

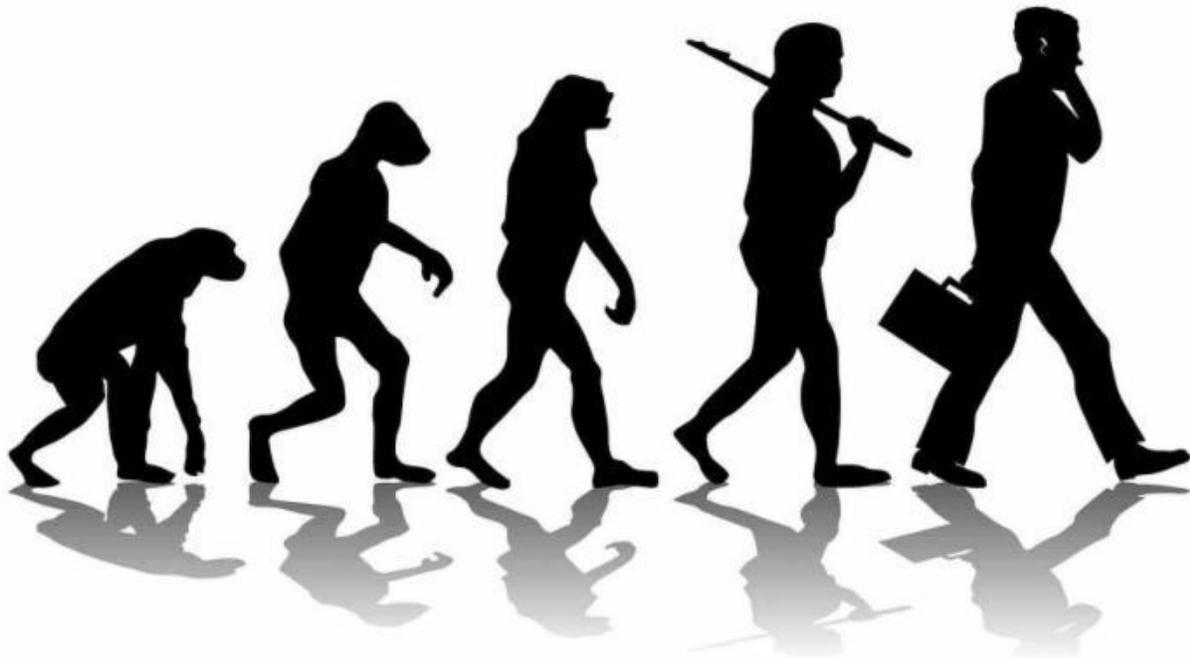


AGENCY CONSULTING GROUP
Consultants to the Insurance Agency Industry

PIPELINE

DARWIN AND RELATIONSHIP SELLING

How did Charles Darwin relate to problems of 21st Century insurance agents? Read this article to find out... picture of Darwin's progression



POINTS OF DIFFERENTIATION

If you're not DIFFERENT from your competitors your view will always be the same.



Achieve points of differentiation to "Lead the Pack"



SHARK TANK AND INSURANCE AGENCIES

Are you an entrepreneur or an insurance agent? Shark Tank clearly explains the difference.



IS YOUR NON-COMPETE OR NON-SOLICITATION CLAUSE ENFORCEABLE?

It could be very expensive for an agency to have unenforceable employment agreements. This article will tell you if your Contract is enforceable.

LEST WE FORGET!

Edmund Burke, the 18th Century statesman, said "Those who don't know history are doomed to repeat it." But he certainly wasn't the first, last or only person to state that fact. George Santayana, who died in 1952, said virtually the same thing.

This common-sense statement applies to our businesses, to politics, and to life.

In these turbulent political times during which we not only don't appear to learn from history, but decry our founding fathers for their human frailties and weaknesses instead of concentrating on the wisdom they passed down to us, I would like to dedicate a small part of every issue of the PIPELINE to some truths that were penned at the time of the founding of the United States.

Whether saint or sinner, these men created a new form of government in the world that continues to surpass all other forms of government. Can we look beyond their frailties and concentrate on what they accomplished?

