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Locked Out of LinkedIn: A Federal Court Opens the Door To Employer Liability

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The U.S. District Court for the Eastern District of Pennsylvania determined this week in ***Eagle v. Morgan, et al***., that a **terminated employee who was locked out of her LinkedIn account by her employer** suffered no legal damages despite successfully proving claims for unauthorized use of her name, invasion of privacy by misappropriation of identity, and misappropriation of publicity. The district court previously dismissed Dr. Eagle's federal claims under the Computer Fraud and Abuse Act and the Lanham Act, and retained jurisdiction over the remaining state law claims.

Dr. Linda Eagle, a former founder and executive of Edcomm, Inc., a banking education company that provides services to the banking community, created her LinkedIn account using her Edcomm e-mail address. Edcomm did not require its employees to create LinkedIn accounts, nor did it pay for accounts if employees created them. At the time of Eagle's termination, Edcomm had no policy in place informing its employees that LinkedIn accounts were the property of the employer. Eagle shared her LinkedIn password with several Edcomm employees to update her account and respond to invitations. Following her termination, Edcomm employees accessed Eagle's LinkedIn account, changed her password, and updated the account with her successor, Sandi Morgan's picture and personal information. However, Edcomm failed to change the homepage's URL to remove Eagle's name and likewise failed to remove Eagle's honors and awards section. Edcomm had full control of the account for approximately 16 days. LinkedIn subsequently took over the account, and Eagle regained access approximately one month after Edcomm changed her password. Eagle filed suit against Edcomm and several employees shortly thereafter alleging illegal use of her LinkedIn account.

With respect to Eagle's claim for unauthorized use of her name, the Court stated that when Edcomm had control of Eagle's account, an individual conducting a search on Google or LinkedIn for Dr. Eagle would be directed to a URL for a LinkedIn web page showing Sandi Morgan's name, profile, and employment with Edcomm. Specifically, the Court noted that when an individual searched for Eagle, he or she would unknowingly be put in contact with Edcomm despite the fact that Eagle didn't work there anymore. The name "Dr. Linda Eagle" had commercial value due to Eagle's efforts to develop her reputation, and Edcomm therefore received the commercial benefit of using her name to promote the service of its business.

The Court similarly found that Eagle successfully proved her claim against Edcomm for invasion of privacy by misappropriation of identity because Edcomm maintained the LinkedIn homepage under a URL that contained Eagle's name. Despite the fact that Edcomm updated the LinkedIn homepage with Sandi Morgan's profile information, the URL still contained Eagle's name and the Court held that her name had the benefit of her reputation and commercial value.

Additionally, the Court entered judgment in Eagle's favor on her claim for misappropriation of publicity because she maintained an exclusive right to control the commercial value of her name and to prevent others from exploiting it without permission. The Court held that Edcomm deprived Eagle of the commercial benefit of her name when it entered her LinkedIn account, changed her password to prevent her from accessing it, and altered the account to display Sandi Morgan's information. The Court noted that Edcomm took these actions instead of creating a new account for Sandi Morgan.

Despite her success on three causes of action, the Court determined that Eagle was not entitled to any compensatory or punitive damages. The Court was not persuaded that Eagle established with reasonable certainty she had lost any sales, contracts, deals, or clients during the period she could not access her LinkedIn account. Eagle offered the testimony of Clifford Brody, the co-founder of Edcomm, to provide an analysis of her damages. His calculation was based on Eagle's average sales per year divided by the number of contacts she maintained on LinkedIn to arrive at a dollar figure per contact, per year. The Court referred to this method as "creative guesswork" and highlighted the fact that there is a chance that even with full access to her LinkedIn account, she would not have made any deals or signed any contracts with her LinkedIn contacts. In denying her claim for punitive damages, the Court stated that Eagle failed to call a single witness to offer evidence regarding Defendants' state of mind or the circumstances surrounding these events.

The Court entered judgment in favor of Defendant Edcomm, Inc. with respect to Eagle's claims for identity theft, conversion, tortious interference with her LinkedIn contract, civil conspiracy, and civil aiding and abetting. Judgment was entered in favor of the individual defendants with respect to all of Eagle's claims, including the claims mentioned above that she successfully proved against Edcomm. In October 2012, the District Court dismissed Eagle's federal claims under the Computer Fraud and Abuse Act and Lanham Act as to all defendants.

This case presents another stepping stone in the continuously changing world of social media law. While employers do have legitimate concerns about LinkedIn accounts with information that identifies clients' key decision makers and a company's strategic business relationships, preventing former employees from accessing their accounts without their consent exposes employers to damages if a former employee can proffer evidence of a lost or misdirected sale or deal. However, there is nothing in the *Eagle v. Morgan* opinion that restricts an employer's ability to have employees remove customer names from their LinkedIn accounts before departing from the company. In fact, courts have recognized that employers do have protectable rights in this information. For example, in *TEKsystems Inc. v. Hammernick, et al.*, the plaintiff alleged that its former employee's use of LinkedIn to connect with former colleagues and clients violated the parties' noncompete/nonsolicitation agreement. In that case, the Court entered a Consent Order for Permanent Injunction prohibiting the former employee from soliciting or contacting the company's customers for a period of 12 months. Also, in *Coface Collections North America, Inc. v. Newton*, the Third Circuit affirmed the district court's entry of a preliminary injunction against the company's former owner who, among other things, used LinkedIn to compete with his former company in violation of a restrictive covenant.

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