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The Challenge of Noncompetes

Distributors expand use of restrictive clauses in employment contracts

Noncompetition clauses are gaining traction once again as distributors try to protect the investments they make in employee training and development. But more cases involving these clauses are also making their way into courts around the U.S. This article examines how restrictive clauses are being used and provides best practices for implementing such covenants.

By Jenel Stelton-Holtmeier

Because competition for skilled employees is so high, more distributors and manufacturers are shifting their focus to hiring a candidate that is a cultural fit and investing in the training themselves. But training can be costly and time-consuming, and as a result, companies are also looking for ways to ensure they get a return on that investment.

Often that means including restrictive covenants, such as noncompete clauses, in employment contracts. These clauses seek to limit where an employee can work after separating from the company.

While these types of employment restrictions are not new – there are records of them dating back to the 1400s – labor market conditions have prompted broader proliferation of them. More companies are using them for more classes of employee. Even sandwich shop Jimmy John's requires its employees to sign agreements stating they will not work for any business that derives more than 10 percent of its revenue from the sale of sandwiches that is within three miles of a Jimmy John's franchise or affiliate for two years after separating from the company.

But the proliferation of restrictive clauses has also led to a proliferation of lawsuits against enforcement of the clauses. And the results of such lawsuits may depend significantly on where the clause is being enforced, says Michael Greco, a partner with labor law firm Fisher & Phillips.

The key is to make sure a clause is necessary to protect a legitimate business interest – simply wanting to keep the employee is not enough – in the least restrictive manner possible, Greco says.

What could go wrong?

The legal goal of noncompete and restrictive covenants is to prevent unfair competition. But too often, executives think they can simply create a one-size-fits-all agreement for all of their locations, without considering the geography where the agreement will be enforced.

"There are a lot of differences from state to state," Greco says. "And there are some very stark differences."

For example, a California statute bans noncompete clauses except for in a few very limited cases. Hawaii recently passed a law with much the same standards. On the other end of the spectrum, these types of clauses tend to be more broadly enforceable in states like Ohio or Pennsylvania. Many other states fall somewhere in the middle of the spectrum.

But even within the same jurisdiction, application of restrictive covenants can vary. "It all depends on the specific circumstances of the individual case," Greco says. As a result, reliance on a one-size-fits-all agreement for companies that operate in multiple jurisdictions usually results in problems.

Another common issue with restrictive clauses is that companies write them too broadly or don't clearly define restrictions on geography or industry.

"Essentially some of these can take you out of your industry altogether and prevent you from making a living," says Skip DeVilling, president of DeVilling & Associates LLC, a recruiting firm focused on

continued on p.3 of this section

INSIDE

PERSPECTIVE ■ Commentary by Thomas P. Gale

Changing Norms for Building Talent

The current business cycle is defined partly by the difficulty that most distributors – as well as traditional bricks-and-mortar companies – experience in engaging and retaining top-notch employees. Technology companies have changed the equation for an entire generation around the company-career relationship, but what's the solution for distributors?

For context, I have to go back about 15 years when I embarked on a multiyear research project to identify the key characteristics of successful distribution companies, ones that differentiated themselves from the competition. A key characteristic was in the culture and how certain distributors combined a customer- and employee-centric focus to consistently outperform competitors across revenue, profitability and growth metrics. Retention of both customers and employees was off the charts.

A $100 million industrial/plumbing distributor, for example, had an open-seating arrangement with cubicles that only had low dividers, not full walls. This included the executive team and even the CEO – well before the dot-com boom. It was tough to get hired, and cross-training and education were relentless across the company. Very clear performance metrics and team-based bonus plans had every associate held accountable by their peers, not their managers. Every employee worked one Saturday morning every six weeks, including the CEO.

This is not necessarily the solution, but this distributor was years ahead of the paradigm that drives the "new" tech workplace cultures by building an open culture with very clear rules and rewards. The problem many traditional companies face today, including plenty of distributors, is that the same organizational structures from 20 years ago are still in place. But what worked for baby boomers, driven almost exclusively by monetary rewards, is secondary to the social, educational and aspirational motivations of today's emerging workforce.

This happens in every industry. Amazon, which just passed Walmart as the most highly valued retailer in the U.S. with a market value of about $250 billion, has built an incredibly intense and dedicated culture. Costco, known for its employee-centric culture, also has done extremely well. The airlines are a classic case of profit at the expense of customers and employees, and yet Southwest and JetBlue have cracked that model with employees at the center.

Culture change is a difficult, long-term process, but this area demands a hard look. Your model might need some tough love to update. If you don't, you risk losing the talent that can build the next version of success over the next 10 years.

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Publisher
Thomas P. Gale
tom@mdm.com

Editor
Jenel Stelton-Holtmeier
jenel@mdm.com

Associate Publisher
Craig Riley
craig@mdm.com

Associate Editor
Eric Smith
eric@mdm.com

Contact Information
Questions, comments, article proposals, address changes or subscription service to:

Gale Media, Inc.
2569 Park Lane, Ste 200, Lafayette, CO 80026
Tel: 303-443-5060
Website: http://www.mdm.com

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Noncompete
Continued from page 1

industrial and construction markets. "Almost no jury in the U.S. would allow for that to stand."

