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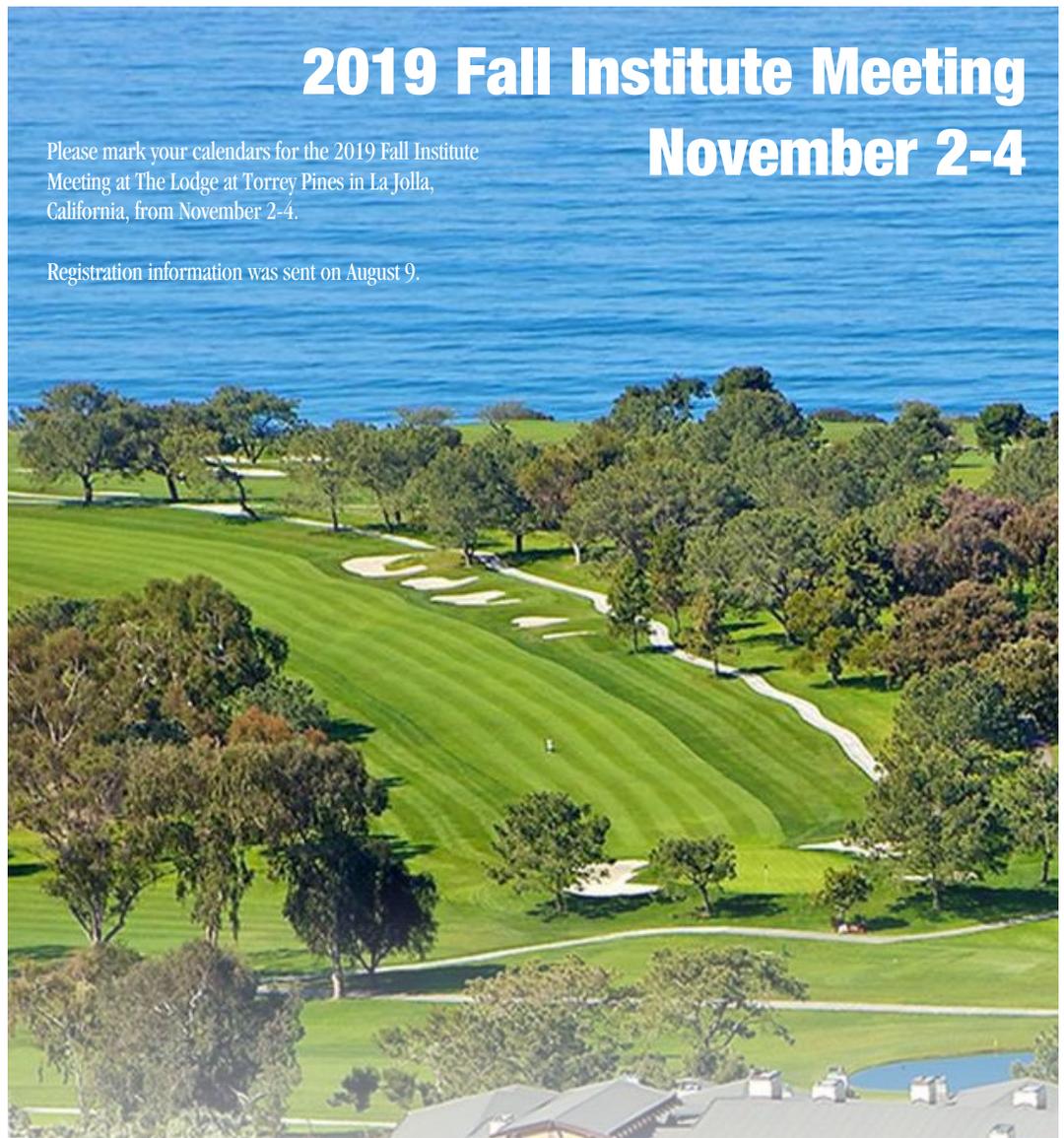
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2019 Fall Institute Meeting November 2-4

Please mark your calendars for the 2019 Fall Institute Meeting at The Lodge at Torrey Pines in La Jolla, California, from November 2-4.