DARWIN AND RELATIONSHIP SELLING

Some years ago, the AP released an article from London titled, "*On Darwin's 200th, a theory still in controversy.*" It explained that even 200 years after his death, arguments abound surrounding his "theory" of the evolution of species as published in 1859 in "On the Origin of Species". Being both a student of science and a man of belief, I have studied Darwin and found him to be incredibly complex and conflicted about publishing his work. First and foremost, Darwin didn't want to offend his wife, a religious woman. Knowing that his theory was revolutionary in a tightly bound religious world (1859 England was not exactly liberal and permissive) he also acknowledged that, more than any other type of discovery; he had to support his theory with rock-solid evidence. And, even then, he knew that the vast majority of common man would neither believe nor accept the theory and even in the light of the best of evidence. He was prepared to die years or generations before his theory became known fact.

What does this have to do with the insurance business? Read on!!

150 years after the publication of Darwin's most important work we still have a core of religious believers who cannot accept as fact that God's word may not have to be taken literally to still believe in an omniscient and omnipresent Supreme Being. The controversy continues in schools, in pulpits and on the streets from every detractor who wants to raise a hue and cry decrying Darwin's philosophies as sacrilegious.

Why would I dare to touch subjects as sensitive as religion and Darwinism in a business publication about selling principals? I use this example because I have found

the same response in the masses of insurance agencies about the conversion of the industry from Quote/Price sales to Relationship Selling.

Darwin showed various species of plant and animal life (no, his theory was not just about monkeys and men) in their various stages of evolution and showed conclusive evidence that, not only did the evolution occur as a result of natural selection, but occurred over a long period of time.

Similarly, over the last 20 years (like eons for today's business world) I have shown evidence of the transition of insurance sales from the counseling relationship similar to that of the family doctor through the 1950's and into the 1960's to the impersonal telephone quoting and even more impersonal internet quoting sponsored on television today through geckos, vending boxed insurance products and animated heroes "saving" insurance-needy individuals on behalf of a web portal.

Evolutionary "Dead-End's" in the Insurance Industry

According to Darwin, during various stages of evolution species changed. Sometimes those changes were 'false starts,' appearing to progress the line, but dying out when the changes were proven to be illusory rather than true progressions. In our industry, the 'Do-It-Yourself' and "Insurance-In-A-Box" philosophies are proving to be such an illusion. And we, the agents and carriers, bear a great deal of the responsibility for this 'false start'. After all, automation, in itself, isn't a bad thing, is it? Neither is saving money by achieving cost savings on insurance programs. But the way the process has snowballed is in a destructive, not constructive way.

First came automated rating. When it became easier for agents to take information, enter it into a terminal and have a program evolve rates than to drag those binders and manuals around, the agency system, itself, began promoting "Fast Quotes" as a way to attract new clients. We began the age of immediate gratification.

The burgeoning direct writing industry occurred simultaneously and they were immediately attracted to automation as a device for expediency and efficiencies that they enjoy to this day. They began the era of telephone quoting and, eventually, direct quoting of prospects to the company rating systems without the need for the counseling or intervention of agents.

Personal and commercial lines package policies (homeowners and combined auto first, followed by today's combined personal lines policies and the commercial BOP policies) sped the simplification of quoting. High-speed internet and interactive web portals that can access myriads of markets have made the rating of rather complex insurance applications for both personal and commercial lines simple enough that people can quote themselves similar to doing their own taxes out of a box.

The semblance of efficiency and cost-savings came at an extreme cost, the personal analysis and counseling about asset risks and their solution that reflects the differences between every person's risk protection needs.

Sherry, my wife of over 50 years, is a well-known and very competent tax professional. With 40 plus years in the business of personal and business taxation, she knows enough to take well over 100 hours of continuing education each year to keep her up with the "simplified" tax laws as defined by our "simple" Congress and the States. Though, several products assure you that you can buy the "box" and do your taxes yourself by answering a series of questions on-line. **"It Just Ain't So!"**

How different is "Tax-In-A-Box" and "Insurance-On-Your-Own"? If people are naive enough to trust a series of simplistic questions to delve through 13,458 pages (in 20 volumes) of the federal tax code, they will also trust someone a thousand miles away (or in India) to ask them a series of simple questions that define their asset risk solutions. These are the evolutionary dead-ends that will only realize their demise when the worst occurs and people find that they either don't have the right coverage or try to get advice and counseling from "the gecko".