In many states, the agreement must also provide some concrete benefit to the employee in exchange for signing it. This could be increased pay or the promise of severance package on separation. Often, though, companies have stated that the promise of continued employment is incentive enough – though courts are divided on this issue, as well. A Supreme Court of Wisconsin ruling from earlier this year supported the claim of continued employment being enough benefit, but suggested that it must include a guaranteed time for employment after the signing. (Runzheimer International v. David Friedlen and Corporate Reimbursement Services)

To enforce or not to enforce

While businesses may find restrictive covenants attractive, their popularity among the general population appears to be waning. More lawsuits are being filed as challenges to the clauses in a number of jurisdictions around the country.

Last year, the noncompete clause used by Jimmy John's was challenged on the basis that its application was too broad – all employees, including low-paid hourly workers, had to sign it – and that it offered no benefit to the employees for signing it. The challenge was dismissed, however, because there was no evidence that Jimmy John's ever enforced the clauses laid out – meaning there was no evidence that actual damages had occurred or would occur.

But businesses aren't stepping aside either. Many more are also turning to the courts for enforcement of the provisions.

For example, in March 2013, Stuart C. Irby Company Inc. filed a complaint against former employees Brandon Tipton, Michael Gilbert and Steven Padgett alleging that they had breached the noncompetition and nonsolicitation agreements they signed while under the employ of Treadway Electric Company. When Treadway was acquired by Irby in 2012, the agreements were assigned to Irby. About a year after the acquisition, Tipton, Gilbert and Padgett quit Irby and went to work for Wholesale Electric Supply Company Inc., Texarkana, TX.

In addition, Irby claimed that Tipton had actively recruited other employees to leave Irby and join them at Wholesale Electric, leaving the Conway, AR, branch of Irby basically unstaffed.

In April 2014, the U.S. District Court for the Eastern District of Arkansas Western Division issued a summary judgment, dismissing the case. The court ruled that because the agreements were signed while under the employ of Treadway, their enforcement ended one year after the employees' technical separation from Treadway through its acquisition by Irby.

The court also ruled that even if the agreements could be assigned to Irby – rather than having the employees re-sign new agreements under the new entity – that they could not be enforced because they were too broad. For one, the customer base already overlapped.

"First, it appears that the only interest Irby seeks to protect is competition," U.S. District Judge Billy Roy Wilson wrote in the judgment. "Irby lists several customers who have done business with Wholesale after this exodus; but nothing in the record indicates those customers began doing business with Wholesale only after the exodus."

In addition, Wilson ruled that the contracts lacked "reasonable geographic limitation" because they were too vague. The territory limitation was left open for definition by Treadway and its successor Irby.

The court also ruled that Irby would pay more than $200,000 in legal costs for the defendants.

In August 2015, however, the U.S. Court of Appeals for the Eighth Circuit overturned the summary judgment, saying it was "inappropriate." The appellate court negated every position laid out by Wilson and declared a trial would be necessary to resolve the existing disputes of material fact.

Best practices

There is no such thing as an ironclad noncompete agreement, Greco says, but there are steps that can be taken to improve a restrictive clause's enforceability and compliance.

Begin by determining the legitimate interests the company needs to protect. Is there confidential information that the employee was privy to that could be used to unfairly benefit a competitor? Does the company have a particularly innovative way of approaching training that needs to be protected?

Once the interests have been identified, determine what sort of agreement is actually necessary to protect them. A full-blown noncompete may not be the best course of action in all cases, Greco cautions. For an executive assistant, a nondisclosure agreement may be sufficient – and in many cases, more readily enforceable with the backing of other trade secret protections.

If it's the cost of training that's a sore spot, consider implementing a training cost agreement to ensure the company gets a return on its investment, Greco says. Assign a reasonable monetary value to the training provided over a set amount of time and how long the employee would have to work there for the company to recoup the investment. The agreement would then assess a "penalty" based on where the employee is in that recoupment period when they decide to separate.

Whatever restrictive clause is chosen, make sure that the provisions are narrowly tailored "so that you can stand up and tell a judge 'We were really careful and thoughtful about this so as to not overreach,'" Greco says. Many cases fail because they are just too broad or unclear.

An effective way to tailor such agreements is to clearly identify what competitors are included in the agreement, DeVilling says. By providing this distinction, employees know exactly how they're limited.

A successful agreement is one that an employee doesn't mind signing, DeVilling says. A former employee is less likely to challenge the agreement if they gained benefits from signing it. But the benefits have to be commensurate with what they're giving up, he says. "You simply can't keep someone from making a living in their field altogether."

College Connection: 'Virtuous Cycle'

Part 1: Benefits of aligning with universities go far beyond recruiting

Advertising in a campus recruiting office or staffing a booth at a college job fair isn't enough for distributors that hope to successfully recruit the next generation of workers. This article examines how a deep relationship between a distributor and university program can yield innumerable benefits for the company, its recruits and the college it partners with – as well as the industry as a whole.

Part 2 will look at how distributors use internships to bolster their position on college campuses and fast-track training for new hires.

By Eric Smith

The start of another school year means HR directors at distribution companies are plotting visits to college job fairs and placing ads with campus recruitment offices in hopes of attracting students to a variety of careers upon graduation. But these tactics might not be enough. When competing for candidates, many distributors find they're no match for companies with trendier names and bigger marketing budgets.

