

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

Bankers Life and Casualty Company,

Case No:

Plaintiff,

vs.

Brian Knox and Jeffrey Prior,

Defendants.

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**VERIFIED COMPLAINT OF PLAINTIFF BANKERS LIFE AND
CASUALTY COMPANY FOR EMERGENCY INJUNCTIVE RELIEF**

Plaintiff Bankers Life and Casualty Company (“Bankers Life”), by and through its undersigned counsel, files this Complaint against Defendants Brian Knox and Jeffrey Prior (collectively, “Defendants”). In support thereof, Bankers Life states as follows:

I. NATURE OF THE ACTION

1. Bankers Life provides seniors with various insurance and financial products. Knox and Prior were the two highest ranking managers for Bankers Life in its Lansing office and its satellite office in Ann Arbor. While employed by Bankers Life, Knox and Prior were working together to: (a) recruit others in their office to join them in leaving for a competitor and (b) download en masse policyholder information to use once they joined the competitor.

2. Bankers Life learned of these actions and Defendants' employment ended. However, before Bankers Life caught wind of these actions, Defendants had downloaded significant amounts of information about Bankers Life policyholders. The primary purpose of this Action is to secure the return of that information and all copies thereof.

3. Defendants' downloading of policyholder information was in violation of Defendants' contractual agreements with Bankers Life, the Federal Defend Trade Secrets Act, and the Michigan Uniform Trade Secrets Act. Their untrustworthy actions in attempting to recruit their downlines while still employed as managers of the Company highlights the urgency of judicial relief in obtaining a full return of all downloaded information before it is misused (or further misused).

4. Defendants therefore ask this Court for emergency injunctive relief, ordering Defendants to: return all copies of the documents Defendants removed from Bankers Life; remove any summaries of the information contained in these documents; identify all third parties with whom Defendants have shared this information (other than the policyholders themselves), and to facilitate Bankers Life's retrieval of such information. Bankers Life also seeks its reasonable attorneys' fees and costs incurred in seeking the return of documents and information, per its contracts with Defendants and the trade secrets statutes.

5. Bankers Life has contractual agreements with the Defendants to arbitrate disputes. Those arbitration agreements provide an exception for requests for emergency injunctive relief. Therefore, this action is limited to the request for emergency injunctive relief to retrieve misappropriated policyholder information and the attorneys' fees and costs in obtaining same. Bankers Life is pursuing a separate arbitration claim against Defendants, for damages caused by the actions discussed above and other actionable conduct, including breach of fiduciary duty, and breach of contractual prohibitions against inducing employees and agents to leave Bankers Life.

II. PARTIES, JURISDICTION AND VENUE

6. Plaintiff Bankers Life is incorporated in Illinois, its principal place of business is in Illinois, and therefore, is a citizen of Illinois.

7. Defendant Brian Knox is a resident of Michigan, and on information and belief, is a citizen of the state. Knox was a Branch Sales Manager ("BSM") immediately prior to his termination, running the Lansing, Michigan office and the Ann Arbor, Michigan satellite office.

8. Defendant Jeff Prior is a resident of Michigan, and on information and belief is a citizen of that state. Prior was a Unit Sales Manager for Bankers Life immediately prior to his resignation, supervising the Lansing, Michigan office and the Ann Arbor, Michigan satellite office.

9. The Court has subject matter over this action pursuant to 28 U.S.C. § 1332(a). Bankers Life is a citizen of a different state than each of the Defendants, and the amount in controversy against each Defendant is in excess of \$75,000, exclusive of interest and costs, as the value to Bankers Life of the injunctive relief sought, with or without contractually-recoverable attorneys' fees, exceeds \$75,000.

10. This Court additionally has subject matter jurisdiction over the claims against Defendants pursuant to 28 U.S.C. § 1331, federal-question jurisdiction, as Bankers Life asserts a claim under the federal Defend Trade Secrets Act of 2016, 18 U.S.C. §§ 1836, 1839 (2016), against these Defendants.

11. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over Plaintiff's state-law claims against Defendants, as their basis is derived from a core group of operative facts that also serves as the basis for Bankers Life's federal claim against Defendants.

