

Midstream Covenants Not to Compete

Is Continued Employment Enough?

By Joshua A. Hawks-Ladds

The situation: Your longtime client, after a recent growth in her company, decides that it is time to protect her business from employees whom she fears might strike out on their own and take clients with them. She advises you that all of her employees are “at-will” and that none have signed an agreement not to compete with her company. She decides to have her existing employees sign a reasonable noncompetition agreement and comes to you for advice.

The question that immediately springs to mind is whether the agreement will have any effect at all in Connecticut. Specifically, you are concerned about what consideration, if any, must be offered to an existing at-will employee to support a noncompetition agreement after employment has already commenced. Is an exchange of promises enough? Must something of value be offered to the employee? Must your client threaten to terminate the employment relationship if the restrictive covenant is not signed?

Your review of recent Connecticut case law seems to indicate that a noncompete agreement lacks sufficient consideration to be binding, unless it is accompanied by something more than the promise of continued employment. You discover

that the appellate and supreme courts have not visited the issue in many decades and that several superior courts have recently declared that “it is well settled law in Connecticut that continued employment is not consideration for a covenant not to compete entered into after the beginning of the employment.”¹

However, a more in-depth analysis demonstrates that the law concerning midstream noncompetition agreements is anything but “well-settled.” In fact, on at least two occasions, the Connecticut Supreme Court expressly stated that continued employment *is* sufficient consideration for a covenant not to compete entered into after the beginning of the employment. Yet, many superior courts continue to hold that, in such situations, continued employment is insufficient consideration to create a binding agreement.

You are now at a loss on how to advise your client in light of the existing Connecticut Supreme Court precedent, which seems contradictory to the more recent superior court holdings. Clearly, the execution of a so-called “midstream” noncompete agreement opens your client up to scrutiny as to whether the employee’s continued employment is, in and of itself, sufficient consideration to support the agreement. What should you advise your client?

This article will explore the history of midstream noncompete agreements in Connecticut and will analyze the state of our law today. It will focus on the Connecticut law of midstream noncompete agreements where nothing (other than continued employment) is given to an at-will employee in exchange for the covenant. The author’s conclusion is that, under current Connecticut precedent, a midstream noncompete accompanied by the employer’s threat of termination of employment should be deemed supported by sufficient consideration—namely, the exchange of a promise to continue employment for a restrictive covenant after that employment ceases. Keep in mind, however, that due to the split in authority, your client may have to litigate the consideration issue to the supreme court to prove that this argument is correct.

Early Covenant Not to Compete Cases in Connecticut

To understand noncompete jurisprudence in Connecticut, we must first look to the law associated with noncompetition agreements outside the employment arena, beginning with the 1879 decision in *Frank*

*F. Cook v. Lucius M. Johnson.*² Although *Cook v. Johnson* did not involve a midstream noncompete, it is one of the earliest and clearest expositions of the law of non-competition covenants in Connecticut. The case dealt with the sale of a dentist office pursuant to a written contract that contained a ten-mile geographic restriction and no duration limit for the covenant.

In holding the agreement enforceable, the court stated a three-part test for the validity of a noncompetition covenant—a test that remains virtually unchanged today:

1st. It must be partial, or restricted in its operation in respect either to time or place. 2d. It must be on some good consideration. 3d. It must be reasonable, that is, it should afford only a fair protection to the interests of the party in whose favor it is made, and must not be so large in its operation as to interfere with the interests of the public. *Id.*

Regarding the restrictive covenant, Mr. Johnson apparently “concede(d) that he has paid no attention to it whatever, except to keep the money paid under it.” *Id.* The supreme court believed that it was immoral for the defendant to make a promise not to compete, sell the plaintiff his dentist practice, and then ignore the covenant completely. The court held the contract to be valid, notwithstanding the fact that the time limitation was “perpetual” and “a radius of ten miles of said Litchfield” was difficult for the parties to measure.³ The court seemed to put great stock in the exchange of promises and did not want to undo the deal because of some vagueness in the terms.

