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ILLINOIS COURT RULES LINKEDIN INVITATION DID NOT VIOLATE A NON-SOLICITATION AGREEMENT

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Many companies use non-competition or non-solicitation agreements to protect their business interests. Traditionally, employers only had to worry about their former employees calling or meeting with current clients or employees. The increasing use of social media has made it more difficult for employers to limit communications and contacts by former employees who signed non-solicitation agreements. In *Bankers Life & Cas. Co. v. Am. Senior Benefits LLC,* No. 1-16-0687 (Ill. App. 2017), the Illinois Court of Appeals addressed whether a request to connect on LinkedIn violated a non-solicitation clause of an employment agreement.

Gregory Gelineau worked for Bankers Life, a company that sells insurance and financial products. While employed with Bankers Life, Gelineau was subject to a non-competition agreement that included a non-solicitation clause that continued for two years after his employment ended. This non-solicitation provision prohibited Gelineau from inducing or attempting to induce Bankers Life employees to sever their relationship with the company. Gelineau left Bankers Life to work for American Senior Benefits ("ASB"), a company that provides similar services. While with ASB, and before the two years had expired, Gelineau sent LinkedIn connection requests to three Bankers Life employees. These connection requests were an invitation to professionally connect with Gelineau, and upon viewing Gelineau's profile, the requested employee could see a job posting for ASB.

Bankers Life filed suit against Gelineau and ASB alleging Gelineau's activity was a solicitation in violation of his non-competition agreement. The Court of Appeals looked to the content of the communication, and found that Gelineau's invitations were sent through generic emails seeking to form a professional connection. They did not contain any discussion of Bankers Life, no

mention of ASB, no suggestion that the recipient view a job description, and no solicitation to leave their place of employment and join ASB. The court noted that to violate his contract, Gelineau would have had to directly attempt to induce individuals to leave Bankers Life. As such, the appellate court affirmed the lower court's ruling that Gelineau did not violate the non-competition agreement.

While the decision in *Bankers Life* is not binding precedent in Michigan, its analysis of social media in the employment law context relied on a Michigan case. In *Amway Global v. Woodward*, the U.S. District Court for the Eastern District of Michigan, in considering whether several sales representatives' use of their LinkedIn accounts violated their non-solicitation agreements, the court said, "it is the substance of the message conveyed, and not the medium through which it is transmitted, that determines whether a communication is a solicitation." *Amway Global v. Woodward*, 744 F. Supp. 2d 657, 674 (ED Mich. 2010). In *Amway,* the court found a violation of the individuals' non-solicitation agreements based on their three-stage strategy to encourage other Amway sales representatives to leave Amway and join them in representing an Amway competitor. The communication included the statement, "If you knew what I knew, you would do what I do."

It is important to consider a departing employee's social media activity when that employee is subject to a non-competition or non-solicitation agreement, and the impact of social media should be considered when working with counsel to create these types of employment policies and agreements. The *Bankers Life* case dealt with a former employee's request to connect with a Bankers Life employee. The court's analysis may have been different if the former employee had attempted to connect with a Bankers Life customer.

***About the Author. Jason E. LaBelle** is a member of Bodman's Workplace Practice Group. He counsels public and private sector employees on employment matters and advises management on contract negotiations and other labor issues. Prior to joining Bodman, Jason's practice focused on appellate advocacy and complex, substantive motion practice related to contract and insurance litigation in state and federal courts. He is a certified civil mediator.*

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