IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

MCGRIFF INSURANCE SERVICES, INC. **PLAINTIFF**

V. **CASE NO. 5:22-CV-5080**

JAMES MADIGAN;
ALEXANDER GRAMLING;
MELISSA ANN LINDE; and
ALLIANT INSURANCE SERVICES, INC. **DEFENDANTS**

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiff McGriff Insurance Services, Inc.'s Motion for Preliminary Injunction (Doc. 12). On October 11, 2022, the Court held an evidentiary hearing on the Motion, during which time McGriff's attorneys narrowed their request for injunctive relief to the following:

- enjoin Defendants James Madigan, Alexander Gramling, and Melissa Ann Linde from soliciting any additional McGriff Insurance Customers and from servicing any former McGriff Insurance Customers who moved their business to Alliant Insurance Services, Inc.—for the two-year period of time specified in the employees' restrictive covenants; and
- enjoin Defendant Alliant from assisting or facilitating its employees from soliciting McGriff Insurance Customers or servicing former McGriff Insurance Customers in violation of the employees' restrictive covenants.[1]

[1] McGriff's counsel stated during the hearing that McGriff's request for preliminary injunctive relief did not include confidentiality and trade secrets claims.

For the reasons stated herein, both requests for preliminary injunctive relief are **GRANTED IN PART AND DENIED IN PART**. Specifically, relief is granted only with respect to Madigan's and Gramling's contractual obligations and Alliant's tortious interference with those obligations. To the extent McGriff's Motion requests any other relief not specifically stated above, such request has now been **WITHDRAWN** and will not be discussed further.

I. BACKGROUND

Madigan, Gramling, and Linde were employees of McGriff as of January 2022. Madigan was a senior vice president with McGriff and the executive in charge of sales for the following four customers: Tyson Foods, WEHCO Media, Arisa Health, and Ouachita Behavioral Health and Wellness. In the insurance world, Madigan was described as a "producer" on these four customer accounts, which simply means he was paid by McGriff on a commission basis depending on the revenue generated by each customer. Gramling was paid on a salary basis. He was a mid-level account executive at McGriff who serviced three of Madigan's customers: Tyson Foods, WEHCO Media, and Arisa Health. Linde was also paid on a salary basis and was ranked below Gramling in the hierarchy of responsibility at McGriff. She was an account manager servicing three of Madigan's customers: WEHCO Media, Arisa Health, and Ouachita Behavioral Health and Wellness.

By the end of February 2022, all three employees had resigned from McGriff and were working for McGriff's competitor, Alliant. By the end of March 2022, all four of Madigan's McGriff customers listed above had switched their business to Alliant, where all three former employees continued servicing the customers' accounts, apparently without interruption. McGriff claims that the three employees were contractually restricted

from soliciting McGriff customers to join them at Alliant and from servicing the customers' accounts. McGriff also charges Alliant with tortiously interfering with the employees' contractual obligations to McGriff.

For purposes of the Motion for Preliminary Injunction—as amended during the hearing—McGriff argues it is likely to succeed on the merits of at least Count I and part of Count II of the Complaint. Count I alleges that Alliant tortiously interfered with certain contractual obligations owed by the former employees, while Count II alleges that the employees breached certain restrictive covenants contained in their employment contracts with McGriff.

To orient the reader, the Court first summarizes the timeline of relevant dates and events and then explains the parties' positions on the pertinent issues. The Court finds that the following facts were established by the credible evidence:

- 12/3/21: Tom Coyne forwarded Madigan's employment contract with McGriff to Tim Ward, an Alliant executive in charge of business development and hiring. (Pl.'s Hrng. Ex. 50). As of this date, Coyne was a senior account executive for Unum Insurance Company, an insurance carrier that sells group (employee) insurance products to customers through Brokers of Record ("BOR"). Coyne had been an executive with Unum for 28 years. However, by no later than December 2021, Coyne was actively planning to leave Unum, while at the same time discussing his future employment with Alliant—a direct competitor to McGriff in the group insurance brokerage industry. Tyson was a longtime Unum customer that Coyne managed for Unum on the insurer side. While

discussing employment with Alliant, Coyne was simultaneously courting Tyson and Madigan to make the move to Alliant with him.

- 12/10/21: Ward and David Osterhaus, a vice president for Alliant, had a videoconference call with Madigan, who was then working for McGriff. (Pl.'s Hrng. Ex. 51).
- 1/4/22: Ward scheduled a January 12th phone call between Madigan and Tom Adkin, Alliant's executive vice president and the managing director in charge of producers. (Pl.'s Hrng. Ex. 47).
- 1/10/22: Coyne begins employment with Alliant as a senior vice president and sales "producer."
- 1/12/22: At 9am Madigan had his telephone job interview with Adkin—which apparently went well, because at 457pm Alliant emailed Madigan an offer of employment. (Pl.'s Hrng. Ex. 48 & 24). The email explained the remaining steps in the hiring process. It was requested that Madigan sign and return the offer letter to indicate his acceptance of employment, and to then complete "on-boarding documents" via Alliant's HR portal within 5 days. Madigan was specifically directed, however, to "refrain from signing your Employment Agreement until your first day of employment." *Id*.
- 1/18/22: Gramling had a conversation with Donna Baker, a vice president for Alliant and then emails her a copy of his employment contract with McGriff. (Pl.'s Hrng. Ex. 12).
- 1/19/22: Madigan executes Alliant's offer letter, indicating his acceptance of employment with Alliant, with a start date of February 7, 2022. (Pl.'s Hrng. Ex.

