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CLERK OF DISTRICT COURT

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Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**WGI HEAVY MINERALS, INC.,** )

*Plaintiff,* )

vs. )

**LINDSAY E. GORRILL, an individual.** )

*Defendant.* )

Case No. **CV 2006 384**

**MEMORANDUM DECISION AND  
ORDER GRANTING TEMPORARY  
RESTRAINING ORDER**

**I. INTRODUCTION AND BACKGROUND.**

Lindsay E. Gorrill (Gorrill) was the President and Chief Executive Officer of WGI Heavy Minerals, Inc., (WGI) until his employment was terminated by WGI on April 17, 2005. Gorrill signed a written employment agreement with WGI on April 17, 2003. Gorrill's employment agreement included a covenant not to compete and a promise not to sue or disclose confidential or trade secret information of WGI.

WGI's business, in large part, is the global marketing and sale of garnet. High quality garnet of the types produced and sold by WGI has a high degree of hardness, a high specific gravity, and is environmentally safe. Because of these characteristics, the primary industrial uses for garnet are as a mineral for abrasive sandblasting, waterjet cutting, water filtration, as well as a variety of other industrial applications.

WGI claims that they have learned that Gorrill has set up a company, Precision Industrial Supply, and through this company Gorrill is competing with WGI directly

himself or indirectly through others in the sale of garnet.

WGI also claims that they have learned that Melanie Delfakis, a former employee who terminated her employment with WGI in September 2005, now works for Gorrill at Precision Industrial Supply. WGI argues that Delfakis was a key and important employee of WGI because she had access to, and detailed knowledge about, confidential information of WGI regarding how to set up business operations to market and sell Garnet, and she also developed extensive and personal relationships with important WGI customers while employed at WGI.

WGI seeks an order restraining or enjoining defendant Gorrill, directly or with the assistance of Delfakis or any other employee, agent or representative, from operating Precision Industrial Supply or any other business in competition with WGI, with such temporary injunctive relief to remain in place until a hearing is completed on WGI's motion for preliminary injunction. WGI argues Gorrill's non-compete agreement should be enforced, that Gorrill must be enjoined from misappropriating WGI trade secrets and that there has been immediate and irreparable damage to WGI. It is for these reasons that WGI believes that a temporary restraining order should be issued.

## **II. ANALYSIS.**

On January 17, 2006, WGI filed its Complaint for Injunctive Relief and Damages, its Motion for Temporary Restraining Order, supporting affidavits of Tyler Haugen, Greg Emerson and William Meyerholtz and its Memorandum in Support of Temporary Restraining Order. Service of these documents was made upon Gorrill on January 17, 2006, through Gorrill's attorney Kacey Wall, as is evidenced by the Affidavit of Service and Acceptance of Service filed January 19, 2006. On January 17, 2006, WGI filed a Notice of Hearing on its Motion for Temporary Restraining Order. The hearing was

noticed before assigned District Judge John P. Luster, to be held on January 23, 2006. On January 20, 2006, Gorrill disqualified Judge Luster without cause pursuant to I.R.C.P. 40(d)(1), and on January 24, 2006, the matter was re-assigned to the undersigned. On January 24, 2006, WGI filed the affidavit of John Steven Cramer and served a copy of such upon Gorrill's counsel. Also, on January 24, 2006, counsel for WGI filed an Amended Notice of Hearing on Plaintiff's Motion for Temporary Restraining Order, to be heard before the undersigned on February 3, 2006. On February 2, 2006, Gorrill filed his "Response to Motion for Temporary Restraining Order and to Memorandum in Support of Motion for Restraining Order." Attached to that response are the Affidavits of Lindsay Gorrill and Melanie Delfakis. (It is unknown why these were attached to the response rather than filed separately).