Just as the off-shoots of every evolutionary line grew, thrived for a few decades and died out, so will the "Tax-In-The-Box" folks and the "Insurance-On-Your-Own" folks. The fact is that every individual's asset protection needs differ. The differences need professional guidance to assure proper protection, whether for tax computation or for insuring yourself, your family, and your valued assets. Otherwise we would also be doing Treat-Yourself physical diagnosis and health care. After all, human bodies are alike and made up of exactly the same components, right?

Agents Seek Short-Cuts and Ignore Their Primary Source of Clients

Every agent we have encountered has agreed that referrals are the best source of sales and long-term clients. You are not strangers when you meet. The prospects have been told about your competence by another of your clients who they trust. Yet these same agents will spend thousands on mechanized forms of marketing and quoting devices trying to gain an advantage on the competition by pricing the insurance products of more people faster. Why aren't they devoting their time, money and assets to relationship selling? Because they think it is "easier" to do it with automation and appealing to the lowest common denominator, price.

How We Train "Lemmings" to Buy Insurance

This process (like the Tax-In-The-Box clients) calls to mind two other famous comparisons. In the Canadian tundra a small rodent multiplies by an in-bred 'need to breed' that generates millions of creatures in a four-year cycle. They are so plentiful that they are the primary support of the country's Snowy Owl and Arctic Fox

population. But every four years the population of millions declines to almost extinction. The cycle repeats itself because nothing has changed the in-bred need to propagate for these creatures.

We also have a population of lemming-like creatures who rush to every new technology as if the fact that it is new means that it is automatically better. They do their taxes from the box because someone tells them it will be easier and cheaper. They do their insurance from the box because everyone (including many agents) tells them it is easier and cheaper. If we offered them Do-It-Yourself surgery at a substantial discount from that performed by a qualified surgeon, they would try that, as well. The results will be the same. More and more people will try it. Not all will perish, but a growing number will determine over a period of time that they are missing singular and critical ingredients that are harming them in the long term. The "Snowy Owls and Foxes" that prey on this population will grow fat but will simply switch their orientation when the population is diminished sufficiently that the market is no longer supporting. But the "owls" and the "foxes" don't worry. This breed will generate anew and will create new generations to feed upon in the future.

Will Our Actions Kill the Independent Agency System?

As second example of survival of the fittest is more tragic. In the 1850's man was introduced to the island of Mauritius and to a flightless bird who had no reason not to trust other flightless creatures. Within 90 years the entire population of the birds (dubbed by the Portuguese sailors as Dodo) was dead and tens of thousands of years of selective evolution was extinct. Why? Because they had never been exposed to the world of modern man - the world that didn't care about a million years of evolution and an ecosystem in balance.

Similarly, our population has had two hundred years of trained, caring professionals who looked after their financial needs in ways similar to the caring of the family doctor. When other industry professionals offered them the 'Golden Chalice' of cost savings, they followed the dream and no one told them to be careful. There was more to insurance than a One-Size-Fits-All product being "hawked" at sale prices.

How to Save Your Agency and the Agency System

We now have the chance to re-educate the insurance buying public. Your associations should be at the head of the battle and every insurance agent who intends to be in the business in ten years (or perpetuate his business beyond simply selling it when he retires) should target their clients to show them the VALUE of an insurance agent beyond price.

The ASSET PROTECTION MODEL of Relationship Selling (or any model of relationship selling) is meant to reinforce the value for which the buying public pays you commissions and fees. Yes, price is important, but not because the insurance buyer must have the lowest price for every product every year. This is the same buyer who

doesn't buy the cheapest cuts of meat, the cheapest clothes or the cheapest cars. They sense a difference in quality in these products. We must also teach them that there is a difference in quality in their asset protection devices that includes product and price AND the added value of a professional insurance agent.

If you are one of the thousands of agents now asking themselves, "But what do I have to offer besides price and product?", I invite you to call us and invite us to do our GPP Analysis (Growth, Profit, and Productivity Analysis) for your agency. The result will likely surprise you. We will identify both value added services that you have (but don't "sell") or could have based on your employees, knowledge base, clients and culture. Of course, we also define efficiencies available to you in every area of performance of your agency. Perhaps the Asset Protection Model is a program in which you will thrive. If so, we will give you all of the ingredients and training and guide you through the process. If not, we will identify what will work best to enhance your growth and profit.

