

### Social Media Mayhem Continues-Invitation to Connect on LinkedIn Held Not Violative of Non-Solicitation Agreement

Courts continue to grapple with the use of social media as a networking platform in the context of compliance with non-compete and non-solicitation agreements. Last month we alerted you to the Pennsylvania Superior Court Case of [Joseph v. O'Laughlin, No. 1706 WDA 2015]. In that case of first impression in Pennsylvania, the Court held that a seemingly innocuous Facebook posting by the seller of a veterinary practice of his undefined future plans to open another practice violated the non-solicitation agreement in an asset purchase agreement. At about the same time the Pennsylvania Superior Court reached that conclusion, an Appellate Court in Bankers Life and Casualty Company v. American Senior Benefits, LLC, N.E.3d--, No. 1-16-0687, 2017 IL App (1st) 160687 (Ill. App. Ct. Aug. 7, 2017), held that an employee's invitations to connect with former colleagues on LinkedIn after his termination did NOT violate the restrictive covenant in his employment agreement.

During his employment with Bankers Life and Casualty Company ("Bankers Life"), Gregory Gelineau signed an employment agreement forbidding him from inducing or attempting to induce any employee to curtail, resign, or sever employment. When Gelineau's employment with Bankers Life ended, he went to work for a competitor and while working for the competitor, Gelineau sent requests on LinkedIn to connect with at least three Bankers Life employees. According to Bankers Life, when those employees clicked on Gelineau's profile, they would see a job posting for his new employer.

Bankers Life filed suit against Gelineau, his new employer, and various individuals, alleging breach of Gelineau's employment agreement. The Trial Court granted summary judgment for Gelineau and his new employer triggering this appeal. The Illinois Appellate Court considered whether social media communications were improper solicitations. The Court ultimately concluded that the invitations Gelineau sent the employees were merely "request[s] to form a professional networking connection" and they "did not contain any discussion of Bankers Life, no mention of [the new employer], no suggestion that the recipient view a job description on Gelineau's profile page, and no solicitation to leave their place of employment and join [the new employer]." The Court further commented that any further steps involving views of Gelineau's profile page or job postings on this profile page "were all actions for which Gelineau could not be held responsible." As a result, the Court affirmed the grant of summary judgment against Bankers Life.

Bankers Life is noteworthy because it joins a growing number of Court decisions to consider whether an invitation to connect via social media constitutes a solicitation in violation of a non-compete/non-solicitation agreement. The Bankers Life Court seemed to rely upon the substance of the message more than the media used to transmit the message. This seemingly simple logic, however, is at odds with other decisions including the recent Pennsylvania case we noted above, as well as commentators who have emphasized that social media is "revolutionizing modern marketing" and can be "a powerful tool to build...professional networks." Since this continues to be an evolving area of law, we will monitor these decisions closely and urge you to consult with counsel before you hit send. In the meantime, be careful out there social media mavens!

For more information, or if you have any questions regarding restrictive covenants, or trade secret protection issues in New Jersey, please contact Robert T. Egan or Thomas A. Muccifori, the chairs of Archer's Trade Secret Protection and Non-Compete Practice Group at 856-795-2121. In Pennsylvania, contact Jonathan P. Rardin at (215) 963-3300 or any member of the Trade Secret and Non-Compete Practice Group, in Princeton, NJ (609) 580-3700, Hackensack, NJ (201) 342-6000, or Wilmington, DE (302) 777-4350.

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