

## Case Summary

### Andrew Corp. v. Cassinelli

2009 U.S. Dist. LEXIS 22105 (N.D. Ill. 2009)

Non-Compliance with Employment Agreement Causes Competitor to Shoulder Costs

During an employment dispute in which an employer alleged a breach of a confidentiality agreement, the Northern District of Illinois found the defendant's forensic analysis insufficient for its failure to report a list of responsive files.

After the employee resigned from the plaintiff corporation and joined a competitor company, the plaintiff filed suit for breach of an employment agreement, under which the employee was prohibited from soliciting or servicing the plaintiff's customers or sharing confidential information with new employers. The employee claimed he had complied with the agreement and had maintained a record of all communications with the plaintiff's customers, whom he referred to other associates at the competitor company.

The court ordered limited discovery to determine if the employee and competitor had complied with the employment agreement. The competitor hired forensic investigators to create a forensic image of the employee's computer, which was then supplied to the plaintiff. In this forensic image, the plaintiff found seven emails containing its confidential information.

The forensic investigators then conducted a search of the competitor's email server and a limited number of office computers, using 26 keywords from the emails discovered on the employee's computer. The competitor asserted that the forensic investigators permanently deleted all 813 responsive documents discovered in its search.

#### Decision

The court found the competitor's assertion insufficient evidence to show compliance with the employment agreement. Because the list of 26 keywords was developed only by the competitor company and was not comprehensive, the court was not confident that the forensic analysis had recovered all responsive files. In addition, the forensics investigators should have provided a report of all responsive files, their locations, and whether they had been deleted. The court ordered a Special Master to oversee compliance with the agreement and ordered the competitor to pay all associated costs and attorneys' fees.