Registration information was sent on August 9.

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Phil Kurtz

USCTI President's Message

Dear Fellow USCTI Members,

I hope everyone is enjoying the summer! The weather, like our business climate, seems to be a little unpredictable. Needless to say, the tariffs and talks of trade wars are continuing, but our economy is weathering it all in pretty good shape so far. Forecasters seem to agree we should finish the year okay but just at a slower growth rate. Time will tell.

The World Cutting Tool Conference (WCTC) was great, with timely presentations and enjoyable networking events. I think you will find reviewing the presentations from the WCTC useful. The European Cutting Tool Association (ECTA), Japan, China, India, Korea, and the U.S. all reported on the business environment in their respective regions. Europe, China, and Japan reported a lower forecast for 2019. India reported their market was busy, but they do not collect any data. The U.S. (USCTI) reported year-over-year growth in both dollars and pieces, but in 2018 it looks like the price per piece increased—and that could be due to either product mix or maybe the tariff impact.

USCTI continues to support a global market report, and at the WCTC, I presented the benefits for other countries to participate in the statistics program, one of those benefits being the development of a global market forecast from IHS Markit. If you have any contacts that could help us collect data from other countries, please reach out to them. The USCTI Office can assist with sending out the forms.

As you know, USCTI's focus is on its membership, and recruiting new members helps strengthen the organization. If you talk to any company that might be interested in becoming a member, please forward the contact information to the USCTI Office (uscti@uscti.com), and they can send membership information. Membership information, including the dues schedule and member benefits, can also be found on the [USCTI website](#).

Our Fall Institute Meeting is scheduled for November 2-4 at The Lodge at Torrey Pines and promises to exceed expectations. Please remind any USCTI members you see to make plans to attend. Remember that prospective members can attend one complimentary meeting before joining USCTI. During the Spring Institute Meeting in Tegernsee, we launched a new program to encourage meeting attendance. All member companies at the Fall Meeting will be entered into a drawing at the end of the meeting to become eligible for one complimentary registration (and one guest registration) for the next meeting for a team member at the winning company who has never attended a USCTI meeting.

See you at Torrey Pines!

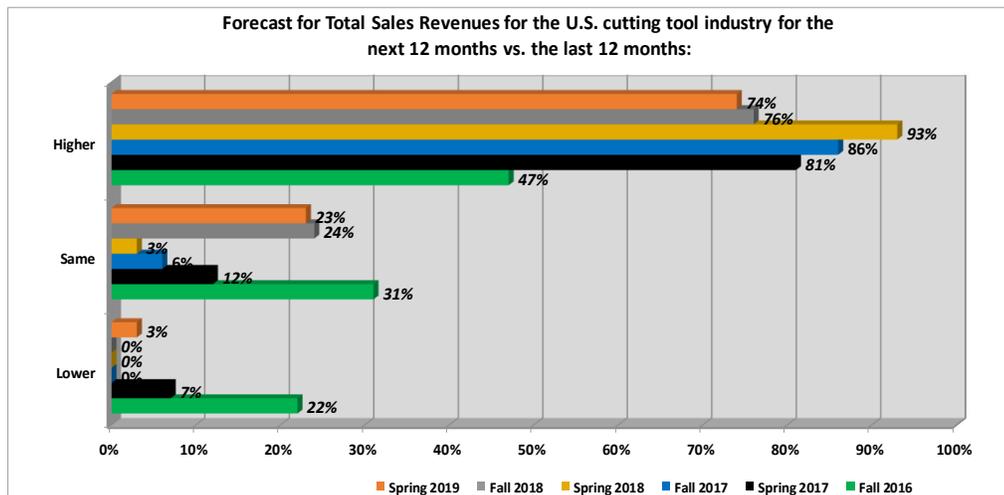
Sincerely,
Phil Kurtz
Wetmore Tool & Engineering Company