Just as you can believe in the Supreme Being and still know that evolution is a fact, not a theory (one of God's greatest devices), you must know that insurance agents are inherently valuable and important to the protection of individuals and businesses. We need not follow the examples of the lemmings or dodos. The "owls" and "foxes" among us can simply find other feeder stock. Let's take back our industry and show our clients and prospects what true value we can bring them by building and maintaining strong personal relationships created on value that they simply can't get from "The Box". Call Al Diamond at 800-779-2430 (al@agencyconsulting.com) to discuss the process and choices for your agency.

Conclusion

Charles Darwin knew that his theory was radical so he spent years building empirical data to support it. While not all his research was correct, he was so far ahead of his contemporaries that the only arguments against his principals have been the emotional outbursts of religious traditionalists for whom faith in God is limited to the exact words written by man a few thousand years ago to make religious concepts understandable to humans of that era. We haven't changed all that much, have we?? Just as people of faith today can believe in a Supreme Being while learning more about his wonders in every passing generation, so can today's business people understand that personal knowledge and counseling cannot be replaced by automation and speed (if those technologies eliminate the individualism from risk management).

Darwin died knowing that his philosophies and principals were sound. I'm sure he assumed that (if the race didn't kill itself off) we would realize the soundness of his work. Similarly, relationship selling based on professionals counseling clients about their particular risk needs is absolutely the only way to properly secure our clients' asset risks. If we don't kill off the agency system, the survivors will realize this and be stronger for the transition (another form of natural selection).

(This article is the basis of a presentation available to agency associations and other groups seeking to support, retain and grow independent insurance agents. Call us for more information)

POINTS OF DIFFERENTIATION

What makes your agency different from every other agency?

For most agencies, the answer is NOTHING. We sell the same forms of insurance as hundreds of our competitors for the same companies to the same prospects and clients. We hope we can quote enough that we find some prospects for whom we can save some money because quoting is all we have to sell.

If you live in a geographic area that has 500,000 people and you have 500 competitors between agencies, banks and direct writers (either local or available to prospects in your area), if no one advertised or marketed insurance, it makes sense that you would have 1,000 individual clients. If there were 10,000 businesses in your area, and 200 of those competitors write commercial lines, the percentage distribution would give you just 50 business clients.

The fact is that agencies and companies do advertise, even if it is to say "We're Better - Buy Insurance From Us!" So, the field is not even and the distribution of clients is never equal.

Much insurance advertising is composed of LIES and exaggerations. Not all advertising lies. Many insurance entities, both agencies and companies, simply "exaggerate" or pose vague statements about their capabilities such as "lowest rates" in an effort to attract the consumers' attention.

The few "gems" in the insurance industry actually have points of differentiation that makes their products and/or services genuinely different and better than that of their competitors.

Do you need to be a great innovator or unique to have points of differentiation?

NO! You need to know your strengths and to be able to clearly communicate those strengths to your clientele and prospects. Of course, it helps if you choose to investigate and adopt new and creative ideas and products in the insurance industry that your competitors do not or have not used to serve their customers.

Let's face it -- an auto policy is an auto policy. Yes there are some differences and even a few that can be relatively important differences, but we don't always know what they are and how to point them out to our prospects. A BOP policy that you sell is pretty much the same as ones sold by your competitors. Yes, many carriers try to

enhance their policies, but they don't speak "human", they speak "insurance", so the differences, enhancing the forms as they do, are really innocuous to most end clients. Few provide coverage that the target market would find attractive in advertising because those coverages important to prospects would also increase the risk to the carrier and should affect the rates.

So, if the personal and commercial policies are relatively the same and if the carrier rates are also relatively similar and transitory - sometimes you are low, other times you are not - what can we point out to our market as the DIFFERENCES between us and our competitors?

SERVICE:

What does it mean that we provide "better, faster service" anyway? Providing service should be a fixed term like having a safe airline flight. You either have a safe flight or you crash! No airline says that we were better than average in flight safety? They don't advertise that they had a better flight safety record than 75% of their competitors. If they don't have the top marks, they don't mention it at all.

We should be satisfied when we can say that we provide a grade of customer service that is expected of us by our clients. That says a lot. However, how can you gauge yourself against your competitors? Are there any "measures" of customer service that defines you as "best"?

All of this is meant to discourage you from making claims about service just because it sounds good and can't be disputed because no measures exist. One large company that measures customer complaints turned a 3% complaint ratio into a proud, 97% Customer Service Satisfaction ratio. As it turns out, that was the equivalent of 45,000 complaints per year. That's almost 1000/week, 200/day, 25/hour!