This notion that the mere exchange of promises is sufficient consideration for an otherwise valid noncompete is an important concept that is carried forward by the next case that bears on the subject of this article: *Samuel Stores, Inc. v. Abrams.*⁴ In *Samuel Stores*, the supreme court did not address the consideration aspect of a restrictive covenant, but it did address the public policy considerations involved in a noncompete between an employer and an employee. In *Samuel Stores*, a clothing store chain hired the defendant as a branch manager for one of its stores. The defendant signed an

employment contract before he commenced work which contained a five-year noncompete. After two months of employment, the defendant quit and, shortly thereafter, opened a competing clothing store. The plaintiff sued to enjoin the competition.

The supreme court noted that the issue was one involving public policy. “The public policy to be applied is the public policy of the present time. The changing conditions of life modify from time to time the reasons for determining whether the public interest requires that a restrictive stipulation shall be deemed void as against public policy.” *Id.* at 252. It then held that the restrictions contained in the contract were overbroad and unenforceable.⁵ Thus, the natural question that arises is: does “public policy” support a holding that continued employment alone is sufficient consideration for a midstream noncompete? The court addressed that issue some twenty-five years later in *Roessler v. Burwell.*⁶

Connecticut’s First Midstream Noncompete Case: *Roessler v. Burwell*

Roessler v. Burwell is the cornerstone of employer-employee noncompete law in Connecticut. Roessler manufactured delicatessen products and sold them to retail stores in New Haven County. In 1926, he hired Burwell as a salesman, without a written employment contract. Three years later, the parties entered into a written employment contract which provided that Roessler agreed to employ Burwell as a salaried salesman “indefinitely.”⁷ In exchange for that indefinite employment, Burwell was enjoined from calling upon or soliciting delicatessen business from “any of the customers of the employer in the locality specified, whom he had called upon during his term of service with the employer.” *Id.* at 126–127. For the next four years, with the Great Depression in full swing, Roessler reduced Burwell’s salary until Burwell voluntarily quit in 1934 and began competing with Roessler on his own behalf.

Roessler then sued Burwell to enjoin him from competing. In enforcing the

restrictive covenant against Burwell, the supreme court stated:

The underlying purpose of the defendant in entering into the agreement was to continue thereafter in the employment of the plaintiff at a mutually agreeable salary; the benefit offered him was such a continuance, in return for which the plaintiff was to receive his services and the benefit of the restrictive covenant in the agreement. The defendant received the benefit he sought in that he was continued in the employment more than four years after the agreement was made, until he voluntarily left it. *Id.* at 127.

The court then cited to a New York case, *Willets v. Sun Mutual Ins. Co.*,⁸ and found that “though there be not mutual promises, yet if, before he calls for the fulfillment of the promise, the promisee do perform that, in consideration of his doing which the promise is made, there is a consideration for the agreement, and it can be enforced.” *Id.* (citations omitted). The court went on to hold that “the plaintiff, having paid the defendant a weekly salary satisfactory to him, from the time when the agreement was made, and having continued the defendant in his employment until he voluntarily left, has given to the defendant the benefit for which he bargained.” *Id.*

Thus, the supreme court in *Roessler* clearly held that the mutual promises of the employer (to continue to employ the employee) and the employee (to agree to be bound by a covenant not to compete post-employment) were adequate consideration for the post-employment restrictive covenant.

Roessler Is Followed for Half a Century

The supreme court again found for an employer against a former employee who violated a midstream noncompetition agreement in *May v. Young.*⁹ In *May*, the defendant was employed in 1929 and did not sign the restrictive agreement until 1935. That agreement provided that in exchange for indefinite employment and seven days written notice before termination, the defendant “would not, ‘while this

contract remains in effect or at any time within two years thereafter, * * * enter into the employ of any client of the [plaintiff]” *Id.* at 3–4. The plaintiff terminated the defendant’s employment one year later. Thereafter, the defendant went to work for one of the plaintiff’s clients in contravention of the restrictive covenant.

