

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLATE FABRICATION & MACHINING, INC.	:	CIVIL ACTION
	:	
	:	No. 05-2276
v.	:	
	:	
ALLEN BEILER	:	

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

January 3, 2006

Plate Fabrication & Machining, Inc. (Plate) moves this Court to bar a company formed by its former president, Allen Beiler, from competing with Plate for a contract to provide armor for military vehicles in Iraq. Beiler claims the employment agreement he signed with Plate does not cover the contract for armor. I find the agreement precludes Beiler from competing with Plate and will impose a constructive trust on all profits arising from Beiler solicitation of the armor contract.¹

FINDINGS OF FACT

1. Plate is Pennsylvania corporation and has its principal place of business in Philadelphia, Pennsylvania.
2. At the time this case was removed to the Eastern District of Pennsylvania, Allen Beiler was a citizen of the State of Delaware.
3. Plate's chief executive officer is Kenneth Neary, who is also president and chief executive officer of Wilmington Steel Processing Company (WSP).

¹Plate styled its motion for injunctive relief as one for a "Temporary Restraining Order/Preliminary Injunction." Beiler responded to this motion and this Court held a hearing on November 28, 2005. Therefore, I will treat Plate's motion as one for a preliminary injunction. Fed. R. Civ. P. 65(a).

4. WSP's principal place of business is located at 1900 Kitty Hawk Avenue in Philadelphia, Pennsylvania.
5. Beiler, an experienced machinist, submitted a "Sales & Marketing Plan" (Plan) to Neary in March, 2004 outlining Beiler's proposal for establishing "Second Dimension," a company capable of "provid[ing] machining and fabrication services to a target market of Original Equipment Manufacturers within a 300 mile radius of the Philadelphia Naval Shipyard."
6. The Plan's "Executive Summary" identifies Neary and WSP as the suppliers of venture capital for the new company, and to minimize "overhead" expenses, Beiler recommended, in two separate sections, certain fixed and administrative costs be shared with WSP.
7. Beiler agreed to assume exclusive responsibility for generating sales and planned to direct his "initial sales thrust" at twenty-nine companies where he had "known contacts," all of which were identified in a Target Customer List.
8. In late March, 2004, Neary and Beiler agreed to form Plate Fabrication & Machining, Inc. based on the plan submitted by Beiler, and Plate's formal incorporation occurred shortly thereafter.
9. On or about April 12, 2004, Neary, on behalf of Plate, and Beiler executed a written employment agreement.
10. Before executing this agreement, Neary and Beiler engaged in active negotiations over its content and terms, and the document that eventually became the agreement was revised no less than six times.
11. Beiler agreed to accept an annual salary of \$50,000, and, in addition to his salary, Beiler was eligible to receive bonus compensation equal to a percentage of Plate's annual profits.
12. The agreement also permitted Beiler to acquire equity rights in Plate at the rate of four

percent per year (up to a maximum of twenty percent) each year Plate was profitable.

13. Neary and Beiler also agreed to the inclusion of the following provisions:

NOW THEREFORE, intending to be legally bound hereby, the parties agree to the following terms and conditions of employment:

* * *

9. Employee hereby acknowledges that, during and solely as a result of his work with **Plate Fabrication & Machining Inc** employee may receive special training, knowledge and information relating to the operation of **Plate Fabrication & Machining Inc** and related business (Wilmington Steel Processing) of the principal owner and other related matters. Employee shall not directly or indirectly engage in (as principal, shareholder, partner, director, officer, agent, employee, consultant or otherwise), or be financially interested in any business operating in the United States of America that is a competitor to **Plate Fabrication & Machining Inc** to the extent that employee's activities involve solicitation of **Plate Fabrication & Machining Inc** customers or clients, which shall be and remain the exclusive property of **Plate Fabrication & Machining Inc**. Employee further acknowledges that he will not disclose said customers to any third party, nor solicit said customers for the benefit of any company or individual other than **Plate Fabrication & Machining Inc**.

