Proskauer

Virginia Court of Appeals Vitiates Multi-Billion Dollar Trade Secrets Verdict

Proskauer on trade Secrets on **November 11, 2024**

Finding errors in the lower court's jury instructions and evidentiary rulings, the Virginia's Court of Appeals struck down a $2 billion trade secrets award, the largest trade secrets verdict in the state's history. Despite striking the damages award, the court upheld the lower court's determination that Appian Corp (Appian) had properly defined its trade secrets, thereby allowing it to make a trade secrets misappropriation claim against Pegasystems, Inc ("Pega"). As such, the Court of Appeals remanded the case to the trial court for a new trial.

The case at issue involved two competitors in the business process management (BPM) software market: Appian and Pega. Appian develops products with an eye towards attracting smaller-scale customers who look for speed and simplicity in their BPM products. It also attempts to attract customers looking for specific functionalities, such as the ability to use its BPM platform on mobile devices and the use a "social feed" where users can comment and provide input on the tasks, worklists, and developments of others.

Pega, meanwhile, focuses on businesses that operate at scale. Unlike Appian, which focuses on developing specific functionalities for its BPM platform, Pega seeks to enable users at large organizations to use their BPM software to handle complex problems and undertakings.

Appian describes Pega as an "archrival" in the BPM market, where both have competed for over a decade. According to the complaint, in 2012, Pega's then-head of competitive intelligence, John Petronio, sought to learn about how developers use Appian's platform. Appian never made its platform publicly available, so Petronio decided to use a staffing agency to hire a consultant with access to Appian's platform.

Petronio eventually hired an individual the Court's opinion identifies as "Consultant Zou," who, from 2012-2014, would give numerous demonstrations and trainings to Pega staff about how Appian's platform worked. According to the opinion, Pega continued to access Appian's platform after Zou's worked finished by, for example, using aliases to gain free trial access to Appian. Petronio himself would leave Pega in 2015 and eventually was hired by Appian as Senior Director of Market Intelligence and Strategy, at which point he informed Appian of Pega's conduct and this lawsuit was filed.

In its Complaint, Appian accused Pega of hiring Zou as a spy to steal information on Appian's strengths and weaknesses. Appian further alleged that Zou helped Pega improve its platform and undermine Appian's reputation among its potential customer base by highlighting its weaknesses. Pega denied the allegations, arguing that Appian failed to adequately identify any trade secrets, and that it did not undermine Appian's reputation since the weaknesses on its platform were publicly known since Appian had licensed its platform to millions of users and had been subject to public, online reviews.

After a full trial, the jury awarded Appian $2.04 billion in damages. The trial court affirmed the full award and Pega appealed.

On appeal, Pega argued that the trial court erred in its evidentiary rulings by (i) excluding versions of Pega's software, which Pega sought to present to illustrate that many of the features Appian claimed Pega had misappropriated pre-existed Pega's contact with Zou or were developed wholly independently of his demonstrations; (ii) excluding evidence concerning Pega's profits from its non-BPM line relevant to a damages determination; and (iii) including a jury instruction that presumed a causal nexus between Pega's total sales and trade secrets stolen that Pega was burdened with rebutting. Pega further argued that Appian's talismanic invocation of software "architecture and design" was too nebulous to warrant protection.

The appeals court agreed with Pega on its claims that the lower court had made erroneous evidentiary rulings and gave improper jury instructions. Finding that the lower court failed to provide any basis for its exclusionary rulings under the relevant rules of evidence, and that the jury instruction erroneously and improperly burdened Pega, the appeals court vacated the damages award and remanded for a new trial. However, on the question of Appian sufficiently defined its trade secrets, the Court of Appeal agreed with Appian. It found that Appian had alleged five distinct trade secrets,[1] and that the secrets were "properly delineated" to survive a motion to strike.

While upholding the lower court ruling would have provided a historic boon to trade secrets plaintiffs, the appellate court's review nonetheless gives guidance to litigants seeking court protection of software trade secrets and what is needed to define a trade secret. Appian has appealed the Court of Appeals ruling to Virginia's Supreme Court and both sides have filed their opening briefs. We will continue to monitor this case for developments as the appeal process plays out.

---

[1](1) Smart services, a function that allows developers to add preconfigured functions into an app (i.e., adding email send functionality to an app); (2) Custom Data Types (CDTs), a grouping function that allows a developer to group data together in a customizable fashion; (3) an edit button that gives developers the ability to toggle between testing and application and editing it; (4)"out-of-box mobile" whereby users could run their apps on desktop and mobile without additional configuration; and (5) "out-of-box social" that provides a pre-programmed user interface with work lists and tasks in a social feed allowing easy coordination and communication among project teams.

View Original

Related Professionals

- **Baldassare Vinti**
  Partner