"The challenge facing all of us who are recruiting college students is the hype that goes along with it," says Beverly Propst, senior vice president, human resources, Graybar, St. Louis, MO. "Anyone who goes to a college recruiting fair knows that it's all about who has the nicest sign or the best logo, or who is the most well-known brand."

Not only are distributors at a competitive disadvantage for landing candidates – many of whom have never heard of the field – but they lament a dwindling talent pool, claiming that while fewer and fewer graduates are looking to distribution as career, even those considering it aren't qualified to fill open positions.

Strategically aligning with a college distribution program can address both issues. This partnership, which could include anything from hiring interns to helping develop curriculum to guest lecturing to funding scholarships, can differentiate a company from a competitor, says Barry Lawrence, director of the industrial distribution program at Texas A&M University.

Regardless of the depth or breadth of a company's commitment, the return far outweighs the investment.

"If you want top-quality people coming out of the university, you've got to engage," Lawrence says. "You've got to be engaged with the programs that exist, and you've got to work toward building new programs. And you've got to put funding behind this. We as a distribution community have under-invested in education."

Industrial Distribution 101

Texas A&M in College Station, TX, is the birthplace of distribution's investment in education. Though several distribution programs of varying size and scope now exist at universities across the U.S., Texas A&M was once the only one. Formed in the 1950s, it blossomed thanks to one distributor in particular, J.R. Thompson of Warren Electric, who "sought to form a relationship with the program and support his initiatives by both hiring graduates and financially sponsoring the program," according to the university.

"Without J.R. Thompson and one or two other individuals, you might not have even seen the field of industrial distribution at a university," Lawrence says. "It might not have ever come into existence."

As Texas A&M prospered, sending countless graduates to distribution jobs around the country and building strong relationships with companies in the process, other industrial distribution programs emerged, including the University of Nebraska at Kearney, as well as the University of Alabama at Birmingham, where Charles Collat, former CEO of Mayer Electric Supply, forged the Charles & Patsy Collat Industrial Distribution Program and the Collat School of Business.

Collat, now chairman emeritus of Birmingham, AL-based Mayer Electric, had seen the success of Texas A&M's program and wanted to replicate it in Alabama with hopes of giving the industry another training ground in a different locale for future generations of distribution executives. "We didn't invest in UAB to establish any kind of competitive advantage," he says. "We just were trying to help support education."

In addition to supporting education by offering scholarships, funding chairs and building the university's endowment, Collat figured a program modeled after Texas A&M's would help increase distribution's exposure – and its emphasis on recruitment – at the university level.

"People have never flocked to distribution," Collat says. "Distribution has to reach out to tell people what we've got."

Industry exposure is indeed a chief concern. Students "go blank" when they hear the term, says Kristen Craig, program manager at the Charles & Patsy Collat Industrial Distribution Program at UAB. So simply introducing the term "industrial distribution" into a campus' collective vocabulary is critical. The earlier the exposure the better.

"The students start to understand that and see the role distribution plays in the economy," she says. "They say, 'I just didn't know that that's what it was called.' It's awkward to have that epiphany in an interview, so educating students about distribution is why college partnerships are important."

Benefits abound

Ensuring the brightest and best college students will consider distribution requires getting in front of them as much as possible through a strong presence on campus. It requires doing more than merely swooping in for a job fair and never reappearing once the HR reps take down the company banner and pack it away for the next tour stop.

"For us to get the most out of our relationships with colleges and universities we have to be seen as a partner to them," Graybar's Propst says. "The key to that is: 1, repetition – we need to see them often and they need to see us often; and 2, it can't be a one-sided relationship – they're providing us access to their students, and we also feel we need to provide something to them, so we try to find out what we can do to help them."

For example, Graybar provides speakers for classes, mock interviewers for a career day and anything else that "allows us to assist them with their mission, which is get their students trained, get them information about business and the industry and add that real-world flavor to the classroom," Propst says. "And it also allows us to get more exposure to the students and the universities and colleges, as well."

Aligning with colleges such as Texas A&M, UNK and UAB – as well as East Carolina University and Central Washington University, other popular ID programs – helps CED, Irving, TX, convey information about the industry as well as electrical distribution to students, many of whom think working in that sector means reading meters for a power company.

"The biggest benefit is just getting the word out to more and more students about the industry," says John Reinig, CED's training manager. "We look at it from the electrical distributor side of things. However, when I go to schools I do spend a lot of my time talking about distribution in general, how important it is, how it can play a role in what they do, how they can make a great career out of it."

A consistent presence helps a distributor promote its own brand – a significant challenge in a realm where few have heard of Grainger, Graybar, Stock Building Supply or Sonepar, says Mike Wigton, president of Jackson, MS-based electrical distributor Irby Co. and an advisory board member of the Texas A&M program.

"When GE goes to a college campus, they don't have to explain to the kids who GE is," Wigton says. "When Irby goes in there, we have to explain who Irby is. The difference in that is if you go into sales for a manufacturer, it's the

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brand that's most important; when you get into the distribution side, it's not about the brand, it's about the person."