The Idaho Supreme Court in *Lawrence Warehouse Co. v. Rudio Lumber Co.*, 89 Idaho 389, 395, 405 P.2d 634 (1965) indicated there should be a hearing where the injunction "encompasses the entire controversy between the parties." Any injunction in this case could encompass the "entire" controversy or nearly the entire controversy. Justice Thomas in *Mountain States Tel. & Tel Co. v. Jones*, 75 Idaho 78, 267 P.2d 634 (1954), wrote:

The discretionary power vested in the court to grant injunctive relief in such cases is not an arbitrary one; it is a sound and legal discretion which should be exercised with great caution; the requirements of caution and sound legal discretion can only be had upon a full hearing; it is indeed a delicate power which requires an abundance of caution, deliberation and sound discretion based upon a full disclosure of the facts which demonstrate with reasonable certainty and persuasiveness the probability of confiscation; it cannot be exercised soundly or with caution without hearing all the relevant facts on the issues joined with reference to the probability of confiscation.

75 Idaho at 86, 267 P.2d at 638. Cited in *Lawrence Warehouse Co. v. Rudio Lumber Co.*, 89 Idaho at 395, 405 P.2d at 640.

The Court heard argument from counsel for both parties on February 3, 2006, but took the matter under advisement since: 1) the Court had only received Gorrill's submissions immediately prior to the hearing and 2) the Court desired further briefing on the issue of non-compete agreements as to the top officer of a company and on the issue of whether Gorrill had a part in the drafting of the covenant, and if so, the legal implications of such role. The parties filed simultaneous briefing on February 13, 2006. Additionally, on February 13, 2006, WGI filed the Affidavit of Keller W. Allen (which consists of text of case authority cited by WGI) and the Affidavit of Edward W. Kok (the current attorney for WGI [but not appearing for WGI in the present litigation] and the attorney for WGI when Gorrill was president and CEO of WGI). Gorrill attached the Affidavit of Lindsay Gorrill (this one dated February 13, 2006, and attached to briefing as well, rather than filed). The Court has reviewed the briefing and affidavits, and the extensive attachments to those affidavits. Accordingly, the matter is now at issue.

A temporary restraining order may be granted if it appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the party's attorney can be heard in opposition, and by complaint or affidavit that the continuance of some act during the litigation would produce great or irreparable injury to the plaintiff. I.R.C.P. 65(b). WGI has not sought a TRO without notice to Gorrill. Since a hearing has been had, there essentially can be no "Temporary Restraining Order". See *Rowland v. Kellogg Power & Water Co.*, 40 Idaho 216, 233 P. 869 (1925). Accordingly, this will be analyzed as a motion for a preliminary injunction under Idaho Rule of Civil Procedure 65(e), and not a motion for temporary restraining order under Idaho Rule of Civil Procedure 65(b). Idaho Rule of Civil Procedure 65(e) provides a preliminary

injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.

(3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

I.R.C.P. 65(e)(1-3). (subparts 4-6 are not applicable to this case). The Court appreciates that this is a matter within the sound discretion of the Court. *White v. Coeur d'Alene Big Creek Mining Co.*, 56 Idaho 282, 55 P.2d 720 (1936); *Harris v. Cassia County*, 106 Idaho at 517, 681 P.2d at 992 (1984).

WGI argues it is entitled to enforcement of Gorrill's covenant not to compete and that Gorrill should be immediately restrained from further violation of the covenant. WGI claims if Gorrill is allowed to continue to wrongfully compete with WGI in violation of his Employment Agreement, WGI will suffer great and irreparable injury.

WGI claims Gorrill and his company, Precision Industrial Supply, as well as WGI's former employee Melanie Delfakis, are using confidential information and trade secrets to the detriment of WGI in violation of both the ITSA (Idaho Trade Secrets Act) and Gorrill's employment agreement, which WGI claims is valid under Idaho Law. WGI argues that both Gorrill and Delfakis have intimate and detailed knowledge about all of the costs and strategic pricing of garnet by WGI. Both had access to and helped develop WGI's price lists, discounting strategies, and shipping costs. Both individuals know WGI's sales and marketing strategies and processes, including the strengths and

weaknesses of WGI's products and ability to procure and supply various grades of garnet. WGI claims that none of this information is publicly disclosed or available outside of WGI, and it is confidential information that is proprietary and critical to WGI's success.

