

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION

---

THOMSON REUTERS (HEALTHCARE) INC.,

Plaintiff,

Case No. 12-CV-149

v.

CRAIG CALDWELL, MELANIE CALDWELL,  
and KERRY CARMICHAEL,

Defendants.

---

**PLAINTIFF'S BRIEF IN SUPPORT OF ITS  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

---

**INTRODUCTION**

This is a restrictive covenant case. The Defendants were long-time employees of the pharmacy consulting business of Thomson Reuters (Healthcare) Inc. ("Thomson Reuters") and its predecessor, Trivantage Pharmacy Strategies, LLC ("Trivantage"). Thomson Reuters and Trivantage paid the Defendants to identify, develop, and cultivate key client relationships. Now that they have left Thomson Reuters, however, the Defendants are soliciting Thomson Reuters' clients on behalf of their newly-formed pharmacy consulting business in violation of their non-solicitation covenants. While the Defendants remain free to use their skills, knowledge, and training to compete directly with Thomson Reuters, their non-solicitation covenants prohibit them from raiding the valuable client relationships which they developed on Thomson Reuters' dime and on its behalf.

Thomson Reuters has brought this case requesting (among other things) that the Court issue a declaratory judgment that the Defendants' non-solicitation covenants are enforceable. As

explained below, partial summary judgment – and an entry of that declaratory judgment – in Thomson Reuters’ favor on that issue is appropriate.

### **STATEMENT OF UNDISPUTED MATERIAL FACTS**

#### **A. Background**

Thomson Reuters supplies data, analysis, and performance benchmarking solutions and services to companies, government agencies, and healthcare professionals in order to help them identify savings, improve outcomes, fight fraud and abuse, and more efficiently manage their healthcare operations and costs. (*See* Statement of Undisputed Material Facts, *hereafter* “SOF,” ¶ 1.) On April 22, 2009, Thomson Reuters acquired 8-year-old Trivantage Pharmacy Strategies, LLC (“Trivantage”), a private company located in Milwaukee, Wisconsin. (SOF ¶ 2.) Trivantage was a pharmacy consulting services firm that assisted employers in evaluating, selecting, contracting with, and auditing pharmacy benefit managers (“PBM”s). (*Id.*) PBMs are third party administrators of prescription drug programs, and are primarily responsible for processing and paying prescription drug claims. Thomson Reuters’ acquisition of Trivantage enabled it to offer expanded pharmacy consulting services as part of its healthcare service offerings. (*Id.* ¶ 3). Leading up to the April 22, 2009 acquisition of Trivantage, Craig Caldwell, Melanie Caldwell, and Kerry Carmichael worked for Trivantage. (SOF ¶ 4.)

#### **B. Melanie Caldwell and Kerry Carmichael’s Employment With Trivantage**

Melanie Caldwell and Kerry Carmichael began their employment with Trivantage in approximately 2002 and 2005 respectively. (SOF ¶ 5.) While at Trivantage, Melanie Caldwell and Kerry Carmichael were both Vice Presidents of Consulting Services. (*Id.* ¶ 6). In those jobs, Melanie Caldwell and Kerry Carmichael were responsible for identifying companies that may be in need of pharmacy consulting services, developing relationships with the appropriate personnel at those companies, and soliciting them to use Trivantage’s pharmacy consulting

services. (*Id.* ¶ 7). Melanie Caldwell and Kerry Carmichael were also responsible for providing pharmacy consulting services to Trivantage's clients. (SOF ¶ 8). Such services included, but were not limited to, PBM vendor evaluation and procurement efforts, managing PBM contracting and negotiations, plan design and analysis, and analytic reporting. (*Id.*) Melanie Caldwell and Kerry Carmichael's positions required them to provide on going pharmacy consulting advice and support to Trivantage's clients. (*Id.*) At Trivantage, Melanie Caldwell and Kerry Carmichael developed and maintained important customer relationships and serviced customer accounts, during the course of which they created, generated, and received confidential and proprietary information regarding Trivantage and its clients, suppliers, and associates. (SOF ¶ 9).