10. All materials developed by employee for **Plate Fabrication & Machining Inc** shall be and remain the property of **Plate Fabrication & Machining Inc** and employee shall not use for employee's personal benefit, or disclose, communicate or divulge to, or use for the direct or indirect benefit of any person, firm, association or company other than **Plate Fabrication & Machining Inc**, any "Confidential Information" which term shall mean any information regarding the business methods, customer lists, manufacturing methods, business policies, policies, procedures, techniques, research, historical or projected financial information, budgets, trade secrets or other knowledge or processes of or developed by company, or any other confidential information relating to or dealing with the business operations of **Plate Fabrication & Machining Inc**. The foregoing provisions shall apply during and after the period when employee is working for **Plate Fabrication & Machining Inc**, and not a limitation of, any legally applicable protections of **Plate Fabrication & Machining Inc** [sic] interest in confidential information, trade secrets, copyrightable materials and the like.

11. Employee acknowledges that he has received consideration from

Plate Fabrication & Machining Inc for the restrictive covenant, non-solicitation agreement, confidentiality and non-disclosure provisions set forth herein. Employee specifically consents to the jurisdiction of a court of competent jurisdiction, and injunctive relief against employee, to enable **Plate Fabrication & Machining Inc** to enforce restrictive covenant and confidentiality provisions of this agreement. If **Plate Fabrication & Machining Inc** is forced to seek enforcement of these provisions in a court, employee shall be liable for company's legal fees and costs in connection with enforcement of this agreement.

14. Under paragraph 7, Beiler had the right to terminate the agreement by giving Plate three months prior notice.
15. The agreement "may also be terminated for cause at any time" in the event Beiler, among other things, engages in an act of fraud or other act "which has the potential to be detrimental to" Plate.
16. In October, 2004, Plate undertook a project for Lawrence Livermore National Laboratories to machine the armored cabs for gun trucks used by U.S. military forces in Iraq.
17. This project ("LLNL Project 1") was referred to Neary through his contacts at a company that supplies steel to WSP.
18. Although WSP provided the initial quote to Lawrence Livermore, Neary, shortly thereafter, assigned LLNL Project 1 to Plate because "it was going to be more extensive" than Neary originally anticipated.
19. Beiler subsequently provided a quotation to Lawrence Livermore through Plate, however, a representative from Lawrence Livermore informed Beiler the quote was "too high."
20. According to Neary, Beiler recommended a price reduction because there was "enough in . . . [the project] to make a profit."

21. Neary agreed to reduce the price to establish goodwill on behalf of Plate because Beiler convinced him there would be future projects from Lawrence Livermore.
22. Plate completed LLNL Project 1 in December, 2004.
23. Before handling LLNL Project 1 on behalf of Plate, Beiler had never conducted business with Lawrence Livermore, and Lawrence Livermore does not appear on the Target Customer List submitted to Neary.
24. Neary testified he “was relying upon the possibility of getting more business from Lawrence Livermore” because Plate “had developed the expertise to do . . . [the machining],” the project was done “in a timely fashion,” and “the reports were glowing that these [armor kits] were very professionally built.”
25. In December, 2004, anticipating additional orders from Lawrence Livermore, Neary, through WSP, purchased a \$600,000 laser-cutting machine.
26. Although Neary anticipated using the laser-cutting machine for subsequent projects from Lawrence Livermore, he did not consult Beiler before purchasing it.
27. Based on Neary’s accounting, Plate posted a profit for 2004, and Beiler received a bonus in accordance with the terms of the agreement.
28. By the end of 2004 through the early part of 2005, Neary and Beiler openly disagreed about the management of Plate and its direction.
29. Neary operated Plate as an affiliate of WSP and, during Beiler’s employment, decided not to open a bank account or line of credit for Plate; instead, all banking for Plate was handled through WSP.
30. In March, 2005, Beiler formed AB Fab & Machining LLC (AB Fab), a limited liability

company engaged in the business of machining steel products.

