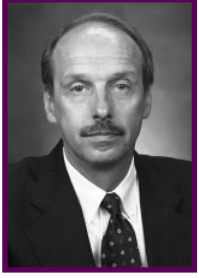


FOCUSING ON GROWTH

BY: RICHARD J. JOHNSON, CHIEF FINANCIAL OFFICER

RICHARD J. JOHNSON



2000 has been a year of considerable change and growth for Moss & Barnett, with the addition of 19 attorneys since January 1. This growth was the result of our strategy, which we want to share with you.

Our strategy is simple: to add depth and increase the scope of our abilities to serve current and compatible new clients, based on our assessment of our clients' current and future needs. Each potential new attorney at every level of experience, is evaluated against these criteria.

We have concentrated on adding depth to our existing areas of expertise, while broadening into new and complimentary areas. We expect to maintain this approach in the future.

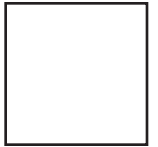
Assessing our clients' current and future needs and taking the necessary steps to meet those needs is the key to our planning and growth. We assure you that meeting the needs of each of our clients will remain at the core of our planning and growth in the future!

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VOLUME 2, ISSUE 3
OCTOBER 1, 2000

PAGE ONE

Empowering People

PAGE TWO

Supporting Non-Compete
Agreements

PAGE THREE

Habitat for Humanity
Moss & Barnett Unveils
a New Identity
New Attorneys

PAGE FOUR

Focusing on Growth

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NEWS FROM MOSS & BARNETT

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EMPOWERING PEOPLE

Among the many talented and experienced attorneys who have recently joined our team, one of our new lawyers has a truly special story.

Cindy J. Ackerman actually began her career as a paralegal at Moss & Barnett in 1989, serving in our Trusts, Estate and Probate Practice Area. Capitalizing on her accounting degree from the University of Minnesota (she passed the C.P.A. exam in 1985), a strong interest in tax law and her boundless enthusiasm for helping people, she quickly became one of our major assets.

In 1997, those same qualities led Cindy to take the initiative and return to law school. Moss & Barnett helped Cindy to take this step by engineering an innovative program that helped pay for law school tuition, while allowing her to continue to serve as a paralegal—in return for her commitment to join us as a lawyer upon her admission to the Bar.

Remarkably for a paralegal, Cindy was the co-editor and a co-author of Minnesota Estate Administration, published by the Minnesota State Bar Association, and taught probate courses at the Minnesota Paralegal Institute. Her commitment to law school did require Cindy to give up her avocation of vocal performance—she hopes to return to membership with the Macalester Festival Chorale this fall.

We are truly fortunate to have Cindy's talent and energy added to our roster of attorneys.

...A STRONG INTEREST IN
TAX LAW AND HER
BOUNDLESS ENTHUSIASM
FOR HELPING PEOPLE,
SHE QUICKLY BECAME
**ONE OF OUR
MAJOR ASSETS**

In addition to graduating near the top of her William Mitchell College of Law class this year, Cindy was recognized with the CALI Excellence for the Future Award for her achievement in the study of Estate and Gift Taxation and Advanced Estate Planning and was named to Who's Who Among American Law Students (1997-2000).



CINDY J. ACKERMAN

SUPPORTING NON-COMPETE AGREEMENTS

BY: JERRIE M. HAYES



In today's competitive business environment, more and more employers are using non-compete agreements to secure trade secrets, confidential client information, and sources of business. The highly competitive job market also makes using non-compete agreements attractive because they contain prohibitions on future employment that make it harder for employees to jump to another job in the same industry.

Of course, this restriction also tends to make non-compete agreements unpopular with employees, companies often find successfully negotiating and executing of non-compete agreements difficult. Employers can easily make the mistake of thinking that simply getting an employee to sign a non-compete is enough to ensure the employer's protections. However, to enforce these agreements in court, employers must put the same—or even greater—effort into *maintaining* their non-compete agreements.