In order to protect the client relationships and various forms of confidential and proprietary information which Melanie Caldwell and Kerry Carmichael developed on behalf of Trivantage and had access to through their positions with Trivantage, Trivantage required them to sign an agreement containing certain restrictive covenants that applied during and after their employment. (*Id.*) On September 10 and 19, 2005, respectively, Kerry Carmichael and Melanie Caldwell each signed an Intellectual Property and Nonsolicitation Agreement ("Agreement") stating the following:

**Non-Solicitation of Customers/Accounts** – I agree that for a period of eighteen (18) months following my last day of employment by Trivantage, I will not individually or as an agent of any person or entity, directly or indirectly, solicit or entice, attempt to solicit or entice, or accept as a client, any customers or accounts of Trivantage with whom I had significant business-related contact during my last (18) months of employment by Trivantage, or on whose account I worked at some point during my last eighteen (18) months of employment by Trivantage, so as to cause any such customer or account not to retain Trivantage or to retain some other party to provide information or consulting services which compete with the services provided by Trivantage. For purposes of this Agreement, a "customer" or an "account" of Trivantage shall mean and include any natural person, firm, corporation (whether profit or nonprofit), partnership or other legal entity to whom Trivantage is providing consulting or information services on the date my employment at Trivantage terminates, or any natural person, firm, corporation

(whether profit or nonprofit), partnership or other legal entity upon whom Trivantage has expended substantial time or energy, which shall include at least one face to face meeting or conference call, within the six (6) month period preceding my termination of employment in an attempt to persuade such person or entity to purchase or continue to purchase consulting or information services.

(SOF ¶ 10.)

Melanie Caldwell and Kerry Carmichael's Agreements each explicitly allowed Trivantage to assign the agreement to its successor(s):

This Agreement binds my successors and assigns and inures to the benefit of Trivantage and its successors and assigns. I hereby consent to any assignment by Trivantage of this Agreement to any person or entity that provides me with employment substantially similar to employment by Trivantage and agree that in the event of any such assignment, "Trivantage" as used in this Agreement shall thereafter mean such assignee, where substantially similar employment shall mean the same the same work schedule, responsibilities and remote office location.

(SOF ¶ 11).

**C. Craig Caldwell's Relationship With Trivantage**

Craig Caldwell was a Vice President of Business Development at Trivantage since its inception. (SOF ¶ 12). In that role, he was responsible for identifying potential clients, marketing Trivantage's services, and developing and maintaining relationships with Trivantage's prospective and actual customers, including key personnel at those companies. (*Id.*)

Accordingly, Craig Caldwell had extensive contact and developed significant personal relationships with Trivantage's actual and potential customers. (*Id.*) He also had access to confidential and proprietary information regarding Trivantage and its customers and associates. (*Id.*)

On March 24, 2005, Craig Caldwell signed an Employment Agreement ("Employment Agreement") with Trivantage in conjunction the restructuring of the company. (SOF ¶ 13).

Under the Employment Agreement, Trivantage agreed to give Craig Caldwell:

- 10% of the purchase price paid by his partners for the Class A Units of Trivantage; and
- a bonus equal to 5% of the net income of Trivantage for each fiscal year of his employment with Trivantage.

(SOF ¶ 14). In exchange, Craig Caldwell agreed to the following restrictive covenant which would protect the significant client relationships and proprietary and confidential information which he developed and had and would have access to as Trivantage's Vice President of Business Development:

- (a) During Employment Term. During the Employment Term, Executive will not directly or indirectly compete against, or directly or indirectly divert or attempt to divert any Customer's business from, Trivantage.
- (b) Following Separation Date.
  - (A) For a period of two (2) years following the Separation Date, Executive will not directly or indirectly attempt to sell to, or solicit the business of, any Restricted Customer regarding any services of the type, or substantially similar to the type, sold by Trivantage.
  - (B) For a period of two (2) years following the Separation Date, Executive will not directly or indirectly encourage any Restricted Vendor/Supplier to terminate its relationship with Trivantage or solicit its business or services in any manner which would end or diminish its relationship with Trivantage.