Access leads to success

The most obvious benefit for a distributor that aligns with a college program is "access to the kids," says Mike Rowlett, CEO, Womack Machine Supply Co., Farmers Branch, TX. "I've bet we've hired close to 70 ID students over the last 15-20 years, and probably half of our sales force are ID students (from Texas A&M), and probably 10-12 are from Nebraska-Kearney."

While Womack Machine's sales department is loaded with students from industrial distribution programs, it also recruits from those programs for its supply chain and customer service departments. Yet the company's relationship with the colleges runs even deeper than just hiring their graduates.

Companies might invest financially in university programs to develop programs and provide scholarships, but, as Rowlett points out, "it's not just money; you've got to put your effort into it. You've got to find people to work with the universities to develop curriculum, develop materials, speak in classrooms. It's a function of your capital, but it's not just financial capital. The more educated and knowledgeable the students are, the better they are able to come up with new needs and solutions for the industry. It's a self-fulfilling prophecy."

That self-fulfilling prophecy is central to Lawrence's mission at Texas A&M. When distributors align with college programs, they help create knowledge by sharing best practices, writing textbooks or assigning business projects that gives students practical experience.

Then as more distributors align with college programs – perhaps even funding the creation of one at a nearby institution, if needed – the programs can extend their reach to more students. As more students are exposed to distribution and seek employment in the industry, the industry gains more talented employees to fill its ranks. And as more employees enter distribution, they, in turn, will lend their support to the university programs that fostered those careers.

"If the companies engage in a university's knowledge, then they help us build that body of knowledge and in so doing they become the companies that faculty are talking about, that faculty are using for education purposes, and that leads to the companies developing strong brand names among the students for recruiting purposes," Lawrence says. "It's a virtuous cycle."

Demand on the rise

An alignment with Texas A&M has been immensely successful for chemical distributor Brenntag North America, Reading, PA, according to Bill Fidler, who from 2006-2013 served as the company's president and CEO. He says the rise of Texas A&M's program over the years, as well as burgeoning industrial distribution programs at other colleges and universities around the country, is critical for the industry's continued prosperity.

"It is the true recognition of the fact that distribution is a profession and there are specific skills that can be learned at the undergraduate and graduate levels," Fidler says. "The real benefit that we have gotten out of our alignment with the industrial distribution program at Texas A&M is the development and understanding of best practices of the top distribution companies."

Fidler, who retired in June after a long career in distribution, sees a rising need for additional college programs because "distribution is a long-term growth industry," he says, "and the opportunity for universities to develop industrial distribution programs is front and center."

Scott Jochum of UNK's industrial distribution program agrees, saying he could easily "double the students I have now and place them all." For him, that signals a need for additional distributors to reach out to existing programs and align with existing universities, or help develop a new program – in much the same way their predecessors did.

"We need those companies that want to invest in our programs," Jochum says. "But it's not just investing in our programs, they're investing in the discipline of distribution. It's a win-win."

CFO Optimism Not Rattled by Economic Tremors

Several notable global economic tremors in the last few months – including the continuation of the Greek crisis in the eurozone and jitters in the Chinese stock market – haven't taken a serious a toll on optimism among CFOs around the world, according to the most recent Global CFO Signals by Deloitte.

However, in many of the nine country reports in this edition of the report, CFOs' optimism seems increasingly tied to their own country's or region's situation.

Highlights from the report include:

- In the wake of the election of a majority conservative government, UK CFOs are reporting higher risk appetites and more expansionary strategies.
- Australia's federal government policy is now viewed as neutral instead of starkly negative thanks to a budget that promises fiscal repair.
- An undercurrent of uncertainty about the strength of the U.S. economy tempered optimism and expectations among North America's CFOs.

From a CFO's perspective, "some of the geopolitical issues that were alarming, in particular the eurozone situation, may be less alarming now," notes Ira Kalish, chief global economist for Deloitte. And given that global companies are obviously influenced by what happens in their home countries, those factors may be weighing more heavily this quarter.

At the same time, this seeming lull in geopolitical crises may be an opportunity to develop a clearer "road map" for future growth, says Kalish. CFOs seem to be focusing more on their longer-term prospects. Instead of citing economic uncertainty as their biggest concern this quarter, UK finance chiefs pointed to the possibility of rising interest rates; Belgium's CFOs are worried about the competitiveness of their companies; and North America's CFOs are greatly concerned that equity markets are overvalued.

Still, those are not the only "triggers that could reignite uncertainty," says Kalish, adding China, the price of oil, and another possible budget crisis in the U.S. to the list. So as CFOs look ahead, he adds, "vigilance continues to be a good idea."

In North America, CFOs remain optimistic this quarter. But while 38 percent express rising optimism about their companies' prospects, that figure is down sharply from last quarter's 48 percent and is the lowest level in more than two years.

Moreover their growth expectations were down dramatically: revenue growth expectations, for example, fell to 3.1 percent from 5.4 percent last quarter and now sit at their historic survey low. Similarly, earnings growth expectations fell sharply to a survey-low 6.5 percent from last quarter's 10.6 percent. CFOs see the outlook for the broader North American economy as quite good – only slightly below where it was last quarter and their assessments of Europe rebounded substantially.