31. Beiler is the sole member of AB Fab and admits the formation of AB Fab during his employment with Plate violated paragraph 9 of the agreement.

32. During the first quarter of 2005, Beiler, acting through AB Fab and without Neary's knowledge, solicited and responded to a subsequent purchase order from Lawrence Livermore. (Hereafter "LLNL Project 2.")

33. LLNL Project 2 involved the machining of one "Armor Cab Kit for a M923 5-ton Truck."

34. Beiler, in an another attempt to direct business to AB Fab, also responded to a purchase order from Trinity Industries, Inc. submitted to Plate Sales, a sister company of WSP. (Hereafter the "Trinity Project.")

35. While serving as Plate's president, Beiler used inventory, supplies, and office materials from Plate and WSP for LLNL Project 2 and the Trinity Project.

36. On April 11, 2005, Neary discovered that Beiler was operating AB Fab as a competitor to Plate and immediately terminated his employment.

37. At the time Beiler was terminated from Plate, LLNL Project 2 and the Trinity Project were only partially complete.

38. AB Fab completed both projects after Beiler's termination, and the values of LLNL Project 2 and the Trinity Project were approximately \$7,596.14 and \$49,387.00, respectively.

39. All revenue from LLNL Project 2 and the Trinity Project went exclusively to AB Fab.

40. In July, 2005, AB Fab solicited and obtained another project with Lawrence Livermore. (Hereafter "LLNL Project 3.")

41. As of January 3, 2006, the date of this memorandum, AB Fab is in the process of completing

LLNL Project 3.

42. Following LLNL Project 1, Plate has not received any additional purchase orders from Lawrence Livermore.

43. Since Beiler's termination, Neary has not hired a new president for Plate, and Plate has not received any further purchase orders from any customers because Neary is not actively marketing or utilizing the company.

44. On April 22, 2005, Plate instituted a civil action in the Court of Common Pleas of Philadelphia County by filing a Writ of Summons and an urgent discovery notice requesting an opportunity to depose Beiler.

45. Beiler removed this matter to the Eastern District of Pennsylvania, where Plate subsequently filed a complaint on June 2, 2005 that sets forth causes of action for breach of contract, injunctive relief, and fraud.

46. On October, 18, 2005 the same day Beiler's court-ordered deposition occurred, Plate filed a motion for a temporary restraining order/preliminary injunction.

47. Beiler responded to this motion, and this Court held a hearing on November 28, 2005.

CONCLUSIONS OF LAW

Injunctive relief is an extraordinary remedy that should only be granted in situations where legal remedies are insufficient. To obtain preliminary injunctive relief, Plate must demonstrate: (1) a likelihood of success on the merits; (2) irreparable harm by the denial of injunctive relief; (3) granting relief will not result in even greater harm to Beiler; and (4) the public interest favors the injunction. *KOS Pharm. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004). If all of these requirements are satisfied, Federal Rule of Civil Procedure 65(a) authorizes me to issue a

preliminary injunction.²

Plate's likelihood of success on the merits turns on whether paragraph 9 of the Agreement, which restricts Beiler's ability to compete with Plate, is enforceable under Pennsylvania law.³ Beiler proffers alternate arguments to invalidate this provision and, as the challenger to this restriction, bears the burden of proving it is unenforceable. *John C. Bryant Co. v. Sling Testing & Repair, Inc.*, 369 A.2d 1164, 1169-70 (Pa. 1977). First, Beiler argues Plate is attempting to enforce a restriction that, by its terms, only governs his activities while he was employed at Plate. According to Beiler, paragraph 9 is not a post-employment "restrictive covenant" as that term is recognized under Pennsylvania law. Alternatively, Beiler contends if this Court construes the relevant provision of paragraph 9 as a restrictive covenant, it is void on its face and unenforceable. I reject both of Beiler's arguments and will construe paragraph 9 as a restrictive covenant capable of equitable modification in accordance with Pennsylvania law.

