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Trade Secrets Protected

by Peter Gojcaj

In a decision reinforcing the strength of the Michigan Uniform Secrets Act (MUTSA), the Michigan Court of Appeals recently upheld a trial court decision enjoining an individual for three years from being employed by his former employer's competitor, despite the absence of a "non-compete" agreement.

Enacted in 1999, MUTSA gives trial courts authority to enjoin "actual or threatened misappropriation" of company trade secrets. The enjoined employee, according to the Michigan Court of Appeals, showed some "warning flags" that he would disclose certain trade secrets of his former employer.

As has become all too common, during the employee's resignation, the employee had used his former employer's computer to access many confidential computer files that the employee had no reason to access. Moreover, despite the employee knowing that a

temporary restraining order (TRO) was issued, the employee claimed that "he did not think" that a certain USB drive that he copied from his former employer's files was covered by the TRO.

Worse, the employee copied his former employer's form, replaced the letterhead with his new employer's name, and sent it to a customer of his former employer.

Notably, the Michigan Court of Appeals cited *PepsiCo v Redmond*, 54 F3d 1262 (CA 7, 1995), a seminal Seventh Circuit case. *PepsiCo* provides that a "plaintiff may prove a claim of trade secret misappropriation by demonstrating that the defendant's new employment will inevitably lead him to rely on the plaintiff's trade secrets."

Although the *PepsiCo* court indicated that "despite the lack of evidence" that the employee "used or planned to use any trade secrets" of his former employer's, the Court opined that the employee demonstrated

a lack of trustworthiness beyond his decision to work for a competitor. This "lack of trustworthiness" was enough for the *PepsiCo* court to enjoin the employee for joining his new employer for a period of six months.

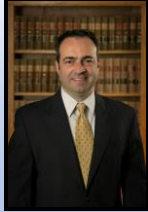
MUTSA defines a trade secret broadly as information, including a formula, pattern, compilation, program, device, method, technique, or process, that 1) derives independent economic value from not being generally known, and 2) is reasonably protected as confidential. Under the Act, actual or threatened misappropriation may be enjoined.

To protect trade secrets or proprietary information in advance, companies should consider the use of a covenant not to compete. Under this contract provision, one party agrees not to pursue a similar profession or trade in competition against another party for a reasonable period of

time. However, where a non-compete is not in place, there is now precedent for imposing

similar restrictions under MUTSA.

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A portrait photograph of Peter Gojcaj, a man with dark hair, wearing a dark suit jacket, a white shirt, and a yellow tie. He is standing in front of a bookshelf filled with books.

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