

Keith A Bollinger “Noncompete Agreements and American Workers”

Leaders, Senators, and Senator Marco Rubio:

Good morning and thank you for holding this hearing and for the opportunity to appear before you today on this matter. I hope we can make a difference.

My name is Keith Bollinger. I am 56 years old. I was never a rich man, but once I had a comfortable life style. The company I worked with for more than 20 years had a downturn and used fear to get the management team to sign non-compete agreements. They went through bankruptcy, cut pay and despite promises - never reinstated the pay of loyal employees even after the market returned. I had an opportunity to recover my losses by joining another company and for that I was punished. I was unemployed for almost 2 years, and my family suffered both financially and emotionally. My story is a prime example of the overreach of non-compete agreements.

I began my career in textile finishing in 1982 after high school and I have no college degree. In 1992 the company I worked for was purchased by one of their local competitors TSG Incorporated. They offered me an hourly position that I accepted. I advanced to quality control manager for TSG by the late 1990's.

TSG issued yearly raises and bonuses at the end of each year. At the end of 2007 all salaried employees received a non-compete agreement to sign with their raise and bonuses. I did not sign it. I did not understand it and did not agree with some of the terms – particularly listing all of North America as the non-compete territory. On January 14, 2008 I was told by the VP of Operations that I had to sign the non-compete agreement. I felt my job was at risk, so I signed it. I never thought it would lead to the destruction of my career, 2 years of unemployment, my current low income and damaged resume.

I received 2 pay cuts equaling 35% at the beginning of 2009. The end of that year, TSG filed for chapter 11 bankruptcy protection. Every person that had to sign the non-complete was given large pay cuts of 35% to 40%. Sometime during bankruptcy period, there was a conference call between the plant managers and TSG headquarters, letting all of us know that once the company was out of bankruptcy that our pay would be reinstated. Later this was reworded to “when business picks back up”, the pay would be reinstated.

During bankruptcy, TSG Incorporated renamed itself to TSG Holding Company. Around April 2011, TSG Finishing LLC was created. After bankruptcy was over I repeatedly asked for my pay to be reinstated, but received only small increases never amounting to my previous salary.

In the fall of 2013, I was approached by a minority owner of American Custom Finishing (ACF) and an individual whom I had worked with at the first employer. He was planning to retire, and the position was for operations manager to replace him. I met with another owner about this opportunity and we discussed the non-compete agreement I had with TSG Finishing. I consulted an attorney and was advised that it was probably not enforceable because I signed the non-compete with TSG Incorporated not TSG Finishing, my current employer. The large pay cuts were also discussed. He did recommend other attorneys with larger firms if I needed one but thought I would be ok. An offer was made by (ACF) and I accepted the offer in November 2013 letting them know that I would need to give TSG a notice.

I submitted my notice in person with one of the company owners. He accepted and seemed to understand when I told him the offer from ACF was a substantial pay increase. He asked me to continue to perform my duties. I remember thinking that the owners may discuss reinstating my pay. I

remember calling my wife and discussing this possibility. She felt that if they reinstated my pay then I should stay as it shows good faith from them. Honestly, I struggled with this possibility. I had worked for TSG for more than 20 years and moving to a new company would be a risk. It was an exciting new opportunity, but I am a loyal guy and would probably have stayed if they had matched or come close to matching the offer from ACF. After about three hours, the plant manager came to my office. He was there to escort me off the property. He told me the owners had discussed my notice and I was to leave and they were going to “come after me”.

So, I started at ACF the following week as operations manager and loved it. I felt this was the job I had worked my entire life for. It was a once in lifetime opportunity and my dream job. Then, on November 26, 2013, TSG Finishing sent both me and ACF cease and desist letters with a copy of my non-compete agreement. I hired an attorney right away. My attorney responded to the letter on December 9, 2013 with his arguments that the contract was not enforceable due to wrong company suing, proof of assignment along with other arguments. He reminded them I was not a chemist, engineer or a sales representative with a territory. He assured them that if they thought I possessed some sort of trade secret knowledge or proprietary information that I would not use them, and we would be more than happy to discuss those matters further to help eliminate any of their concerns.

Instead of trying to discuss what sort of reasonable restrictions they wanted for their trade or other protections I was served with a lawsuit January 24, 2014. I was the only defendant at this time and the case was moved from Catawba County NC to North Carolina Business court.

TSG filed motion for preliminary injunction. I was not being accused of taking anything just that I had access to or had knowledge of customer preferences and that I ran trials to help determine processes. I did handle customer complaints and quality issues and trials to help satisfy customers. Nothing I could take with me that the customer would not know. I did not have knowledge of chemical recipes or anything else. I don't know how to make the goop, I just know how to apply the goop.