12. Personal jurisdiction is proper here, as Defendant Knox resides in this District and the actions occurred principally in this District. Moreover, both Defendants each executed agreements with Bankers Life, attached as Exhibits 1-2, respectively, each of which contains a provision generally providing that any disputes between those individuals and Bankers Life will be resolved through binding arbitration, but each of these agreements expressly permits the parties to pursue emergency injunctive relief in Court. (*See* Exhibit 1, Knox Arbitration Agreement, at p. 5; Exhibit 2, Prior Arbitration Agreement, at p. 5).

13. Venue is proper here, as Defendant Knox resides in this District, both Defendants reside in this State, and a substantial part of the events giving rise to the claims in this matter occurred in this District.

III. FACTS

Background

14. Bankers Life provides seniors with various insurance and financial products, such as long-term care insurance, life annuities, and Medicare Supplement insurance. In furtherance of its business, Bankers Life utilizes both employees and agents (*i.e.*, independent contractors) to provide these products to customers/policyholders.

15. Bankers Life provides confidential information to employees and agents, including the Defendants. Bankers Life gave the Defendants access to the significant confidential and trade secret information – including customer lists, policyholder cards, and contact data. Knowing who has Bankers Life policies is extremely valuable, as such individuals are by definition individuals who have both the financial means and the inclination to purchase the kinds of products Bankers Life provides. Finding such individuals is an extremely time-intensive endeavor. Further, by having access to the policyholder cards and policyholder contact data, the Defendants became privy to confidential and trade secret policyholder information including, without limitation, the policyholders' names, addresses, contact information, dates of birth, social security numbers, the policies each policyholder has with Bankers Life, the coverage provided by those policies, the premiums paid by the policyholders, and the policyholders' goals, concerns and other personal information pertinent to insurance purchase decisions.

16. As managers, Knox and Prior were entrusted with access to information regarding all of the policyholders serviced the Lansing and Ann Arbor offices.

17. The confidential nature of the information obtained by the Defendants cannot be disputed. Policyholder cards and policyholder contact data contain protected health information as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Consistent with HIPAA requirements, Bankers Life has implemented and maintains various administrative, physical, and technical safeguards to protect the confidentiality of protected information. For example, Defendants were required to complete mandatory training regarding their responsibility for appropriate use, and disclosure of protected health information.

18. While performing services for Bankers Life, the Defendants utilized all of the confidential and trade secret information described above in identifying Bankers Life's current

and prospective customers, interfacing with them, and selling them various insurance and financial products. Indeed, the Defendants could not have performed any of this work on behalf of Bankers Life without such information, and the Defendants would not have learned or otherwise had access to such information but for their association with Bankers Life.

19. By signing their contracts with Bankers Life, the Defendants acknowledged the confidential and trade secret nature of the information described above and agreed not to misappropriate such information in any way. (See Exhibit 3, Knox Agent Agreement, at p. 10, Section 24; Exhibit 4, Prior Agent Agreement, at p. 10, Section 24).

20. In addition to obtaining contractual protections with its agents and employees, Bankers Life took, and still takes, additional measures to guard against the unauthorized disclosure of its confidential and trade secret information. For instance, all policyholder cards, policyholder contact information, and the like are stored in password-protected computer databases.

21. Further, regarding policyholder interface, by meeting face-to-face with customers, learning detailed, personal, and confidential information about them, and addressing their insurance needs, Bankers Life's employees and agents develop, maintain, and advance the relationship between Bankers Life and its customers. It takes years to develop these customer relationships. As such, Bankers Life invests substantial time and resources in obtaining and developing these customer relationships. The Defendants would not have had these customer relationships but for their association with Bankers Life.

22. Knox and Prior each executed agreements with Bankers Life, each of which contains a provision requiring that they return all Confidential Information to Bankers Life immediately upon termination of the Agreement, regardless of the format, and including without

limitation all information relating to customers. (See Exhibit 3, Knox Agent Agreement, at p. 10, Section 24; Exhibit 4, Prior Agent Agreement, at p. 10, Section 24).