The covenant not to compete reads as follows:

Employee agrees that he will not, any time within the one (1) year period immediately following the termination of this Agreement, directly or indirectly engage in, or have any interest in any person, firm, corporation or business (whether as an employee, officer, director, agent, security holder, creditor, consultant or otherwise) that engages in any activity in any country in which the Company conducts business, which activity is the same as, or similar to, or competitive with any activity then engaged in by the Company (or any successor of the Company) in said territory.

Gorrill concedes that the one year limitation is reasonable. Response to Motion for Temporary Restraining Order and to Memorandum in Support of Motion for Temporary Restraining Order, p. 5. Most of Gorrill's argument is focused on the geographical limitation being overly broad. *Id.*, pp. 5-8. The Court is not persuaded by this argument for several reasons. No one on earth knew more about the countries in which WGI conducted business than Gorrill, so in signing the agreement, Gorrill knew exactly where he would be precluded from competing for a one-year period. The Court has read the cases cited by WGI regarding geographical scope of Gorrill's covenant not to compete. This Court finds the geographic scope reasonable due to the fact that the *time* limitation is only one year, due to the fact that WGI conducts business worldwide, yet the specific countries it engages in (and thus Gorrill is precluded from) is a fairly low number of countries (only the United States, India and Germany are referenced in WGI's Memorandum in Support of Motion for Temporary Restraining Order, pp. 2-3; Affidavit of William Meyerholtz), and due to WGI having a legitimate business interest to be protected. Plaintiff's Supplemental Memorandum in Support of Motion for Temporary Restraining Order, pp. 9-12. The Court

is particularly persuaded by *Sigma Chemical Co. v. Harris*, 586 F.Supp. 704 (D.C. Mo. 1984) and *Continental Group, Inc. v. Kinsley*, 422 F.Supp. 838, 843 (D.Conn. 1976).

The Court also finds the language of the covenant not to compete (...“engages in *any activity* in any country in which the Company conducts business, which activity is *the same as, or similar to, or competitive with...*”) is not ambiguous. The Court has read and is persuaded by the authority cited by WGI: *Blue Ridge Anesthesia and Critical Care, Inc. v. Gidick*, 239 Va. 369, 373, 389 S.E.2d 467, 469 (Va. 1990); *Roanoke Engineering Sales Co. v. Rosenbaum*, 223 Va. 548, 553, 290 S.E.2d 882, 885 (Va. 1982), and *Logic Associates, Inc. v. Time Share Corp.*, 124 N.H. 565, 474 A.2d 1006 (N.H. 1984), in addition to *Sigma*. Plaintiff’s Supplemental Memorandum in Support of Motion for Temporary Restraining Order, pp. 12-14.

WGI claims that Gorrill, though Delfakis, has approached some of WGI’s customers and in one instance forced WGI to ship from a more distant port in order to avoid losing that customer or at least that customer’s order. Memorandum in Support of Motion for Temporary Restraining Order, pp. 14-15. While this is somewhat speculative at present, cases cited by WGI show that “evidence of threatened loss of prospective customers or goodwill certainly supports a finding of the possibility of irreparable harm” (*Stuhlberg International Sales Co., Inc. v. John D. Brush and Co.*, 240 F.3d 832, 841 (9<sup>th</sup> Cir. 2001), and irreparable harm may be found from solicitation of a former employer’s existing or future customers (*Medtronic. V. Advanced Bionics Corp.*, 630 N.W.2d 438, 452 (Minn.App. 2001). The Court has reviewed those cases. *Medtronic* holds that “irreparable injury can be inferred from the breach of a restrictive covenant if the former employee came into contact with the employer’s customers in a way which obtains a personal hold on the good will of the business” and that “systematic

solicitation of former employer's customers supports inference of irreparable harm". 630 N.W.2d at 452. These are the types of activities WGI alleges have occurred.

