



Supreme Court Upholds North Carolina's Blue Pencil Doctrine Impacting Non-Competes

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On March 18, 2016, the North Carolina Supreme Court reasserted the state's strict blue pencil doctrine by reversing the Court of Appeals in *Beverage Systems of the Carolinas, LLC v. Associated Beverage Repair, LLC, et al.* (No. 316A14). The Supreme Court agreed with the two lower-court rulings as to the overbroad geographic scope of the non-competition covenant at issue, but it declined to look beyond the trial court's blue penciling authority—an inadequate tool when faced with a written covenant divisible only into the entire states of North and South Carolina—in order to reform the covenant. More detail and discussion about the lower-court rulings can be found [here](#).

In renewing the North Carolina blue pencil doctrine, the Supreme Court put to bed the notion that parties to a contract can consensually award North Carolina courts the power to retrospectively revise otherwise unenforceable covenants, or any other power that the court otherwise lacks under existing law. So business buyers, employers, and anyone else seeking the benefit of a restrictive covenant must carefully consider the *structure* of the covenant, and not just the scope, because an enforcing court may strike—but not rewrite.

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