(*Id.*) Craig Caldwell's Employment Agreement also explicitly allowed Trivantage to assign it to its successor(s): "This Agreement . . . may be assigned by Trivantage, in whole or in part without Executive's consent." (SOF ¶ 15).

In recognition of the value which he added to Trivantage's business, Trivantage later entered into a further oral agreement with Craig Caldwell (the "Sale Bonus Agreement"). (SOF ¶ 16). According to the Sale Bonus Agreement, Craig Caldwell would receive five percent of the net proceeds from a sale of substantially all of Trivantage's assets. (*Id.*)

**D. Thomson Reuters' Acquisition of Trivantage**

By April 2009, Thomson Reuters had expressed an interest in acquiring Trivantage. (SOF ¶ 17). However, Thomson Reuters had conditioned its potential acquisition of Trivantage on the agreement of key Trivantage employees, including Craig Caldwell, to certain restrictive covenants so that they could not leave after the acquisition and solicit away key clients, thereby gutting the deal of its value. (*Id.* ¶ 18). In anticipation of that acquisition, Trivantage and Craig Caldwell entered into an agreement ("Sale of Business Agreement"). (*Id.* ¶ 19).

The Sale of Business Agreement memorialized Trivantage's and Craig Caldwell's existing obligations under the Employment Agreement and Sale Bonus Agreement. (SOF ¶ 20). Thus, among other things, it explained that Craig Caldwell would receive approximately 5% of the net proceeds received by Trivantage if and when the acquisition closed. (*Id.*) Additionally, to make sure that Thomson Reuters closed on the acquisition, it also stated that Craig Caldwell would "continue to remain bound by" the restrictive covenants contained in the Employment Agreement. (*Id.*)

Thomson Reuters acquired Trivantage on April 22, 2009. (SOF ¶ 21). Consistent with his agreements with Trivantage, Craig Caldwell received approximately 5% of the net proceeds of the sale. (*Id.*) In exchange, Thomson Reuters specifically acquired the right to enforce the restrictive covenants contained in Craig Caldwell's Employment Agreement as well as those in Melanie Caldwell's and Kerry Carmichael's Agreements. (*Id.*)

**E. Thomson Reuters' Pharmacy Consulting Business**

After the acquisition, the Trivantage business became Thomson Reuters' pharmacy benefits strategies segment. (SOF ¶ 22). Like Trivantage did prior to the acquisition, Thomson Reuters' pharmacy benefits strategies segment assists customers in evaluating, selecting, contracting with, and auditing PBMs. (*Id.* ¶ 23). Thomson Reuters' pharmacy benefits

strategies segment is a relationship-based business. (SOF ¶ 24). Customers choose Thomson Reuters' pharmacy benefits strategies segment because they trust Thomson Reuters' sales personnel and consultants to use Thomson Reuters' methods, algorithms, audit software, proprietary PBM contract, customized request for proposal ("RFP") solution, and technology to analyze their confidential and proprietary information (including their business needs, preferences, contractual terms, and historical healthcare use and spending information) to select the most cost-effective PBM partner. (*Id.*).

Thomson Reuters' pharmacy benefits strategies segment is a highly competitive business. (SOF ¶ 25). It has approximately 15 direct competitors. (*Id.*)

**F. Craig Caldwell, Melanie Caldwell, and Kerry Carmichael Go to Work for Thomson Reuters**

After Thomson Reuters acquired Trivantage, Craig Caldwell, Melanie Caldwell and Kerry Carmichael all went to work for Thomson Reuters' pharmacy benefits strategies segment. (SOF ¶ 26). After the acquisition, they each performed essentially the same job for Thomson Reuters' pharmacy benefits strategies segment as they had previously for Trivantage. (*Id.* ¶ 27). Craig Caldwell held the title of Director of Business Development and Melanie Caldwell and Kerry Carmichael each held the title of Director of Client Services in Thomson Reuters' pharmacy benefits strategies segment. (*Id.*)

