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Louisiana Business Litigation Basics

James C. McMichael Jr.
McMichael, Medlin, D'Anna, Wedgeworth & Lafargue

BUSINESS LITIGATION BASICS
REPRESENTING (OR PROSECUTING) THE COMPETING EX-EMPLOYEE

James C. McMichael, Jr.
McMichael, Medlin, D'Anna, Wedgeworth & Lafargue, L.L.C.
P. O. Box 72
Shreveport, Louisiana 71161-0072
Phone: (318) 221-1004
Fax: (318) 221-0008
jmcmichael@mmw-law.com

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I. Non-Competition and Non-Solicitation Agreements

La. R.S. 23:921, as amended on August 1, 2020, provides, in relevant part:

C. Any person, including a corporation and the individual shareholders of such corporation, who is employed as an agent, servant, or employee may agree with his employer to refrain from carrying on or engaging in a business similar to that of the employer and/or from soliciting customers of the employer within a specified parish or parishes, municipality or municipalities, or parts thereof, so long as the employer carries on a like business therein, not to exceed a period of two years from termination of employment. An independent contractor, whose work is performed pursuant to a written contract, may enter into an agreement to refrain from carrying on or engaging in a business similar to the business of the person with whom the independent contractor has contracted, on the same basis as if the independent contractor were an employee, for a period not to exceed two years from the date of the last work performed under the written contract.

D. For the purposes of Subsections B, C, E, F, J, K, and L of this Section, a person who becomes employed by a competing business, regardless of whether or not that person is an owner or equity interest holder of that competing business, may be deemed to be carrying on or engaging in a business similar to that of the party having a contractual right to prevent that person from competing.

H. Any agreement covered by Subsection B, C, E, F, G, J, K, or L of this Section shall be considered an obligation not to do, and failure to perform may entitle the obligee to recover damages for the loss sustained and the profit of which he has been deprived. In addition, upon proof of the obligor's failure to perform, and without the necessity of proving irreparable injury, a court of competent jurisdiction shall order injunctive relief enforcing the terms of the agreement. Any agreement covered by Subsection J, K, or L of this Section shall be null and void if it is determined that members of the agreement were engaged in ultra vires acts. Nothing in Subsection J, K, or L of this Section shall prohibit

the transfer, sale, or purchase of stock or interest in publicly traded entities.

Louisiana has long had a strong public policy disfavoring non-competition agreements. Vartech Systems, Inc. v. Hayden, 2005-2499 (La.App. 1 Cir. 12/20/06), 951 So.2d 247, 254; Clear Channel Broadcasting, Inc. v. Brown, 2004-0133 (La.App. 4th Cir. 3/30/05), 901 So.2d 553; Kimball v. Anesthesia Specialists of Baton Rouge, Inc., 2000-1954 (La.App. 1 Cir. 9/28/01), 809 So.2d 405, 410. Thus, the longstanding public policy of Louisiana has been to prohibit or severely restrict such agreements. *Id*. This public policy is expressed in La. R.S. 23:921(A)(1), which provides that every contract or agreement, or provision thereof, by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, except as provided in this Section, shall be null and void. However, every contract or agreement, or provision thereof, which meets the exceptions as provided in this Section, shall be enforceable.

To be enforceable, an agreement limiting competition must strictly comply with the requirements of La. R.S. 23:921. Also, the statutory exceptions to La. R.S. 23:921(A)(1) must be strictly construed. Thus, both the non-competition clause itself and the exceptions relied upon by the party seeking enforcement must be strictly construed. Furthermore, a non-competition agreement is a contract between the parties and therefore, any doubt or ambiguity as to the meaning of the contract must be interpreted against the party who furnished the text. *See La. C.C. art. 2056.*

To be enforceable, a non-competition agreement:

1. Must not exceed two years from termination of employment

2. Must specify the parish(es) or municipality(ies) in which the employer operates and must specifically name the parishes or municipalities in which the agreement is to have effect.

3. Must sufficiently describe the employer's business.

A non-solicitation agreement clause must have its own term and geographical limitations.

Prior to August 15, 2003, an employer could not prohibit an employee from going to work as an employee in a competitor's business. However, Louisiana Revised Statutes 23:921 was amended by Acts 2003, No. 428, effective August 15, 2003 to allow an employer to prohibit an employee from working in a competitor's business.

Ethan & Associates v. McKay, WL 3544807 (La.App. 1 Cir.), 2006.

Other jurisprudence:

Wechem, Inc. v. Evans, 274 So.3d 877 (La.App 5 Cir. 05/30/19).