Spring Industry Outlook Survey Results

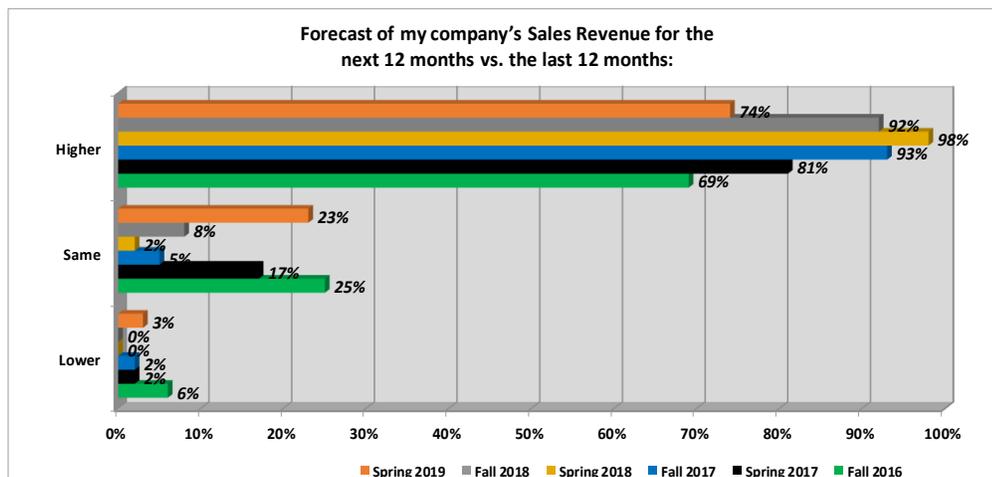
Participation in the 2019 Spring Industry Outlook Survey was down again from the 2018 Fall Industry Outlook Survey. Only 74% of respondents in the Spring Survey, compared to 92% of Fall Survey respondents, thought the forecast for total sales revenues for the next 12 months would be higher than the forecast for the last 12 months. Compared to 2018, those reporting higher sales revenue quarter-over-quarter noted that for the reported quarter they were down 21%. In addition, only 39% of respondents reported paying more for raw materials than they did in the previous quarter.

We hope all members will participate in the 2019 Fall Survey. The results can benefit all of us.

Industry Forecast



Company Forecast



USCTI Meetings

Future Meeting Dates

Be sure to mark your calendar for the upcoming Institute meetings, which are scheduled as follows:

2019 Fall Meeting

November 2-4, 2019
The Lodge at Torrey Pines
La Jolla, California

2020 Spring Meeting

May 15-18, 2020
Margaritaville Resort & Marina
Key West, Florida

2020 Fall Meeting

October 16-19, 2020
The Broadmoor
Colorado Springs, Colorado



World Cutting Tool Conference Recap

This June, ECTA hosted the World Cutting Tool Conference in Tegernsee, Bavaria, Germany. The location was wonderful, and the weather was unseasonably hot. Although hot weather is usually a benefit, we quickly discovered that there was no air conditioning in this region of the country. Although this didn't ruin the meetings, it did make things so uncomfortable that the Europeans were even taking off their jackets and ties!

Attendees heard updates from Europe and the U.S. as well as from China, Japan, Korea, and India. The four guest speakers were inspirational, informative, and entertaining. We heard from Jan Sibbersen, who broke the record for the swimming portion of the Ironman Triathlon in Hawaii at the age of 43. Prof. Gabriel Felbermayr, an Austrian economist, shared some great insight from the European perspective. In addition, Prof. Dr. sc. techn Thomas Koch provided an update on advances in the internal combustion engine. Finally, we heard from Vince Ebert, a physicist who is also a comedian. Who knew that was possible?

It was a great opportunity to network and enjoy time with colleagues from around the world. The next World Conference will take place in 2022 and will be hosted by the Japanese Cutting Tool Association.

Sincerely,
Mike Stokey, Programs Committee Chairman
Allied Machine & Engineering Corp.



