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Client Alert: Delaware Court Strikes Down Non-Compete: Key Lessons for Private Equity Sponsors

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On March 4, 2025, the Delaware Court of Chancery issued a significant decision in *Weil Holdings II, LLC v. Jeffery Alexander, DPM*, holding that a non-compete provision contained in a limited liability company agreement (the LLC Agreement) was unenforceable on its face due to its indefinite duration and constantly changing geographic scope. The Court also declined to "blue pencil" or revise the provision to make it enforceable, entering judgment in favor of the defendant physician. This decision carries important implications for private equity sponsors structuring restrictive covenants outside the sale of business context.

Background

Weil Holdings II, LLC, plaintiff, is a holding company providing management and administrative services to podiatric practices. Dr. Jeffery Alexander, a podiatric foot and ankle surgery specialist, defendant, worked for a subsidiary of the plaintiff, Weil Foot and Ankle Institute, LLC (WFAI), from July 2014 through August 2023. WFAI is a podiatric practice with 16 offices in Illinois and one in Kenosha, Wisconsin.

In May 2023, as part of a private equity-backed transaction, Dr. Alexander acquired a membership interest in plaintiff, and in connection with this investment, Dr. Alexander executed the LLC Agreement, which contained non-competition and non-solicitation provisions.

The non-compete provision restricted Dr. Alexander from engaging in or assisting others in engaging in the "Restricted Business" within the "Restricted Territory" for so long as he held any membership interests and

for a period of two years thereafter. The "Restricted Business" encompassed the provision of podiatric, orthopedic, and wound care services, as well as related management services. The "Restricted Territory" was defined as a radius of 25 miles from Dr. Alexander's "Primary Practice Site" and 15 miles from any other practice site of the "Affiliated Practices"—which included any entity that entered into a management or administrative services agreement with Weil Foot & Ankle Management, LLC (Weil Management), an affiliated entity.

Following the termination of Dr. Alexander's employment in August 2023, he began practicing podiatry for a new employer in Racine, Wisconsin, which fell within 15 miles of WFAI's Kenosha, Wisconsin office—a location where Dr. Alexander had never worked. Plaintiff sued, seeking injunctive relief and damages for breach of the LLC Agreement and tortious interference with business expectancy.

The Court's Analysis

Standard of Review

The *Weil Holdings* decision demonstrates the Delaware courts' unwillingness to blue pencil overly broad non-competes and instead closely scrutinize such provisions, particularly outside of the sale-of-business context. A non-compete is enforceable only when it "(1) is reasonable in geographic scope and temporal duration, (2) advance[s] a legitimate economic interest of the party seeking its enforcement, and (3) survive[s] a balancing of the equities."

Plaintiff argued that because the non-compete was included in an LLC Agreement rather than an employment agreement, and because Dr. Alexander represented that he was an accredited investor with knowledge and experience in financial and business matters, a more deferential standard of review should apply. The Court acknowledged that Dr. Alexander willingly agreed to the non-compete as part of an investment in which he held himself out as a sophisticated party but noted that he did not agree to it as part of a sale of a business. Ultimately, the Court found that neither a "more" nor "less" searching inquiry would change the outcome—the non-compete was unreasonable regardless of the standard applied.

Unreasonable Duration

The Court found the duration of the non-compete to be overly broad. The provision purported to bind Dr. Alexander for as long as he held his membership interests and for two years thereafter. Because the LLC Agreement did not afford members a mandatory redemption right, the non-compete was "potentially indefinite." Although plaintiff had the option to repurchase membership interests, this meant that plaintiff—not Dr. Alexander—controlled when and if the non-compete period would begin to run.

Plaintiff suggested that, because private equity investments typically last three to 10 years, the Court could infer that the non-compete would not apply indefinitely. The Court rejected this argument, noting that the LLC Agreement contained no such time limitation and that even a 12-year non-compete would be unreasonable under the circumstances.

Unreasonable Geographic Scope

The geographic scope of the non-compete was also deemed overbroad. The "Restricted Territory" covered a 25-mile radius from Dr. Alexander's primary practice site and 15 miles from any other practice site of the "Affiliated Practices"—which operated in four states, including two where Dr. Alexander had never treated patients. The court held this is not appropriately tailored to protect plaintiff's legitimate business interests.

More troubling to the Court was that the "Restricted Territory" was subject to change. Each time Weil

Management contracts with a new entity—and as those "Affiliated Practices" move their offices or acquire new practices—the geographic scope of the non-compete may enlarge. Taken together, the duration and geographic scope of the non-compete could indefinitely restrict Dr. Alexander from practicing podiatric medicine in a geographic region that is constantly subject to change. The court declined to blue-pencil the non-compete provision.

Key Takeaways for Private Equity Sponsors

Draft Non-Competes with Reasonable and Defined Boundaries

The *Weil Holdings* decision underscores that Delaware courts will not enforce non-competes that are indefinite in duration or contain geographic restrictions that can expand unilaterally. Private equity sponsors should ensure that restrictive covenants in LLC Agreements contain:

- **Fixed durations** that do not depend solely on the company's discretion to trigger.
- **Defined geographic restrictions** that do not change based on future acquisitions or expansions, especially following the departure of an employee-investor from the company.
- **Mandatory redemption or put rights** that allow the restricted party to withdraw or divest their interest and start the clock on any post-termination restriction period.

Employee-Unitholders May Not Be Treated Like Business Sellers

Even when an employee-investor is a sophisticated, accredited investor, Delaware courts will not automatically apply the more deferential standard reserved for non-competes negotiated in connection with a sale of a business. The nature of the relationship matters; an employee investing in an affiliate of his or her employer is not in the same bargaining position as a business owner selling a company.

Tailor Restrictions to Legitimate Business Interests

Non-competes should be specifically tailored to protect the legitimate business interests of the company seeking enforcement. Here, the Court questioned whether plaintiff—a holding company that did not itself treat patients—had a legitimate interest in restricting Dr. Alexander from practicing in geographic areas where he had never served patients.

Conclusion

Weil Holdings II, LLC v. Jeffery Alexander, DPM serves as a cautionary tale for private equity sponsors. **Non-compete provisions that bind employee-investors indefinitely or subject them to constantly shifting geographic restrictions are unlikely to survive judicial scrutiny in Delaware**—and courts will not necessarily rescue poorly drafted covenants through blue penciling. Sponsors should work closely with legal counsel to ensure that restrictive covenants are reasonable, clearly defined, and appropriately tailored to the company's legitimate interests. We note that this decision was appealed to the Supreme Court of Delaware and was affirmed on December 23, 2025.

If your organization structures equity incentives, rollover investments, or governance documents that include restrictive covenants, the implications of this decision should be carefully considered. If you have any questions or would like more information, please contact Christa Sullivan or a member of Shumaker's Corporate, Tax & Transactions Service Line.

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