

# ARCHER & GREINER

## ATTORNEYS AT LAW

### CLIENT ADVISORY

May 4, 2004

## **NO MAW UNCERTAINTY -** *New Jersey Supreme Court Rejects Whistleblower Liability For Employers Who Terminate Employees For Refusing To Sign Non-Compete Agreements*

This morning, the New Jersey Supreme Court issued its much-anticipated opinion in *Maw v. Advanced Clinical Communications, Inc.*, and held that New Jersey employers who terminate at-will employees for refusing to sign non-compete agreements cannot be liable under the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 ("CEPA"), New Jersey's "Whistleblower Statute."

Today's decision reverses a controversial April 13, 2003 Appellate Division decision, which had potentially expanded CEPA's reach in a variety of employment contexts, and also imposed new and sweeping potential consequences on employers who sought to protect their confidential business information, customer relationships, and other legitimate business interests by requiring employees to sign non-compete agreements.

While today's decision in *Maw* is good news for New Jersey employers, it does not change the well-settled legal proposition that New Jersey Courts will enforce non-compete agreements only if they are reasonably tailored to protect an employer's legitimate business interests; impose no undue hardship on the employee; and are not injurious to the public. New Jersey employers should therefore continue to engage in careful planning with experienced counsel in drafting non-compete agreements and presenting them to their employees.

The *Maw* decision also contains language that may help employers avoid CEPA liability when employees allege that they were terminated in retaliation for complaining about "clear violations of public policy." While the decision will certainly be welcome in the employer community, which has watched with

growing alarm as the NJ courts have expanded the reaches of CEPA in the workplace, *Maw* does not roll back these previous expansions of the law. Employers must continue to carefully consider the possible application of CEPA when making any adverse employment decisions.

If you have any questions about today's decision or non-compete, non-solicitation and/or non-disclosure agreements in general, feel free to contact Robert T. Egan, Esquire, Chair of Archer & Greiner's Employment Competition and Information Protection Group at 856-354-3079, or [regan@archerlaw.com](mailto:regan@archerlaw.com), or any attorney at our firm with whom you have contact.