In ruling in favor of the plaintiff, the supreme court first cited the three-part test it enunciated in *Cook v. Johnson*, then said:

When the character of the business and the nature of the employment are such that the employer requires protection for his established business against competitive activities by *one who has become familiar with it through employment therein*, restrictions are valid when they appear to be reasonably necessary for the fair protection of the employer’s business or rights...*The employer is entitled to contract for and to enforce protection against unfair competition made dangerous by the use of weapons placed by him in his employee’s hands during his service and which may be turned against him*, such as the knowledge of trade secrets or other confidential information or an acquaintance with his employer’s customers and their requirements...*Briggs Co. v. Mason*, 217 Ky. 269, 274, 89 S.W. 295, 52 A.L.R. 1344, 1347. *Id.* at 7 (emphasis added).

The court did not specifically discuss the issue of whether continued employment was sufficient consideration for the noncompete; however, the supreme court clearly recognized the validity of the midstream noncompete covenant and expressly endorsed an employer’s right to contract with an employee to prevent the employee from using knowledge and relationships, entrusted to him or her by the employer, as a post-employment “weapon” against the employer.¹⁰

The Case Law Becomes Muddled

With all this supreme court precedent as guidance, how did Connecticut get to the current state of confusion where more than a few Connecticut superior courts have held that a midstream noncompete is

void for want of consideration? To answer that question, we must pick up the trail in 1966 with the case of *Osborne v. The Lock Steel Chain Co.*¹¹

Osborne involved an employee who sued his former employer for breaching an agreement to pay him an annual sum for life in exchange for his agreement to be available to consult for and not to compete with the company. Superior courts now use a portion of *Osborne*’s dictum, in which the court stated the general rule that “past services will not constitute a sufficient consideration for an executory promise of compensation for those services,”¹² to void midstream noncompete agreements.

The modern reliance on this dictum is interesting because the *Osborne* court upheld the agreement *sub judice*, finding that the consideration for the payments to the plaintiff were his promises to his former employer. In doing so, the court explained plainly that “consideration consists of ‘a benefit to the party promising, or a loss or detriment to the party to whom the promise is made.’ An exchange of promises is sufficient consideration to support a contract.”¹³ The court therefore held that an exchange of promises is adequate consideration for an executory contract. *Id.*

Then, twelve years later, using New York law, the supreme court decided *Dick v. Dick*,¹⁴ which did not involve a covenant not to compete and, *in dicta*, stated that, under Connecticut law, “past consideration” will not support a promise.¹⁵ Despite these deficits, *Dick v. Dick* is nonetheless cited by several superior court opinions for the conclusion that continued employment is not sufficient consideration for a covenant not to compete entered into after the commencement of employment.¹⁶

The next opportunity the supreme court had to examine the issue came in *Van Dyck Printing Co. v. DiNicola*,¹⁷ where it affirmed the superior court’s award of damages to the employer for its former employee’s breach of a midstream noncompete. *Van Dyck Printing Co.*, however, for three reasons, does not permit the inference of a hard-and-fast rule relating to whether continued employment is sufficient consideration for a midstream noncompete. First, at the time employment

commenced, the parties agreed that they would eventually execute a written contract that “would include some sort of protection” for the employer, and that contract was executed four weeks after the commencement of employment. Second, the court held that the defendant received an “enhanced commission rate” during his twenty-one years of employment, which “would constitute new consideration for the covenant not to compete.” *Id.* at 196. Third, and most interesting, the superior court took pains to distinguish *National Safe Northeast, Inc. v. Smith*,¹⁸ “in which an employee who had been working for one year was asked to sign a covenant not to compete as a condition of continued employment, a circumstance found to entail no new consideration for the new obligation.” *Id.*

Unfortunately, on appeal, the supreme court in *Van Dyck Printing Co.* did not opine on whether continued employment, with nothing more, is sufficient consideration for a midstream noncompete. The court merely stated that “the parties do not dispute that the trial court applied the proper legal criteria in determining the enforceability of a covenant not to compete and in assessing the damages that flow from its breach.” 231 Conn. at 273. It therefore affirmed the trial court, without commenting on this critical issue.