Vartech Systems, Inc. v. Hayden, 951 So.2d 247 (La.App. 1 Cir. 12/20/06).

Clear Channel Broadcasting, Inc. v. Brown, 901 So.2d 553 (La.App. 4 Cir. 3/30/05)

Regional Urology, L.L.C. v. Price, 2007 WL 2781922 (La.App. 2 Cir. 9/26/07)

II. Louisiana Unfair Trade Practices and Consumer Protection Act - La.. R.S. 51: 1401 et seq:

Selected Text of Act

§1405. Unlawful Acts and Practices

A. Unfair methods of competition and unfair or deceptive acts in the conduct of any trade or commerce are hereby declared unlawful.

§1406. Exemptions - the act does not apply to:

(1) Actions or transactions subject to the jurisdiction of the Louisiana Public Service Commission or other public utility regulatory body, the commissioner of financial institutions and the insurance commissioner, and any bank chartered by or under the authority of the United States acting under statutory authority of this state or the United States to regulate unfair or deceptive trade practices; or

(2) Acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station or other advertising medium in the publication or dissemination of an advertisement when the publisher, owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement, did not prepare the advertisement and did not have any direct financial interest in the sale or distribution of the advertised product or service.

(3) No seller of any product or service who disseminates any advertisement or promotional material in this state shall be liable under this chapter if he receives the advertisement or promotional material from a manufacturer, packer, distributor or other seller from whom he has purchased the product or service unless he refused on the request of the attorney general, or director, to provide the name and address of the manufacturer, packer, distributor or other seller from whom he has purchased the product or service and said seller also agrees to enter into an assurance of voluntary compliance as prescribed by the chapter from disseminating any such advertisement or promotional material thereafter. This exemption does not in any way limit the right of action any consumer may have under this chapter.

(4) Any conduct which complies with section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C., 45(1)(1)], as from time to time amended, any rule or regulation promulgated thereunder and any finally adjudicated court decision interpreting the provisions of said Act, rules and regulations.

§1409. Private Actions

A. Any person who suffers any ascertainable loss of money or movable property, corporeal or incorporeal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by R. S. 51:1405, may bring an action individually but not in a representative capacity to recover actual damages. If the court finds the unfair or deceptive method, act or practice was knowingly used, after being put on notice by the director or attorney general, the court shall award three times the actual damages sustained. In the event that damages are awarded under this Section, the court shall award to the person bringing such action reasonable attorney's fees and costs. Upon a finding by the court that an action under this section was groundless and brought in bad faith or for purposes of harassment, the court may award to the defendant reasonable attorney's fees and costs.

B. Upon commencement of any action brought under Subsection A of this section, the plaintiff's attorney shall mail a copy of the petition to the attorney general and director, and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the attorney general and director, but failure to conform with this subsection shall not affect any of plaintiff's rights under this section.

C. Any permanent injunction, judgment or order of the court made under R.S. 51:1407 and R.S. 51:1408 shall be prima facie evidence in an action brought under R.S. 51:1409 that the respondent used or employed a method, act or practice declared unlawful by R.S. 51:1405 or by rule or regulation promulgated pursuant thereto; provided, however, that this subsection shall not apply to consent orders or voluntary assurances of compliance.
D. If any person is enjoined from the use of any method, act or practice or enters into a voluntary compliance agreement accepted by the director and the attorney general under the provisions of this chapter, such person shall have a right of action to enjoin competing businesses engaged in like practices.

E. The action provided by this section shall be prescribed by one year running from the time of the transaction or act which gave rise to this right of action.

Background Jurisprudence

The Act provides a private cause of action only for consumers and business competitors. Cheramie Services Inc. v Shell Deepwater Production Inc., 35 So.3d 1053 (La. 4/23/10); Delta Truck and Tractor, Inc. v. J. I. Case Co., 975 F. 2d 1192, C.A. 5 (La.) 1992, on remand 833 F. Supp. 587. Tessier v. Moffat, 92 F. Supp. 2d 729 (E.D. La. 1998).

A trade practice is unfair when it offends public policy and when the practice is unmoral, unethical, oppressive, unscrupulous, or substantially injurious Laurents v. Louisiana Mobile Homes, Inc., 689 So. 2d 536 (La. Appl 3d Cir. 1997) and Tripp v. Pickens, 2018 WL 6072027 (W.D. La 11/2/18).