Paragraph 9 states, in pertinent part, Beiler "shall not directly or indirectly engage in . . . , or be financially interested in any business operating in the United States of America that is a competitor to **Plate Fabrication & Machining Inc** to the extent that employee's activities involve solicitation of" Plate's customers or clients. Beiler admits that by creating AB Fab and using it to solicit business from Lawrence Livermore he violated this provision while serving as Plate's president. Despite this admission, Beiler argues the absence of language extending the restriction beyond the employment relationship – such as a "thereafter" phrase – limits the moratorium on his

²Subject matter jurisdiction in this case is based on 28 U.S.C. § 1332 because the parties, at the time this case was removed to the Eastern District of Pennsylvania, were citizens of different states and the amount in controversy exceeds the jurisdiction requirement.

³Pennsylvania law governs this case. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938).

competitive activities to the time he was employed at Plate. To bolster this argument, Beiler contends Neary's decision to terminate him was Plate's exclusive remedy for his breach of the restriction in paragraph 9 and urges this Court to strictly construe the provision because it is ambiguous. I conclude, though, Beiler is wrong as a matter of contract interpretation and has attempted to create ambiguity where there is none.

According to the plain language of paragraph 9, Beiler covenanted not to compete with Plate, and there are no other contractual provisions that limit the operation of the restriction to the employment relationship. Under Pennsylvania law, when the language of a written contract is plain and unambiguous, the intent of the parties is embodied solely in the words of the contract itself. *Steuart v. McChesney*, 444 A.2d 659, 661 (Pa. 1982). To adopt Beiler's proposed construction of paragraph 9 – a provision that is clear on its face – would not only violate this basic principle of contract interpretation, but also vitiate the meaning of paragraph 11, wherein Beiler expressly consented to the imposition of injunctive relief against him so that Plate could enforce the restrictive covenant. Although Beiler does not argue paragraph 11 is invalid, ambiguous, or unenforceable, he now contends Neary's decision to fire him – an act Beiler concedes was warranted under the circumstances – constituted Plate's exclusive remedy for Beiler's breach of the covenant.⁴ This is

⁴In an attempt to void the entire Agreement, Beiler also argues Neary materially breached the contract and frustrated its purpose by operating Plate as a close affiliate of WSP. Beiler alleges Neary operated Plate as a "sales arm" of WSP and points to Neary's decision not to open a bank account or line of credit for Plate as support for his contention. There is no merit, though, to Beiler's argument because his business plan, which served as the basis for Plate's formation, expressly states in two sections that Plate and WSP would share overhead and administrative expenses to place it in a competitive position in the marketplace. Although Beiler may have disagreed with Neary's management philosophy and was apparently disappointed at pace of business development, there is simply no evidence Neary material breached his part of the bargain. In fact, the records reveals it was Neary's decision to have Plate, instead of WSP, handle the first Lawrence Livermore project. Neary also testified he assigned the project to Beiler with the expectation Beiler

a wholly untenable position because it disregards the plain language of the restrictive covenant and paragraph 11. In the face of contractual language that is clear and unambiguous, I am without any basis upon which to conclude the restriction should operate only while Beiler was an employee of Plate.⁵

Alternatively, Beiler argues that if this Court interprets paragraph 9 as continuing post-employment, it is void on its face because it does not contain a time limitation or geographic restriction. Pennsylvania law permits an employer to protect its legitimate, non-pecuniary business interests through the use of a post-employment restrictive covenant. *Wellspan Health v. Bayliss*, 869 A.2d 990, 996-1000 (Pa. Super. 2005). “The type of interests that have been recognized in the context of a non-competition covenant include trade secrets or confidential information, unique or extraordinary skills, customer goodwill, and investments in an employee specialized training program.” *Id.* at 996. To ensure a restrictive covenant does not unduly burden the former employee, Pennsylvania law permits “the equitable enforcement of post-employment restraints only where they are incident to an employment relation between the parties to the covenant, the restrictions are reasonably necessary for the protection of the employer, and the restrictions are reasonably limited in duration and geographic extent.” *Sidco Paper Co. v. Aaron*, 531 A.2d 250, 252 (Pa. 1976) (citing *Girard Inv. Co. v. Bello*, 318 A.2d 718 (Pa. 1974), *Bettinger v. Carl Berke Assoc., Inc.*, 314 A.2d 296 (Pa. 1974), and *Jacobson & Co. v. Int’l Envtl. Corp.*, 235 A.2d 612 (Pa. 1967)). If a restrictive

