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Fifield Update: Two Federal District Courts Conclude That The Illinois Supreme Court Will Ultimately Reject Fifield's Two-Year Rule

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In the last issue of The Fast Laner, we reported that the Illinois Court of Appeals, Third District, followed Fifield v. Premier Dealer Servs. and held that, in the absence of other consideration, continued at-will employment of less than two years was not sufficient consideration to support enforcement of a restrictive covenant. However, two federal district court judges in Illinois have recently expressed doubt that the Illinois Supreme Court would follow Fifield. First, in Bankers Life v Miller, Bankers Life sued seven former employees who began competing with it in alleged violation of their contracts and restrictive covenants. In denying the employees' motion to dismiss based upon the consideration rule in Fifield, Federal District Judge Manish Shah of the United States District Court for the Northern District of Illinois opined that the Illinois Supreme Court would reject the Fifield consideration rule in favor of a more flexible approach. Days later, in Cumulus v Olson, Federal District Judge Billy McDade of the United States District Court for the Central District of Illinois granted a motion for a temporary restraining order against a former employee of a radio broadcasting station. The former employee, who had signed an agreement that included a 60 mile non-compete clause as well as a non-solicitation of customers provision, quit his employment after working twenty-one months and began working for a competitor. Judge McDade opined that the Illinois Supreme Court would not accept the two-year bright line consideration rule announced in Fifield and severely criticized the logic of the decision. Decisions of federal district courts are not binding on Illinois courts and Fifield remains applicable law for Illinois employers (despite the willingness of federal district judges in Illinois to reject it). This issue will not be settled until the Illinois Supreme Court decides the legal question, but it may not weigh in on this issue until at least one Illinois Appellate Court, as opposed to federal district courts, rejects Fifield, thus creating a split of opinion among Illinois Appellate Courts. In the meanwhile, employers who need enforceable restrictive covenant agreements to protect their business interests should consult with their employment counsel in order to, as much as possible, "Fifield-proof" such agreements.

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