The Current State of the Law

In the past decade, several Connecticut courts have held that continued employment is not sufficient consideration for a covenant not to compete;¹⁹ however, several have taken the contrary position.²⁰

Only two cases discuss the supreme court precedent of *Roessler v. Burwell*—and one of them does so only, *in dicta*, in a footnote. The lone case that actually relies on the *Roessler* precedent, *Piscitelli d/b/a Allusions v. Pepe*,²¹ held that an employment agreement that was signed seven years after employment commenced was supported by the defendant’s continued employment for another seven years. In so ruling, the court quoted *Roessler* and noted that “the benefit offered him was such a continuance (of employment), in

return for which the plaintiff was to receive his services and the benefit of the restrictive covenant in the agreement.” *Id.* Notably, the parties also introduced evidence of training provided to the employee as evidence of consideration—but the parties disagreed as to whether the employer was its source.

In *NewInmo, Inc. v. Peregrin Development, Inc.*,²² the court stated that “the proposition that continued employment is insufficient consideration for a noncompete or confidentiality agreement is inapplicable to at-will employees such as these defendants. Except as otherwise prohibited by law, at-will employees may be terminated at an employer’s discretion, and thus, continued employment, even after the start of the employment relationship, is sufficient consideration to support a confidentiality agreement.”

Some recent decisions follow that same line of reasoning but find additional factual support of adequate consideration. For example, in *Weseley Software Development Corp. v. Burdette*,²³ the U.S. District Court found that, although the employer hired the employee in May 1993 and the employee did not sign a covenant not to compete until January 14, 1995, the noncompete was still valid. *Id.* at 141. The court determined that, had the employee not signed the agreement, the employer would have terminated his employment. *Id.* The court therefore held that the restrictive covenant not to compete was knowingly entered into for adequate consideration, which included the threat of termination and articulated paid vacation entitlement and new entitlement to severance benefits and stock options.²⁴

In *Russo Assocs., Inc. v. Cachina*,²⁵ the superior court held that a midstream covenant not to compete was enforceable due to the temporal proximity between the employee’s hiring and his signing of the employment agreement. *Id.* The court determined that because the employee signed the agreement so soon after his hiring (three months after hire) and because Cachina knew at the time of his hiring that he would later be required to execute an employment agreement, there was consideration for that agreement.²⁶

In deciding *Blum, Shapiro & Co. v. Searles & Houser, LLC*,²⁷ the superior

court cited the *Cachina* decision and held that continuation of employment is sufficient to support a noncompete. The court stated that “(w)hen a pre-existing contract of employment is terminable at will, no overt consideration is required to support an otherwise valid covenant not to compete. The law presumes that such a covenant is supported by the employer’s implied promise to continue the employee’s employment... or his forbearance in not discharging the employee then and there.”

Clearly then, a split exists in the superior courts on this issue, and there is risk for each side in a midstream noncompete case.

Conclusion

Until overruled by the supreme court, the holding in *Roessler v. Burwell* would appear to be good precedent. That case appears to stand for the rule that when a preexisting contract of employment is terminable at will, no overt consideration is required to support an otherwise valid covenant not to compete. However, that conclusion is tempered by more recent superior court holdings stating that “continued employment is not consideration for a covenant not to compete entered into after the beginning of the employment.”

The question is, why are the superior courts struggling with the issue? The answer appears to be that the superior courts are virtually, but not completely, ignoring *Roessler* in a struggle to connect fundamental principles of the law of consideration (an exchange of promises versus an exchange of something of value) in the midstream noncompete context. However, most of these cases do not analyze what the proper rule should be; some view the employment as “past consideration” and therefore insufficient. Some view the promise of continued employment as illusory because termination of an at-will employee can occur anytime after the exchange of promises is made. Some courts say something of value must be given (better benefits, a bonus, a raise, etc.), but don’t say what or how much. A few follow *Roessler*.