Low interest rates and a weaker Australian dollar are fueling optimism among that country's CFOs. In addition, the federal government's policy-making has a neutral influence on optimism this quarter, whereas last quarter two-thirds of finance chiefs felt that the influence was negative.

In this environment, CFOs' views on their own companies' metrics for the coming year show a number of continuing positive signs, with 71 percent forecasting increased operating cash flows and 49 percent expecting increased capital expenditures. Still, the rate of fiscal repair is seen as too slow among CFOs, even though the majority (58 percent) believes the government's budget could have a positive impact on the economy.

CFO sentiment remains mixed across much of Europe. In the UK, for example, optimism is apparent in CFOs' rebounding risk appetite: up to 59 percent from a two-year low of 51 percent last quarter. Moreover, CFOs' strategies have turned markedly more expansionary, and expectations for hiring and capital expenditure have risen close to their highest levels in five years.

The positive sentiment is shared among Belgium's CFOs, whose outlook is bolstered by the fact that halfway through the year, 37 percent of them report their companies have performed better than what was initially budgeted. Netherland's CFOs, on the other hand, report a slightly less optimistic outlook, but their perception of uncertainty took a positive turn: 46 percent now rate it as above normal – compared with 89 percent two years ago.

Meanwhile, Switzerland's finance chiefs remain gloomy as they continue to adapt to the removal of the currency floor in January. And only 17 percent of Austria's CFOs are feeling confident about economic development in their own country, while just 14 percent report increased optimism toward their companies' prospects.

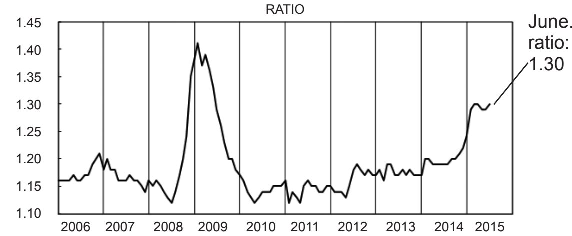
Monthly Wholesale Trade Data

Wholesale revenues in June were $449.9 billion, up 0.1 percent from the revised May level, but were down 3.8 percent from the June 2014 level. June sales of durable goods were down 1.1 percent from last month and down 1.5 percent from a year ago. Sales of nondurable goods were up 1.2 percent from May, but down 5.7 percent from last June.

Inventories. Inventories were $586.2 billion at the end of June, up 0.9 percent from the revised May level and up 5.4 percent from June 2014. June inventories of durable goods were up 0.1 percent from last month and up 5.4 percent from a year ago. Inventories of nondurable goods were up 2.3 percent from May and up 5.5 percent from last June.

Monthly Inventories/Sales Ratios of Merchant Wholesalers: 2006-2015

(Estimates adjusted for seasonal and trading-day differences, but not for price changes)



Source: U.S. Census Bureau

Inventories/Sales Ratio. The June inventories/sales ratio for merchant wholesalers was 1.30. The June 2014 ratio was 1.19.

Sales and Inventories Trends: June 2015

NAICS Code	Business Type	Sales $Millions	Inventory $Millions	Stock/ Sales Ratio	Percent Change Sales 5/15-6/15	Percent Change Sales 6/14-6/15	Percent Change Inventory 5/15-6/15	Percent Change Inventory 6/14-6/15
42	**U.S. Total**	**449,920**	**586,156**	**1.30**	**0.1**	**-3.8**	**0.9**	**5.4**
423	**Durable**	**214,402**	**359,889**	**1.68**	**-1.1**	**-1.5**	**0.1**	**5.4**
4231	Automotive	36,333	63,017	1.73	-2.8	2.8	2.0	14.8
4232	Furniture & Home Furnishings	6,730	10,905	1.62	3.6	10.1	1.5	7.6
4233	Lumber & Other Construction Materials	9,492	14,528	1.53	2.6	3.4	0.9	2.5
4234	Prof. & Commercial Equip. & Supplies	36,595	39,925	1.09	-0.8	-3.1	-0.6	3.6
42343	Computer Equipment & Software	18,782	15,792	0.84	-0.8	-4.7	-2.1	2.1
4235	Metals & Minerals	13,553	30,887	2.28	-0.5	-12.4	-1.3	-1.3
4236	Electrical Goods	47,198	48,018	1.02	-1.2	1.5	0.1	6.4
4237	Hardware, Plumbing, & Heating Equipment	10,599	22,433	2.12	1.2	6.4	-1.0	9.4
4238	Machinery, Equipment & Supplies	34,946	103,717	2.97	-2.2	-4.2	-0.5	5.1
4239	Miscellaneous Durable	18,956	26,459	1.40	-0.8	-9.6	1.0	-5.9
424	**Nondurable Goods**	**235,518**	**226,267**	**0.96**	**1.2**	**-5.7**	**2.3**	**5.5**
4241	Paper & Paper Products	8,137	7,767	0.95	1.2	4.1	0.2	1.6
4242	Drugs	51,428	56,555	1.10	1.4	13.5	-0.6	14.3
4243	Apparel, Piece Goods & Notions	14,183	29,311	2.07	0.1	1.4	2.0	12.0
4244	Groceries &Related Products	49,888	33,144	0.66	-1.4	-0.5	1.1	7.6
4245	Farm-product Raw Materials	19,494	23,100	1.18	3.6	-9.7	15.5	4.1
4246	Chemicals & Allied Products	10,646	12,724	1.20	1.4	-2.5	1.8	0.5
4247	Petroleum & Petroleum Products	48,601	19,585	0.40	3.7	-29.2	3.6	-18.2
4248	Beer, Wine & Distilled Beverages	11,267	15,453	1.37	1.4	5.9	1.5	5.0
4249	Miscellaneous Nondurable Goods	21,874	28,628	1.31	0.0	5.2	0.6	6.7

U.S. Bureau of the Census, Current Business Reports, Monthly Wholesale Trade, Sales and Inventories Series: MDM compilation and analysis.
Adjusted for seasonal and trading day differences. Figures for sales and inventories are preliminary adjusted estimates.

