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Jury Concludes that Bioscience Company Stole Cancer Drug Trade Secrets, but Awards No Damages to Aggrieved Pharmaceutical Company

NOVEMBER 30, 2018

On November 8, 2018, a jury concluded that a high-profile scientist stole trade secrets from Incyte, a Delaware pharmaceutical company, relating to an immunotherapy cancer drug and shared them with Silicon Valley startup, Flexus Biosciences. Despite this finding on liability, the jury awarded no damages for the misappropriation because it concluded that Flexus had not been "unjustly enriched" by its theft.

Specifically, after the close of a twelve-day trial in the Delaware Superior Court's Complex Commercial Litigation Division, the jury concluded that a former Incyte research scientist passed along valuable trade secrets critical to the discovery of cancer-inhibiting drugs when he moved from Incyte to Flexus in 2014. The jury rejected Incyte's argument that Flexus was unjustly enriched by its theft because those secrets inflated the value of Flexus, which was sold to Bristol-Myers Squibb for $1.25 billion in April 2015. Incyte argued that its misappropriated trade secrets accounted for $70 to $670 million of that purchase price.

Simply put, the jury found that Flexus had not been unjustly enriched at all.

TIP: This case serves as a reminder that a finding of misappropriation of trade secrets does not always operate as a "win" for the client. Attorneys presenting a trade secret case should take care to consider and build their theory of damages, which can be challenging to prove in some cases.

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