**G. Thomson Reuters Terminates Craig Caldwell's, Melanie Caldwell's, and Kerry Carmichael's Employment**

In mid-2011, Thomson Reuters began to suspect that Craig Caldwell, Melanie Caldwell, and Kerry Carmichael were not devoting their business efforts to their respective responsibilities for Thomson Reuters. (SOF ¶ 28). Instead, Thomson Reuters discovered that they were working to set up and operate a competitive business. (*Id.*) Specifically, Craig Caldwell stopped logging his sales efforts into Thomson Reuters' computer system, Melanie Caldwell and Kerry

Carmichael exchanged emails that seemed to indicate that they were brainstorming about the name for a new company, and on at least one occasion, Craig Caldwell, Melanie Caldwell, Kerry Carmichael or one of their associates appear to have funneled a Thomson Reuters payment to an unauthorized vendor. (*Id.* ¶ 29.) As a result, Thomson Reuters terminated Craig Caldwell's employment on August 2, 2011 and subsequently terminated Melanie Caldwell's and Kerry Carmichael's employment on August 17, 2011. (*Id.* ¶ 30.)

**H. Craig Caldwell's, Melanie Caldwell's, and Kerry Carmichael's Restrictive Covenants Only Prohibited Them From Soliciting A Fraction Of The Potential Pharmacy Consulting Clients**

Craig Caldwell's, Melanie Caldwell's, and Kerry Carmichael's restrictive covenants only prohibited them from soliciting a fraction of the pharmacy consulting clients in the marketplace. (SOF ¶ 31). The entire pool of potential clients in the pharmacy consulting industry consists of thousands of entities. (*Id.* ¶ 32). Out of that pool, Thomson Reuters' pharmacy benefits strategies segment serviced approximately 75 clients in the two years prior to the termination of Craig Caldwell's employment. (*Id.* ¶ 33). During that time, Craig Caldwell worked on the accounts of, had confidential information regarding, or had contacts with those 75 Thomson Reuters clients. (*Id.*) Out of the entire pool of potential clients in the pharmacy consulting industry, Thomson Reuters' pharmacy benefits strategies segment serviced approximately 75 clients in the 18 months prior to the termination of Melanie Caldwell and Kerry Carmichael's employment. (SOF ¶ 34). During that time, Melanie Caldwell and Kerry Carmichael worked on the accounts of or had significant business contacts with those 75 Thomson Reuters clients. (*Id.*)

**I. Craig Caldwell, Melanie Caldwell, and Kerry Carmichael Nevertheless Violate Their Restrictive Covenants**

After their termination, Craig Caldwell, Melanie Caldwell, and Kerry Carmichael formed and began working for a company called Remedy Analytics, Inc. ("Remedy Analytics"). (SOF ¶ 35). Remedy Analytics was incorporated in May 2011 (3 months before Thomson Reuters



terminated Craig Caldwell's, Melanie Caldwell's, and Kerry Carmichael's employment) and operated, and/or continues to operate, from Craig and Melanie Caldwell's home address. (*Id.* ¶ 36).

Remedy Analytics directly competes with Thomson Reuters in the pharmacy consulting business. (SOF ¶ 37). Specifically, like Thomson Reuters' pharmacy benefits strategies segment, Remedy Analytics assists companies in evaluating, selecting, contracting with, and auditing PBMs. (*Id.*) Additionally, at Remedy Analytics, Craig Caldwell, Melanie Caldwell, and Kerry Carmichael have continued to perform essentially the same jobs as they did at Thomson Reuters and, previously, Trivantage. (*Id.* ¶ 38).

Even though their respective restrictive covenants only prohibit them from soliciting a fraction of the potential pharmacy consulting clients, Thomson Reuters learned that Craig Caldwell, Melanie Caldwell, and Kerry Carmichael had begun to directly solicit the business of Thomson Reuters' clients in violation of their restrictive covenants listed above. (SOF ¶ 39). Specifically, in November 2011, Thomson Reuters' client, Cornell University, notified Thomson Reuters' employee Adriano Sabatelli that it was aware that several former Thomson Reuters employees had begun working for Remedy Analytics and that Remedy Analytics would be responding to a RFP to assist Cornell University in an upcoming PBM selection. (*Id.* ¶ 40). Then, also in November 2011, Thomson Reuters' client, Safeway, notified Thomson Reuters that it had been contacted by several Remedy Analytics employees in an effort to solicit Safeway to begin working with Remedy Analytics rather than Thomson Reuters on pharmacy consulting matters. (*Id.* ¶ 41).

