Covenants Not To Compete - By The Numbers

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The professors looked at a sample of 874 net usable explicit CEO agreements. In this sample, 162 of the contracts were with firms headquartered in California. They found that only 62.4% of these contracts included non-compete provisions while 84% of the contracts from firms primarily located outside of California had non-compete clauses. Regarding this finding, the authors observe “While this is consistent with our expectations, it is comforting to know that companies and their lawyers pay attention to legal doctrine.” However, I’m surprised to learn that more than one-half of the California headquartered companies included such provisions in their CEO employment agreements – especially in light of Walia v. Aetna, Inc., 93 Cal. App. 4th 1213 (2001) (upholding an award of punitive damages).

As the first in-depth look at the prevalence of non-competes in CEO employment agreements, the professors’ article provides interesting background for practitioners and fodder for future academic debates.

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