24). Madigan continues working at McGriff without giving notice or otherwise informing McGriff that he has accepted employment with its direct competitor. Doc. 68, pp. 46-47.

- 1/25/22: While still employed by McGriff, Madigan sends an email from his personal email address to the personal email address of Lee Kidd, the vice president of benefits for Tyson Foods, listing "talking points" for an upcoming meeting with Elizabeth Chappelear, the senior director of benefits for Tyson Foods. The purpose of the email's "talking points" was to convince Chappelear to move Tyson's insurance business from McGriff to Alliant. (Pl.'s Hrng. Ex. 54). On the same day, Ward asked Madigan for his home address so that Alliant could ship Madigan a work computer. (Pl.'s Hrng. Ex. 19).
- 2/7/22: Madigan resigns his employment with McGriff, signs his employment contract with Alliant, and begins working as a producer for Alliant—on terms that included a $150,000 signing bonus and a $600,000 base salary. (Pl.'s Hrng. Exs. 21, 22). Not coincidentally, on this same day, Gramling submitted his employment application to Alliant. (Pl.'s Hrng. Ex. 13).
- 2/8/22: Gramling's application was met with an immediate job offer from Alliant. (Pl.'s Hrng. Ex. 14).
- 2/14/22: This date appears in a BOR that is signed by Kidd and Chappelear.[2] The BOR authorizes Alliant to service certain Unum insurance products sold to Tyson. (Pl.'s Hrng. Ex. 32).

[2] Although the BOR bears the February 14 date, it is not clear whether the BOR was signed on February 14th. This is because the Court infers that the BOR was drafted by Coyne—not Tyson—and the date at the top of the BOR may be influenced by its intended

- 2/15/22: Several significant events occurred this date. Kidd emailed the signed BOR to Coyne (Pl.'s Hrng. Ex. 31); Gramling started his first day of work at Alliant (Pl.'s Hrng. Ex. 17); and Madigan, Gramling, and Coyne a meeting with Chappelear at Tyson's home office (Pl.'s Hrng. Exs. 53, 55, 56).[3]
- 2/17/22: WEHCO moved its business to Alliant. (Pl.'s Hrng. Exs. 29, 30).
- 2/18/22: Linde resigned from McGriff to work for Aliant. (Pl.'s Hrng. Ex. 38).
- 3/17/22: Arisa moved its business from McGriff to Alliant. (Def.'s Hrng. Ex. 6).
- 3/28/22: Ouachita Behavioral Health and Wellness moved its business from McGriff to Alliant. (Def.'s Hrng. Ex. 5).
- 8/3/22: Madigan and Gramling admit in discovery responses that, in the months since beginning their employment with Alliant, they "serviced and/or [are] servicing" McGriff's "Former Customers," including Tyson Foods, WEHCO Media, and Arisa Health. (Pl.'s Hrng. Ex. 7 & 8). Madigan also admits to servicing Ouachita Behavioral Health and Wellness. *Id*.

Having made the above findings in the context of a chronological timeline, the Court will now make additional findings specific to the claims at issue and with the added context of the parties' positions.

A. Madigan and Gramling's Employment Contracts

There is no dispute that Madigan and Gramling entered into valid and enforceable employment contracts with McGriff that contain identical non-solicitation and non-

effective date. In other words, February 14th may or may not represent the date that Kidd and Chappelear signed it.

[3] What is not clear is the sequence of these events. Regardless, the Court finds the timing and significance of these three events to be no mere coincidence.

servicing provisions. *See* Pl.'s Hrng. Ex. 1, ¶ 9(a)(iv)–(v) (Madigan); Pl.'s Hrng. Ex. 2, ¶ 7(a)(iv)–(v) (Gramling). As relevant here, Madigan and Gramling agreed, that during their employment with McGriff—and for a period of two years following the end of their employment with McGriff—they would not "directly or indirectly:"

> (iv) Solicit, contact, . . . or call upon . . . any McGriff Insurance Customer . . . on [their] own behalf or on behalf of any Competitive Business . . ., if the purpose of the activity is for the Competitive Business . . . to solicit a McGriff Insurance Customer to purchase employee benefits insurance products or . . . services similar to those [they] sold on behalf of McGriff Insurance . . .; or
>
> (v) Accept, . . . on behalf of any Competitive Business . . . an offer or opportunity from any McGriff Insurance Customer . . . to . . . service employee benefit insurance products or services that are competitive with those sold by [Madigan/Gramling] on behalf of McGriff Insurance during the term of [their] employment with McGriff Insurance.