23. Knox and Prior each also executed data privacy and security agreements with Bankers Life, each of which contains a provision requiring that they return all Personally Identifiable Information to Bankers Life, regardless of the format within five days. (See Exhibit 5, Knox Data Privacy and Security Addendum, at p. 6, Section 8; Exhibit 6, Prior Data Privacy and Security Addendum, at p. 6, Section 8).

24. The contractual agreements Defendants executed with Bankers Life further provided that they will indemnify Bankers Life for any reasonable attorneys' fees it may incur due to their noncompliance with their obligations under the agreement. (See Exhibit 3, Knox Agent Agreement, at p. 11, Section 28; Exhibit 4, Prior Agent Agreement, at p. 11, Section 28).

Actions of Knox and Prior

25. Knox and Prior were the two highest ranking managers at the Lansing, Michigan office and the Ann Arbor, Michigan satellite office of Bankers Life immediately before their departure.

26. Beginning on January 22, 2018 or earlier, Knox and Prior began to surreptitiously recruit others in the office to join them in their planned departure to a competitor.

27. On or about January 22, 2018, Knox told Bankers Life Unit Supervisor Raynee Michaud that he planned to leave Bankers Life to join a competitor, and tried to persuade her to join him. In so doing, Knox discussed his plans to recruit others in the office.

28. Knox attempted to recruit Unit Field Trainer Heidi Van Wagenen on January 23 and 25, 2018. In so doing, Knox discussed his plans to join a competitor and to recruit others in the office.

29. Prior attempted to recruit Van Wagenen on January 24, 2018.

30. On January 25, 2018, Prior attempted to recruit Bankers Life Unit Field Trainer Malinda Choate and indicated he and Knox were opening an office for a competitor of Bankers Life.

31. On Thursday, January 25, 2018, Bankers Life Regional Director, Tom Chiaravalli, learned of Knox and Prior's plans and recruiting efforts. The very next day, Chiaravalli and Territory Development Manager Scott Bogdon met with Knox and Prior separately. Prior admitted he intended to leave and resigned the same day. A true and accurate copy of Prior's resignation letter is attached hereto as Exhibit 7.

32. Knox denied he was leaving. After confirming that this denial clearly was false, the Company terminated Knox the same day.

33. Prior's download of policyholder information during the week of his resignation and just before that was substantial. For instance, on January 24, Prior downloaded policyholder information for 68 and 88 policyholders in two separate instances. (*See* Exhibit 8, Prior Download Report). On January 22, Prior downloaded information on over 30 policyholders seven times. *Id.* On January 9, prior downloaded the information on 206 policyholders, and 215 policyholders on December 26, 2017. *Id.*

34. In addition, Prior directed the Branch Office Administrators ("BOA") to download policyholder information for him in that same period. On January 23, Prior had BOA Dawn Kollin download information multiple times, including for 85, 105, and 496 policyholders in three distinct instances. (*See* Exhibit 9, Kollin Download Report). He made a similar request of Kollin on January 19, 2018, which resulted in a printout of information on 323 policyholders. *Id.*

35. Neither Prior nor Knox turned over any policyholder information to Bankers Life on or after their respective resignation and termination.

36. On information and belief, both Knox and Prior have access and intent to use the policyholder information downloaded by and for Prior before his resignation.

IV. CLAIMS

FIRST CLAIM FOR RELIEF

Breach of Contract (against Defendant Knox)

37. Paragraphs 1 through 36 of this Complaint are fully incorporated herein by reference.

38. Bankers Life offered Knox the Agreement attached hereto as Exhibit 3 (“Knox Agreement”), and Knox accepted that offer.

39. Knox received adequate consideration for the Knox Agreement.

40. Bankers Life performed all of its obligations under the Knox Agreement.

41. Knox breached his obligations under the Knox Agreement by failing to return all copies of all information he had regarding Bankers Life policyholders when he departed from Bankers Life.

42. Bankers Life has suffered damages as a result of Knox’s breach.

43. Bankers Life has suffered irreparable harm as a result of Knox’s breach, will continue to suffer irreparable harm in the absence of an injunction, and has no adequate remedy at law without an injunction.

