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LinkedIn “Connection” Request Did Not Violate Non-Solicit

By Peter A. Steinmeyer on June 29, 2017

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In this age of social media, a frequently asked question is whether social media activity can violate a non-compete or non-solicit. Although the case law is evolving, courts which have addressed the issue have focused on the content of the communication, rather than the medium used to convey it. In so doing, they have distinguished between mere passive social media activity (e.g., posting an update about a new job) as opposed to more targeted, active actions (e.g., not merely posting about a new job, but also actively recruiting former co-workers or clients).

A “LinkedIn” case recently decided by the Illinois Appellate Court, *Bankers Life v. American Senior Benefits*, involved conduct which fell between these two extremes: an individual, Gregory P. Gelineau, who was contractually barred from soliciting former co-workers, sent

three former co-workers generic requests to become “connections” via LinkedIn. The requests did not go further than that, but they were not purely passive in that they sent to specific individuals. Gelineau’s former employer, Bankers Life, filed suit, accusing him of breaching his non-solicitation obligation.

After surveying decisions from around the country involving various forms of social media activity, the Court explained that the different results reached in these decisions “can be reconciled when looking at the content and the substance of the communications.” Here, the Court noted that the LinkedIn requests sent by Gelineau did not discuss Bankers Life or Gelineau’s new employer, did not suggest that the recipient view Gelineau’s new job description, and did not encourage the recipient to leave Bankers Life and join Gelineau’s new employer. Rather, they were bare requests to become “connections” on LinkedIn.

The Court held that such bare requests were not the sort of direct, active efforts to recruit which would have been a breach of Gelineau’s contractual non-solicitation clause.

While the facts of *Bankers Life* fall in between the two extremes of social media activity addressed by other courts, the case ultimately turned on an evaluation of the content of the activity, as opposed to the medium. This approach is consistent with that taken by courts whenever they are tasked with determining whether particular conduct constitutes an unlawful “solicitation.”

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