In the opinion of this author, *Roessler* is still good law. However, to reflect “the public policy of the present time,”²⁸ courts

should find that when a midstream noncompete is accompanied by the threat of termination of employment for refusing to sign, then the continued employment is an exchange of a promise for the restrictive covenant. Absent that threat, the at-will employee doesn’t receive anything he or she didn’t already have: continued at-will employment. Faced with the threat, the employee has a choice to end the at-will relationship, not accept the offer, and thereby not be bound by any contract.²⁹ This rule would recognize the reality of the situation (that the employee would be out of a job if he or she didn’t sign) and reflects the jurisprudence relating to the consideration founded upon the exchange of promises: the employer only promises to continue to employ the at-will worker in exchange for the employee’s covenant not to compete.³⁰

That said, Connecticut, unlike many other jurisdictions across the country,³¹ may not be able to enjoy finality on this issue unless the supreme court undertakes to update its holding in *Roessler*. Until that time, there is a risk that a superior court will not follow *Roessler* and your client will be forced to appeal that decision to the supreme court for the final say on whether midstream noncompetes are supported by sufficient consideration when based solely upon continued employment. **CL**

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Notes

1. See, e.g., *North American Outdoor Products, Inc. v. Dawson*, Superior Court, Judicial District of New Haven, Doc. No. CV-04-0490177S, 2004 WL 2284289 (Sept. 21, 2004, Zoarski, J.T.R.); *Cost Management Incentives, Inc. v. London-Osborne*, 2002 WL 31886860, *7, Superior Court, Judicial District of New Haven, Docket No. CV-02-0463081 (December 5, 2002, Munro, J.); *Artman v. Output Technologies Sol. E.R.*, No. CV-00-0595362 S 2000 Ct.Sup. 8003, 373 (Jun. 28, 2000, Rittenband, J.); *J.M. Layton & Co., Inc. v. Reid Millar*, No. CV-04-0084446-S, Superior Court, J.D. Ansonia-Milford, 2004 WL 1966290, 37 Conn. L. Rptr. 649 (Aug 09, 2004, Robinson, A., J.).