With respect to part (iv) of Madigan's contract, the Court finds there is strong evidence that Madigan directly solicited Tyson Foods to transfer its business to Alliant after Madigan accepted Alliant's job offer but before Madigan resigned from McGriff. *See* Pl.'s Hrng. Ex. 54, (the "talking points" email that Madigan sent to Kidd's personal email account). Yet, during written discovery after this suit was filed, Madigan responded (falsely) that he had not solicited any business from former McGriff customers and that he had not communicated with former customers about Alliant while still employed at McGriff.[4] Madigan doubled down at the hearing—denying under oath that he had

[4] Madigan may have thought the paper trail to prove otherwise had been deleted. What he apparently had not considered was that Kidd would forward Madigan's "talking points" email to Kidd's Tyson email account, which Tyson subsequently produced in response to subpoenaed third-party discovery. *Compare* Pl.'s Hrng. Ex. 54 *with* Pl.'s Hrng. Ex. 7, pp.7–8. (Madigan denies Requests for Admissions that he solicited business from any Former Customers on behalf of Alliant and further denies having communicated with Former Customers while still employed by McGriff). *See also* Doc. 68, pp. 48–54, 204.

communicated with Tyson about moving their business to Alliant. In closing argument, however, Madigan's counsel conceded that "at the end of the day, that email [from Madigan to Kidd at Tyson] is going to be classified as a solicitation, and it's unfortunate; it should not have been done by Jimmy Madigan. I don't dispute that. He shouldn't have done it." (Doc. 68, pp. 215–16).[5]

Gramling also testified that he did not directly solicit any former McGriff customers in violation of part (iv) of his contract. However, he agreed on the stand that—on his very first day of work at Alliant—he accompanied Madigan and Coyne to a meeting with Chappelear, the senior director of benefits for Tyson. Also on that same day, Kidd emailed the signed BOR for Tyson's Unum products to Coyne.[6]

As for part (v), which prohibits former McGriff employees from "servic[ing]" the insurance products of former McGriff customers, it is undisputed that Madigan is currently servicing the products of former customers Tyson Foods, WEHCO Media, Arisa Health,

---

[5] Counsel's admission streamlined the Court's findings here to some extent, but the Court would have come to the same conclusion without it. The plain language of the email from Madigan to Kidd reveals that Madigan was directly involved in soliciting Tyson's business on Alliant's behalf while still working for McGriff. Accordingly, Madigan's claim on the stand that he did not solicit was self-serving and not credible. The Court makes the same credibility determination as to Coyne, whose testimony was impeached multiple times on the stand by McGriff's counsel. Coyne ultimately admitted that prior to the date Tyson moved its business to Alliant, Coyne and Kidd had "[c]onversations" about the prospect of Madigan and Gramling coming to work at Alliant on Tyson's accounts. (Doc. 68, p. 142). In addition, Alliant submitted a declaration by Kidd that stated: "[N]either Jimmy Madigan, nor any of the former employees named in this lawsuit, solicited the business of Tyson in order to transfer it to Alliant" and "I interfaced exclusively with Tom Coyne in the process of transferring Tyson's business to Alliant." (Doc. 33-4, p. 2). In light of the email between Madigan and Kidd, these claims in Kidd's declaration are false.

[6] It is not entirely clear from the evidence exactly when the Tyson meeting involving Madigan and Gramling occurred in relation to the date and time that Kidd and Chappelear signed the BOR and Kidd emailed it to Coyne. *Supra*, p. 6, note 3. In any event, these events took place within a very small window of time.

and Ouachita Behavioral Health and Wellness, and Gramling is servicing the products of Tyson Foods, WEHCO Media, and Arisa Health. *See* Pl.'s Hrng. Ex. 7 & 8.

Madigan argues that even though he is servicing the products of several former McGriff customers, he would only be in violation of part (v) of his contract if he had "[a]ccept[ed]" his former customers' "offer[s]" to service their accounts. See Pl.'s Hrng. Ex. 1, ¶ 9. Madigan contends that only a designated BOR[7] or producer for an account may "accept" a customer's "offer" to service its insurance products. Madigan reasons that since Coyne is Alliant's broker of record and the named producer for all former McGriff Insurance Customers, Madigan can continue servicing these customers' accounts without violating part (v).

Gramling has a different argument. He believes that part (v) only potentially applies to former McGriff producers, like Madigan, but cannot possibly apply to mid-level account executives, like himself. Part (v) states that he cannot "service employee benefit insurance products or services that are competitive *with those sold by [himself]* on behalf of McGriff Insurance during the term of [his] employment with McGriff Insurance." (Pl.'s Hrng. Ex. 2, ¶ 7(a)(v)) (emphasis added). Gramling contends that since he never directly sold insurance products at McGriff, part (v) is inapplicable to him, and he is free to carry on servicing former McGriff customers at Alliant.

[7] Madigan testified at the hearing that a BOR is a document that gives a brokerage firm written authority to work with an insurance carrier on a customer's behalf. A "BOR letter" or "BOR authorization" is typically written on customer letterhead and identifies the name of the brokerage firm that may manage the customer's insurance policies. (Doc. 68, p. 58).

B. Linde's Employment Contracts

All parties agree that Linde is subject to a non-disclosure agreement ("NDA") between herself and McGriff's parent company, BB&T Insurance Holdings, Inc., which she testified to signing on September 18, 2018. *See* Pl.'s Hrng. Ex. 4 (unsigned copy). Any purported breach of the NDA by Linde is not the subject of McGriff's Motion for Preliminary Injunction. Instead, McGriff points to another contract Linde signed in 2014, when she was employed by Regions Insurance, Inc. *See* Pl.'s Hrng. Ex. 3.

