

ALI-ABA Audio Seminar

**Non-Compete Agreements  
and Trade Secrets: Update**


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**Restrictive Covenants: Restraints on Competition**

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# Restrictive Covenants: Restrictions on Competition



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Non-compete covenants are disfavored  
*Weissman v. Transcontinental Printing  
U.S.A., Inc.*, 205 F. Supp. 2d 415, 425 (E.D.  
Pa. 2002)

## Merry Old England

"As early as the fifteenth century, pursuant to English common law, restrictive covenants in the employment arena were *per se* void and unenforceable. *Morgan's Home Equip.* (reviewing *Dyer's Case*, Y.B. Mich. 2 Henry 5, f. 5, pl. 26 (C.P. 1414) (striking down covenant whereby an individual bound himself to another to refrain from practicing his trade in a particular village for a brief period; the Court observed: "The obligation is void because the condition is against the common law, and by God, if the plaintiff were present he should rot in gaeol till he paid a fine to the King.")). *Hess v. Gebhard & Co. Inc.*, 808 A.2d 912, 917 (Pa. Sup. Ct. May 14, 2002).

## Post-employment restrictive covenants

*Labriola v. Pollard Group, Inc.*, 100 P.3d 791, 794 (Wash. 2004) (A non-compete entered into after employment commences, will be enforced if supported by independent consideration which may include increased wages, a promotion, a bonus, a fixed term of employment, or perhaps access to protected information).