2. *Cook v. Johnson*, 47 Conn. 175, 36 Am. Rep. 64, 1879 WL 1561 (1879).
3. Compare that with many of today's non-compete cases in which courts refuse to interpret the parties' intentions when geographic restrictions are deemed too vague or too broad. *See, e.g., Beit v. Beit*, 135 Conn. 195, 202-205, 63 A.2d 161 (1948) (refusing to "blue pencil" an overly broad geographic and duration restriction).
4. 94 Conn. 248, 108 A. 541, 9 A.L.R. 1450 (1919).
5. The court concluded its decision with the following allegory: "Covenantees [in contracts in restraint of trade between employer and employee] desiring the maximum protection have, no doubt, a difficult task. When they fail, it is commonly because, like the dog in the fable, they grasp too much, and so lose all." *Id.* at 255, quoting *Herreshoff v. Boutineau*, 17 R. I. 7, 19 Atl. 713, 8 L. R. A. 469, 33 Am. St. Rep. 850.
6. 119 Conn. 289, 176 A.126 (1934).
7. More recently, in *Torosyan v. Boehringer Ingelheim Pharmaceuticals, Inc.*, 234 Conn. 1, 662 A.2d 89 (1995), the supreme court explained an indefinite contract of employment as follows: "Typically, an implied contract of employment does not limit the terminability of an employee's employment but merely includes terms specifying wages, working hours, job responsibilities and the like." Thus, "[a]s a general rule, contracts of permanent employment, or for an indefinite term, are terminable at will." *D'Ulisse-Cupo v. Board of Directors of Notre Dame High School*, 202 Conn. 206, 211 n. 1, 520 A.2d 217 (1987)." *Id.* at 14.
 In *Torosyan*, the supreme court affirmed a jury verdict that the employer breached an express employment contract in the form of an employee handbook. The court held that the fact that the employee continued to work for the company after it issued a new handbook that substantially interfered with the employee's legitimate employment expectations, did not demonstrate the employee's consent to that new handbook. The fact that the employee continued working "may be relevant to determining whether he or she consented to the new contract, but cannot itself mandate a finding of consent." *Id.* at 19. In *Torosyan*, however, the jury found that the employee had not consented to the new employee handbook and, therefore, the older handbook represented the contractual terms of employment.
8. 45 N. Y. 45, 47, 6 Am. Rep. 31 (1871).
9. 125 Conn. 1, 2 A.2d 385, 119 A.L.R. 1445 (1938).
10. The court did not discuss whether the "seven-day notice" provision in the new contract had any bearing on the consideration issue. Query whether that notice provision played any role in the court's decision, notwithstanding the fact that the court did not include that fact in its analysis. Such a *de minimis* element would seem to be of little import to the analysis.
11. 153 Conn. 527, 218 A.2d 526 (1966).
12. *Id.* at 533.
13. *Id.* at 531 (citations omitted).
14. 167 Conn., 210, 355, A.2d 110 (1974).
15. 167 Conn. at 224.
16. *See, e.g., Artman v. Output Technologies*, 2000 WL 992166 (Conn. Super Ct. 2000); *Fairfax Corp. v. Nickelson*, 2000 WL 1409714 (Conn. Supp. Ct. 2000); *Corporate Health Strategies v. Smith*, 11 Conn. Law Trib. No. 6 at p. 15; *Kristin Norton v. Commercial Credit Corporation*, CV-98-0578441, Superior Court Judicial District of Hartford at Hartford October 6, 1998 (Rittenband, J.); *Cost Management Incentives, Inc. v. London-Osborne*, 2002 WL 31886860, *7, Superior Court, Judicial District of New Haven, Docket No. CV-020463081 (December 5, 2002, Munro, J.) ("continued employment is not additional consideration and...past consideration cannot support the imposition of a new obligation"). *See also Covenants Not to Compete: A State-by-State Survey*, Fourth Edition, Vol. I at 616 (citing *Dick v. Dick* for the conclusion that, "Under Connecticut law, continued employment—standing alone—does not provide consideration to support a covenant entered into after inception of the employment relationship.") *See also Timentarial v. Dagata*, 29 Conn. Sup. 180, 185 277 A.2d 512 (Super. Ct. 1971). A superior court case that predates *Dick v. Dick*, but holds that a covenant not to compete signed *five days* after employment commenced lacks consideration because "(p)ast consideration does not constitute legal consideration in the law of contracts." *Id.* at 185-6. In so holding, the *Timentarial* court merely cited to two cases involving alleged subsequent promises to pay for goods or materials, which under those circumstances the supreme court held to be promises founded upon past consideration and therefore *nudum pactum*. *Id.* at 185, citing *Sandelli v. Duffy*, 131 Conn. 155, 157, 38 A.2d 437 (1944); *Plumb v. Curtis*, 66 Conn. 154, 172, 33 A. 998 (1895).
17. 43 Conn. Supp. 191, 198, 648 A.2d 898, 902 (1993) aff'd, 231 Conn. 272, 648 A.2d 877 (1994).
18. Superior Court, Judicial District of Hartford-New Britain at Hartford, No. 304189 (December 31, 1985).
19. *See* footnote 1, *supra*.
20. *See, e.g. Daniel V. Keane Agency, Inc. v. Butterworth*, Superior Court, J. D. New Haven, Docket No. 313181 (February 22, 1995, Levin, J.)(Court accepted employer's claim that compensation change was exchanged for covenant); *R&C Livolsi Inc., v. Campanelli*, No. CV-97-0259105S (Oct. 8, 1997) 1997 Ct.Sup. 10254 p. 10205 (Dorsey, J.T.R.).
21. Superior Court of Connecticut Judicial District of New Haven, No. CV-04-4002472-S, 2004 WL 2898630, 38 Conn. L. Rptr. 219 (Nov. 5, 2004, Lopez, J.).
22. 2002 WL 31875450 (Conn. Super. Ct. 2002)(Stevens, J.).
23. 977 F. Supp. 137, 144 (1997).
24. *Id.*, citing *Van Dyck Printing Co. v. DiNicola, supra* and *Russo Assocs., Inc. v. Cachina*, Superior Court, Judicial District of Fairfield, 1995 WL 94589 (Conn. Super.), 13 Conn. L. Rptr. 408 (March 1, 1995).
25. *See* footnote 22, *supra*.
26. *See also KX Industries, L.P. v. Saaski*, 1997 WL 583629, No. CV-96-0386806-S, Super. Ct. (August 29, 1997, Meadow, J.) (where an at-will employee signs a noncompete shortly after starting employment and is retained on that condition, the noncompete is supported by adequate consideration).
27. 1999 WL 669824, Super. Ct. (1999).
28. *Samuel Stores, supra*, 94 Conn. 248, 252.
29. Courts have long held that, upon hire, the new employment is sufficient consideration for a noncompete provided at the time of hire. However, these cases usually do not state that the employee was told that if he or she did not sign the noncompete then he or she would not be hired. Query, if new employment is deemed sufficient consideration for a noncompete in the at-will context, why wouldn't continued employment likewise be equally sufficient consideration?
30. The issue of how long an employee has to continue to be employed to avoid a claim that the employer's promise of continued employment was illusory or fraudulent will undoubtedly be a factual issue in cases where employment is terminated in a matter of days or weeks after execution of the noncompete.
31. There is a split in authority across the country on this issue. For those jurisdictions holding that continued employment for a period of time furnishes consideration *see: Lake Land Employment Group of Akron, LLC v. Columber*, 101 Ohio St.3d 242, 248, 804 N.E.2d 27 (2004); *Wright & Seaton, Inc. v. Prescott*, 420 So.2d 623 (District Court of Appeal of Florida, Fourth District 1982); *Simko v. Graymar*, 55 Md.App. 561, 567, 464 A.2d 1104, 1107 (1983); *Daughtry v. Capital Gas Co., Inc.*, 285 Ala. 89, 229 So.2d 480 (1969), *rehearing denied* Jan. 8, 1970; *Tasty Box Lunch Co. v. Kennedy*, 121 So.2d 52 (Fla.App.1960); *Thomas v. Coastal Industrial Svcs., Inc.*, 214 Ga. 832, 108 S.E.2d 328 (1959); *Maynard v. Kohls*, 203 N.W.2d 209 (Iowa Sup.Ct.1972); *Frierson v. Shepard Building Supply Co.*, 247 Miss. 157, 247 Miss. 157, 154 So.2d 151 (Miss. 1963); *Sarco Company of New Jersey v.*