According to the Complaint at ¶ 17, "Regions Insurance Group was acquired by McGriff's parent company, BB&T Insurance Holdings, Inc., in 2018" and then "merged into McGriff Insurance Services, Inc." (Doc. 2). The Court was never provided with any of the merger documents that explained which assets, liabilities, intellectual property, and/or ongoing contractual obligations were assigned, bought, or sold in the merger. Instead, the only details about the merger were provided at the hearing, through the testimony of Linde and Will Thames, McGriff's president in charge of insurance products and sales for Arkansas.

Thames testified that he joined McGriff in November 2018 after the company's merger with Regions. It was his understanding that Linde was still bound to the terms of her employment contract with Regions. Linde, however, contradicted Thames's account. She testified that her supervisor at Regions, Diane Gamble, informed her at the time of the merger with McGriff that she would no longer be subject to an employment contract and would only be required to sign an NDA, while Regions's producers and account executives would be required to enter into new employment contracts with McGriff.

If Linde's contract with Regions was in force during the time she worked for McGriff, she was prohibited under ¶ 8 from directly or indirectly soliciting, advising, consulting, or servicing "any insurance related business from any Insured Customer" for a period of two years after the date of her termination. (Pl.'s Hrng. Ex. 3). In other words, the disagreement concerns whether those restrictions continued after McGriff acquired Regions.

C. Alliant's Knowledge of the Employment Contracts

On December 3, 2021, Alliant's executives received a copy of Madigan's employment contract from Tom Coyne, who was recruiting Madigan to join him at Alliant. On January 18, Gramling emailed a copy of his employment contract to Donna Baker, another executive at Alliant.

On January 12, Alliant made Madigan an offer of employment, which Madigan accepted on January 19, with a start date scheduled for February 7. In between those two dates, on January 25, Madigan emailed "talking points" to Kidd at Tyson Foods, listing reasons why Tyson should move its business from McGriff to Alliant. *See* Pl.'s Hrng. Ex. 54.[8] Coyne testified at the hearing that Madigan's talking points parroted "a lot of

[8] For example, one talking point was that Alliant "value[d] the size and breadth of Tyson" and would allow "the current service team to dedicate significantly more time in support of Tyson and Tyson initiatives." Pl.'s Hrng. Ex. 54. Importantly, "the current service team" at that time was Madigan and Gramling—who were still working for McGriff. The email suggests that Madigan was aware that both he and Gramling, at least, would be moving to Alliant "to dedicate significantly more time [than McGriff did] in support of Tyson and Tyson initiatives." *Id.*

[Coyne's] words and what [Coyne] was saying to Lee [Kidd] about reasons to come to Alliant." (Doc. 68, p. 160).

Tom Adkin, the managing director of Alliant in charge of producers, testified in his deposition that Alliant's business practice is to ask all prospective new hires for a copy of their employment contracts. In Madigan and Gramling's case, Alliant hired an Arkansas attorney to review their employment contracts with McGriff. (Doc. 69-2, p. 23). Next, "a group" of Alliant executives and "internal and outside counsel" ordinarily participate in a phone call to "discuss[] the review [of the agreements]" and decide "next steps . . . on a particular candidate." *Id.* at p. 24. According to Mr. Adkin, both Madigan and Gramling were required to sign a "departure protocol" that outlined exactly what Alliant believed they "should and shouldn't do" when working for Alliant so as to "avoid situations where there could be misunderstandings between [the] current employer and Alliant." *Id.* at p. 21. Adkin further testified that Madigan and Gramling were advised by Alliant about "what their obligations to their current employer are." *Id.* at p. 26. For these reasons, the Court finds that Alliant was well aware of Madigan's and Gramling's restrictive covenants prohibiting the solicitation and servicing of McGriff's customers.

II. LEGAL STANDARD

In evaluating a request for a preliminary injunction, the Court considers the following factors: (1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties; (3) the probability that movant will succeed on the merits; and (4) the public interest. *Dataphase Sys. Inc. v. CL Sys.*, 640 F.2d 109, 114 (8th Cir. 1981). Preliminary injunctive relief is an extraordinary remedy, and the party seeking such relief bears the burden of

proving that the balance of the equities is in its favor. *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003). "While no single factor is determinative, the probability of success factor is the most significant." *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013) (internal quotation marks and citations omitted).

The Court will begin its discussion by evaluating McGriff's probability of success on the merits on Count II for breach of contract, followed by Count I for tortious interference. Then the Court will consider the other three *Dataphase* factors in turn.

III. DISCUSSION

A. Probability of Success on the Merits

When assessing whether to issue a preliminary injunction, the Court must consider whether the movant has put forth enough evidence to show it has at least a "fair chance of prevailing" on the merits of its claims. *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008) (en banc). A "fair chance" under *Dataphase* means "something less than fifty percent." *Id.* at 730; *see also Fennell v. Butler*, 570 F.2d 263, 264 (8th Cir. 1978) ("If the balance tips decidedly towards the plaintiffs and the plaintiffs have raised questions serious enough to require litigation, ordinarily the injunction should issue.").