Gorrill argues that there is no irreparable harm, because even if there were a breach of an enforceable covenant not to compete, lost profits could be awarded for any breach, citing a case from an undisclosed jurisdiction. Response to Motion for Temporary Restraining Order and to Memorandum in Support of Motion for Temporary Restraining Order, pp. 14-15. That argument ignores Idaho authority to the contrary: "An injunction will issue to temporarily restrain an act which will result in great damage to the plaintiff although the injury is not irreparable, and although other remedies by way of damages are open to the plaintiff." *Meyer v. First National Bank*, 10 Idaho 175, 181, 77 P. 334 (1904), *citing Staples v. Rossi*, 7 Idaho 618, 626-27, 65 P. 67 (1901); *Price v. Grice*, 10 Idaho 443, 453, 79 P. 387 (1904).

Gorrill was in the top position within WGI when he signed the agreement which contained the covenant not to compete. As shown by the affidavit of Edward W. Kok, then counsel for WGI (and present counsel though not for purposes of this litigation), Gorrill played at least some part in the drafting and revising of the Employment Agreements that were to be signed by Gorrill, Greg Emerson (Chief Financial Officer) and Ian Falconer (Chairman of the Board) in 2002. Affidavit of Edward W. Kok, p. 5, ¶ 9, Exhibit G. This request to revise the agreements was made by either Gorrill or Emerson "for the purpose of increasing the pay, but most importantly, increasing the duration of the employment from one year to five years as part of an employee retention and poison pill effort by the Board of Directors and Management." *Id.* Gorrill was at the very top of "management". Gorrill does not deny the "poison pill effort" by the board of directors and management, and specifically acknowledges the revision was made to increase his compensation and extend

his employment contract to a five-year term. Affidavit of Lindsay Gorrill dated February 13, 2006, p. 3, ¶ 8. This agreement was signed by Gorrill on May 16, 2002. Affidavit of Ed Kok, p. 5, ¶ 10, Exhibit H. In the next revision, Gorrill played a direct role. According to Kok, he was contacted by Gorrill in early April 2003, and Gorrill asked Kok to reform the Employment Agreements on behalf of WGI for himself, Emerson and Falconer, with changes made to the amounts of compensation they made (Gorrill's increased from \$187,500 per year to \$295,000 per year), and "shortened the Covenant Not to Compete with Lindsay (Gorrill) from three years to one year." *Id.*, pp. 5-6, ¶ 11, Exhibit I. Gorrill admits that he may have asked Kok to make the change shortening the covenant not to compete to a one-year term, but if he did it was at the request of Emerson. Affidavit of Lindsay Gorrill dated February 13, 2006, pp. 3-4, ¶ 9. This is the Employment Agreement signed by Gorrill on April 17, 2003, which is the subject of this litigation. The Employment Agreement is referred to as Exhibit A attached to the Complaint filed January 17, 2006 (but was not attached to the Complaint), and which is attached to the Affidavit of Greg Emerson as Exhibit A.

As noted by WGI (Plaintiff's Supplemental Memorandum in Support of Motion for Temporary Restraining Order, pp. 14-16), the Court should consider whether the respective parties have equal or unequal bargaining power, citing *Roberts v. Tifton Medical Clinic, P.C.*, 206 Ga.App. 612, 616, 426 S.E.2d 188, 191-92 (Ga.App. 1992). Gorrill had equal bargaining power, and most of the terms inured to his favor. His compensation increased significantly from \$187,500 a year to \$295,000 a year, and the time of the covenant not to compete decreased from three years to one year, and the area decreased to only the companies WGI operated within, in exchange for the five-year contract. Similar benefits and burdens were applied to other key WGI employees Emerson and Falconer.

As in *Roberts*, Gorrill, Emerson and Falconer not only restricted themselves with the one-year covenant not to compete, "...but [they have] also exacted from each of the other contracting parties a like restriction..." 202 Ga.App. at 615, 426 S.E.2d at 191.