Non-compete agreements, which typically contained within broader employment contracts, are only effective if the contract in which they are contained is valid and enforceable. To rely on the protections of non-compete agreements, employers must be vigilant about keeping related employment contracts up-to-date. When reviewing employment contracts, employers should be mindful of two often-ignored clauses, the term length and renewal, that can effectively destroy the safeguards of even the most artfully drafted non-compete provision.

In a recent case involving a non-compete provision contained within a two-year employment contract, the Minnesota Court of Appeals held that the agreement could not be enforced against an employee who stayed on at a company after his employment contract had expired. The employee left his employer after three and a half years to take a job with a competitor—and not just any competitor, but a company that was *specifically named* in the non-compete agreement. Yet when the employer sought to have the non-compete agreement enforced, the Court refused to do so on the grounds that the employment contract in which the non-compete clause was contained had expired after two years and had never been properly renewed. The court found that the contract terminated the agreement at the end of two years and, even though the employee had voluntarily remained with the employer for eighteen months after the expiration of the employment contract, the protections of the agreement ended when the agreement expired. This allowed the employee to legally go to work for the employer's direct competitor.

The Court's decision is disappointing for companies relying on non-compete agreements to protect their business interests, but

employers can easily avoid a similar fate by reviewing the renewal provisions of their employment contracts and answering some basic questions about the agreement's life span.

1.) Does the contract have a limited term or does it continue indefinitely?

If the agreement is only for a limited number of years, the non-compete protections of the agreement will expire when the contract expires. Employers who want to remain protected must either renew the old contract or make a new contract. For added security, new contracts should be negotiated well in advance of the expiration of the old agreement, so that there is no substantial gap in non-compete protection between contracts.

2.) For contracts of limited term, does the agreement renew automatically or is an additional written agreement necessary to extend the contract beyond its original term?

It may be in the employer's best interest to let the agreement self-renew, (i.e. for example when there are many employment contracts and individual renewals would be too costly or administratively difficult). Of course, the employer may be better served by having an opportunity to renegotiate the contract at the end of its term, which would be particularly true where the company's need for a certain kind of employee is fluid, or where allowing an employment contract to lapse makes sense because of market or labor trends.

3.) Is the non-compete provision specifically tied to the termination of the employment contract or is it tied more broadly to the termination of employment?

Even the subtle difference in language between a non-compete provision expiring upon "termination of this agreement" versus upon "termination of employment" may make a difference should enforcement of the non-compete provision become a matter for the courts. Employers who can skillfully include language that broadens the scope of their non-compete protection will have a significant business advantage.

Simply having a non-compete provision in an employment agreement is not enough. Where the employment contract is for a limited term, employers need to ensure that the termination and renewal provisions of the contract also support the non-compete language. To make the most of a non-compete's protections, employers must be cautious of "missing the forest for the trees" by focusing too much on non-compete provisions and paying insufficient attention to the employment contract as a whole. An employment contract with clear, purposeful term and renewal provisions will enhance the chance for effective court enforcement of the non-compete clause that the employer has so carefully negotiated.

HABITAT FOR HUMANITY

Moss & Barnett has always taken pride in being involved in the community. This past June, the firm completed its first Habitat for Humanity project. The group of volunteers enjoyed learning new carpentry skills, working together and helping to revitalize this area's stock of aging housing for low-income families. Moss & Barnett will participate in two more rehabilitation projects with Habitat, in coming months.



Moss & Barnett's Habitat for Humanity volunteers are pictured here at the end of a full day spent sheet-rocking a home in St. Paul on June 10, 2000.

Attorneys Kevin Busch (left) and Ron Eisenberg use teamwork to remove old framework. The Moss & Barnett volunteers consisted of attorneys and staff from the firm.



MOSS & BARNETT UNVEILS A NEW IDENTITY

As we celebrate over 100 years' presence in the life of our region, Moss & Barnett unveils its newer, fresher identity—an identity designed to carry our firm into the new economy, enhance pride in our people, and increase recognition among members of the communities we serve.

Thank you to our partners at Tanaka Advertising, for helping to position our firm with a strong image that will span across all of our marketing communications materials to facilitate and support our continued growth.

MOSS & BARNETT

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NEW ATTORNEYS

Moss & Barnett would like to welcome the following new attorneys who have recently joined the firm.

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