44. Wherefore, Bankers Life respectfully requests that:

a. Knox be ordered to return all copies of all policyholder information he removed or copied from Bankers Life, and any documents or summaries containing such information;

b. Knox be ordered to identify in a signed declaration all third parties with whom he has shared such information, and which information he shared with each such third party;

c. Knox be ordered to submit all electronic storage devices he has used since August 1, 2017, to a computer forensic inspection to confirm deletion of all such information;

d. Knox be ordered temporarily to cease and desist from using any such information;

e. Knox be ordered preliminarily, through the issuance of a determination on the arbitration claim filed regarding this issue, to cease and desist from using any such information;

f. Knox be ordered to pay Bankers' Life's reasonable attorneys' fees incurred in bringing this action, and any other relief the Court deems to be just.

SECOND CLAIM FOR RELIEF
Breach of Contract
(against Defendant Prior)

45. Paragraphs 1 through 44 of this Complaint are fully incorporated herein by reference.

46. Bankers Life offered Prior the Agreement attached hereto as Exhibit 4 ("Prior Agreement"), and Prior accepted that offer.

47. Prior received adequate consideration for the Prior Agreement.

48. Bankers Life performed all of its obligations under the Prior Agreement.

49. Prior breached his obligations under the Prior Agreement by failing to return all copies of all information he had regarding Bankers Life policyholders when he departed from Bankers Life.

50. Bankers Life has suffered damages as a result of Prior's breach.

51. Bankers Life has suffered irreparable harm as a result of Prior's breach, will continue to suffer irreparable harm in the absence of an injunction, and has no adequate remedy at law without an injunction.

52. Wherefore, Bankers Life respectfully requests that:

a. Prior be ordered to return all copies of all policyholder information he removed or copied from Bankers Life, and any documents or summaries containing such information;

b. Prior be ordered to identify in a signed declaration all third parties with whom he has shared such information, and which information he shared with each such third party;

c. Prior be ordered to submit all electronic storage devices he has used since August 1, 2017, to a computer forensic inspection to confirm deletion of all such information;

d. Prior be ordered temporarily to cease and desist from using any such information;

e. Prior be ordered preliminarily, through the issuance of a determination on the arbitration claim filed regarding this issue, to cease and desist from using any such information;

f. Prior be ordered to pay Bankers' Life's reasonable attorneys' fees incurred in bringing this action, and any other relief the Court deems to be just.

THIRD CLAIM FOR RELIEF

**Misappropriation of Trade Secrets under the Federal Defend Trade Secrets Act of 2016
(against Defendants Knox and Prior)**

53. Paragraphs 1 through 52 of this Complaint are fully incorporated herein by reference.

54. The policyholder information described in Paragraph 15 constitutes trade secrets within the meaning of Section 1839(3) of United States Code Title 18. Such information is valuable to Bankers Life, would be valuable to a competitor, and was developed at great expense to Bankers Life. Such information is subject to reasonable security efforts and is not known to Bankers Life's competitors through legitimate means. Moreover, the distribution of such information to third parties is harmful to Banker's Life's reputation and to the policyholders themselves, as policyholders entrust such private information to Bankers Life.

55. Prior misappropriated Bankers Life policyholder information by removing copies of such information from Bankers Life.

56. On information and belief, Prior has used such information to the detriment of Bankers Life since his departure and/or will do so in the future.

57. Knox misappropriated Bankers Life policyholder information by acting in consort with Prior to orchestrate a departure to a competitor and on information and belief has the same access to the policyholder information that Prior does.

58. On information and belief, Knox has used such information to the detriment of Bankers Life since his departure and/or will do so in the future.

59. Bankers Life has suffered irreparable harm as a result of such conduct, will continue to suffer irreparable harm in the absence of an injunction, and has no adequate remedy at law without an injunction.