Conduct is considered unlawful under LUTPA when it involves fraud, misrepresentation, deception, breach of fiduciary duty or other unethical conduct Cheramie Services Inc. v Shell Deepwater Production Inc., 35 So.3d 1053 (La. 4/23/10); Nursing Enterprises, Inc. v. Marr, 719 So. 2d 524 (La. App. 2d. Cir. 1998).

LUTPA does not provide alternative remedy for simple breaches of contract. Fraud, misrepresentation, deception and similar conduct is prohibited as unfair trade practice under LUTPA while mere negligence is not. Turner v. Purina Mills, Inc., 989 F. 2d 1419 C.A. 5 (La.) 1993.

What constitutes unfair and/or deceptive business under LUTPA is determined on a case-by-case basis. In order for conduct to be unfair under LUTPA, it must offend established public policy. Pyramid Instrumentation & Electric Corp. v. Hebert, 2018 WL 1789325 (W.D. La. 3/14/18); United Group of Nat. Paper Distributors, Inc. v. Vinson, 666 So. 2d 1338 (La. App. 2d Cir. 1996).

Actual damages under LUTPA include damages for mental anguish and humiliation Laurents v. Louisiana Mobile Homes, supra.; Vercher v. Ford Motor Co. 527 So. 2d 995 (La. App. 3d Cir. 1988).

Failure to serve the attorney general with a copy of LUTPA complaint defeats a claim for treble damages - but does not defeat claim for actual damages and attorney's fees. Laurents v. Louisiana Mobile Homes, supra.

Injunctive relief under §1407 is only available to the state through the attorney general. Family Resource Group, Inc. v. Louisiana Parent Magazine, 818 So.2d 28 (La.App. 1 Cir. 11/9/01); Lafreniere Park Foundation v. Friends of Lafreniere Park, 698 So. 2d 449 (La. App. 5th Cir. 1997).

Under §1409 E. suit must be brought within one year of the transaction or act which gave rise to the right of action. This period is peremptive, not prescriptive. Warner v. Carimi Law Firm, 725 So. 2d 592 (La. App. 5th Cir. 1997). However, this period is subject to the "continuing tort" rule. Adcock v. Wooten, 180 So.3d 473 (La.App. 2 Cir. 9/30/15); Benton, Benton & Benton v. Louisiana Public Facilities Authority 672 So. 2d 720 (La. App. 1st Cir. 1996). Capitol House Preservation Co., L.L.C. v. Perryman Consultants, Inc., 725 So. 2d 523 (La. App. 1st, 1998).

Selected cases

Under Louisiana law, without a restrictive agreement, at the termination of his employment, an employee can go to work for a competitor or form a competing business, and even before termination, the employee can seek other work or prepare to compete. American Machinery Movers, Inc. v. Machinery Movers of New Orleans, LLC, E.D. La.2001, 136 F.Supp.2d 599, affirmed 34 Fed.Appx. 150, 2002 WL 494474.

Competition and free enterprise are favored, and as long as conduct is neither unlawful nor offensive to public policy, persons are able to discuss changes of employment, effectuate a

change in employment, plan to compete and take preliminary steps in furtherance of that plan without violating Unfair Trade Practices Act. Nursing Enterprises, Inc. v. Marr, App. 2 Cir.1998, 719 So.2d 524, 30,776 (La.App. 2 Cir. 8/19/98)

Even before termination of employment, absent restrictive agreement, employee can seek other work or prepare to compete, except that she may not use confidential information acquired by her from her previous employer. United Group of Nat. Paper Distributors, Inc. v. Vinson, App. 2 Cir.1996, 666 So.2d 1338, 27,739 (La.App. 2 Cir. 1/25/96), rehearing denied, writ denied 679 So.2d 1358, 1996-0714 (La. 9/27/96).05

Solicitation of customers by former employee after end of employment relationship does not form basis for claim of unfair competition. United Group of Nat. Paper Distributors, Inc. v. Vinson, App. 2 Cir.1996, 666 So.2d 1338, 27,739 (La.App. 2 Cir. 1/25/96), rehearing denied, writ denied 679 So.2d 1358, 1996-0714 (La. 9/27/96)

Former employee's solicitation of oxygen supply business' customers after she resigned her position was not unfair trade practice under Unfair Trade Practices and Consumer Protection Law, where former employee did not solicit customers until after effective date of her resignation, solicited clients based on memory, and did not make any misrepresentation to the clients, even though substantial portion of clients transferred to employee's new business. Wyatt v. PO2, Inc., App. 2 Cir.1995, 651 So.2d 359, 26,675 (La.App. 2 Cir. 3/1/95), writ denied 654 So.2d 331, 1995-0822 (La. 5/5/95)

Question whether employee has breached fiduciary duty or loyalty as an employee collapses into question whether employee's actions constitute unfair trade practices, as defined in Louisiana Unfair Trade Practices and Consumer Protection Law (LUTPA). Restivo v. Hanger Prosthetics & Orthotics, Inc., E.D. La. 2007, 483 F.Supp.2d 521, reconsideration denied 2007 WL 1341506.