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Industrial & Construction Markets Update

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NFIB Small Business Optimism Rises in July

The NFIB Small Business Optimism Index rose 1.3 points to 95.4 in July after dropping more than 4 points in June. Expectations for business conditions and real sales gains accounted for half of the net gain in the Index components.

"The best that can be said about the July index is that there was no further decline from June," said NFIB Chief Economist Bill Dunkelberg. "July has produced the most grudging of gains in the Index's history and is still not above the 42-year average of 98 (99.5 through 2007). This leaves current readings just over 2 points below the average and five points below the December 2014 reading."

Job creation was flat in July. On balance, owners added a net 0.05 workers per firm in recent months, better than June's -0.01 reading, but still close to the zero line. Fifty-seven percent reported hiring or trying to hire (up 5 points), but 48 percent reported few or no qualified applicants for the positions they were trying to fill.

Sixteen percent reported using temporary workers, down 2 points. Twenty-five percent of all owners reported job openings they could not fill in the current period, up 1 point, but 4 points below the highest reading for this year. A net 12 percent plan to create new jobs, up 3 points reversing last month's loss.

Sixty-one percent reported capital outlays, up 3 points on top of a 4-point gain in June. Overall, a nice pickup in the frequency of spending reports. The percent of owners planning capital outlays in the next three to six months rose 1 point to 24 percent, not a strong reading historically but among the better in this expansion.

Earnings trends continued to deteriorate, posting a 2-point decline after a 10-point drop in June, falling to a negative 19 percent. Far more owners reporting profits lower quarter to quarter than higher.

Distributor News

Grainger, Chicago, IL, reported July sales declined 1 percent compared to the same period a year ago. U.S. segment sales were up 1 percent year-over-year, and Canadian segment sales were down 19 percent, 4 percent in local currency. Other businesses segment sales increased 8 percent compared to July 2014, or 25 percent in local currency.

Airgas Inc., Radnor, PA, has named Joseph P. Sullivan as president – Airgas Specialty Products.

Airgas Inc. named Nicole Kahny senior vice president of human resources.

Ohio Transmission Corp., Columbus, OH, has acquired **Buckeye Pumps Inc**., Galion, OH, a provider of engineered process system and pump solutions for customers in industrial and municipal markets. Buckeye Pumps will operate as a division of **OTP Industrial Solutions**, a division of Ohio Transmission Corp.

DXP Enterprises Inc. Houston, TX, reported second quarter sales of $323.7 million, a 15.2 percent decrease over the same period a year ago. Profit decreased 51.8 percent to $7.2 million. For the first six months, sales were $665.3 million, down 8.9 percent from the prior-year period. Profit decreased 34.9 percent to $16.8 million.

Beacon Roofing Supply Inc., Peabody, MA, agreed to acquire **Roofing Supply Group**, Dallas, TX, from investment firm Clayton, Dubilier & Rice for $1.1 billion

Beacon Roofing Supply Inc. reported sales for the fiscal third quarter ended June 30 of $718.2 million, an 8.3 percent increase over the same period a year ago. Profit increased 5.8 percent to $28.3 million. For the first nine months, sales were $1.7 billion, up 7.9 percent over the same period a year ago. Profit was $31.5 million, up 6.2 percent year-over-year.

Lyon, France-based **IPH Group**, a distributor of industrial supplies in Europe, has agreed to acquire Germany-based technical distributor **KISTENPFENNIG AG**.

MRO distributor **Stellar Industrial Supply**, Tacoma, WA, has agreed to acquire certain assets of **Graffams Industrial Supplies**, San Luis Obispo, CA.

Metals distributor **Ryerson Holding Corp**., Chicago, IL, has acquired **Southern Tool Steel**, a privately owned metals service center company based in Chattanooga, TN.

Electrical Equipment Company, Raleigh, NC, has agreed to acquire **Williams Supply Inc**., Roanoke, VA.

Border States Electric, Fargo, ND, a wholesale electrical product and solution supplier, opened a 14,800-square-foot facility in Watford City, ND.

continued on p.2 of this section

MARKETS UPDATE SUPPLEMENT P. 2

News Digest

Continued from p. 1 of this section

Industrial distributor **Applied Industrial Technologies**, Cleveland, OH, reported sales for fiscal year 2015 of $2.8 billion, up 11.9 percent year-over-year. Profit decreased 2.4 percent to $115.5 million. For the fiscal fourth quarter ended June 30 sales were $677.5 million, an increase of 3.5 percent over the same period a year ago. Profit decreased 5.5 percent to $28 million.