60. Wherefore, Bankers Life respectfully requests that:

a. Knox and Prior be ordered to return all copies of all policyholder information they removed or copied from Bankers Life, and any documents or summaries containing such information;

b. Knox and Prior be ordered to identify in a signed declaration all third parties with whom they have shared such information, and which information they shared with each such third party;

c. Knox and Prior be ordered to submit all electronic storage devices they have used since August 1, 2017, to a computer forensic inspection to confirm deletion of all such information;

d. Knox and Prior be ordered temporarily to cease and desist from using any such information;

e. Knox and Prior be ordered preliminarily, through the issuance of a determination on the arbitration claim filed regarding this issue, to cease and desist from using any such information;

f. Knox and Prior ordered to pay Bankers' Life's reasonable attorneys' fees incurred in bringing this action, and any other relief the Court deems to be just.

FOURTH CLAIM FOR RELIEF

**Misappropriation of Trade Secrets under the Michigan Uniform Trade Secrets Act
(against Defendants Knox and Prior)**

61. Paragraphs 1 through 60 of this Complaint are fully incorporated herein by reference.

62. The policyholder information described in Paragraph 15 constitutes trade secrets within the meaning of M.C.L. § 445.1902. Such information is valuable to Bankers Life, would

be valuable to a competitor, and was developed at great expense to Bankers Life. Such information is subject to reasonable security efforts and is not known to Bankers Life's competitors through legitimate means. Moreover, the distribution of such information to third parties is harmful to Banker's Life's reputation and to the policyholders themselves, as policyholders entrust such private information to Bankers Life.

63. Prior misappropriated Bankers Life policyholder information by removing copies of such information from Bankers Life.

64. On information and belief, Prior has used such information to the detriment of Bankers Life since his departure and/or will do so in the future.

65. Knox misappropriated Bankers Life policyholder information by acting in consort with Prior to orchestrate a departure to a competitor and on information and belief has the same access to the policyholder information that Prior does.

66. On information and belief, Knox has used such information to the detriment of Bankers Life since his departure and/or will do so in the future.

67. Bankers Life has suffered irreparable harm as a result of such conduct, will continue to suffer irreparable harm in the absence of an injunction, and has no adequate remedy at law without an injunction.

68. Wherefore, Bankers Life respectfully requests that:

a. Knox and Prior be ordered to return all copies of all policyholder information they removed or copied from Bankers Life, and any documents or summaries containing such information;

b. Knox and Prior be ordered to identify in a signed declaration all third parties with whom they have shared such information, and which information they shared with each such third party;

c. Knox and Prior be ordered to submit all electronic storage devices they have used since August 1, 2017, to a computer forensic inspection to confirm deletion of all such information;

d. Knox and Prior be ordered temporarily to cease and desist from using any such information;

e. Knox and Prior be ordered preliminarily, through the issuance of a determination on the arbitration claim filed regarding this issue, to cease and desist from using any such information;

f. Knox and Prior ordered to pay Bankers' Life's reasonable attorneys' fees incurred in bringing this action, and any other relief the Court deems to be just.

LITTLER MENDELSON, P.C.

/s/ Michael A. Chichester, Jr.

MICHAEL A. CHICHESTER, JR. (P70823)

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(Application Forthcoming)

Attorneys for Plaintiff

Dated: March 2, 2018

VERIFICATION

I, Thomas Chiaravalli, of Bankers Life and Casualty Company, pursuant to 28 U.S.C. § 1746, verify under penalty of perjury pursuant to the laws of the United States of America that I have read the foregoing Verified Complaint for Emergency Injunctive Relief, and know the contents thereof to be true to the best of my knowledge and belief, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

Thomas Chiaravalli

Executed in Detroit, Michigan this ____ day of March, 2018.

VERIFICATION

I, Thomas Chiaravalli, of Bankers Life and Casualty Company, pursuant to 28 U.S.C. § 1746, verify under penalty of perjury pursuant to the laws of the United States of America that I have read the foregoing Verified Complaint for Emergency Injunctive Relief, and know the contents thereof to be true to the best of my knowledge and belief, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

A handwritten signature in black ink, appearing to read 'T. Chiaravalli', is written over a horizontal line.

Thomas Chiaravalli

Executed in Okemos, Michigan this 2 day of March, 2018.