Former employee's alleged conduct in setting up a competing business while he was still employed by employer, and in soliciting the employer's customers, was not of itself a violation of the Louisiana Unfair Trade Practices Act (LUTPA); employer submitted no evidence that the employee solicited the employer's customers while he was still employed by the employer or that he used any confidential information to solicit the employer's customers after he was terminated. American Machinery Movers, Inc. v. Machinery Movers of New Orleans, LLC, E.D.La.2001, 136 F.Supp.2d 599, affirmed 34 Fed.Appx. 150, 2002 WL 494474

The elements of a breach of fiduciary duty claim premised on a breach of confidence under the Unfair Trade Practice Act are proof of: (1) possession by the plaintiff of knowledge or information which is not generally known, (2) communication of this knowledge or information by the plaintiff to the defendant under an express or implied agreement limiting its use or disclosure by the defendant, and (3) use or disclosure by the defendant of the information to the injury of the plaintiff. B & G Crane Service, L.L.C. v. Duvic, App. 1 Cir.2006, 935 So.2d 164, 2005-1798 (La.App. 1 Cir. 5/5/06), rehearing denied, writ denied 939 So.2d 1280, 2006-1820 (La. 10/27/06).

An employee's involvement in forming a competitive entity, including the solicitation of business and the hiring of employees, prior to terminating his current employment relationship, is not an "unfair trade practice." under Unfair Trade Practices Act. Innovative Manpower Solutions, LLC v. Ironman Staffing, LLC, W.D. La. 2013, 929 F.Supp.2d 597; SDT Industries, Inc. v. Leeper, App. 2 Cir.2001, 793 So.2d 327, 34,655 (La.App. 2 Cir. 6/22/01), rehearing denied, writ denied 803 So.2d 973

One does not violate Louisiana Unfair Trade Practices Act (LUTPA) by utilizing the experience acquired and the skills developed while in one's former employment or profession. Creative Risk Controls, Inc. v. Brechtel, App. 5 Cir.2003, 847 So.2d 20, 01-1150 (La.App. 5 Cir. 4/29/03), rehearing denied, writ denied 855 So.2d 353, 2003-1769 (La. 10/10/03)

Former employee of radio paging service was not prevented from working for competitor, even though he previously had access to former employer's pricing system, where pricing system for radio paging services was highly competitive and readily available over telephone and, therefore, information was not confidential. First Page Operating Under the Name and Corporate Entity, Groome Enterprises, Inc. v. Network Paging Corp., App. 4 Cir.1993, 628 So.2d 130, writ denied 634 So.2d 379, 1993-3193 (La. 2/11/94)

What is entitled to protection is knowledge confidentially gained, but an employer cannot prevent his employee from using the skill or intelligence acquired through experience received in the course of the employment; the employee may achieve superiority by every lawful means, and upon the rightful termination of his contract use that superiority for the benefit of rivals in the business of his former employer. Lamb v. Quality Inspection Services, Inc., App. 3 Cir.1981, 398 So.2d 643, 214 U.S.P.Q. 575

Although more likely than not, former sales representative had misappropriated confidential customer information at least to the extent that he did not rely merely on memory in soliciting customers of former employer, preliminary injunction enforcing anticompetition provision of employment agreement would not issue as much of the harm resulting from the alleged misappropriation had already been suffered, sales representative had returned his route books and would not have access to further route books and to enjoin representative would bar him from earning his accustomed living in the area in which he had worked and lived for years. NCH Corp. v. Broyles, E.D.La.1982, 551 F.Supp. 636

Louisiana courts decline to enjoin defendants from misappropriation of confidential customer information unless the former employee was not acting solely from memory and such information was not easily ascertainable and generally available to the public. NCH Corp. v. Broyles, E.D.La.1982, 551 F.Supp. 636.