Craig Caldwell, Melanie Caldwell, and Kerry Carmichael worked on Cornell University's account during the last 18 months of their employment with Thomson Reuters. (SOF ¶ 42). Additionally, during their employment with Thomson Reuters, Craig Caldwell,

Melanie Caldwell, and Kerry Carmichael had access to confidential information pertaining to Safeway (including Thomson Reuters' contacts there) because that information was listed in Thomson Reuters' computer database. (*Id.*)

### **SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate where the pleadings and evidence before the court demonstrate that "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "Material facts" are those that, under the applicable substantive law, "might affect the outcome of the suit." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). If the moving party meets its burden to demonstrate that there is no material question of fact with respect to an essential matter, summary judgment is proper. *Cody v. Harris*, 409 F.3d 853, 860 (7th Cir. 2005).

### **ARGUMENT**

#### **THOMSON REUTERS IS ENTITLED TO PARTIAL SUMMARY JUDGMENT.**

As explained below, summary judgment is appropriate and Thomson Reuters is entitled to a declaratory judgment that the Defendants' non-solicitation covenants are enforceable.

##### **A. Restrictive Covenants Are Enforceable Under Wisconsin Law.**

"Wisconsin courts have always recognized the importance of protecting parties' freedom to contract." *Selmer Co. v. Rinn*, 789 N.W.2d 621, 627 (Wis. Ct. App. 2010) (internal quotations omitted). Accordingly, Wisconsin courts will ordinarily enforce an agreement so long as it does not impose obligations that are contrary to public policy. *Id.* at 627. The question of whether an agreement, including a restrictive covenant, is enforceable is a question of law for the court. *Farm Credit Servs. v. Wysocki*, 614 N.W.2d 1, 4 (Wis. Ct. App.), *rev'd on other grounds*, 627 N.W.2d 444 (Wis. 2000).

In evaluating whether a restrictive covenant is enforceable, Wisconsin courts consider: (1) whether it is necessary to protect the company; (2) whether it contains a reasonable time limit; (3) whether it contains a reasonable territorial limit; (4) whether it is harsh or oppressive on the restrained party; and (5) whether it is contrary to public policy. *Rinn*, 789 N.W.2d at 627-30.<sup>1</sup>

However, Wisconsin courts apply these factors differently depending on the circumstances in which the restrictive covenant was executed. If the restrictive covenant was executed by an employee as a condition of his or her employment (or in circumstances in which an employer retains an unfair bargaining advantage over an employee), Wisconsin courts interpret Section 103.465<sup>2</sup> to require “close scrutiny” of whether the restrictive covenant satisfies the five factors. *Rinn*, 789 N.W.2d at 629. However, if the restrictive covenant was executed as part of the sale of a business, by an employee in exchange for stock options, or in other circumstances in which the parties have equal bargaining power, Wisconsin courts are more flexible and evaluate whether the restrictive covenant is “reasonable” by considering the five factors. *Id.* (reasonableness standard applied to restrictive covenant contained in stock option agreement between employer and employee of equal bargaining power); *Reiman Assoc., Inc. v.*

---

<sup>1</sup> “While the ‘very essence of what is reasonable involves the totality of the circumstances,’ that does not mean that in some circumstances a determination on any one of the five relevant inquiries cannot be made as a matter of law.” *Overhead Material Handling, Inc. v. Potratz*, 2003 Wisc. App. LEXIS 1127, at \*5 (Wis. Ct. App. 2003), quoting *Rollins Burdick Hunter of Wisconsin, Inc. v. Hamilton*, 304 N.W.2d 752 (Wis. 1981).

