

# Bankers Life and Casualty: Illinois Appellate Court finds Connecting to Old Colleagues via LinkedIn Does not Constitute Unlawful Solicitation

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New job to-do list: (1) send goodbye email; (2) attend goodbye party; (3) update LinkedIn account; and (4) then use said LinkedIn account to send old colleagues new contact information. This sounds like a pretty standard modus operandi for the modern job-hopper, right? In fact, this last act, that LinkedIn contact, provided the nub of a recent non-solicit case out of Illinois state court.

In *Bankers Life v. American Senior Benefits*, an appellate court found that an ex-employee's invitation to connect with old colleagues via LinkedIn did *not* violate his non-solicitation agreement with his former employer. The *Bankers Life* opinion, though not designated for publication by the Illinois appellate court, provides insight into the line between the permissible and the prohibited in the context of solicitation via social media.

### **Background**

The *Bankers Life* case represents a commonplace dispute over a non-solicit covenant, with a modern social media twist. Here a sales manager subject to a two-year employee non-solicitation covenant, sent generic requests from his LinkedIn account to three former colleagues asking them to become professional "connections."

Bankers Life sued their former sales manager and his new employer for violating the covenant. It claimed that once its employees accepted the LinkedIn invitation from the former sales manager and visited his LinkedIn profile, they would also encounter a job posting at his new employer. The trial court disagreed and Bankers Life appealed.

### **Bankers Life Decision**

On review, the appellate court in *Bankers Life* looked to other jurisdictions (presumably because of a dearth of binding precedent) to define the contours of what constitutes unlawful solicitation via social media. On one end of spectrum, the court looked to a Connecticut case, where a court found that a web designer who posted on LinkedIn and asked his contacts to "check-out" a website he designed for his new company did not violate his non-solicit agreement. On the other end, the *Bankers Life* court reviewed the decision of a federal court in Michigan, which found that an ex-employee who contacted his former colleagues via LinkedIn and told them that "if you knew what I knew, you would do what I do" violated his non-solicitation provision because the ex-employee's message could be readily characterized as solicitation for employees to leave their employer. According to the judges in *Bankers Life*, the principle emerging from the social media cases they canvassed was to look at the "content and substance" of the purported solicitation.

Applying that principle to the case-at-bar, the *Bankers Life* court found that the sales manager's generic LinkedIn requests to connect with former colleagues were more like the actions of the web designer in the Connecticut case. The *Bankers Life* court reasoned that the LinkedIn requests did not mention Bankers Life or the sales manager's new employer. Nor did the sales manager's LinkedIn requests suggest that Bankers Life employees review their old colleague's job description or encourage them to leave Bankers Life or join his new company. Thus, the *Bankers Life* court held that the sales manager's actions did not constitute solicitation prohibited by his agreement.

### **Takeaways**

- The fact that the *Bankers Life* court had to canvass other jurisdictions for precedent suggests that the law on social media and solicitations is still young and evolving. Given the prevalence of social media in the professional context, it will only be a matter of time before other jurisdictions weigh-in and help draw the line between permissible outreach via social media and impermissible solicitation.
- Courts following *Bankers Life's* commonsense approach will look at the substance and content of a social media communication, and not the medium of exchange itself, to decide whether an unlawful

solicitation has taken place.

- Companies and practitioners should stay abreast of this fast-developing area of the law. As *Bankers Life* shows, a mere LinkedIn invitation from an ex-employee subject to a restrictive covenant may not be the smoking gun that makes an employer's non-solicit case a winner.
- On the flip side, individuals who are subject to non-solicit provisions should use caution when reaching out to former colleagues via LinkedIn or any other social media platform. Crafting a communication designed to go beyond a generic invitation to connect may end up setting new solicitation precedent.
- Lastly, employers may be able to minimize the likelihood of litigation by explicitly spelling out restrictions with respect to social media after the employee separates.

## Authors

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