Proskauer

CA Federal Court Awards Biomedical Companies $62M Following Jury Trial Involving Confidentiality-Related Claims

Minding Your Business on **March 5, 2024**

On November 1, 2023, a jury in the U.S. District Court for the Central District of California awarded damages to Skye Orthobiologics, LLC ("Skye") and Human Regenerative Technologies, LLC ("HRT") for breach of contract, breach of fiduciary duty, and breach of duty of loyalty by Skye's former employee ("Defendant"). While Plaintiffs Skye and HRT did not succeed on their claim of trade secret misappropriation, they were able to succeed in showing Defendant misappropriated confidential information in breach of his employment agreements.

HRT manufactures tissue biologic products under various trade names, which are used in both surgical and non-surgical contexts for wound care, plastics, cosmetics, and other medical care. HRT manufactures exclusively for Skye, which sells the products through independent contractors. In 2012, Defendant began working for Skye as an independent contractor, during which time he worked closely with HRT products and signed a consulting contract with HRT in 2014 that included confidentiality clauses. In April 2018, Defendant was promoted to Vice President of Business Development, at which time he signed an employment agreement stating that Skye was his "sole job and focus," and another confidentiality agreement that contained a covenant not to solicit or compete.

Skye and HRT alleged that Defendant started a competing business in June 2018, just a month before he resigned from Skye. He allegedly used Plaintiffs' resources and equipment to form the CTM entities, (collectively "CTM"), naming these corporate entities after the phrase "connective tissue matrix," which Skye's salespersons used exclusively to describe HRT's products. Defendant, through CTM, began distributing competing products and, according to Plaintiffs, used promotional materials referring to "connective tissue matrix" to capitalize on Plaintiffs' goodwill and recognition in the marketplace.

Skye and HRT filed suit against Defendant and his CTM entities with multiple claims, including trade secret misappropriation under the Defending Trade Secrets Act ("DTSA"). HRT had identified as trade secrets parts of its product development and manufacturing process, including its "unique product formulas." Though Plaintiffs pleaded safeguards to prove existence of their trade secrets—such as confidentiality agreements for their employees, control of physical access to offices and information, network firewalls, password protection, security credentials, and revocation of authorization at the end of employment—the court found that HRT did not plead its trade secrets with sufficient particularity. Thus, the court dismissed it from the DTSA claim on summary judgment.

However, during trial, Plaintiffs filed a brief arguing that HRT's manufacturing process should still be allowed as evidence on its claims of breach of fiduciary duty and breach of duty of loyalty. Plaintiffs argued that the process was still confidential information that Defendant agreed to keep confidential while he was employed there, so they should be allowed to show evidence of him disclosing or using the process as support for breaching his fiduciary duties. The court agreed, and allowed the jury to hear evidence of Defendant using or disclosing HRT's manufacturing process while employed at Skye, as support for these claims.

After trial, the jury returned its special verdict finding that Defendant had breached his contracts (with respect to the confidentiality provisions) with Skye and HRT, and he had breached both his fiduciary duties to Skye and his duty of loyalty to Skye. The court entered judgment for the case, declaring that Defendant owes Skye $29,195,796 in lost profits and $25,560,000 in punitive damages, and owes HRT $7,298,949—totaling over $62 million.

This verdict serves as a vivid example of legal protections for confidential and proprietary information beyond trade secret misappropriation.

View Original

Related Professionals

- **Isaiah D. Anderson**
  Associate
- **Steven J. Pearlman**

Partner