would “bring it to contract” and successfully complete it on behalf of Plate. Moreover, based on Neary’s accounting, Plate posted a profit after less than a year in business, thereby making Beiler eligible for a bonus. In light of this evidence, I find Beiler’s argument wholly without support.

⁵The cases cited by Beiler as grounds for circumscribing the restriction to the employment relationship are inapposite and unpersuasive.

covenant meets these requirements, it is enforceable.⁶ In situations, though, “where the covenant imposes restrictions broader than necessary to protect the employer, [the Pennsylvania Supreme Court] . . . ha[s] repeatedly held that a court of equity may grant enforcement limited to those portions of the restrictions which are reasonably necessary for the protection of the employer.” *Sidco Paper Co.*, 531 A.2d at 254. Thus, a restrictive covenant with protections broader than necessary to protect the employer’s legitimate business interests is not *per se* unenforceable and void. A court, however, to be faithful to Pennsylvania law, should not enforce any covenant that is “manifestly unreasonable in light of the employer’s needs and is excessively burdensome to the employee in pursuing his occupation.” *Bell Fuel Corp. v. Cattolico*, 544 A.2d 450, 459 (Pa. Super. 1988).

Under Pennsylvania law, the reasonableness of any restriction is fact-sensitive. *Wellspan Health*, 869 A.2d at 999. To determine whether the restrictive covenant here is capable of equitable modification requires an evaluation of the nature of the restraint. Paragraph 9 restricts Beiler from engaging in or becoming financially interested in “any business that is a competitor to **Plate Fabrication & Machining Inc** to the extent that employee’s activities involve solicitation of **Plate Fabrication & Machining Inc** customers or clients” The restriction Plate seeks to enforce merely prohibits Beiler’s ability to solicit Plate’s customers and clients. Beiler is still free to establish a competing venture and “earn a living” as a machinist as long as he does not solicit entities with which Plate has established a business relationship. The limited prohibition on Beiler’s ability to compete with Plate does not make the restrictive covenant in paragraph 9 void on its face. *Bell Fuel Corp.*, 544 A.2d at 457-60. In *Bell Fuel*, the restrictive covenant precluded a former employee

⁶Beiler does not dispute that the Agreement was incident to an employment relationship, so only the reasonableness of the restriction is at issue here.

of Bell Fuel Corp. from contacting or soliciting the company’s customers, much like the covenant at issue here. Although the employee challenged the restriction as void on its face for the same reason Beiler offers (i.e., no temporal or geographic limitations), a panel of the Pennsylvania Superior Court concluded the covenant was not “prima facie unreasonable” because it only prohibited the employee from soliciting Bell’s customers and did not generally restrain him from engaging in any other competitive activity or rival business. *Id.* at 458.⁷ The Pennsylvania Superior Court further reasoned that “[i]f [the employee] wishes, he may set up shop next door to Bell in a directly competitive business or he may work for any of Bell’s competitors. He simply may not solicit Bell’s customers” *Id.* at 459. Here, Beiler can do the same because the intent of the parties was only to restrict one particular form of competition: the solicitation of Plate’s customers. Moreover, the restriction, hardly deprives Beiler from pursuing his livelihood. Instead, it simply prevents him from profiting at the expense of Plate by taking Lawrence Livermore, its primary