Gorrill makes the argument that enforcement of this agreement would be injurious to the public. Supplemental Brief, pp. 4-5. Other than that claim, the argument is not supported by any facts. In Gorrill's first brief the argument was if WGI provided garnet to a company in Halifax, Quebec, Gorrill would be unable to contract with a company in Vancouver, British Columbia. Response to Motion for Temporary Restraining Order, p. 8, pp. 10-11. "Such a situation would rob a consumer from benefiting from a number of products providers simply because a covenant not to compete was entered between an employee of a company that does business more than three thousand miles away." *Id.*, p. 10. While that argument has some superficial appeal, the thrust of the complaint is not that WGI has an existing customer in Quebec, and Gorrill has a prospective customer in Vancouver. The complaint by WGI is that Gorrill is contacting long-time customers of WGI in an attempt to solicit and divert the business of WGI's customers to Gorrill's Precision Industrial Supply, and that Gorrill is establishing warehouses for the storage and supply of garnet in the very same cities throughout the United States. Memorandum in Support of Motion for Temporary Restraining Order, pp. 4-5. The "injurious to the public" argument made by Gorrill is not persuasive.

Gorrill claims that WGI owes him about \$42,000 for the thirty-day period following his termination. Response to Motion for Temporary Restraining Order and to Memorandum in Support of Motion for Temporary Restraining Order, p. 3; Affidavit of Lindsay Gorrill dated February 2, 2006, p. 2, ¶ 5. Using the "unclean hands" argument for the equitable relief sought by WGI, Gorrill argues WGI, "[b]y failing to honor the terms of

the Employment Agreement, WGI is in no position to now argue that Mr. Gorrill has breached the same agreement...” *Id.*, p. 10. Gorrill cites *Thomas v. Medical Center Physicians, P.A.*, 138 Idaho 200, 61 P.3d 557 (2002). That case held “...the Court has the discretion to evaluate the relative conduct of both parties and to determine whether the party seeking equitable relief should in light of all the circumstances be precluded from such relief.” 138 Idaho at 209. However, in that case the Idaho Supreme Court held that a physician’s failure to report allegations of misconduct to the Idaho Board of Medicine did not constitute a defense to the group of physicians to defend against the physician’s suit for wrongful termination. 138 Idaho at 209-210. If indeed there are amounts owed by WGI to Gorrill, that can be raised in a counter-claim. At the present time, the issue is not before the Court, except via an affidavit. Even if the claim is accepted as true by the Court, the Court in its discretion finds that such conduct would not justify an absolute defense to Gorrill’s disregard of the covenant not to compete found in the Employment Agreement he signed and in which he played some role in preparing and having other key management people sign. Such claim is more appropriately handled by way of damages or set off as part of the underlying case.

**A. I.R.C.P. 65(e)(1).**

The “entitled to the relief demanded” language found in Idaho Rule of Civil Procedure 65(e)(1) is frequently restated as “substantial likelihood of success.” The Idaho Supreme Court in *Harris* interpreted “substantial likelihood of success” as follows:

The substantial likelihood of success necessary to demonstrate that appellants are entitled to the relief they demanded cannot exist where complex issues of law or fact exist which are not free from doubt. *First National Bank & Trust Co. v. Federal Reserve Bank*, 495 F.Supp. 154 (W.D.Mich. 1980); *Avins v. Widener College, Inc.*, 421 F.Supp. 858 (D.Del. 1976) (not granted where issues of fact and law are seriously

disputed); *Wm. Rosen Monuments, Inc. v. Phil Madonick Monuments, Inc.*, 62 A.D.2d 1053, 404 N.Y.S.2d 133 (N.Y.App.Div. 1978) (granted only upon the clearest evidence). Appellants claim of right in this case is not one which is free from doubt and, accordingly, we hold that appellants have not carried their burden of proof under I.R.C.P. 65(e)(1).

106 Idaho at 518, 681 P.2d at 993. In *First National Bank & Trust Co. v. Federal Reserve Bank*, 495 F.Supp. 154 (W.D.Mich. 1980), the federal district judge wrote:

Although it appears to the Court that Plaintiff has a likelihood of success, whether it has a "substantial likelihood" as required by *Mason*, supra, is, at this juncture, unclear.

