



By **Kelly J. O'Brien** – Technology Reporter, Boston Business Journal

Mass. high court curtails non-competes for out-of-state employees



A ruling from Massachusetts' highest court will make it harder for companies to enforce non-compete agreements in whatever court system is most favorable to their case, creating an important precedent as new state rules around such agreements go into effect next month.

In a decision on Friday, the Massachusetts Supreme Judicial Court held that Oxford Global Resources Inc., a Beverly-based technology staffing firm, could not sue a former California-based employee in Massachusetts court, even though the employee's non-compete agreement with Oxford stated that all such disagreements would be settled in Massachusetts.

Although relatively narrow in scope, the case is important because many tech companies have a presence in multiple states, and the laws of non-compete agreements vary widely by jurisdiction. California, for example, prohibits non-compete agreements, which are allowed in Massachusetts.

“This decision now makes it clear,” said **Nancy Puleo**, a partner in the employment law division of Posternak Blankstein & Lund. “If you have a California presence and have an employee that doesn’t have any other connections to Massachusetts, you’re not going to be able to work around the prohibition on non-competes in California.” The case comes at a time when non-compete agreements are in the spotlight as new Massachusetts legislation goes into effect on October 1.

The new rules also include a clause meant to prohibit "forum shopping" of the kind that Oxford was attempting. That clause, combined with the SJC ruling, could have a big impact on companies that are headquartered in other states but have employees in Massachusetts, according to **Gregory Bombard**, an attorney with Duane Morris LLP who specializes in trade secrets law.

"This matters because the Massachusetts non-compete reform bill included a first-in-the-nation requirement to pay 'garden leave' to employees during the non-compete period," Bombard said. That means that companies headquartered elsewhere could try to avoid Massachusetts courts, just like Oxford was trying to avoid California courts.

Still, the ruling's impact probably has important limits. It's unlikely, for example, that a Massachusetts tech worker subject to a non-compete agreement who moves to a competing company in California would be able to take advantage of California's ban on non-competes.

"I don't think an employee can, per se, flee Massachusetts to California to escape the strictures of a non-compete," said Anthony Bongiorno, a partner at McDermott Will & Emery.