If you have done something that you can prove provides a grade of service about which you are proud and can prove, then go ahead and use it as a point of differentiation. But that also means that you tell your clients exactly what to expect, such as "30-minute time service to return calls for client policy service." And it means that you offer something tangible if you DON'T live up to your service claims such as "30 minutes time service to return calls or you get dinner on us at La Restaurant."

INSURANCE PRODUCTS THAT COMPETITORS DON'T OFFER:

There is nothing wrong with being a generalist insurance agency. You can offer many different products to your clients. But as insurance products are created, do you and your staff learn them and use them in your marketing? Most agents don't learn or understand new products until they are forced to do so by customer inquiries. Then, they learn by "doing." How would you like to have a surgeon who is using you to "learn" a new procedure? Your producers should take the lead, learning and studying every new product that is offered by your carriers. As you become proficient, use those

products to differentiate your agency from the myriad of agents who simply sell the same products for their entire careers.

NON-INSURANCE PRODUCTS AND SERVICES RELATED TO RISK MANAGEMENT

The differentiation of the insurance industry is coming from outside the industry as well as from the typical products offered. Risk managers and service providers are finding answers to risks to our client base that are not directly addressed by insurance products. One example is Compliance Check, a Florida-based company that teaches insurance agents how to put their business clients in compliance with federal regulations.

Whether you create difference in your agency through new and different products, new and different services, or customer service levels that you can quantify that will provide a grade of service different than that of your competitors, **FIND THOSE DIFFERENCES**. And if you have points of differentiation, tell your customers and prospects about them. No one else will "blow your horn" for you.

If you are among the majority of agents who have no points of differentiation, call us (800-779-2430). We will help you find the point of differentiation that you have but don't recognize or we will help you jump-start your business and create new points of differentiation.

Make yourself different, then tell the world - and tell them frequently. You will reap the rewards of more than your share of the market. Everyone wants to be with a leader and innovator. No one wants to be insured with the "average" agents.

SHARK TANK AND INSURANCE AGENCIES

If you've never watched "Shark Tank" on ABC I highly recommend it, both for its entertainment value and as a lesson in what is important and what is trivial in business building and business transactions.

Shark Tank has been on TV since 2009 and is a variation of "Dragon's Den", a similar show, that has been on Japanese TV since 2000 and in England since 2005.

On this show various entrepreneurs present their businesses and ideas to a group of very successful entrepreneurs and investors (the "Sharks") who may offer the arising businesses investment money for some equity in their business. This show has attracted a loyal audience over 11 seasons and over 222 episodes.

The highlight of the show is the appearance of every kind of business idea imaginable before a panel of "sharks" - savvy investors who ask probing questions to determine if they should invest in the business being presented before them.

How does Shark Tank relate to a privately owned insurance agency?

Besides the entertainment value of the products and services being offered and the grilling each entrepreneur gets from the sharks before offers are made (or not) to invest in their companies, the key idea that you get about the concept is that **YOU MUST KNOW THE METRICS OF YOUR BUSINESS OR IT IS SIMPLY YOUR PROFESSION, NOT A VIABLE BUSINESS.**

There is nothing wrong with being skilled, caring and knowledgeable insurance agents who have gathered assistants and administrative staff around them to better serve their clients. These skilled professionals will feel stress growing as they serve an ever-increasing client base until it becomes intolerable. Regardless of how many, or how qualified the agent's staff may be; the heavy load and responsibility rests directly on the agent's heads.

When asked to consult with these agencies we see the common issues of perceived inability to take vacations and, when time off is taken, the agency owner is constantly on the phone putting out fires and managing his business. While more common in small agencies you would be shocked how many agencies at and over \$1 Million revenue (commissions) also fall into this category.

Eventually the stress takes its toll and agency owners in their late 50's and 60's feel burn-out and seek relief through retirement or bringing in partners (who are usually in the same mold as the current owner and will become the next generation's burn-out).

While there are a myriad of ownership, management and delegation woes that pursue these agency owners, a surprising commonality is the lack of METRICS within the agencies of journeymen insurance agents who have never honed the entrepreneurial or management skills that separate the "Insurance Agent" from the "Agency Owner".

The Insurance Agent:

Takes pride in properly insuring the clients and being there for any incident or insurance need that might arise.

Is primarily concerned with the knowledge base that the owner and the staff achieve in support of their profession and for their clients.