1. Breach of Contract—Count II

As previously stated, Madigan and Gramling do not contest that the restrictive covenants in their respective employment contracts are enforceable inasmuch as they protect valid interests, contain a reasonable scope, and involve a reasonable two-year time limit. *See Girard v. Rebsamen Ins. Co.*, 14 Ark. App. 154, 159–60 (1985). Further, there is no dispute that Madigan violated part (iv) of his contract, as counsel conceded

the point on his behalf during the evidentiary hearing. Gramling, on the other hand, claims there is no evidence he directly violated part (iv). As for part (v), both Madigan and Gramling contend they are not currently violating the non-servicing provisions because they believe part (v)'s restrictions do not apply to them at all, either due to the nature of their current jobs at Alliant or their former jobs at McGriff.

Linde's defense to the breach of contract claim is fundamentally different. She argues there is no evidence that her employment contract with her former employer, Regions, may be enforced by McGriff pursuant to a valid assignment of rights.

a. Madigan and Gramling

The Court finds that, based on the evidence presented at the preliminary injunction hearing, McGriff has met its burden to show a probability of success on the merits of its claim that Madigan and Gramling breached parts (iv) and (v) of their employment contracts with McGriff by directly or indirectly soliciting former McGriff Insurance Customers and by servicing the former customers' insurance products at Alliant.

As previously discussed, Madigan and Gramling are bound by the identical non-solicitation and non-servicing restrictions in their employment contracts with McGriff. There is sufficient evidence in the record to show it is likely both Madigan and Gramling "directly or indirectly" "[s]olicit[ed], contact[ed], call[ed] upon with the intent of doing business with, or divert[ed] any McGriff Insurance Customer . . . on [his] own behalf or on behalf of any Competitive Business . . . to purchase employee benefits insurance products" in violation of part (iv) of the non-solicitation portion of their contracts. *See* Pl.'s Hrng. Ex. 1, ¶ 9(a); Pl.'s Hrng. Ex. 2, ¶ 7(a).

Madigan sent an email to Kidd at Tyson on January 25, 2022, when he was still employed at McGriff, setting forth talking points Kidd should present to Chappelear at Tyson to convince her to move Tyson's business to Aliant. These talking points used "a lot of [Coyne's] words," (Doc. 68, p. 160), which strongly suggests that Coyne (by then an Alliant executive) and Madigan agreed on these talking points before Madigan presented them to Kidd. This email is evidence of direct solicitation by Madigan.

In Gramling's role as McGriff's account executive, he had the most day-to-day contact with Tyson regarding the administration and servicing aspects of the products brokered by McGriff. Thus, as a practical matter, Gramling's institutional knowledge would be key to insuring a smooth transition of Tyson's business from McGriff to Alliant. This is most likely why, on his first day of work at Alliant, he accompanied Coyne and Madigan to meet with Chappelear, Tyson's benefits executive. The evidence shows that on the same day of this meeting, Kidd emailed the signed BOR for Tyson's Unum products to Coyne at Alliant. Accordingly, McGriff has established there is at least a fair chance that Gramling directly or indirectly breached the non-solicitation provision of his agreement at part (iv).

There is also sufficient evidence in the record to show that both Madigan and Gramling are currently violating part (v) of their employment contracts, which bar them from servicing former customers of McGriff for a period of two years from the date of their separation from McGriff.

Arkansas law[9] on the interpretation of contracts is summarized as follows:

> [T]he intention of the parties is to be gathered, not from particular words and phrases, but from the whole context of the agreement. In fact, it may be said to be a settled rule in the construction of contracts that the interpretation must be upon the entire instrument, and not merely on disjointed or particular parts of it. The whole context is to be considered in ascertaining the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause. Every word in the agreement must be taken to have been used for a purpose, and no word should be rejected as mere surplusage if the court can discover any reasonable purpose thereof which can be gathered from the whole instrument. The contract must be viewed from the beginning to end, and all its terms must pass in review, for one clause may modify, limit or illuminate the other. Taking its words in their ordinary and usual meaning, no substantive clause must be allowed to perish by construction, unless insurmountable obstacles stand in the way of any other course. Seeming contradictions must be harmonized, if that course is reasonably possible. Each of its provisions must be considered in connection with the others and, if possible, effect must be given to all. A construction which entirely neutralizes one provision should not be adopted if the contract is susceptible of another which gives effect to all of its provisions.

First Nat. Bank of Crossett v. Griffin, 310 Ark. 164, 170 (1992) (quoting *Fowler v. Unionaid Life Ins. Co.,* 180 Ark. 140, 144–145 (1929)).

Madigan's and Gramling's respective interpretations of part (v) are strained and unconvincing. Madigan believes that as long as he is not specifically identified on the BORs for former McGriff customers, he can continue to service those customers' accounts at Alliant. Gramling claims part (v) only applies to McGriff producers who were named on their customers' BORs. Both of these interpretations assume—wrongly—that McGriff's and Alliant's BORs identify individual brokers rather than brokerage firms. Furthermore, Madigan's and Gramling's interpretations of part (v) disregard the parties' reasons for entering into the restrictive covenants in the first place.

[9] Paragraph 16 of the employment contract states that Arkansas substantive law governs any dispute about the contract's interpretation.

In particular, Madigan's contract at ¶ 10 explains that "Section[] 9," which contains the non-solicitation and non-servicing provisions, is "fair and necessary to protect the interests of McGriff Insurance and to prevent Employee from unfairly taking advantage of contacts established during employment." (Pl.'s Hrng. Ex. 1, ¶ 10(c)). Similarly, Gramling's contract states that the intent of the parties is:

> (ii) to safeguard [McGriff's] proprietary and confidential information; (iii) to protect [McGriff] against competitive activities by Employee upon termination of employment with McGriff Insurance; and (iv) to protect [McGriff's] investment in training, customer relationships, and other legitimate business interests.