Fall 2019 Institute Meeting Preview

Our next meeting will be held at The Lodge at Torrey Pines from November 2-4 in beautiful La Jolla, California. If you play golf, you won't want to miss this meeting. We will be playing the North Course on Saturday and the legendary South Course on Monday. We have other activities lined up for all three days and have a great lineup of informative speakers for our meetings. In further exciting news, our committee has chosen to go back to Key West next spring and The Broadmoor in Colorado Springs next fall.

If you haven't been to a meeting recently, this would be a great opportunity to come back and network with industry colleagues. In addition, if there are employees at your company who could benefit from getting involved with USCTI, consider sending them. Registration information for the Fall Meeting was recently sent.

We hope to see you in sunny California!



1300 Sumner Ave.
Cleveland, Ohio 44115
phone: 216-241-7333
fax: 216-241-0105
email: uscti@uscti.com
www.uscti.com

Breaking Up Is Hard to Do: The Role of Non-Compete Agreements When Employees Leave to Work for the Competition

By Anat Maytal

Non-compete agreements are contractual restrictions that control employees' future ability to work for competitors of their current employers. Non-compete agreements are an important way for employers to protect their financial interests and trade secrets. While employers traditionally reserved non-compete agreements, or restrictive covenants, for high-level employees whose departures could present a fiscal impact to the company, non-compete agreements are now common with various levels of employees.

However, not all non-compete agreements are enforceable. Whether a court will enforce a non-compete agreement depends on the subject employee and the imposed restrictions. First, the employer must determine whether the employee poses a high risk and is in possession of trade secrets or confidential information that gives the employer a competitive advantage. If so, the employer must then consider the reasonableness of the restriction as it relates to the duration, scope, and geographical area.ⁱ For example, the duration of the non-compete restriction should not be excessive compared to the value of confidential information the employee might possess.ⁱⁱ Further, the scope of duties restricted and the geographical area to which those restrictions apply should be limited to the extent necessary to protect the employer.ⁱⁱⁱ

Employers should also consider public policy and the laws of applicable jurisdiction, which may weigh heavily on the decision to include a choice of law or forum selection clause. Delaware and California are stark examples of the differing jurisdictional approaches to enforcing non-compete agreements.

In Delaware, the court views restrictive covenants through a contractual lens and will generally enforce reasonable non-compete agreements. Delaware's public policy respects the freedom to contract, with very limited exceptions, as its courts "respect the right of parties to freely contract and to be able to rely on the enforceability of their agreements. . . . [O]ur courts will enforce the contractual scheme that the parties have arrived at through their own self-ordering . . . Upholding freedom of contract is a fundamental policy of this State."^{iv} If Delaware courts find an agreement to contain unreasonable terms,



Whether a court will enforce a non-compete agreement depends on the subject employee and the imposed restrictions.

the court may choose to invoke the "judicial blue-pencil" to modify the agreement, rather than void it altogether.^v

In California, public policy prohibits any restraint on employment based on non-compete agreements. Section 16600 of the Business and Professions Code deems void any kind of contract to the extent it restrains anyone "from engaging in a lawful profession, trade or business of any kind."^{vi} California does not consider whether the parties had adequate consideration or whether the terms were reasonable. "The interests of the employee in his own mobility and betterment are deemed paramount to the competitive business interests of employers."^{vii} Although California is an at-will employment state, courts have found employers

liable in tort for terminating employees who refused to sign a non-compete agreement.^{viii} The public policy concern with non-compete agreements is very strong; California courts have even voided non-compete agreements between out-of-state employers and employees that leave to work in California.^{ix}

These are just two different states' approaches to enforcing non-compete agreements. Each state's laws and the facts of each case will determine the enforceability of each respective non-compete agreement. These are just a few considerations for a lawyer preparing a non-compete agreement.

Regardless of how reasonable or well-drafted the non-compete agreement may be, the employer must have an action plan in the event an employee breaches the non-compete agreement. Cases involving the violation of non-compete agreements rarely proceed to trial. Thus, counsel should inform employers of all available remedies and consider the strategic effect that requests for injunctive and interim relief will have on the ultimate case disposition.

Article written by Anat Maytal, an associate in BakerHostetler's litigation group whose practice focuses on complex commercial litigation and employment and labor law in both state and federal courts. BakerHostetler serves as antitrust counsel to the United States Cutting Tool Institute.

