

## Ohio Non-compete Distance Measured as The “Crow Flies”

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A recent case out of Ohio offers an instructive lesson for those looking to probe the geographical limits of a non-compete agreement. A dentist sold his dental practice and also continued to work as an employee there. As part of the sale, he agreed not to compete for five years and was prohibited from working “within 30 miles” of the practice. The relationship between the parties deteriorated and the dentist went to work for a competing firm. The purchaser dentist filed suit claiming a breach of the non-compete.

The trial court ruled against the seller, noting that although the new practice was more than 30 miles away from the old one when driving, it was less than 30 miles measured by a straight line. An Ohio appellate court affirmed the trial court’s decision on how to track miles. The appellate court held that despite the assertion that “within 30 miles” is subject to differing interpretations, Ohio courts have consistently measured the geographical limits as straight lines or “as the crow flies.” ([Ginn v. Stonecreek Dental Care, Ohio Ct. App., CA2015-01-001, 10/26/15](#)).

The prevailing party was awarded \$125,000 in damages, plus interest, by a jury.

Additionally, the breaching party had to pay nearly \$100,000 in legal fees as a result of the loss. As is the case in many jurisdictions, in Ohio, damages are typically calculated by measuring lost profits. This figure can be assessed using historical business data, as it was here, and an expert is not necessary to prove damages for all cases. In this case, the fact that the seller had worked as an employee for six months prior to breach gave fairly reliable data as to the damage caused as a result of moving to a competitor.

For someone looking to craft a non-compete agreement that uses mileage as a measurement of distance, one should be aware of the way different state courts interpret such language. It is also worthwhile considering the practical effects of a mileage condition on a non-compete, such that when a practice is sold, a customer is unlikely to leave with the seller.

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