

Texas Supreme Court Holds Former ExxonMobil Executive Forfeited Restricted Stock

October 3, 2014

In the case of *Exxon Mobil Corp. v. Drennen*, the Texas Supreme Court held that New York law could be applied to determine the enforceability of a forfeiture provision contained in an executive compensation agreement between a Texas-based corporation and a Texas employee. A vice president of ExxonMobil had received restricted stock under an incentive plan, which included a New York choice of law provision. After he took a position with a competitor, ExxonMobil cancelled all of his outstanding shares of restricted stock, pursuant to a clause in the incentive plan which provided that outstanding shares would be forfeited if the executive engaged in “detrimental activity,” such as becoming employed by a competitor. The executive sued to recover the forfeited shares. Following judgment in favor of ExxonMobil at the trial court, the court of appeals reversed, holding that the choice of law provision was unenforceable because applying New York law in this case would cause enforcement of a covenant not to compete, in violation of Texas public policy because the covenant was not limited to time, geographic area, or scope of activity. In reversing the court of appeals, the Texas Supreme Court held that the detrimental activity clause was *not* a covenant not to compete, but rather was a forfeiture clause, which could be enforced without contravening Texas public policy. Consequently, the Court applied New York law to the agreement and ruled that the forfeiture clause was enforceable. This is a favorable result for large companies that operate in multiple states and that wish to include choice of law provisions in their incentive plans in order to have the terms of such plans applied uniformly to executives in different locations. A copy of the *Exxon Mobil Corp. v. Drennen* opinion can be found [here](#).