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DOES GOODWILL COUNT? ESTABLISHING "IRREPARABLE HARM" IN NON-SOLICIT DISPUTES

Sam Louwagie

The field of restrictive covenant litigation has been rapidly evolving since Minnesota's 2023 statutory ban on non-competes. Employers have turned to non-solicitation agreements, confidentiality provisions, or trade-secret laws to prevent former employees from competing.

In these cases, preliminary injunctions are often the key battleground. By the time a non-compete, non-solicitation, or trade-secret dispute reaches a final judgment, the departing employee may already have spent more than a year working for a competitor, soliciting former customers, or using confidential information, at which time it might not be possible to "unring" the bell. On the other hand, if an injunction blocks an employee from taking a job, pursuing a venture, or working with a particular client, the opportunity may well be gone by the time the case is decided on the merits. In many such disputes, then, the preliminary injunction hearing effectively determines the practical outcome, long before trial.

That reality makes recent Minnesota and Eighth Circuit decisions addressing preliminary injunctive relief especially significant for employees and employers alike. Two 2026 decisions, reaching very different results, illustrate the developing contours of this analysis.

On January 12, 2026, the United States Court of Appeals Eighth Circuit vacated a preliminary injunction issued against a group of financial advisors. The decision underscores the demanding burden employers face in establishing "irreparable harm" caused by breach of a non-solicit agreement.

In *Choreo, LLC v. Lors*, four financial advisors resigned from Choreo, a national investment advisory firm, and joined Compound Planning, a competing firm opening a new office in the same city. The advisors had employment agreements with Choreo prohibiting them from soliciting clients of the firm or conducting any financial planning with any of its customers after their employment ended. But within two weeks, the Choreo branch had lost approximately one-third of its business to Compound, with the departing advisors admittedly serving as financial advisors to those clients. The advisors did not dispute that they had breached the agreement, only that the provision at issue was enforceable.

Choreo sought a preliminary injunction. The trial court granted one, barring the advisors from, among other things, servicing the covered client accounts. But the Eighth Circuit, in a sweeping decision, vacated the injunction. The Court held that Choreo's claimed harms, fees from the clients allegedly poached, could be calculated and awarded as money damages if Choreo won the case on the merits. The Court separately rejected the argument that the "amorphous loss of goodwill and reputation was irreparable harm supporting preliminary injunctive relief."

The *Choreo* decision has already had ripple effects in federal district courts in the Eighth Circuit. Around a month later, in *Equity One Franchisors, LLC v. Dishon* the U.S. District Court for the Eastern District of Missouri cited *Choreo* in denying a motion for preliminary injunction in a trade secret dispute. The Court's reasoning, based on *Choreo*, suggested a standard that could rarely be met in a restrictive covenant case: "In fact, this case is all about money. No ancient oak tree is about to be torn down. No historic landmark is about to be destroyed. No toxins are about to leak into the water table. And no person is facing deprivation of their constitutional rights. . . . These losses are measured and can be remedied with money damages."

But just last month, in an unpublished decision, the Minnesota Court of Appeals reached a dramatically different conclusion in a factually similar case. In *Continua Interiors of Minnesota, LLC v. Hess*, a group of employees left Continua and began working for a competitor called CTI. The employees began hiring other Continua employees and marketing to Continua customers. Continua sought preliminary injunctions enforcing the confidentiality and noncompete clauses in the employees' employment agreements. The district court granted the injunctions, finding that goodwill with customers was an "intangible asset" that "money cannot replace."

On appeal, the employees argued—just as the Eighth Circuit held in *Choreo*—that there was no showing of irreparable harm related to customer goodwill, because any alleged harm could be remedied with an award of money damages. But the Minnesota Court of Appeals reached the opposite conclusion. Here, the Court held that the "difficulty in ascertaining the precise dollar value of the harm to its goodwill and business relationships weighs in favor of temporary injunctive relief."

The contrasting decisions in *Choreo* and *Continua Interiors* leave uncertain how courts will treat the loss of "customer goodwill" at the preliminary injunction stage. While the Eighth Circuit rejected injunctive relief based on such "amorphous" harm, the Minnesota Court of Appeals found that same quality—"the difficulty in ascertaining the precise dollar value"—supported an injunction.

Some key takeaways for litigants in restrictive covenant cases:

- Different courts reach different conclusions as to whether "customer goodwill" can constitute irreparable harm. Research the law in your venue before seeking a preliminary injunction. Consider also whether there is precedential state court authority that federal courts applying state law would be bound to follow.
- Employers should be prepared to provide (and employees to counter) specific reasons why their customer relationships are not simply "all about money," and why they cannot be adequately addressed by money damages when they are lost.

Sam Louwagie is an attorney at Anthony Ostlund Louwagie Dressen & Boylan P.A. He represents both individuals and businesses, as plaintiffs and defendants, in commercial litigation, including employment disputes, restrictive covenant litigation, and trade secret claims.

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ANTHONY OSTLUND
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