

Verdicts & Settlements

Non-compete morphs into \$22.7M verdict

Jury: Workers took confidential info to rival company

By Patrick Thornton

patrick.thornton@minnlawyer.com

A dairy farm equipment manufacturer won a \$22.7 million verdict after a Kandiyohi County jury concluded that two former employees took confidential business information to a rival company.

The two former sales employees of Relco LLC in Willmar, Minn., are accused of walking out the door with thousands of confidential computer files to start work at Custom Fabricating & Repair in Marshfield, Wis. Soon after the two men left, Custom Fabricating expanded a new, lucrative business unit that was in direct competition with Relco.

Relco argued that Custom Fabricating could only provide the service by using the confidential information the two former employees took with them. Further, Relco argued it directly lost out on several lucrative jobs to Custom Fabricating only because the Wisconsin company used Relco's technology.

Relco hired Gray Plant Mooty attorneys Dean LeDoux and Meghann Kantke. LeDoux said the two compa-

nies are in a niche industry that includes a handful of companies that design and build the multimillion-dollar processing systems for dairy operations. The service at the heart of the lawsuit dealt with the byproduct created by processing raw milk. In the past, dairy farms had to pay someone to dispose of the byproduct. Relco came up with a way to dry out the byproduct and reuse it for animal feed and other purposes.

ful in resolving the case. The trial started in mid-October. LeDoux said that the case started out as an issue of violating a non-compete agreement, but that it quickly expanded and evolved into an accusation that the two employees improperly took confidential information.

The next issue was whether Custom Fabricating was aware of the act or whether it just benefited. The salespeople did not design the equip-

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— Meghann Kantke, plaintiff attorney



So what was once a liability now became a profitable source of revenue for dairy farms if they had the conversion technology. Up until early 2010, Custom Fabricating could not design the processing systems that converted the byproduct. But soon after the two former Relco salespeople started, Custom Fabricating went into direct competition with Relco with this service.

Evolving non-compete

In 2011 Relco sued. Two court-ordered mediations were unsuccess-

ment, but because they served as the contact for many of the large projects, they had access to the technical information. At trial, Custom Fabricating was represented by the St. Cloud law firm of Quinlivan & Hughes. Attempts to reach the attorneys were not successful.

According to LeDoux, at first Custom Fabricating denied that the two men took the information. But the plaintiffs were able to find an external hard drive with thousands of computer files containing Relco technology in a safe deposit box. Custom

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Fabricating then argued that it didn't use the confidential information. Rather, the technology it used to start its competing business unit was readily available in the industry. Relco countered that the technology wasn't available through public sources.

One of the big deciding factors in the case was the strength of the expert witnesses, Kantke said. The plaintiffs used the president of Relco to testify about the technology the salespeople took with them to Custom Fabrication and how they used it to start a new business offering. A dairy industry expert refuted the claim that the defendants used only readily available information in the industry, and a computer forensics expert was able to show the chain of custody in the computer files.

Presenting the case to a jury in a way that was digestible was one of the biggest challenges. The judge also wanted the trial done in two weeks.

"One of the issues was managing all the data we obtained. During the course of discovery we ended up with multiple devices and each had thousands of files on it. Just cataloging and understanding the information we had was a lot of work," she said. "We started out with not having enough information and then by the end we almost had too much."

The facts of the case were both simple and complex at the same time,

LeDoux said. To begin with, two former employees were accused of stealing confidential information and taking it to a competitor. The competing business lied about the theft and then tried to cover it up once the lie was exposed.

But the underlying technology was incredibly sophisticated and only available to a handful of companies in a tight industry.

"I told the jury that you will hear a lot of information about this industry, but you won't need to become a dairy processing expert to figure out what you need to do here," he said.

Efficiency paid off

To prove the theft, LeDoux and Kantke found the best examples of the work Custom Fabricating had copied from the computer files that had been turned over and put those up side by side next to Relco's originals.

"We found several engineering drawings that had the same technology [as Relco] but a different name," LeDoux said. "If you can show that this technology was clearly Relco's first and then it was used by the defendant on this project and this project, it's pretty easy to see that it wasn't a coincidence."

Kantke said the jury did a commendable job staying with the case and following the facts and expert testimony.

"I think it wins you a lot of points when you present your case as efficiently as possible and don't waste anyone's time," she said. "We were careful to only tell them what they needed to know."

The damages covered the two-plus years from the time the two salespeople left Relco to the time the lawsuit started in October. The figure was calculated based on the loss of profits to Relco when it lost out on three jobs to Custom Fabrication during an open bidding. That figure was added to the amount from the jobs that Relco didn't bid but that Custom Fabricating secured using Relco's confidential information. The judgment already has been entered and Relco is working with Custom Fabricating to work out payment, LeDoux said.

He also predicted that in 10 years, cases like this one will become more common as companies fight aggressively to hold on to their technological advantages. He also said he hopes that prosecutors and the criminal justice system will start to pay more attention to industrial theft.

"Right now the legal system isn't fully equipped to deal with these cases. Under Minnesota law, if you steal a \$1,000 laptop, that is a felony and five-year sentence," he said. "But if you steal millions of dollars' worth of computer files, your punishment is having to file an answer in civil court."

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Contact Information:

Dean LeDoux



dean.ledoux@gpmlaw.com

Gray Plant Mooty

500 IDS Center, 80 S. Eighth St

Minneapolis, MN 55402

Telephone: (612) 632.3233

Contact Information:

Megann Kantke



meghann.kantke@gpmlaw.com

Gray Plant Mooty

500 IDS Center, 80 S. Eighth St

Minneapolis, MN 55402

Telephone: (612) 632.3414

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