

Covenant Not to Compete/Landfill Gas Services: Federal Court Addresses Request for Preliminary Injunction



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Like many service industries, conflicts sometimes arise between competitors in the environmental service industry segments.

A federal district court, Western District, North Carolina (“Court”) addressed in a September 29th Order a request for a preliminary injunction by Carlson Environmental Consultants, PC (“Carlson”) against its former employee, Sean Slayton (“Slayton”). See *Carlson Environmental Consultants, PC v. Sean Slayton*, 2017 WL 4225993.

Carlson is stated to provide certain solid waste services. The company sought to enjoin Slayton from:

1. Competing with it
2. Soliciting its customers or employees
3. Using or disclosing its confidential information and trade secrets

The Court held a hearing to assess the request for preliminary injunction. It granted Carlson’s request. The Court noted that the following described findings of facts that form the basis of the decision are subject to change in the subsequent proceedings.

Carlson is described as providing services to the solid waste industry on a national basis. A “key” environmental service provided by the company is described as landfill gas well drilling. This service is further characterized as:

. . . highly specialized and complex service involving the use of special drilling equipment to drill holes in landfills and to then construct wells and related pipelines designed to extract the methane gas resulting from the natural decomposition of the landfill’s contents.

The company focused almost entirely “on these segments of the solid waste market to grow its business.”

Waste Management, Inc. and Republic Waste Services, Inc. are identified as national owners/operators of landfills and two of the Carlson’s most important clients. The three companies are described as having worked together for a significant period of time. As a result, Carlson was stated to be very familiar with their construction requirements, projects operations/personnel, safety requirements, and other expectations on their projects.

Additional companies identified include Landmarc Environmental Systems (“LES”) as a primary Carlson competitor and Quality Drilling Services, LLP (“QDS”) which provides landfill gas well drilling services. QDS

periodically served as a subcontractor (well drilling) with Carlson as prime contractor. QDS also periodically performed services for Carlson's competitors. Sean Slayton was a key principal and driller for QDS.

In 2015 Carlson purchased QDS because drilling work was exceeding its capacity, necessitating the use of subcontractors such as QDS on a frequent basis. The purchase included a drill rig and related tools, client contacts, client information, goodwill, bidding information, and other proprietary data.

An additional objective of the purchase was stated to be limiting Carlson's competitors' ability to effectively compete on such projects by having QDS work exclusively through Carlson. This plan was believed to put it in a position to obtain more business from Republic Waste Services, Waste Management and other companies. QDS and Carlson are stated to have held discussions regarding the asset purchase and a Business Plan and Agenda. Key objectives included:

- Expansion of drilling capabilities
- Growth of drilling business by expanding to 5 or 6 crews
- Slayton to manage the business line
- To use Slayton's knowledge and experience to more effectively compete against Carlson's major competitors (which included LES)
- To add more clients by purchasing QDS's client base
- To utilize Slayton's extensive client and industry contacts

A Memorandum of Understanding ("MOU") provided that Slayton would be required to enter into a five-year non-compete agreement and be responsible for managing Carlson's drilling operations. However, the five-year non-compete agreement was reduced to two years at Slayton's request.

Carlson and Slayton also entered into a "short term employment agreement" which provided that Slayton would be employed for a fixed duration expiring when the QDS transaction closed. At such time Slayton would be required to enter into new employment with Carlson pursuant to a written employment agreement containing:

- A covenant not to compete, customer and employee nonsolicitation provisions
- Confidential information nondisclosure provision

Slayton was stated to have signed a Confidentiality and Noncompetition Agreement ("Agreement"). He received a new employment with Carlson after signing the Agreement, including new benefits. The Agreement provided that it was being entered into:

. . . in consideration of Employer's hiring of Employee as an at-will employee and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged.

Slayton is stated to have acknowledged Carlson's possible expansion of substantial resources in terms of business relationships, establishing goodwill and obtaining a national reputation as a provider of landfill gas well drilling services. He is characterized as having access to Carlson's confidential information after execution of the Agreement.

Slayton's Agreement contained a covenant not to compete which provided during a Restricted period of two years following his separation from employment with Carlson, within the Restricted Territory :

1. [...] shall not develop, market, solicit, sell, or otherwise provide or perform services identical to those services that Employee developed, marketed, solicited, sold, provided or performed while employed with Employer; [or]
2. [...] shall not become employed by (as an officer, director, employee, consultant or otherwise) become commercially interested in or affiliated with (whether through direct, indirect, actual or beneficial ownership or through a financial interest), a Competitor, unless Employee accepts

employment with a Competitor in an area of the Competitor's business which does not compete with the Employer.