(Pl.'s Hrng. Ex. 2, p. 1).

The Court finds that Madigan's restrictive reading of the non-servicing paragraph of his contract at part (v) would fail to give effect to the parties' mutual understanding of the contract's purposes and goals. Further, Madigan's interpretation is contrary to the plain meaning of the contract's terms. Part (v) restricts Madigan from "[a]ccept[ing], . . . on behalf of any Competitive Business . . ., an . . . opportunity from any McGriff Insurance Customer . . . to . . . service employee benefit insurance products that are competitive with those sold by Employee on behalf of McGriff Insurance during the term of Employee's employment with McGriff Insurance." (Pl.'s Hrng. Ex. 1, ¶ 9(a)(v)). Madigan asks the Court to believe he did not "accept" his former customers' "offer or opportunity" to service their accounts at Alliant—*even though he is actually servicing their accounts*—because, supposedly, only Tom Coyne's name appears on the former McGriff customers' BORs. This is plainly false: *Alliant's* name—not Coyne's—appears on all the BORs for former McGriff customers. *See* Pls Hrng. Exs. 30 & 32; Def.'s Hrng. Exs. 5 & 6. And Madigan did not recuse himself from these accounts—he affirmatively accepted the opportunity to

service former McGriff customers on Alliant's behalf. Alliant is a Competing Business. Madigan is clearly in breach and no amount of clever *post hoc* parsing can escape that obvious conclusion.

As for Gramling's interpretation of part (v), he fails to account for the fact that the restrictions apply to all of his "direct[] or indirect[]" acts "during [his] employment [at McGriff] and for a period of two (2) years following the date of termination." (Pl's Hrng. Ex. 2, ¶ 7(a)(v)). The Court does not interpret part (v) to mean that only producers at McGriff who directly "sold" insurance products are bound. The more reasonable interpretation of part (v) is that Gramling, as the account executive for various McGriff customers, indirectly sold insurance products to these customers by virtue of the fact that he worked for McGriff—the entity that ultimately sold the products. Moreover, if Gramling is not included in part (v), this would tend to neutralize the effect of the earlier portions of his contract that manifest his and McGriff's mutual desire to protect McGriff against "competitive activities by [Gramling] upon termination of [Gramling's] employment with McGriff" and preserve for a two-year period McGriff's investment in Gramling in terms of "training, customer relationships, and other legitimate business interests." (Pl.'s Hrng. Ex. 2, p. 1). Accordingly, there is a likelihood that Gramling, like Madigan, is in breach of part (v) of his employment contract because he services the insurance products of former McGriff Insurance Customers.

b. Linde

McGriff failed to present sufficient evidence—at least at this stage of the litigation—to show that Linde's employment contract with Regions was assigned to McGriff during the companies' 2018 merger. None of the merger documents were presented, so there

is no proof about what assets or liabilities, including contractual obligations, were assigned during the merger. McGriff surely could have presented this information to the Court, had it suited McGriff's purposes. Further, even though Thames testified it was his understanding that Linde's Regions employment contract was assigned to McGriff in the merger, he offered no facts to support this understanding; in other words, he did not testify about his conversations with others at McGriff or about merger documents he read to form this understanding. Linde, on the other hand, testified about a conversation she had with her Regions supervisor that led Linde to believe her contract was not assigned in the merger. Finally, Linde explained that the only Regions employees who were required to sign new employment contracts with McGriff were producers and account executives. The Court finds Linde's account more credible than Thames's, at least in part, because Madigan, a former Regions producer, was required to sign a new employment contract with McGriff.

2. Tortious Interference—Count I

McGriff asserts it has at least a fair chance of prevailing on the merits of its claim that Alliant tortiously interfered with the former employees' contractual relationships with McGriff. The tortious interference claim is only worth analyzing with respect to Madigan and Gramling, since the Court has already determined that McGriff failed to show it was likely to succeed in proving that the non-solicitation and non-servicing provisions of Linde's 2014 contract with Regions are enforceable by McGriff.

A successful tortious interference claim requires proof of: (1) the existence of a valid contractual relationship, (2) knowledge of the relationship on the part of the interfering party, (3) intentional and improper interference that induces or causes a breach

or termination of the relationship, and (4) resulting damage to the party whose relationship has been disrupted. *Baptist Health v. Murphy*, 2010 Ark. 358, 15 (2010). Here, McGriff has provided evidence to support each of the four elements, such that the Court is persuaded McGriff has a fair chance of prevailing on the merits.

First, it is undisputed that McGriff entered into valid employment contracts with Madigan and Gramling. Second, Alliant received copies of their contracts on December 3, 2021 (Madigan), and January 18, 2022 (Gramling). Tom Adkin testified in his deposition that Alliant's normal hiring process required Madigan and Gramling, as prospective new hires, to provide Alliant with a copy of their employment contracts. This is typically done, according to Adkin, "to make sure that [the prospective employees] understand our expectations of . . . how they should be treating their current employer on exit" and to "ensure that they do not run afoul of their employment agreements with their current employers." (Doc. 69-2, p. 54). Adkin also testified that Alliant "educate[d] them on what their . . . obligations are" to McGriff after joining the team at Alliant. *Id.* at p. 26.