III. Louisiana Uniform Trade Secrets Act La. R.S. 51:1431, et seq.

§1431. Definitions

As used in this Chapter, unless the context requires otherwise:

(1) “Improper means” includes theft, bribery, misrepresentation, breach, or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) “Misappropriation” means:

(a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(a) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret; or

(ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(aa) derived from or through a person who had utilized improper means to acquire it;

(bb) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(cc) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) “Person” means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) “Trade secret” means information, including a formula, pattern compilation, program, device, method, technique, or process, that:

(a) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§1432. Injunctive relief

A. Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial

advantage that otherwise would be derived from the misappropriation.

B. If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

C. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

§1433. Damages

In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss.

§1434. Attorney's fees

If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.

§1435. Preservation of secrecy

In an action under this Chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

§1436. Prescriptive period

An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purpose of this Section, a continuing misappropriation constitutes a single claim.

The thrust of Louisiana Unfair Trade Practices Act (LUTPA) is to deter injury to competition. In order to recover damages under LUTSA. A plaintiff must prove the existence of a trade secret, the misappropriation of that trade secret by another and that there was actual loss caused by the misappropriation. Reingold v. Swiftships, Inc. 126 F. 3d 645, C.A. 5 (La.) 1997.

The threshold inquiry in every trade secrets case is whether a legally protectable trade secret actually existed; the second element is whether there is a contractual or confidential relationship between the parties that obligated the party receiving the secret information not to disclose it; and finally whether the party receiving the information wrongfully breached its duty of trust or confidence by disclosing or using the information to the injury of plaintiff. Pontchartrain Medical Labs, Inc. v. Roche Biomedical Laboratories, Inc. 677 So. 2d 1086 (La. App. 1st Cir. 1996).

Purpose of Trade Secrets Act, 51:1431 et seq., is to prevent one person or business from profiting from a trade secret developed by another, because it would thus be acquiring free competitive advantage; Act was never intended to apply to discovery in civil actions. CamSoft Data Systems, Inc. v. Southern Electronics Supply, Inc., La.App. 1 Cir. 7/2/19, WL 2865138, not published in So. Rptr.; Stork-Werkspoor Diesel V.V. v. Koek, App. 5 Cir.1988, 534 So.2d 983, 10 U.S.P.Q.2d 1249.

Disclosure of trade secret to others who have no obligation of confidentiality extinguishes property right in trade secret. Sheets v. Yamaha Motors Corp., U.S.A., C.A.5 (La.)1988, 849 F.2d 179, 7 U.S.P.Q.2d 1461, on remand

To establish violation of the Louisiana Trade Secrets Act, (1) there must first be a determination that legally protected trade secret actually existed, (2) if so whether an express or implied contractual or confidential relationship existed between the parties obligating recipient of alleged secret material not to use of disclose it, and (3) finally there must be proof that recipient breached duty of trust or confidence by disclosing or using information to injury of discloser. Restivo v. Hanger Prosthetics & Orthotics, Inc., E.D.La.2007, 483 F.Supp.2d 521, reconsideration denied 2007 WL 1341506.

Former employee of company engaged in providing orthotics and related services did not violate Louisiana Trade Secrets Act by appropriating list of referral sources for orthotics business; sources could be ascertained by reading telephone directories Restivo v. Hanger Prosthetics & Orthotics, Inc., E.D.La.2007, 483 F.Supp.2d 521, reconsideration denied 2007 WL 1341506.

A customer list or special pricing list may be trade secret if efforts are made to maintain its secrecy. Pontchartrain Medical Labs, Inc. v. RocheBiomedical Laboratories, Inc., App. 1 Cir.1996, 677 So.2d 1086, 1995-2260 (La.App. 1 Cir. 6/28/96)

IV. Tortious Interference

A. Contractual Relationship

9 to 5 Fashions, Inc. v. Petr L. Spurney 538 So.2d 228 (La. 1989).

Prior to 9 to 5 Fashions v. Spurney, Louisiana Law provided that no action existed in this state for inducing the breach of a contract or interference with contractual relations by means which were otherwise unlawful. Kline v. Eubanks, 33 So. 211 (La. 1902).

The Louisiana Supreme Court in 9 to 5 Fashions v. Spurney recognized an action would lie against a corporate officer for intentional and unjustified interference with contractual relations under the following limited circumstances:

. 1. There is a contract or legally protected interest between the plaintiff and the corporation;

2. The corporate officer has knowledge of the contract;

3. The corporate officer intentionally induces or causes the corporation to breach the contract or otherwise intentionally renders its performance impossible or more burdensome;

4. There is absence of justification for the corporate officer's actions; and

5. The corporate officer's actions cause damage to the plaintiff.

The finding was based on the basic principles that an officer of a corporation owes an obligation to a third person having a contractual relationship with the corporation to refrain from acts intentionally causing the company to breach the contract or to make its performance more difficult unless the officer has reasonable justification for his conduct. The officers action is considered justified if he acted within the scope of his corporate authority and in the reasonable belief that his action was for the benefit of the corporation.