<sup>2</sup> Wis. Stat. §103.465 provides: “A covenant by an . . . agent not to compete with his or her employer during the term of the employment . . ., or after the termination of that employment . . ., within a specified territory and during a specified time is lawful and enforceable only if the restrictions imposed are reasonably necessary for the protection of the employer or principal. Any covenant, described in this subsection, imposing an unreasonable restraint is illegal, void and unenforceable even as to any part of the covenant or performance that would be a reasonable restraint.”

*R/A Advertising, Inc.*, 306 N.W.2d 292, 309-10 (Wis. Ct. App. 1981) (reasonableness standard applied in context of the sale of a business).

**B. The Standards Applicable to the Defendants' Agreements.**

It is appropriate for the Court to analyze the non-solicitation covenants contained in Melanie Caldwell's and Kerry Carmichael's Agreements under the "close scrutiny" standard. However, the Court should evaluate the non-solicitation covenant contained in Craig Caldwell's Employment Agreement – which he reaffirmed in the Sale of Business Agreement – under the "reasonable" standard, rather than under the "close scrutiny" standard.

*Selmer Company v. Rinn*, 789 N.W.2d 621 (Wis. Ct. App. 2010) is instructive. In that case, Rinn was a Vice President of sales and marketing for Selmer. In that role, he served as a liaison between Selmer and its customers, with whom he developed close relationships. In exchange for the opportunity to purchase stock in Selmer's parent company at a reduced price, Rinn signed an agreement that contained a non-solicitation provision. Selmer subsequently sought to enforce that non-solicitation covenant. Because the agreement provided Rinn stock options at a discounted price and was not a condition of his employment, and because Rinn was not required to sign it, the court determined that the agreement fell "closer to a bargained for exchange" than an "employment case." *Id.* at 629-30. As a result, the court evaluated the non-solicitation covenant under the "reasonable" standard rather than under the "close scrutiny" standard. *Id.* at 630.

As in *Selmer*, Trivantage gave Craig Caldwell the opportunity to receive 10% of the purchase price of the Class A Units of Trivantage if he signed an Employment Agreement which contained a non-solicitation covenant. (SOF ¶¶ 13-14.) As in *Selmer*, Craig Caldwell's continued employment was not conditioned on his acceptance of that offer. (*Id.*) As in *Selmer*, by accepting that offer and signing the Employment Agreement, Craig Caldwell "forfeited his

ability to tap” Trivantage’s (or its successor’s) customers for a period of time after he separated employment. (SOF ¶ 14.) Thus, as in *Selmer*, the Court should interpret the non-solicitation covenant in Craig Caldwell’s Employment Agreement as a “bargained-for exchange” and analyze that clause under the “reasonable” standard. *See Selmer*, 789 N.W.2d at 280-81.

Furthermore, in the Sale of Business Agreement, Craig Caldwell reaffirmed his non-solicitation covenant in exchange for 5% of the net proceeds from Thomson Reuters’ acquisition of Trivantage. (SOF ¶¶ 19-20.) Because that reaffirmation was incidental to Thomson Reuters’ acquisition of Trivantage (and a condition of Craig Caldwell’s receipt of 5% of Trivantage’s net proceeds from that sale), the “reasonable” standard is doubly appropriate. *Reiman*, 306 N.W.2d at 295 (“[c]ovenants not to compete incidental to the sale of a business are not subject to exacting scrutiny, particularly where, as here, the covenants contain no restriction on the right of the restrained party to enter employment”), quoting *Betten Co. v. Brauman*, 260 N.W. 456, 458 (Wis. 1935).<sup>3</sup>

As a result, the Court should evaluate Craig Caldwell’s non-solicitation covenant under the “reasonable” standard.

**C. The Defendants’ Non-Solicitation Covenants Are Enforceable.**

No matter whether the Court reviews the Defendants’ non-solicitation covenants with “close scrutiny” or for “reasonableness,” they satisfy all five factors of both tests and are consequently all enforceable.

---

<sup>3</sup> Because Craig Caldwell’s non-solicitation covenant is subject to the “reasonable” standard (and not the “close scrutiny” standard consistent with §103.465), even if the Court determines that it is overbroad or unenforceable, the Court may still enforce it to the extent necessary to protect Thomson Reuters’ legitimate business interests. *Reiman*, 306 N.W.2d at 310.