⁷The status of non-solicitation clauses is not “free from doubt” according to the opinion in *Bell Fuel*. More precisely, Pennsylvania law has not expressly resolved whether pure non-solicitation clauses (like the ones involved in *Bell Fuel* and here), which do not otherwise prohibit former employees from engaging in a particular occupation or field, should be subject to the test of reasonableness. A seminal opinion from the Pennsylvania Supreme Court that dealt with the validity of a restrictive covenant and confidentiality agreement only applied the reasonableness requirement to the general restraint on competition, but not to the clauses concerning customer solicitation. *Morgan’s Home Equip. Corp. v. Martucci*, 136 A.2d 838, 843 (Pa. 1957) (concluding Pennsylvania’s common law of unfair competition, not an express contractual provision such as a restrictive covenant, prevents “an employe from using customer contacts as well as confidential customer information to his own advantage by soliciting the customers of his former employer”). Plate, like the plaintiff in *Bell Fuel*, has, from the outset, characterized the relevant provision as a restrictive covenant, and to subject the restriction here to the requirement of reasonableness is consonant with the general principles of Pennsylvania law concerning post-employment restraints. Even if the common law of unfair competition as set forth in *Morgan’s Home Equipment Corp.* governed the restriction on Beiler’s ability to solicit Plate’s customers, the result would be the same – I would still enjoin Beiler.

customer, as well as any others.⁸ Therefore, I am convinced that the restriction here, even without a time or geographical limitation, is capable of equitable modification because it only restricts Beiler's ability to solicit customers of Plate – it does not preclude him from earning a living as a machinist and operating AB Fab.⁹

The purpose of equitable modification is to achieve a proportional (i.e., “reasonable”) relationship between the degree to which the employer requires protection and the restraint on the former employee. The plaintiff in *Bell Fuel* only sought enforcement of the restrictive covenant for a period of two years, and the court implied a geographic limitation from the location of Bell's actual customers. Here, counsel for Plate, when pressed by the Court for an appropriate temporal limitation, suggested a period of three years. Under the circumstances, though, three years affords Plate too much protection because the company has remained idle since Beiler's termination, and Neary's plans for Plate's future are uncertain. Nevertheless, Plate requires protection to the degree

⁸Plate's proposed order for injunctive relief requests the restrictive covenant be enforced against “Lawrence Livermore National Laboratories, Benco Technology, LLC, RSP Towing, Stoltzfus Enterprise Fabrication, Mittal Steel USA, Trinity Products, and any other customer of Plate Fabrication & Machining, Inc.” The evidence shows, though, Benco Technology, LLC, RSP Towing, Stoltzfus Enterprise Fabrication, and Mittal Steel USA were not customers of Plate. Instead, most of these entities were vendors. Additionally, Neary testified on direct examination Trinity Industries, Inc. was a customer of Plate Sales, a “sister company” to WSP.

⁹The historical development of the doctrine governing restrictive covenants under Pennsylvania law also informs the appropriateness of enforcing the restriction here. In general, courts have scrutinized employment agreements (i.e., subjected them to the requirement of reasonableness) because of the unequal bargaining power between the parties in a traditional employer/employee relationship. *Hess*, 808 A.2d at 918. The situation here, though, is markedly different. From the evidence presented, Neary and Beiler engaged in arms-length negotiations, and Neary testified at the hearing that paragraphs 9, 10, and 11 “were an effort on both of our parts.” This testimony was not contradicted, and there are no facts to suggest Beiler was compelled, by Neary or other circumstances, to accept the position as president of Plate. Therefore, it is eminently reasonable Beiler be required to fulfill his obligations under the Agreement and refrain from soliciting Plate's customers.

that its goodwill has been damaged by the departure of Lawrence Livermore to AB Fab.

