CLIENT ALERT: Massachusetts Supreme Judicial Court Clarifies Scope of Massachusetts Noncompetition Agreement Act

On Friday, June 13, 2025, the Massachusetts Supreme Judicial Court issued its decision in *Miele v. Foundation Medicine, Inc.*, SJC-13697, holding that forfeiture clauses tied to non-solicitation agreements were definitively excluded from the jurisdiction of the Massachusetts Noncompetition Agreement Act ("the Act"). Though this was long the understanding of many attorneys in the Commonwealth, this decision confirms that such clauses, and more broadly, non-solicitation agreements themselves, are not governed by the Act. The Act put strict limitations on the use of noncompete agreements in the Commonwealth in 2018 when it was enacted.

A former employee, Susan Miele, signed an agreement not to solicit employees during her employment with Foundation Medicine, Inc. and later affirmed the same in a separation agreement. The separation agreement stated Ms. Miele would forfeit significant severance benefits if she violated its terms, including the non-solicitation provision.

Foundation Medicine later claimed Ms. Miele had violated the agreement by soliciting employees, stopped severance payments, and demanded repayment pursuant to the forfeiture clause. Ms. Miele sued, arguing the forfeiture clause that required her to return the severance benefits if she violated the non-solicitation provision was in violation of the Act, and therefore unenforceable.

While the lower court agreed with Ms. Miele that the forfeiture clause was unenforceable pursuant to the Act, the SJC disagreed and overturned the lower court's holding. The SJC specifically found that non-solicitation agreements had been explicitly excluded from the Act by the Legislature, and, therefore, a forfeiture clause tied to a non-solicitation agreement was similarly excluded from the Act.

While this holding clarifies that non-solicitation agreements (and clauses associated with them) are excluded from the Act, such clauses are still subject to other legal considerations including fairness and public policy and should be evaluated prior to providing to employees. Should you have any questions about this decision or how it may impact your business, please reach out to your MBJ attorney.

Morgan, Brown & Joy partner Catherine (Cat) Scott filed an amicus brief on behalf of the Massachusetts Defense Lawyers Association (MassDLA) in connection with *Miele v. Foundation Medicine, Inc*. For more information, see the press release, here.

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