1. Protection of a legitimate business interest

“The customer goodwill that comes from a positive relationship between a customer and the employee with whom the customer regularly deals is a valuable asset of the employer’s business and, for some businesses, may be the most important asset.” *H & R Block Eastern Enters. v. Swenson*, 745 N.W.2d 421, 426 (Wis. Ct. App. 2007), citing *Chuck Wagon Catering, Inc. v. Raduege*, 277 N.W.2d 787, 792 (Wis. 1979).

Here, the pharmacy consulting business is a relationship-based business and all three Defendants were responsible for identifying prospective customers, establishing close working relationships with those customers, and for servicing and maintaining those customer relationships on behalf of Thomson Reuters. (SOF ¶¶ 7-9, 12, 24, 26-27.) Thomson Reuters thus has a legitimate business interest in protecting the relationships that the Defendants developed on its behalf. *See, e.g., Star Direct, Inc. v. Dal Pra*, 767 N.W.2d 898, 906 (Wis. 2009) (holding that employer had legitimate business interest where its business was “relationship-based” and it provided former salesperson “with a platform from which to foster, nurture, and cultivate his customer contacts and relationships”); *Selmer*, 789 N.W.2d at 630 (holding that restrictive covenant was reasonably necessary to protect its customer base after the departure of its Vice President of sales and marketing); *Techworks, LLC v. Wille*, 770 N.W.2d 727, 734 (Wis. Ct. App. 2009) (finding that plaintiff had legitimate business interest in restricting its former service technician, who developed relationships with clients, from competing with it for a reasonable period); *Lakeside Oil v. Slutsky*, 98 N.W.2d 415, 420 (Wis. 1959) (“Slutsky was paid to develop customers for the plaintiff. He should not now be allowed to take such customers away from plaintiff without giving his former employer a reasonable chance to keep them”).

2. Reasonable time restriction

Craig Caldwell's non-solicitation covenant will last for two years after he separated employment with Thomson Reuters. (SOF ¶ 14.) Melanie Caldwell's and Kerry Carmichael's non-solicitation covenants will last for 18 months after they separated employment with Thomson Reuters. (SOF ¶ 10.) Those durations are clearly reasonable under Wisconsin law. *See, e.g., Techworks*, 770 N.W.2d at 734 (holding that two year limit on competition post-employment was reasonable); *Rollins Burdick Hunter of Wis., Inc. v. Hamilton*, 304 N.W.2d 752, 753 (Wis. 1981) (same); *Central Watch, Inc. v. Black*, 22 B.R. 561, 568 (Bankr. E.D. Wis. 1982) ("Thus as night follows day, there is no doubt that the 2 year restriction in Black's employment contracts was reasonable in duration").

3. Reasonable territorial restriction

While the Defendants' non-solicitation covenants do not contain geographic limitations, they are limited to certain Thomson Reuters customers. (SOF ¶¶ 10, 14.) Wisconsin courts have held that customer limitations are appropriate substitutes for geographic restrictions, especially where they more closely approximate "the area of the employer's vulnerability." *Rollins Burdick*, 304 N.W.2d at 755; *Techworks*, 770 N.W.2d at 735 ("[T]here need be no geographic limitation if those for whom the former employee cannot work is limited to a specific group of customers").

Here, Craig Caldwell's non-solicitation covenant only prohibits him from soliciting those customers or proposed customers with whom he had contact or about whom he acquired confidential information or trade secrets in the two years before his departure from Thomson Reuters. (SOF ¶ 14.) Melanie Caldwell's and Kerry Carmichael's non-solicitation covenants only prohibit them from soliciting clients with whom they had significant contacts or on whose accounts they worked in their last 18 months. (SOF ¶ 10.) Restrictions limited to those

customers with whom the employee dealt or regarding whom the employee had confidential information are reasonable. *See Dal Pra*, 767 N.W.2d at 911 (upholding covenant which prevented employee from soliciting or competing with customers who he serviced, “otherwise dealt with” or “obtained special knowledge about”); *Techworks*, 770 N.W.2d at 735 (holding that non-compete which only applied to customers employee serviced in two years before departure was reasonable), quoting *Chuck Wagon*, 277 N.W.2d at 793 (“In Wisconsin a covenant is considered reasonable as to territory, if, like this covenant, it is limited to the route or customers defendant actually services”); *Rollins Burdick*, 304 N.W.2d at 756-57 (finding that employer may have protectable interest where employee had access to customer information).