Gulliver, 3 N.J.Misc. 641, 649, 129 A. 399 (Ch. 1925); *Bettinger v. North Fort Worth Ice Co.*, 278 S.W. 466 (Tex.Civ.App. 1925).

For contrary conclusions see: *Kistler v. O'Brien*, 464 Pa. 475, 347 A.2d 311 (1975); *Maintenance Specialties, Inc. v. Gottus*, 455 Pa. 327, 314 A.2d 279 (Pa. 1974); *Forrest Paschal Machinery Co. v. Milholen*, 27 N.C.App. 678, 220 S.E.2d 190 (1975); *Poole v. Incentives Unlimited, Inc.*, 338 S.C. 271, 525 S.E.2d 898 (S.C.Ct.App. 1999), *aff'd* 345 S.C. 378, 548 S.E.2d 207 (S.C. 2001); *Citadel Broad. Co. v. Gratz*, 52 Pa. D.&C. 4th 534, 546 (Pa. Com. Pl. Ct. 2001) (midstream noncompete only valid if employee received some corresponding benefit or change in status). For a good but somewhat dated discussion of this topic on a national level, see *Consideration for Employee Noncompetition Covenants in Employments (sic) At Will*, 54 Fordham L. Rev. 1123, Yates, Kathryn J. (1986).

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