The Restricted Territory is defined as the United States. This is deemed a recognition of the nationwide basis of Carlson's business and Slayton's involvement in the core activities (including ease of competition with that business in any part of the United States). It also included a territorial restriction which triggers successively smaller areas in which Slayton's competition against Carlson is prohibited in the event that a court deems the nationwide territory to be unreasonable or otherwise invalid or unenforceable. Slayton also agreed not to solicit Carlson employees or suppliers for a two-year period following cessation of his employment.

Slayton's Carlson employment as its drilling superintendent/supervisor is described as:

- Overseeing Carlson's drilling operations
- Client contact for multiple Carlson clients
- Point of contact in the field at any landfill facility
- Management of 3 Carlson drillers and up to 12 employees
- Directly involved in Carlson's pricing process and in formulating and submitting drilling proposals and bids
- Negotiating pricing directly with Carlson customers
- Access to highly confidential pricing information
- Knowledge of unique and proprietary methods of creating proposals and bids (providing Carlson with a competitive advantage)
- In charge of hiring and drill crew set-up
- Knowledge of employee salaries and bonuses
- Carlson client liaison

The Court summarized that Slayton's position provided high-level knowledge about company operations and the basis for its competitive edge due to:

- performance for Carlson on 68 projects in multiple cities in various states

In 2016 Carlson entered into an agreement with LES to lease and then purchase a drill in exchange for that company's agreement to hire Carlson for as many drilling jobs as it had the resources to handle. It was projected that LES had sufficient new and recurring business over the next 2 to 3 years to provide Carlson with a substantial amount of drilling work. This lease-purchase agreement was stated to Carlson's principals to be part of LES's overall strategy to exist the landfill gas well drilling business.

Carlson subsequently terminated Slayton due to alleged job-related misconduct and failure to operate Carlson's drilling business in an acceptable manner. He was later hired by LES as a Drilling Superintendent. That job's responsibilities included:

- Growing LES's gas construction drilling business
- Training and supervising drilling crews
- Meeting with and updating clients

Slayton is stated to have denied that he was bound by an agreement not to compete in executing his LES offer letter. He also agreed to a covenant not to compete with LES.

On March 22, 2017 Carlson filed the lawsuit against Slayton.

The alleged claims included:

- Breach of Carlson agreement
- Noncompetition covenant
- Nonsolicitation provisions
- Tortious interference of existing and prospective business relations

- Unfair and deceptive trade practices

LES subsequently issued a letter to Slayton directing him not to engage in certain activities that would violate his post-employment obligations to Carlson. The Court characterizes the directive as inconsistent with Slayton's noncompetition provisions in the Carlson agreement and notes that Slayton's own motions indicate a performance of landfill gas well drilling services for at least two of Carlson's customers.

The Court's findings of fact include a determination that Slayton undertook the following:

- Supervision of employees who perform landfill gas well drilling
- Consulted and provided technical assistance to employees
- Operation of drills on landfill gas well drilling projects in several states
- Provided off-site technical support and supervision to drilling employees in a South Carolina LES project

The Court also concludes that since Slayton's employment with LES, critical Carlson customer relationships have been impaired and its competitive position with certain major clients has been diminished. Further, LES is stated to have been able to obtain landfill gas well drilling work on a number of projects that had previously been performed by Carlson. In addition, since Slayton's employment with LES three former Carlson employees have joined that company to perform drilling.

The Court subsequently undertakes a review of the four factors to be considered as to whether to issue a preliminary injunction, which include:

- A. Likelihood of Success on the Merits (concluding likely success on the merits of a breach of contract claim because the Carlson agreement if valid and enforceable has been violated by Slayton)
 - a. Nationwide Geographic Scope (finding non-compete is reasonable and enforceable)
 - b. Two-Year Time Restriction (reasonable under the facts and relevant authorities)
 - c. Breach of Carlson agreement (adequate proof that Carlson agreement has been violated)
- B. Irreparable harm (Slayton is in a position to continue to damage and threaten Carlson's customer relationships, goodwill, and ability to fairly compete for landfill gas well drilling work)
- C. Balance of the Equities (evidence "tips the balance in Carlson's favor")
- D. Public Interest (granting preliminary injunction is in the public interest as it is beneficial to the public for Courts to enforce agreements that private parties enter into knowingly and voluntarily)

The Court grants the Plaintiff's Motion for Preliminary Injunction and orders that Slayton be restrained and enjoined from various actions within the defined Restricted Territory ("RT") during the pendency of the litigation.

[A copy of the Opinion can be downloaded here.](#)