Veritiv Corp., Atlanta, GA, reported sales for the second quarter of $2.2 billion, a 62.7 percent increase from the prior year. Profit increased 48.3 percent to $4.3 million. For the first six months, sales were $4.3 billion, up 63 percent year-over-year. Profit decreased to $2.1 million from $8.4 million in the prior year period.

Aerospace distributor **Wesco Aircraft Holdings Inc.**, Valencia, CA, reported sales for the third quarter ended June 30 of $368.7 million, a year-over-year decrease of 7 percent. Profit decreased 50 percent to $16.5 million. Sales for the first nine months of fiscal 2015 were $1.1 billion, an increase of 19 percent compared to the prior year period, driven primarily by the Haas acquisition. Profit decreased 23.5 percent to $59.3 million.

The Home Depot, Atlanta, GA, reported sales for the second quarter of $24.8 billion, a 4.3 percent increase over the same period a year ago. Profit increased 9 percent to $2.2 billion. For the first six months, sales were $45.7 billion, up 5.1 percent over the same period one year prior. Profit increased 11.2 percent to $3.8 billion.

Houston Wire & Cable Co., Houston, TX, reported second quarter sales of $78 million, down 24.6 percent year-over-year. The company reported a loss of $0.6 million for the quarter, compared to a profit of $4 million the prior year. Sales for the first six months were down 21.7 percent year-over-year to $159.6 million. Profit was $1.6 million, compared to $7.8 million for the prior year period.

Park-Ohio Holdings Corp., Cleveland, OH, reported sales for the second quarter of $377.3 million, a 9.9 percent increase over the same period a year ago. Profit was flat at $12.4 million. For the first six months, sales were $752 million, up 13.7 percent over the same period a year ago. Profit was $23.2 million, up 3.1 percent.

WinWholesale Inc., Dayton, OH, has named Jack Johnston as CEO. Johnston also retains his title as president of WinWholesale.

Calculation of MDM Inflation Index for July 2015

		BLS Price Indices July '15	BLS Price Indices June '15	BLS Price Indices July '14	% Sales Weight	Weighted Indices July '15 (1)X(4)	% Change July '15 June '15	% Change July '15 July '14
1136	Abr. Prod.	578.0	581.5	572.9	19.1	110.39	-0.61	0.88
1135	Cutting Tools	508.1	506.2	495.1	18.9	96.04	0.37	2.63
1145	Power Trans.	810.4	811.0	804.1	15.4	124.80	-0.08	0.78
1081	Fasteners	512.6	512.3	510.7	9.0	46.13	0.05	0.37
1149.01	Valves, etc.	956.8	955.8	962.9	7.6	72.71	0.10	-0.64
1132	Power Tools	371.1	371.1	361.8	6.5	24.12	0.00	2.57
1144	Mat. Handling	594.9	594.0	582.0	6.2	36.88	0.14	2.22
0713.03	Belting	835.3	835.3	839.2	6.1	50.95	0.00	-0.46
1042	Hand Tools	778.5	779.8	778.8	8.1	63.06	-0.17	-0.04
108	Misc. Metal	476.0	477.7	480.0	3.1	14.76	-0.35	-0.82

"New" July Index	334.3	July Inflation Index	639.85	-0.07	0.80
"New" June Index	334.5	June Inflation Index	640.28		
		July 2014 Inflation Index	634.74		

New index reflects 1977-100 base other #: 1967 To convert multiply by .52247

HVACR/plumbing distributor **F.W. Webb Co.**, Bedford, MA, has appointed Thomas Grunewald as senior vice president of sales.

The Hillman Group Inc., Cincinnati, OH, a fasteners and builder's hardware distributor, has named Gregory J. Gluchowski, Jr. president and CEO.

Economic News

June **U.S. manufacturing technology orders** totaled $355.4 million according to the Association for Manufacturing Technology. This total, as reported by companies participating in the USMTO program, was down 13.2 percent from the June 2014 total of $409.7 million but up 4.6 percent when compared to May's total of $339.9 million.

June **U.S. cutting tool consumption** totaled $188.7 million, according to the U.S. Cutting Tool Institute and the Association for Manufacturing Technology. This total, as reported by companies participating in the Cutting Tool Market Report collaboration, was down 1 percent from June 2014 and up 9 percent from May.

The **Producer Price Index** for final demand rose 0.2 percent in July, seasonally adjusted, according to the U.S. Bureau of Labor Statistics. On an unadjusted basis, the final demand index declined 0.8 percent for the 12 months ended in July, the sixth straight 12-month decrease.

Privately owned housing starts in July were at a seasonally adjusted annual rate of 1,119,000, according to the U.S. Census Bureau and the Department of Housing and Development. This is 16.3 percent below the revised June estimate of 1,337,000, but is 7.5 percent above the July 2014 estimate of 1,041,000.

Industrial production increased 0.6 percent in July after moving up 0.1 percent in June, according to the Federal Reserve. **Capacity utilization** for the industrial sector increased 0.3 percentage point in July to 78 percent.

Total **nonfarm payroll employment** increased by 215,000 in July, and the unemployment rate was unchanged at 5.3 percent, the U.S. Bureau of Labor Statistics reported.