The non-compete territories included North Carolina and Pennsylvania as well as 16 other states that they considered their primary competition states. Also, both the United States and all North America. The duration was for two years and did not allow engaging as an employee or contractor in performance of textile finishing, engage in the manufacturing of textile finishing machinery or equipment, including but not limited to jobber, reseller, or dealers of used textile machinery or equipment or engage in sales, marketing or managerial services for any individual or entity that competes with TSG direct or indirectly in prohibited territory. The choice of Law was Pennsylvania. I never worked in Pennsylvania. I have lived and worked in the Hickory, NC area my entire life.

My attorney responded to their motion and I went through a brutal deposition from a very aggressive attorney. He seemed to keep asking the same questions over and over just rewording them trying to force me to choose the words he wanted to hear. Wanting my words to fit his agenda.

That night I had a panic attack or an anxiety attack. I was gasping for my breath. Felt like I could not breathe. Scared my wife and son. There were more of these through the course of all the legal battles. I went to my doctor and was tested for other possibilities, but we concluded it was probably stress.

A hearing was held February 5 for the preliminary injunction. I was present and Jack Rosenstein testified. Attorneys from both sides made their arguments. The preliminary Injunction was denied by the NC Business Court judge February 24, 2014. The order seems to agree with most of my attorneys'

arguments and stated something to the effect of enforcing a non-compete as articulated by the plaintiff's would bar me from working in the only profession I have known since high school throughout North America. I felt great and thought glad this is over.

TSG appealed to the NC Appeals Court and on December 31, 2014 NC Appeals court reversed the Business Courts decision.

Still today I cannot read the Appeals Court opinion all the way through. I do not understand how they made such absurd statements and acted as if facts and it is on the internet for all to see. If you did not know me, you may not give me a second chance after reading it. Anytime applying for jobs, I have to mention the lawsuit. It haunts me. North Carolina believes the public has the right to know and the Business Court, Appeals & Supreme Court all have my case on their websites. If you google my name you can find the Appeals Court opinion without going to their website and that's not been a lot of help when looking for employment. They make me out to be some awful ex-employee and they never even met me.

The same day the Appeals court reversed my victory TSG's attorney notified ACF's attorney of the decision and I was immediately laid off. I lost my dream job and a good income.

My attorney filed to NC Supreme Court for a stay and we were granted it. Lucky me. My review was denied on August 20, 2015 and that dissolved the stay.

I remained unemployed for about 2 years during all of this. It is hard to find full time employment with no reference from longest employer and with companies now doing internet searches it seemed like a good idea to tell anyone I interview with about my situation. I had an interview with a Weaving company close by that asked me if I was allowed to work for them. I said I thought I was. No offer was ever made. I am unsure if they called TSG or just decided to play it safe.

I remember at one point I was being accused of still working for ACF and they subpoenaed our tax records. Our adjusted gross income was around \$27,000. Hard to pay a house payment and car payments and keep up with attorney fees with that. Unemployment benefits in NC are terrible.

There were multiple times my wife noticed traffic backed up in front of our house with someone taking pictures and on several occasions I saw the plaintiff's attorney following me.

TSG filed another lawsuit against ACF and other companies and individuals signed by their attorney the same day the Supreme Court's denial. TSG Finishing was even suing indirect competitors. Both cases were combined in NC Business Court. December of 2015 the preliminary injunction was placed on me.

We borrowed money from family and friends. We wiped out our savings and had to use credit cards and cut expenses the best way we could. No cable, Christmas gifts, eating out, movies, home repairs were left undone, and our son was starting college and had to take out college loans. After 3 ½ years in 2017 TSG accepted \$200,000 offer of judgment from all defendants. The lawsuit left a vaper trail internet and damaged my resume. I never got my day in court to determine whether the non-compete was legal. According to the appeals court the burden is on the employee. That's frustrating.

I am currently back working at ACF making about the same as I did 20 years ago with no insurance benefits or 401k. During my absence that position was filled and I don't blame them. I have applied and

interviewed for other positions with better pay and benefits but internet searches and unable to use a company I worked for over 20 years as a reference make it difficult.

I am 56 years old and have spent 3 ½ years of my life fighting to have a future. The one I had worked 30 plus years for and was taken from me. I lost a comfortable life style. The company I worked with had me sign a non-compete after 16 years then cut my pay - never reinstating it even after the market returned. I had an opportunity to recover my losses by joining another company and for that I was punished. My career has not recovered, and it may never. I went through three different courts one never gave the time to hear me, and the other two had the complete opposite opinions with only one ever meeting me. How is someone like me able to understand a contract when the courts interpretations are complete opposite. There are other contracts a business can use that does not destroy careers. I thought this was a free country and a land of opportunity.