



Pennsylvania Supreme Court Finds That UWOA Language Does Not Waive Right to Challenge Adequacy of Consideration for Restrictive Covenant

Insights

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On November 18, 2015, in a highly anticipated decision, the Pennsylvania Supreme Court held that employers could not use the language set forth in Pennsylvania's Uniform Written Obligations Act ("UWOA") to avoid providing adequate consideration for a restrictive covenant signed by an employee. In *Socko v. Mid-Atlantic Systems of CPA, Inc.*, the Court considered whether a non-compete agreement signed by Socko with Mid-Atlantic following the commencement of Socko's employment was enforceable despite Mid-Atlantic's failure to provide any benefit or change in employment status at the time of execution, by virtue of the parties' statement in the agreement that they "intend to be legally bound" by its terms.

The UWOA, enacted in 1927, 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." Mid-Atlantic, acknowledging that it provided no benefit or change in employment status to Socko when he signed the agreement, argued that the UWOA is not a substitute for consideration, but instead prohibits a party to a written agreement containing the "legally bound" language from challenging the contract based on a lack of consideration. Rejecting this interpretation, the Pennsylvania Supreme Court reviewed the history of Pennsylvania jurisprudence relating to restrictive covenants. The Court observed that Pennsylvania courts, while generally disfavoring non-compete agreements, have nevertheless enforced them if they adhered to certain requirements, including the requirement that they be supported by adequate consideration. Where a non-compete agreement is executed after the inception of employment, the Court noted, new consideration, beyond continued employment, is required.

Applying principles of statutory construction, the Court found that a construction of the UWOA that would eliminate the need for new consideration when entering into a post-employment restrictive covenant like the one signed by Socko would be unreasonable. Accordingly, the Court held that an agreement containing the UWOA's language could be challenged for lack of consideration, despite the parties' statement of their intent to be "legally bound."

Employers who have entered into non-competition agreements with their employees following the inception of employment should review their agreements and the manner in which they were implemented to determine whether adequate consideration was supplied at the time that the

agreement was signed. If the employer did not provide consideration and intended to rely on a statement in the agreement of the parties' "intent to be legally bound" as a substitute for consideration, the employer should consider asking the employees who signed such agreements to sign new covenants, supplying consideration together with the agreement.

[Socko v Mid-Atlantic.pdf \(117.89 kb\)](#)

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