with the sale of a business. Numerous other jurisdictions are following suit and have legislation pending to similarly restrict the enforceability of non-compete agreements.
The legal landscape therefore appears to be changing fast, and employers would be well served to review their existing non-compete agreements to make sure they comply with existing state laws and legal precedent. Employers should also begin to consider alternative means to prevent ex-employees from competing with them unfairly. Alternatives may include providing paid garden leave, as well as drafting enhanced confidentiality and non-solicitation agreements.

The Labor and Employment attorneys at Williams, Bax & Saltzman, P.C. are available to advise employers on how to navigate through this complicated and rapidly evolving area of the law.