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BLOG

Federal Court Rules that the DTSA Requires Pleading an "Interstate" Connection

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On January 23, 2019, a judge in the District Court of Hawaii dismissed a federal trade secrets case finding that Plaintiff failed to adequately allege a sufficient "federal nexus" to assert a Defend Trade Secrets Act (DTSA) claim. The judge held that simply alleging that health care-Plaintiff's and Defendant's patients had federal patient identification numbers and received federal funding was not enough of an out-of-state connection to bring a suit under the federal Act. Since 2017, at least two federal courts have dismissed plaintiffs' claims under the DTSA on similar grounds. *See, Hydrogen Master Rights, Ltd. v. Weston*, 228 F.Supp.3d 320 (D. Del. 2017); *Gov't Emp. Ins. Co., v. Nealey*, 262 F.Supp.3d 153 (E.D. Pa. 2017). However, some other courts have questioned whether asserting a "federal nexus" is required at the pleading stage (*see Well's Lamont Indus. Group v. Mendoza*, 2017 WL 3235682, at *3 (N.D. Ill. July 31, 2017)), and others have yet to weigh in on this question.

For a civil claim under the DTSA, the "trade secret at issue must be related to a product or service used in, or intended for use in, interstate or foreign commerce." 18 U.S.C. § 1836(b)(1). Here, Plaintiff DLMC, Inc. and Defendants Loving Care Health Provider, Inc. (LCHP), and Benedicta Flores, were all located in Hawaii and provided health care services to the elderly. Plaintiff alleged that former employee Flores, who now works for LCHP, misappropriated confidential client information in violation of the DTSA. But, without further information "articulating how the 'client lists' that Flores allegedly stole on behalf of LCHP relate[ed] to the provision of interstate commerce," the Court determined that the complaint did not appropriately allege the jurisdictional component of a DTSA claim. *DLMC, Inc. v. Flores*, 2019 WL 309754, at *2 (D. Haw. Jan. 23, 2019). Specifically, the Court noted that neither Plaintiff nor Defendants offered any interstate services; all of their respective business took place within the state of Hawaii. This tends to show that at least this Court reads the "use in interstate…commerce" element of the DTSA narrowly.

Given the current thrust of cross-border trade secret jurisprudence, plaintiffs should be aware that they may need to plead specifically *how* the trade secrets at issue affect interstate or foreign commerce.

TIP: It is important for companies to strategically assess not only the strength of a potential trade secret claim but what venue may be appropriate.

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