ⁱSee generally, e.g., *Coady v. Harpo, Inc.*, 719 N.E.2d 244, 250 (Ill. App. Ct. 1999); Norman D. Bisbara et al., AN EMPIRICAL ANALYSIS OF NONCOMPETITION CLAUSES AND OTHER RESTRICTIVE POSTEMPLOYMENT COVENANTS, 68 Vand. L.J. 1, 28-35 (2015) (addressing the reasonableness requirement for restrictive covenant enforcement).

ⁱⁱSee *supra* n. 2.

ⁱⁱⁱSee generally *Philips Elecs. N. Am. Corp. v. Hope*, 631 F.Supp.2d 705, 715 (M.D.N.C. 2009); NEV. REV. STAT. § 613.200 (2017) (some states require the non-compete agreement to have valuable consideration and reasonableness pertaining to duration and scope, which is combined with the geographical area).

^{iv}*Ascension Ins. Hldgs., LLC v. Underwood*, No. Civ. 9897-YCG, 2015 WL 356002, at *4 (Del. Ch. Jan. 28, 2015).

^vSee e.g., *Del. Exp. Shuttle, Inc. v. Older*, No. Civ.A. 19596, 2002 WL 31458243, at *13-14 (Del. Ch. Oct. 23, 2002) (adjusting a three-year time limit to a more reasonable "two-year duration" and imposing a geographical limitation where there was none).

^{vi}CAL BUS. & PROF. CODE § 16600.

^{vii}*Application Group, Inc. v. Hunter Group*, 61 Cal. App. 4th 881, 900 (1998).

^{viii}*D'sa v. Playbut, Inc.*, 85 Cal. App. 4th 927, 929, 934 (2000) ("[A]n employer cannot lawfully make the signing of an employment agreement, which contains an unenforceable covenant not to compete, a condition of continued employment.")

^{ix}See *Application Group, Inc.*, 61 Cal. App. 4th at 899-900 (striking down a Maryland employer's non-compete agreement with a former employee who moved to work for a California employer).

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Madeline Bucheger
Director of Sales North America
Phone: 847-599-9550
madeleine.bucheger@afcarbide.com
www.afcarbide.com



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President
Phone: 248 624-1005, x4005
Riddiford@anca.com
<http://www.anca.com>



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National Sales Manager
Phone: 810-407-5116
nkaczmariski@beamerlaser.com
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Grinding Application Manager
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<http://www.blaser.com>



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Sales Director High Speed Steel Products
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paul.nagus@bucorp.com
<http://www.bucorp.com>



Ceratizit USA
Tim Tisler
President
Phone: 586-759-2280
tim.tisler@ceratizit.com
<http://www.ceratizit.com>



Cutting Tool Engineering Magazine
Dennis Spaeth
Publisher
Phone: 847-714-0176
dspaeth@jwr.com
<http://www.cuttingtoolengineering.com>



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Haimer
Brendt Holden
President
Phone: 630-833-1500
brendt.holden@haimer-usa.com
<http://www.haimer-usa.com>



MachiningCloud
Anita Shum
Senior Marketing Manager
Phone: 805-437-4171, Ext. 149
anita.shum@machiningcloud.com
<http://www.machiningcloud.com>



Plasel Plastic Ltd.
Ronit Katalan
Account Manager
Phone: +972 (0) 4 9089820
Mobile: +972 (0) 54 2689 183
ronit@plasel.com
<http://www.plasel.com>



Platit Inc.
Bo Torp
President
Phone: 847-680-5270
b.torp@platit.dk
<http://www.platit.com>



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Phone: 847-281-8550; Ext. 275
eschwarzenbach@rollomaticusa.com
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President
Phone: 847-640-0273
ikaage@transorfilter.com
<http://www.transorfilter.com>



Vollmer of America Corp.
Peter Allen
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Phone: 412-278-0655 Ext. 222
p.allen@vollmer-group.com
<http://www.vollmer-us.com>