The Conference Board Leading Economic Index for the U.S. declined 0.2 percent in July to 123.3, following a 0.6 percent increase in June, and a 0.6 percent increase in May. The **Coincident Economic Index** increased 0.2 percent to 112.5, and the **Lagging Economic Index** increased 0.3 percent to 118.1.

U.S. manufactured exports decreased by 2 percent to $298 billion in the second quarter as compared with 2014, according to an analysis from the MAPI Foundation, the research affiliate of the Manufacturers Alliance for Productivity and Innovation. The U.S. deficit in manufactures rose by $21 billion, or 15 percent, compared with the second quarter of 2014. **Chinese exports** were also down 2 percent to $533 billion in the second quarter on a year-over-year basis. China's trade surplus increased by $14 billion in the second quarter over 2014, or by 6 percent.

Canadian manufacturing sales rose 1.2 percent to $50.8 billion in June, according to Statistics Canada.

Canadian municipalities issued building permits worth C$7.7 billion (US$5.9 billion) in June, a 14.8 percent increase, according to Statistics Canada.

Canadian investment in new housing construction increased 3.1 percent to C$4.1 billion (US$3.1 billion) in June compared with the same month in 2014, according to Statistics Canada.

The **Canadian wholesale services price index** decreased 0.3 percent in the first quarter, according to Statistics Canada. Of the eight major wholesale sectors, margins were down in five, up in two and unchanged in one.

Compared with May, **European seasonally adjusted industrial production** in June fell by 0.4 percent in the euro area (EA19) and fell by 0.2 percent in the EU28, according to estimates from Eurostat, the statistical office of the European Union. In May, industrial production decreased by 0.2 percent and 0.1 percent respectively.

Compared with May, June **seasonally adjusted production in the construction** sector fell by 1.9 percent in the euro area (EA19) and by 1.1 percent in the EU28, according to Eurostat. Compared with June 2014, production in construction fell by 2.3 percent in the euro area and by 0.4 percent in the EU28.

Power transmission/motion control distributor sales were up 6.1 percent in the first quarter

continued on p.4 of this section

News Digest
Continued from p. 3 of this section

compared to the same period in 2014, while manufacturer sales rose 7.8 percent, according to the quarterly Sales History & Outlook Report from the Power Transmission Distributors Association.

Manufacturer News

Pentair plc, Manchester, UK, has agreed to acquire **ERICO Global Company**, Solon, OH, for $1.8 billion.

Diversified manufacturer **Precision Castparts Corp**., Portland, OR, has agreed to be acquired by **Berkshire Hathaway Inc**., Omaha, NE, for $32 billion.

Johnson Electric Holdings Ltd., Hong Kong, has agreed to acquire **Stackpole International**, Ancaster, Ontario, a supplier of transmission and engine oil pumps and powder metal components for automotive powertrains.

Stanley Black & Decker, New Britain, CT, has sold **Stanley Security España S.L.** and **Stanley Security Italia S.r.l.** to **CoBe Capital**, a global private investment firm.

Tool manufacturer **Snap-on Inc**., Kenosha, WI, has acquired Italian manufacturer **Ecotechnics S.p.A.** for $13 million.

Bearings manufacturer **NN Inc**., Johnson City, TN, has agreed to acquire **Precision Engineered Products Holdings Inc**. for $615 million.

NN Inc. reported second quarter sales of $164.9 million, a 55 percent increase over the same period a year ago. Profit grew 33.7 percent to $7 million. For the first six months of 2015, sales were $328.6 million, a year-over-year increase of 57.1 percent. Profit increased 24 percent to $13 million.

Lincoln Electric Holdings Inc., Cleveland, OH, has acquired **Specialised Welding Products**, Melbourne, Australia, a privately held provider of specialty welding consumables in Australia and New Zealand.

Swedish manufacturer **Sandvik** announced that it has ousted President and CEO Olof Faxander, and that it will replace him with Björn Rosengren.

Bearings manufacturer **RBC Bearings Inc.**, Oxford, CT, reported sales for the fiscal first quarter of $142.3 million, a 25.9 percent increase over the same period a year ago. Profit decreased 16.3 percent to $13 million.

Power equipment manufacturer **Generac Holdings Inc**., Waukesha, WI, reported sales for the second quarter of $288.4 million, a decrease of 20.5 percent year-over-year. Profit decreased 72.5 percent to $14.8 million. Year-to-date sales were $600.2 million, down 14.8 percent over the prior-year period. Profit decreased 61.1 percent to $34.5 million.

Parker Hannifin Corp., Cleveland, OH, has appointed Bob Bond to the newly created position of vice president – eBusiness, IoT and Services.

Motion control manufacturer **Allied Motion Technologies Inc**., Amherst, NY, reported sales for the second quarter of $60.5 million, a 2.6 percent decrease over the same period a year ago. Profit increased 16 percent to $3.1 million. For the first six months, sales were $120.1 million, up 2 percent over the same period one year ago. Profit increased 26 percent to $6.1 million.

Allied Motion Technologies Inc. has named Rob Maida as vice president of operational excellence, a newly created position.

Bluff Manufacturing, Fort Worth, TX, has named Lane Moss as vice president of operations.

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