Goodwill is a “business’s positive reputation” arising from a company’s investment in developing customer relationships expected to continue into the foreseeable future. *Wellspan Health*, 869 A.2d at 997 (citing *Hess*, 808 A.2d at 922). More importantly, “[a]n employer’s right to protect, by a covenant not to compete, interest in customer goodwill acquired through the efforts of an employee is well-established in Pennsylvania.” *Sidco Paper Co.*, 351 A.2d at 252-53. Neary chose to pursue equitable relief on behalf of Plate because of the loss of Lawrence Livermore as a customer. From the evidence presented, Neary and Beiler took steps to cultivate a long-standing relationship with Lawrence Livermore. Neary testified he expected to get more business from Lawrence Livermore because Plate had developed the expertise to machine the armor for the gun trucks in a timely fashion, and Neary received “glowing” reports that the kits “were very professionally built.” He also believed subsequent orders would be a “natural extension” from successfully handling the first project. Based on Neary’s uncontradicted testimony, I am convinced Plate established a favorable reputation with Lawrence Livermore, and his expectation of a long-term relationship with this customer was reasonable. Equity dictates that Beiler be enjoined for a period of time during which Plate can take steps to overcome the damage done to its goodwill and repair relations with Lawrence Livermore.¹⁰ Given the uncertainty surrounding Neary’s plans for Plate, though, a one-year period from the date of Beiler’s termination is a reasonable length of time within

¹⁰During the hearing, counsel for Plate routinely attempted to present evidence of harm to the reputation of WSP and argued forcefully that its inability to fully utilize the machine Neary purchased in anticipation of more orders from Lawrence Livermore was causing it irreparable harm. Even though WSP may have been harmed by Beiler’s actions, WSP is not a party to this proceeding and any damage to its reputation is not relevant to my evaluation of the necessity for injunctive relief against Beiler.

which Neary can find a replacement for Beiler, develop a business plan to recapture Lawrence Livermore as a customer, and build new customer relationships to reestablish its goodwill in the marketplace. The purpose of equitable relief is preventative rather than punitive, and the injunction here does no more than enforce a contractual obligation for a time period that is sufficient to protect Plate's legitimate business interest.¹¹ Thus, I will enjoin Beiler from soliciting business from Lawrence Livermore and other customers of Plate for a period of one year from the date of his termination.

Satisfied Plate is likely to succeed on the merits of its claims against Beiler, I next turn to the existence of irreparable harm to Plate by Beiler's violation of the restrictive covenant. To prove irreparable harm, Plate must have suffered an injury that by its nature is incapable of pecuniary measurement. *Nat'l Bus. Serv., Inc. v. Wright*, 2 F. Supp. 2d 701, 709 (E.D. Pa. 1998). "Grounds for irreparable injury include loss of control of reputation, loss of trade, and loss of goodwill."

¹¹In addition to reasonable temporal limitations, a restrictive covenant should also be geographically circumscribed to ensure the burden on the employee is no greater than necessary for the protection of the employer's legitimate business interests. The need to impose a geographic restriction, though, is only applicable if, by the terms of the covenant, the employee is actually precluded from competing with the employer in certain locations. The covenant here, which is purely a non-solicitation clause, merely prohibits Beiler from vying for business from those entities that are already customers of Plate. Simply put, Beiler is still free to compete in the same geographic locations as Plate's customers. Therefore, to imply a geographic limitation here is unnecessary because the covenant is technically already reasonable in geographic scope.

To the extent Plate argues the identity of its customers, such as Lawrence Livermore, is confidential, and, thus, entitled to protection under paragraph 10 of the Agreement, I conclude Plate misinterprets the applicable boundaries for protecting such information under Pennsylvania law. The only entity to which this provision applies is Lawrence Livermore, and the evidence adduced at the hearing does not reveal Plate's performance of LLNL Project 1 entitles it to claim the identity of Lawrence Livermore is a trade secret. *Morgan's Home Equip. Corp.*, 136 A.2d at 843. Information is readily available about Lawrence Livermore and the projects for gun truck armor to entities involved in the steel-machining industry, and "equity will not protect mere names and addresses easily ascertainable by observation or reference to directories." *Carl A. Coteryahn Dairy, Inc. v. Schneider Dairy*, 203 A.2d 469, 472-73 (Pa. 1964).