It is the Court's opinion that there can be no substantial likelihood of success where there exist complex issues of law, the resolution of which are not free from doubt. This is especially true when the record before the Court is incomplete.

495 F.Supp. at 157. This Court has analyzed the facts and applicable law as it pertains to the facts of the present case and finds there is a substantial likelihood of success on the part of WGI, at least as it pertains to the covenant not to compete.

#### **B. I.R.C.P. 65(e)(2).**

Idaho Rule of Civil Procedure 65(e)(2) reads:

A preliminary injunction may be granted in the following cases:

(2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.

The Idaho Supreme Court in *Harris* interpreted Idaho Rule of Civil Procedure 65(b)(2) requirement of "irreparable injury" as follows:

We have previously stated that "a preliminary mandatory injunction is granted only in extreme cases where the right is very clear and it appears that irreparable injury will flow from its refusal." *Evans v. District Court of the Fifth Judicial District*, 47 Idaho 267, 270, 275, P.99, 100 (1929); *quoted in Farm Service, Inc., v. United States Steel Corp.*, 90 Idaho 570, 587, 414 P.2d 898, 907 (1966). The district court's findings state that: "[t]he evidence clearly indicates that neither of the named plaintiffs nor, for that matter, any of the other proposed plaintiffs whose records were presented are in danger of any irreparable damage." We agree.

106 Idaho at 518, 681 P.2d at 988. There are two issues then to be analyzed: 1) a right that is “very clear” and 2) irreparable injury.

### **1. A “Very Clear” Right.**

This Court determines that WGI’s right to enforce this covenant not to compete is “very clear” for the reasons discussed. The time limitation of one year is reasonable, the geographic limitation is reasonable, the context in which the covenant arose (increased compensation for Gorrill, long-term contract and poison pill) make the covenant reasonable.

### **2. Great or Irreparable Injury to Plaintiff.**

At first glance the above quote in *Harris* might indicate that the Idaho Supreme Court felt an injunction could be granted only where the injury is irreparable. 106 Idaho at 518, 681 P.2d at 988. But that interpretation would be out of context with Idaho Rule of Civil Procedure 65(e)(2) which reads: “When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.” A review of other Idaho Supreme Court cases makes it clear that injunctions can be granted under Idaho Rule of Civil Procedure 65(e)(2), where the injury is “great” or “irreparable”. As stated in *Meyer v. First Nat’l Bank*, 10 Idaho 175, 181, 77 P. 334, 336 (1904):

The contention of defendants that plaintiffs have an adequate remedy by an action at law, and cannot, therefore, resort to an equitable remedy, is not well founded. It is true that they have their remedy for damages, but under our statute, section 4288, Revised Statutes, a party is not under the necessity of waiting till his property has been damaged and destroyed, and his business disorganized, and his premises encroached upon to the extent of his own ouster, and then resorting to an action at law for redress. In *Staples v. Rossi*, 7 Idaho, 618, 65 Pac. 67 [1901], this court laid down the rule under our statute as follows: “Injunctions will issue to restrain temporarily an act which will result in great damage to the plaintiff, although the injury is not irreparable, and notwithstanding that other

remedies lie in behalf of plaintiff."

The last sentence in the above quote makes it clear that "Injunctions will issue to restrain temporarily an act which will result in great damage to plaintiff", even though the injury is not irreparable and even though damages may later compensate the injured party for that injury. (emphasis added). WGI has set forth its reasons why such competition from Gorrill has been great, and perhaps irreparable.

This Court finds as a factual matter, and as a matter of law, that the requirements of I.R.C.P. 65(e)(2) have been met and that an injunction should issue.

**C. I.R.C.P. 65(e)(3).**

Idaho Rule of Civil Procedure 65(e)(3) allows a preliminary injunction: "When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to make the judgment ineffectual." In this case, the one-year time period Gorrill has promised not to compete is nearly half over. Idaho Rule of Civil Procedure 65(e)(3) appears to have been interpreted by the Idaho Supreme Court only once in *Gilpin v. Sierra Nevada Consol. Mining Co.*, 2 Idaho 696, 703, 23 P. 547, 549 (1890). That case dealt with whether an injunction regarding a mine in Shoshone County should have been denied by the district court. The Idaho Supreme Court held: "To remove the ore from the mine, and leave but a worthless shell to be contended for, would certainly have a 'tendency to render ineffectual' any judgment which the plaintiff might recover." *Id.* In the present case, an analogous situation exists. If Gorrill continues to violate his covenant not to compete, it would have a "tendency to render ineffectual" any judgment it may recover, because a money

judgment cannot restore lost customers. After the one-year period, Gorrill may do as he pleases, but in the interim, he cannot. It should be noted that in *Gilpin* the Idaho Supreme Court reversed the district court's denial of a preliminary injunction, and itself ordered a preliminary injunction, not even remanding the issue back to the trial court. 23 P. at 552.

This Court finds as a factual matter, and as a matter of law, that the requirements of I.R.C.P. 65(e)(3) have been met and that an injunction should issue upon that ground as well. The requirement of Idaho Rule of Civil Procedure 65(e)(2) that an injunction cannot "have the effect of giving to the party seeking the injunction all the relief sought in the action" does not apply to Idaho Rule of Civil Procedure 65(e)(3). While the Court is persuaded that a temporary restraining order must be granted based on the evidence before the Court upon the theory of breach of the covenant not to compete, the Court is not persuaded a temporary restraining order should be granted based on the trade secrets theory. Idaho Code § 48-801 *et. seq.* is the Idaho Trade Secrets Act. WGI claims that Gorrill had intimate and detailed knowledge about all the costs and strategic pricing of garnet by WGI, which is probably true. Memorandum in Support of Motion for Temporary Restraining Order, pp. 11-12. However, pricing changes quickly, and the Court is not persuaded by its review of the cases cited by WGI that there has been a violation of the Idaho Trade Secrets Act, at least at this juncture. *Id.*, pp. 12-13.

WGI has submitted a proposed Temporary Restraining Order. The Court has reviewed such and concludes it is too encompassing. The appropriate relief sought by WGI is better set forth in its initial brief: "WGI seeks an order restraining and enjoining defendant Lindsay E. Gorrill, with the assistance of Ms. Delfakis or any other employee, agent or representative, from operating Precision Industrial Supply or any other business in

competition with WGI, with such temporary injunctive relief to remain in place until a hearing is completed on WGI's motion for preliminary injunction." Memorandum in Support of Motion for Temporary Restraining Order, pp. 5-6.

Idaho law requires every order granting an injunction shall set forth the reasons for its issuance, it shall be specific in terms, it shall describe in reasonable detail the act sought to be restrained and is binding only upon the parties to the action (their officers, agents, servants, employees and attorneys) who receive actual notice of the order by personal service or otherwise. I.R.C.P 65(d). The reasons for the issuance of the injunction in the present case is the covenant not to compete, based upon the analysis set forth above. The acts restrained are set forth below.

### III. ORDER.

**IT IS HEREBY ORDERED** the Motion for Temporary Restraining Order is hereby **GRANTED** in that a Preliminary Injunction is **GRANTED** in favor of plaintiff WGI against defendant Lindsay E. Gorrill, and Gorrill is enjoined, directly or indirectly through Precision Industrial Supply or any other business, or through Delfakis or any other person, agent, or representative, from engaging in any activity in any country in which WGI conducts business, which activity is the same as, or similar to, or competitive with any activity then engaged in by WGI (or any successor of WGI) in any such country, for the period of one year following Gorrill's termination from WGI.

Entered this 28th day of March, 2006.

\_\_\_\_\_  
John T. Mitchell, District Judge

#### Certificate of Service

I certify that on the \_\_\_\_\_ day of March, 2006, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer

Fax #

| Lawyer

Fax #

Keller W. Allen

509 777-2215

Kacy L. Wall

208 666-6070

John F. Magnuson

208 667-0500

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Secretary