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Trade Secrets

The Cover-Up is Always Worse Than the Crime: Court Upholds Massive Arbitration Award in Trade Secrets Case

Legal Update

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A recent Minnesota Supreme Court decision highlights the stakes involved in trade secret misappropriation cases as well as the consequences for falsifying evidence. In *Seagate Technology, LLC v. Western Digital Corporation*, the Minnesota Supreme Court upheld an arbitration award of over \$500 million against Western Digital and Mr. Sining Mao for misappropriating Seagate's trade secrets.

Mao was a former director at Seagate, a hard drive company, who worked on technology to improve storage capacity. When Mao joined Seagate, he signed an employment contract that included a confidentiality provision and an arbitration provision. Eventually, Mao left Seagate and joined Seagate's competitor Western Digital.

Seagate commenced a lawsuit alleging Mao had taken eight of its trade secrets and that Western Digital had used those trade secrets to create a competitive product. The case was sent to arbitration based on the provision in Mao's employment contract.

During arbitration, Western Digital and Mao defended by alleging three of Seagate's alleged trade secrets were not secret at all. In fact, Mao provided a presentation he had given, while employed by Seagate, where he disclosed the three alleged trade secrets to the public.

The only problem: Seagate said the presentation was fabricated and that Mao had inserted PowerPoint slides "disclosing" the three trade secrets *after* the presentation. The arbitrator agreed, finding that the fabrication was "obvious."

As a sanction, the Arbitrator precluded Mao and Western Digital from defending against Seagate's claims regarding those three trade secrets. As such, the Arbitrator entered judgment against Mao and Western Digital, even though the Arbitrator found Seagate had failed to prove that the other five "trade secrets" actually met the legal definition of a trade secret. The Arbitrator awarded Seagate \$525 million plus

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interest.

Mao and Western Digital challenged the award, arguing that the Arbitrator had no authority to level such a heavy sanction. The Minnesota Supreme Court ultimately sided with Seagate, finding that the Arbitrator did possess the authority to essentially award Seagate a win by default.

The lessons from this case are manifold. First, confidentiality clauses can pack a big punch. Companies should always include such provisions in their employee agreements. Second, arbitration is unpredictable and subject to limited judicial review. Before including or seeking to enforce arbitration provisions in contracts, companies should consider whether the predictability of court litigation may be preferable. Third, the cover-up is always worse than the crime. It is possible the Arbitrator would have entered judgment in favor of Western Digital if not for Mao's fabrication.