Since Spurney, the Louisiana Supreme Court in Great Southwest Fire Insurance Company v. CNA Insurance Companies, 557 So. 2d 966 (La. 1990) reaffirmed its intention to proceed with caution in expanding a cause of action for interference with a contract. In Great Southwest, it declined to recognize a cause of action for negligent interference on behalf of an excess liability insurer against a primary insurer for sums paid as a result of the privacy insurer's bad faith failure to defend and settle a suit.

Similarly, appellate courts have refused to expand Spurney's application beyond its unique facts:

Healthcare Management v. Vantage Healthplan, 748 So. 2d 580 (La. App. 2d Cir 1999) in which the court rejected an intentional interference claim by the City of Monroe's former health plan administrator against the current administration for inducing the City to breach its contract and switch administrators.

MD Care, Inc. v. Angelo, 672 So. 2d 969 (La. App. 4th), 1996) in which an intentional interference claim was brought by a former employer of a physician against his current employer.

A&W Sheet Metal, Inc. v. Berg Mechanical Inc. 653 So. 2d 158 (La. App. 2d. Cir 1995) in which the court rejected a claim for intentional interference with a contract brought by one sub-contractor against another.

As stated most recently in Restivo v. Hanger Prosthetics and Orthotics, E.D.La., 2007, 483 F.Supp.2d 521.

Tortious interference with contract was recognized in a limited fashion by the Supreme Court of Louisiana in 9 to 5 Fashions, Inc. v. Spurney, 538 So.2d 228 (La.1989) and to date the holding has been restricted to the precise cause of action it explicates: that is a situation involving a corporation, an officer of the corporation, and a contract between the corporation and a third party." Egorov, Pughinsky, Afanasiev & Juring v. Terriberry, Carroll & Yancey, 1998 WL 483483, *3 (E.D.La. Aug.14, 1998) citing Great Southwest Fire Ins. Co. v. CNA Ins. Cos., 557 So.2d 966 (La.1990); Kite v. Gus Kaplan, Inc., 708 So.2d 473 (La.App. 3d Cir.1998) Colbert v.

B.F.Carvin Const. Co., 600 So.2d 719 (La.App. 5th Cir.1992); Durand v. McGaw, 635 So.2d 409 (La.App. 4th Cir.1994).

Mr. Restivo is not alleged to be a corporate officer so this cause of action does not apply to him. White v. White, No. 93-1389 (La.App. 3 Cir. 6/15/94); 641 So.2d 538 (no cause of action for tortious interference with contract where the defendant was not a corporate officer). Moreover, this cause of action cannot be maintained against a corporate entity defendant, thus, it cannot be maintained against Limbcare. Technical Control Systems, Inc. v. Green, No. 01-0955 (La.App. 3 Cir. 2/27/02); 809 So.2d 1204.

B. Business Relationship

Louisiana courts have long recognized a cause of action for tortious interference with business. Junior Money Bags, Ltd. v. Segal, 970 F.2d 1 (5th Cir.1992), citing Dussouy v. Gulf Coast Inv. Corp., 660 F.2d 594 (5th Cir.1981), citing Graham v. St. Charles St. Railroad Co., 41 La. Ann. 1656, 18 So. 707 (1895). This claim is distinct from that of tortious interference with a contract. Louisiana law protects the business man from malicious and wanton interference permitting only interferences designed to protect a legitimate interest of the actor. Dussouy, 660 F.2d at 601. Thus, the plaintiff in a tortious interference with business suit must show by a preponderance of the evidence that the defendant improperly influenced others not to deal with the plaintiff." [citations omitted]. Junior Money Bags, 970 F.2d at 10. Furthermore, this cause of action unlike the contractual interference cause of action, is not restricted to officers of corporations. Medx, Inc. of Florida v. Ranger, 1993 WL 21250 (E.D.La. Jan.25, 1993). A plaintiff must show that defendant possessed some sort of malice in order to recover for tortious interference with business relations. Endotech USA v. Biocompatibles Intern., PLC, 2000 WL 1594086 (E.D.La. Oct.24, 2000). Restivo v. Hanger Prosthetics and Orthotics, supra.