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## **New Jersey Courts Strike Down Contractual Non-Solicitation Provision of Companies Providing Staff Supplementation Services**

By Kurt E. Anderson, Esq.

On July 3, 2003, the New Jersey Superior Court held unenforceable an employee non-solicitation provision between two consulting companies who provided staff supplementation services to AT&T due to the failure of the companies to be registered as temporary help service firms under the New Jersey Employment Agency Act ("NJEAA"). This case underscores the importance of ensuring compliance with the licensing and registration requirements of the NJEAA.

In this case, Real Soft, Inc. ("Real Soft") had a contract to provide certain computer services to AT&T. Real Soft contracted with Software International, Inc. ("SII") to provide Jaswant Singh, a highly skilled employee, for the AT&T project. The contract between Real Soft and SII precluded Real Soft from hiring Singh for one year. During the AT&T project, Real Soft hired Singh. SII sued Real Soft for breach of contract. Real Soft counterclaimed under an indemnification provision in the contract.

The court found that, in its dealings with Real Soft, SII would not ordinarily be considered an "employment agency" within the meaning of the NJEAA, since SII did not charge a fee to Singh and did not restrict him from working elsewhere. However, the NJEAA applies to companies who supply job seekers on a temporary assignment basis who have not registered with the Attorney General as temporary help service firms. Since neither company had registered with the Attorney General as a temporary help service firm, the court declined to enforce the contract between them.

This is a trap for the unwary. It is common practice for consulting companies to periodically provide employees to a customer for a temporary project without being registered with the Attorney General as a temporary help service firm. However, this practice puts at risk the enforceability of contracts entered into by such companies. In this case, the issue was the enforceability of the contract between the prime contractor and the subcontractor. However, the failure of the prime contractor to be registered could just as easily be asserted by a customer who, for other reasons, does not want to pay for the services otherwise properly rendered.

This information is not to be construed as legal advice. If you have any questions please do not hesitate to contact the following attorney:

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