As previously discussed, Madigan's "talking points" email he sent to Kidd on January 25, 2022, explained several reasons why Tyson should move its business from McGriff to Alliant. *See* Pl.'s Hrng. Ex. 54. From the evidence of record, it is clear that Coyne (by then an Alliant executive) and Madigan were jointly discussing ways to solicit Tyson's business in violation of Madigan's restrictive covenants well before Madigan quit his job at McGriff. Further, Alliant was aware before hiring Madigan and Gramling that they were subject to non-servicing provisions in their contracts. Suffice it to say from the

above discussion, there is a significant likelihood that Alliant intentionally and improperly interfered with enforceable contractual relationships.

As for the fourth element of the claim for tortious interference, the testimony of Will Thames indicates that McGriff has suffered and will continue to suffer both monetary and non-monetary damages as a result of Alliant's tortious interference. The Court therefore concludes that McGriff has a likelihood of success on the merits on this claim.

B. Threat of Irreparable Harm

The Court's initial impression of Alliant's business development model—at least from the evidence and the briefing—is that it evaluates its competitor's most lucrative customers in a given market then recruits the competitor's employees who have existing relationships with those customers. Next, Alliant encourages the prospective new hires to solicit their customers' business; the customers are assured that if they switch to Alliant, their trusted team of agents will have also switched to Alliant and will be waiting in the wings to provide great service. Once the transfer of business and personnel is complete, Alliant waits for its competitor to file suit.[10]

At the hearing, Alliant's legal team essentially invited to Court to enjoin future solicitation of McGriff customers and employees. This strategy makes sense. After all, by the time McGriff filed this lawsuit, Alliant had already poached all the customers and employees it wanted. Yet, Alliant vigorously opposes enjoining Madigan and Gramling from servicing former McGriff customers. That also makes sense. After all, McGriff's customers switched to Alliant, at least in part, because they were assured Madigan and Gramling would continue to service their accounts.

[10] Alliant has faced these very same allegations many time before. *See* Doc. 2, ¶ 5.

Alliant's strongest argument against issuing a preliminary injunction is that McGriff's harm related to Alliant's servicing of former McGriff customers is strictly monetary in nature. "Irreparable harm occurs when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages." *Gen. Motors Corp. v. Harry Brown's, LLC*, 563 F.3d 312, 319 (8th Cir. 2009). However, it is possible that a prevailing party may be entitled to both damages and equitable injunctive relief. *See Glenwood Bridge, Inc. v. City of Minneapolis*, 940 F.2d 367, 371 (8th Cir. 1991).

Thames testified that McGriff provides a variety of specific resources to its employees that enable them to provide the highest quality of service to customers. *See* Doc. 68, p. 71. In addition, Thames testified that the reason why McGriff requires employees to sign restrictive covenants, including the one prohibiting agents from servicing former McGriff customers for a two-year period, is because McGriff employees develop over the course of many years specialized information about their customers and targeted ways to provide them service. For example, Tyson Foods and WEHCO Media were customers of McGriff's for decades. The institutional knowledge McGriff developed on how best to service Tyson, WEHCO, and other long-standing customers was passed along from employee to employee through the years. This knowledge represents value that Alliant gained and McGriff lost, and that value cannot be easily converted into money damages. Thames explained:

> We [at McGriff] know how price sensitive [our customers] are so that we can design products that fit that company's appetite, culture, the goals that they are trying to accomplish. We would understand things within a company even down to the decision-making structure; what is the history with that company, what products are they most likely to purchase, what has been discussed in the past, how are the decisions made, what is the best way to

> implement them, what is the cadence of the communication, what format of the data would these people like to have. All of the backwork, so there's maybe a final product we may give to a customer. We may have a tremendous amount of proprietary and confidential information that went into the analysis of the data and then knowing how to present that to the client.

Id. at p. 72.

Finally, Thames testified that it typically takes months, if not years, for a large customer like Tyson Foods or WEHCO Media to move its insurance business to a new broker; and, in general, the larger the customer's business, the longer it will take for the customer to develop the comfort level to change brokers. Thames maintained that Madigan and Gramling had extensive historical and strategic knowledge about Tyson, in particular, that they only gained through their work with McGriff. *Id.* at p. 104.

In stark contrast to Thames's testimony, Coyne claimed he managed to move Madigan's largest, most lucrative customers—who were also the most lucrative customers of McGriff's in the state of Arkansas—to Alliant within a matter of weeks without Madigan, Gramling, or Linde being "involved in the process at all." *See id.* at pp. 136–37. Coyne testified, for example, that he had a personal relationship with Kidd at Tyson, and he convinced Tyson to move to Alliant based solely on this relationship. However, the record reflects that before Tyson named Alliant as the BOR, Madigan sent Kidd the "talking points" email; and on the same day Kidd emailed the signed BOR to Coyne, Madigan and Gramling met personally with Chappelear at Tyson's offices. It is likely Coyne's relationship with Kidd was not the only reason Tyson decided to move its business to Alliant after spending decades with McGriff.