Pappan Enter., Inc. v. Hardee's Food Sys., 143 F.3d 800, 805 (3d Cir. 1998). Without the ability to enforce the covenant through injunctive relief, Plate would be forced to compete against the investment it made in creating and establishing a positive reputation with Lawrence Livermore. I am convinced that Plate's reputation was irreparably harmed by Beiler's solicitation of Lawrence Livermore because Plate was placed at a competitive disadvantage for future purchase orders.

Plate has also satisfied the third requirement for injunctive relief because there is no greater harm to Beiler if the restrictive covenant is enforced. At the hearing, Beiler argued enforcing the covenant would substantially interfere with the rights of Lawrence Livermore because AB Fab is currently performing LLNL Project 3. This argument, though, misapprehends the nature of the balancing I must undertake. The harm must be to Beiler; not to a third party such as Lawrence Livermore. Upon my review of the record, there is no evidence of harm to Beiler if he is enjoined from soliciting Plate's customers for a period of one year from the date of his termination. Beiler is free to compete unfettered for purchase orders from any of the twenty-nine companies on the Target Customer List where he has "known contacts," provided, however, they are not already customers of Plate. These potential sources of business more than offset any inconvenience to Beiler.

Finally, the public interest supports the issuance of a preliminary injunction in this case because enforcement of the covenant promotes ethical business practices. Beiler willingly agreed to at the outset of his employment with Plate to refrain from soliciting Plate's customers for his own benefit. Having established that Plate does not have an adequate remedy at law, the public has a strong interest in ensuring Beiler, and those who are similarly situated, conduct their business affairs in a fair and forthright manner. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Napolitano*, 85 F.

Supp. 2d 491, 499 (E.D. Pa. 2000) (concluding the enforcement of a restrictive covenant through the issuance of a preliminary injunction against a former employee “serve[s] the compelling public interests of enforcing valid contractual provisions and protecting business investments”).

The impact of the preliminary injunction on LLNL Project 3 – a contract that rightfully belongs to Plate – cannot be ignored because the armor from this project is vital to protecting U.S. armed forces deployed in Iraq. For that reason alone, it would be improper for this Court to require AB Fab to immediately cease work on this project. The proper equitable remedy, therefore, is to impose a constructive trust on all revenue generated from LLNL Project 3 and order an accounting.

Accordingly, I enter the following:

ORDER

AND NOW, this 3rd day of January, 2006, Plate Fabrication & Machining, Inc.’s Motion for a Preliminary Injunction (Document 9) is GRANTED. It is hereby ORDERED that:

- (1) Allen Beiler is preliminarily enjoined, for a period of one year from April 11, 2005, from directly or indirectly engaging in (as principal, shareholder, partner, director, officer, agent, employee, consultant, or otherwise), or becoming financially interested in any business operating in the United States of America that is a competitor to Plate Fabrication & Machining, Inc. to the extent Beiler’s activities involve the solicitation of Plate Fabrication & Machining, Inc.’s customers or clients, including, but not limited to, Lawrence Livermore National Laboratories.
- (2) A constructive trust is imposed on all revenue that has been or will be realized from any and all violations of this Order.

- (3) An accounting must take place within thirty days of the date of this Order on all projects, contracts, and purchase orders undertaken in violation of this Order.
- (4) AB Fab & Machining LLC is permitted to continue performing its current contractual obligations for Lawrence Livermore National Laboratories through completion.
- (5) Plate Fabrication & Machining, Inc. must post security in the amount of \$100,000 pursuant to Fed. R. Civ. P. 65(c) within ten days of the date of this Order.¹²

BY THE COURT:

/s/ Juan R. Sánchez

Juan R. Sánchez, J.

¹²This amount is appropriate because it would enable Beiler to secure indemnification for any pecuniary injury that may occur during the period he is restrained from soliciting Plate's customers should it eventually be determined he was wrongfully enjoined. *Frank's GMC Truck Ctr., Inc. v. Gen. Motors Corp.*, 847 F.2d 100, 103 (3d Cir. 1988) (explaining the amount of security required under Federal Rule of Civil Procedure 65(c) "is left to the discretion of the court").