Tailors every insurance program with office standardization as a secondary consideration. Has no written procedures because "Do the Right Thing for the client is the primary consideration."

The Agency Owner:

Takes pride in the growth of the business through the consistent satisfaction of the clients and carriers with the agency's (not just any one person's) performance.

Considers product knowledge and excellent customer service simply as the key tools to keep the engine of the agency running smoothly as it grows and achieves a fair profit on the owners' investment. Knowledge and service levels are not the end goal in themselves -- they are the means to the end goal.

May go to extraordinary measures on behalf of a client, but recognizes that process and procedures are key to the productivity of employees that will earn the owners their business profit as they grow.

Shark Tank points out that if you don't know your own metrics - in detail - you don't know your business and are unlikely to succeed in any business plan besides trying hard and doing your best every day. While that frame of mind is perfect for a miner digging for gold, it is not the right strategy for the mine owner trying to determine what direction to dig, testing to see if the yield is profitable and determining where to put his human assets to best serve the profit goal of the owner.

For the reasons above, when we speak to an agent for the first time we urge them to invite us to do a GPP (Growth, Productivity, and Profitability) Analysis as our first intervention in their agency. Three things happen as the result of this effort.

- 1. We find out how much the agent already knows about his business.** The questionnaire that we send to be completed tests the agent's knowledge of the business and, if they don't know, the gathering of data to support the analysis will act to teach the agent a great deal about the history and current status of the business.
- 2. We gather the data needed to analyze the history and present position of the agency.** Using the data gathered (or gathering the data ourselves from the system, owners or staff) we identify the trends and personality of the agency in every key area of agency performance.
- 3. We visit the agency already knowing its metrics. BUT YOU CAN'T ANALYZE A BUSINESS FROM AFAR.** In most agencies, the present and future of the business is defined by the culture of the agency and the personalities of the employees. For that reason anyone who offers you a book or a workbook that is supposed to tell you your strengths and weaknesses and formulate a plan of action for the future is selling you a 'Fool's Dream'. Our consulting visit is specifically to learn the culture of the owners and the strengths and weaknesses of the employees and systems currently employed in the agency.
- 4. KNOWLEDGE WITHOUT A PLAN IS MENTAL MASTURBATION,** satisfying to some extent, but leaving you without a permanent solution to help you achieve your long-term goals. Our consultations are geared to provide you

rock-solid recommendations AND the means by which to address those recommendations toward YOUR (not our) goals for the business.

5. **A PLAN WITHOUT IMPLEMENTATION AND FOLLOW UP** (see 4, above). One of the things that we cannot do is force implementation of any plan. But we will offer you implementation assistance and follow up for as long as needed to make sure that the time and money invested in creating the Plan has been well-spent.

What Shark Tank teaches us is that not everyone is an entrepreneur. Some of us are going to be successful insurance agents and there is absolutely nothing wrong with that. The key to success is to avoid taking on so many clients that we overload our own capacity for comfortable workload and our agencies become our Masters instead of the tools that support our personal and financial goals.

However, many agency owners imagine themselves as both insurance professionals AND business entrepreneurs, growing profitable ventures through sales and business acquisition to provide a comfortable living during our productive years and a great retirement when the time comes to 'cash out'.

If you imagine yourself an entrepreneur you must KNOW YOUR METRICS and use them to control and fine-tune your organization to maximize your success without stress. Every client that we consult will end up with a MIS (Management Information System) that will tell them their performance on a daily, weekly, monthly and Year-To-Date basis along with comparisons of this year to prior year and to budget expectation. This system, different for every agent based on the agency owner's ranking of importance of key information, will allow you to Plan and implement change with constant measurements of how those changes affect your metrics. Whether you use our services or DIY (Do It Yourself) the metrics are the ingredients that permit you to know whether you are a SHARK or you are Shark-bait.

To discuss this with us please call Al Diamond at (856) 779-2430 (al@agencyconsulting.com).

IS YOUR NON-COMPETE OR NON-SOLICITATION CLAUSE ENFORCEABLE?

Let's face it! Employment Agreements are arguably created to scare the "bejeezus" out of employees.