With respect to other former McGriff customers, Coyne admitted he lacked the same kind of personal relationship with the customers' principals as he did with Kidd at

Tyson. Coyne testified he had a distant personal connection with WEHCO Media because he had "worked with them in the past with Jimmy [Madigan]'s dad, Steve," who retired from the insurance business. *Id.* at p. 138. Despite the fact that WEHCO Media was Madigan's long-term customer, Coyne claimed Madigan had no idea that Coyne was actively soliciting WEHCO's business—though Coyne noted he was "sure [he] talked to [Madigan] afterwards" about it. *Id.* at p. 172. As for Arisa Health, Coyne maintains he won that business from McGriff by placing a "cold call" to Ruth Dover, the company's director of benefits. *Id.* at p. 173. Coyne testified he could not remember one way or another how he managed to acquire the business of Ouachita Behavioral Health and Wellness from McGriff. *See id.* at p. 174.

The Court is well persuaded, based on Thames's credible testimony and Coyne's less than credible testimony, that at least one factor that facilitated Alliant gaining the business of Madigan's largest and most lucrative McGriff customers was Alliant's assurance that Madigan, Gramling, and (to a much lesser extent) Linde would continue to service the customers' accounts at Alliant—without interruption. Accordingly, if Madigan and Gramling are permitted to service their former McGriff customers in violation of their employment contracts, McGriff will suffer harms that cannot readily be quantified and reduced to money damages.

Arkansas courts interpreting restrictive covenants have enforced them when they are reasonable in scope and grow out of an employment relationship that provided specialized training or made available confidential business information or trade secrets. *See Burleigh v. Center Point Contractors, Inc.*, 2015 Ark. App. 615, 7 (2015). The restrictive covenants are enforceable in the case at bar because they necessarily protect

"a legitimate business interest . . . [in] the development of a personal or confidential relationship between [the employer's] agents and the customers they service." *Girard*, 14 Ark. App. at 161. Preliminarily enjoining Madigan and Gramling from violating the non-solicitation and non-servicing provisions of their employment contracts will stop McGriff from suffering actual and threatened loss of customers, income, and employee capital that will be nearly impossible to value economically. McGriff also will continue to suffer irreparable harm if Alliant is not enjoined from tortiously interfering with Madigan's and Gramling's restrictive covenants.

C. Balance of the Harms

Alliant's representatives persuaded the Court during the evidentiary hearing that McGriff's former customers do not comprise a significant percentage of Alliant's revenue stream. Coyne emphasized in his testimony that Madigan has already brought in two new customers since he started at Alliant, and those new customers' revenue streams combined are roughly equivalent to that of Tyson Foods—McGriff's most lucrative customer. Moreover, Coyne testified that he, and he alone, convinced all of McGriff's biggest customers to move to Alliant, and that he is the sole producer on all these accounts. If Alliant is to be believed, then Coyne, Linde, and other Alliant personnel can handle servicing these customer accounts for the next two years without Madigan's and Gramling's assistance. This will preserve McGriff's benefit of the bargain and lessen the

irreparable harm McGriff will suffer as a result of Madigan's and Gramling's breaches and Alliant's tortious interference.

D. Public Interest

The contracts at issue here do not contain non-competition provisions; in other words, Madigan and Gramling can continue to work in this industry and be employed at Alliant. Further, the restrictive covenants are not overly restrictive; a two-year prohibition on soliciting and servicing former customers is reasonable by Arkansas standards. *See, e.g., Girard,* 14 Ark. App. at 160. There is no prohibition on Alliant soliciting McGriff's current customers—provided Madigan and Gramling are not directly or indirectly involved—and there is no barrier to McGriff's current customers switching their business to Alliant—provided Madigan and Gramling do not service their accounts at Alliant for the time periods specified in their contracts. Finally, the public interest is generally served when parties are required to uphold their reasonable contractual obligations.

IV. CONCLUSION

For the reasons stated, **IT IS ORDERED** that Plaintiff McGriff Insurance Services, Inc.'s Motion for Preliminary Injunction (Doc. 12) is **GRANTED IN PART AND DENIED IN PART with respect to the relief requested at the evidentiary hearing on October 11, 2022**. All other requests for relief in Plaintiff's Motion and Brief are considered **WITHDRAWN**.

IT IS THEREFORE ORDERED that during the pendency of this litigation Defendants James Madigan and Alexander Gramling are **ENJOINED** from soliciting the business of, contacting, calling upon, selling to, trading with, or servicing the insurance products of any company or individual that was a former McGriff Insurance Customer

during the two-year period before Madigan and Gramling terminated their employment with McGriff, as provided in ¶ 9(a)(iv)–(v) of Madigan's contract and ¶ 7(a)(iv)–(v) of Gramling's contract.

IT IS FURTHER ORDERED that for the pendency of this litigation Defendant Alliant Insurance Services, Inc. is **ENJOINED** from tortiously interfering with Madigan's and Gramling's obligations to McGriff as set forth in their employment contracts. Alliant is prohibited from assisting or facilitating McGriff's current of former employees with the solicitation or servicing of "McGriff Insurance Customers" in violation of the employee's restrictive covenants.

McGriff's request for preliminary injunctive relief as to former employee Melissa Linde is **DENIED** for the reasons stated.

IT IS SO ORDERED on this 9th day of December, 2022.

TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE