



# PA Supreme Court Rules No Freebies For Employers When It Comes to After-Thought Non-Compete Agreements

Client Advisories

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On November 18, 2015, in *Socko v. Mid-Atlantic Sys. of CPA, Inc.*, the Pennsylvania Supreme Court considered for the *first* time whether the enforcement of a non-competition agreement, entered into after the start of employment, could be challenged by an employee for lack of consideration even if the agreement contains express language indicating that the parties “intend to be legally bound.” The Court held that an employee could make such a challenge, despite the fact that the Uniform Written Obligations Act (“UWOA”) would prevent such a challenge in the case of any other type of contract.

David Socko (“Socko”) was employed as a salesman for Mid-Atlantic Systems of CPA, Inc. (“Mid-Atlantic”). Upon hire, Socko signed an employment agreement which contained a two-year non-competition provision. A year later, Socko signed a more restrictive, non-competition agreement. The agreement stated that the parties intended to be “legally bound.” Socko was not given any benefit or any change in his existing employment status in exchange for signing the agreement. Thereafter, Socko left his employment and began working for a competitor. When Mid-Atlantic informed Socko’s new employer of the non-competition agreement signed by Socko, he was fired.

Socko filed suit against Mid-Atlantic, seeking to have the non-competition agreement declared unenforceable on the grounds that it was not supported by adequate consideration given that it was entered into during the course of his employment and he had not received any benefit of value in exchange for signing the agreement. Mid-Atlantic opposed Socko’s claims by relying on the UWOA, which provides that a written promise “shall not be invalid or unenforceable for lack of consideration, if the writing also contains an additional express statement, in any form of language, that the signer intends to be legally bound.” The trial court sided with Socko, finding that the “legally bound” language did not constitute adequate consideration under the UWOA. On appeal, a unanimous panel of the Superior Court affirmed the trial court ruling. Mid-Atlantic then petitioned the Supreme Court for a further appeal, which was granted.

The Supreme Court affirmed the Superior Court's ruling, holding that an employment agreement containing a non-competition clause may be challenged for lack of consideration even though the agreement's express terms indicate that the parties "intend to be legally bound" pursuant to the UWOA. In reaching this conclusion, the Court reasoned that a construction of the UWOA which would eliminate the need for new and valuable consideration when entering into a non-competition agreement after the start of employment would be unreasonable given the long history of Pennsylvania courts strongly disfavoring covenants in restraint of trade and applying more rigorous scrutiny to the enforceability of such restraints in relation to other types of contracts.

This decision serves as instruction to Pennsylvania employers desiring to impose non-compete restrictions on employees that such agreements must be entered at the onset of employment or, if during the course of employment, must be accompanied by some additional valuable benefit to the employee. The Supreme Court cited examples of what might constitute sufficient new and valuable consideration, but the rules are amorphous and largely dependent upon a variety of factors. In addition, the consideration rule in Pennsylvania differs from the rule in New Jersey and we therefore urge you to proceed with caution and review this issue with your counsel.

In the meantime, if you have questions about the Supreme Court's ruling in *Socko* and its potential impact on the workplace, please contact Laura Link, Esq., or any member of the firm's [Labor & Employment Group](#). If you would like to discuss how to properly implement a non-compete agreement into your existing workforce in light of the ruling in *Socko*, or have any other trade secret protection or non-compete-related matter, please contact [Thomas A. Muccifori, Esq.](#), or any member of Archer's [Trade Secret Protection and Non-Compete Group](#) in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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