4. Not harsh or oppressive

The Defendants’ non-solicitation covenants are neither harsh nor oppressive for several reasons. First, they do not prevent Craig Caldwell, Melanie Caldwell, or Kerry Carmichael from competing against Thomson Reuters (as they have already done by forming and working for Remedy Analytics). (SOF ¶¶ 10, 14.) Defendants have been, and remain, free to directly compete with Thomson Reuters. Under those circumstances, the non-solicitation covenants are neither harsh nor oppressive. *See Selmer*, 789 N.W.2d at 630-31 (finding covenant reasonable between the parties because it only restricted the solicitation of former customers and did not restrict employee’s use of his skills, knowledge, or abilities to compete in similar work).

Second, they only restrict the Defendants from soliciting a small subset of the applicable market. Specifically, they only limit Craig Caldwell, Melanie Caldwell, and Kerry Carmichael from soliciting 75 entities out of a pool of thousands. (SOF ¶¶ 10, 14, 32-34). Wisconsin courts have held that covenants limiting competition to such a limited portion of the market are neither harsh nor oppressive. *See Techworks*, 770 N.W.2d at 735-36 (finding covenant not oppressive where it only restricted competition with small subset of potential market); *Rollins Burdick*, 304



N.W.2d at 754 (finding reasonable provision restricting employee from soliciting or doing competing business with 175 customers employee worked with in two years prior to departure where total pool of potential customers was 6,000).

Finally, Craig Caldwell received substantial compensation (above and beyond compensation for performing his job) in exchange for agreeing to the non-solicitation covenant. (SOF ¶¶ 14, 19-20.) Under those circumstances, Craig Caldwell's non-solicitation covenant is neither harsh nor oppressive. *See Selmer*, 789 N.W.2d at 630 (finding that plaintiff could not reap benefit of bargain, in which he received company stock in exchange for agreeing to limit solicitation, and later argue that restrictive covenant was unenforceable).

5. Public policy

Enforcement of the Defendants' non-solicitation covenants also will not injure the public. There are approximately 15 companies that directly compete with Thomson Reuters in the pharmacy consulting business. (SOF ¶ 15.) As a result, enforcing the Defendants' non-solicitation covenants will not result in a shortage of choices in the marketplace. *Lakeside Oil*, 98 N.W.2d at 421 (finding that contract was enforceable and did not create shortage of employees or services or stifle competition).

**CONCLUSION**

Applying all five factors, the Defendants' non-solicitation covenants are clearly necessary for the protection of Thomson Reuters' legitimate business interest in protecting the client relationships that it paid the Defendants to develop during their employment with Thomson Reuters. As a result, Thomson Reuters respectfully requests that the Court grant its Motion for Partial Summary Judgment and issue an order declaring that the Defendants' non-solicitation covenants are enforceable as a matter of law.

Dated this 13th day of February, 2012.

*s/ Mark E. Schmidt*

---

Mark E. Schmidt  
State Bar No. 1052450  
GODFREY & KAHN, S.C.  
780 North Water Street  
Milwaukee, WI 53202-3590  
Phone: 414-273-3500  
Fax: 414-273-5198  
Email: mschmidt@gklaw.com

Attorneys for Plaintiff, Thomson Reuters  
(Healthcare) Inc.

Direct Inquiries To:

Mark E. Schmidt  
414-287-9643

OF COUNSEL:

Zachary C. Jackson  
Epstein Becker & Green, P.C.  
150 North Michigan Avenue, 35th Floor  
Chicago, IL 60601  
Phone: 312-499-1400  
Fax: 312-845-1998  
Email: zjackson@ebglaw.com

7472213\_1