The typical sections of an Employment Agreement include the following:

1. Position, Duties and Reporting relationship
2. Authority levels and limitations

3. Exclusivity of service to the agency
4. Compensation and Benefits
5. Termination at Will by employee and for cause
6. Insurance and licensing requirements
7. Confidential Information

These are relatively innocuous and need to be spelled out to assure that the employee and employer are on the same page in these categories of employment. There are several legal sections that are Boiler Plate sections that include Waiver of Breach, Court's Right to Modify Restrictions, Severability, Injunctive Relief, Entire Agreement and Modification, Choice of Law and Venue and, perhaps, an Arbitration Clause. Then, somewhere between the 7 "Thou Shalt's" and the legal jargon we find the "Thou Shalt Not's" that always become contentious if a contract is broken,

8. Non-Disclosure
9. Non-Solicitation
10. Non-Competition

Whether or not the wording on these last three Negative Commandments are meant to scare or threaten employees with the ramifications of their actions if they leave and try to harm the employer, most of these sections do exactly that - threatens harm and mayhem if the employee leaves and doesn't adhere to these rules.

However, the reality is that an unfair "non" clause can be fought and won - relatively easily - if the implication is that it protects the agency but doesn't treat the employee fairly.

For instance, Non-Solicitation of Employees is perfectly acceptable - except the section falls apart if it is so specific that a former employee cannot work for another employer who has hired another former employee of the same agency for fear that they will be sued for potentially "soliciting" other employees to leave and go to the same place. Realize that a very fine line exists between social interaction and inducing employees to leave. The more specific you are the better you are able to protect the integrity of your employees from being poached.

Non-Solicitation of Customers or Prospects

If an employee has had contact with customers during his tenure at the agency it is perfectly acceptable to forbid him from solicitation of those customers for some (limited) period of time - usually one or two years - during which the agency will replace the employee relating those customers and attempt to retain the agency's relationship with the customers through another employee). This period of time allows for an 'even playing field'. Otherwise the former employee could use the relationship he gained while being paid by the employer to harm the employer by taking clients away or influencing them against the former employer. However, prolonged non-solicitation periods are often considered unfair to the former employee who should be

able to compete after a reasonable period of time to allow for the employer to retain the client.

Similarly, if, during the last year, the employee has been in contact with prospects toward the eventual solicitation for insurance programs for the employer, it is quite acceptable to forbid the employee from soliciting those prospects for another employer. The courts have acknowledged that if the employee has been paid to create and mature relationships, those relationships should be protected for a few years on behalf of the employer before the former employee could re-solicit them for another agency employer.

Non-Piracy

While Non-Solicitation covers actions by a former employee designed to influence clients the employee has serviced, sold or administered, a Non-Piracy clause is designed to protect the agency (for the same two year period) against the loss (piracy) of all other clients to whom the employee had access to files (manual or data) while employed at the employer. The courts will typically allow for a period of time during which the former employee is considered to have had an unfair access to confidential information about any clients in the agency. A Non-Piracy clause can also address prospects that the agency has solicited in the recent past (last twelve months) that a former employee could also have had access to non-public information that could cause the prospect to be influenced to do business with a competitor agency. After two years that information that the former employee might have had access is considered "stale" and non-current.

Non-Competition

While employed it is perfectly acceptable to forbid any conflicting employment outside the agency. However, the entire section of Non-Competition within the insurance business for former employees of an agency within a geographic area has been the cause of innumerable lawsuits, most of which have been won by the former employees.

It seems that the attitude of the court is that a Non-Competition Clause that forbids an employee from performing the trade for which the employee has been trained and has experience is an unfair practice that is akin to slavery or indenture. Their attitude is that you can't stop someone from earning a living doing the only thing they know how to do where they live.

Instead agencies have told former employees that they can certainly work for another agency but they can't pursue clients and prospects they dealt with previously (Non-Solicitation), other clients of the agency for whom they had access to confidential information (Non-Piracy) or disclose confidential information about clients or their former employer (Confidentiality) for a long enough period that the

information is no longer confidential (stale data), already in the public eye, or the former employer has had sufficient time to rebuild relationships with other employees.

Be careful with your wording. Courts have increasingly chosen to simply strike the offending sections of the contracts completely instead of modifying them to a more reasonable measurement or limited scope. It would be better to change your contract to make it more liberal (liberalizing contracts is much easier than tightening them with respect to equitable compensation for contract changes).

If you have any questions or would like Agency Consulting Group, Inc. to review your contracts, call 856 779 2430 or write to al@agencyconsulting.com .

LEST WE FORGET!

I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.

-James Madison

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