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Alleged Theft of Drug Pricing Trade Secrets Could Cost Both Victim and Thief

Proskauer in Life Sciences on **November 28, 2023**

Life Sciences is an area ripe for trade secrets misappropriation litigation. In recent news, Merz Pharmaceuticals, LLC filed a lawsuit under the North Carolina Uniform Trade Secrets Act alleging that its former director of federal accounts, Andrew Thomas, stole trade secrets relating to Merz's flagship botulinum toxin drug Xeomin®. Those secrets purportedly included drug pricing strategies, marketing plans, market share data, and potential customer lists, all of which were intended to grow Xeomin®'s presence in the government market sector — a key therapeutic sector for Merz's drug, which is primarily known for its aesthetic effects.

In the complaint, Merz alleged that it fired Thomas, and, within minutes of his firing, he transferred the secrets at issue from his company laptop to a personal thumb drive. Making matters worse, according to Merz, was the fact that Thomas then quickly transitioned to an identical role at Revance Therapeutics, Inc. and allegedly started leveraging the stolen secrets to push for sales of Revance's newly approved competing neurotoxin Daxxify®. Arguing that Thomas agreed to protect Merz's trade secrets as a condition of employment, Merz asked the court for temporary and permanent injunctions to stop Thomas from using the stolen secrets.

To support its requested relief, Merz claimed that Thomas's alleged theft has caused and will continue to cause irreparable injury to Merz's business and client relationships because Revance – through Thomas's employment – allegedly has "all the information it needs to effectively target Merz's customers, anticipate Merz's customer messaging, and undercut Merz's strategies and pricing in the therapeutic marketplace." Merz argued that such information would be critical to Daxxify®'s successful launch and ultimate persistence in the relevant market. Assuming no extension is requested, Thomas's response to the complaint will be due in mid-December.

It remains to be seen whether this lawsuit proceeds past the pleadings stage. This is because, while drug pricing information is invaluable to drug companies, courts are split as to whether such information properly constitutes a trade secret under applicable state laws. It also bears noting that, to the extent the suit does move forward and goes to trial, damages awards in recent trade secret litigations have been in the tens to hundreds of millions of dollars.

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