

Third Circuit Affirms Confirmation of Arbitrator's Award of "Head Start" Damages in Theft of Trade Secrets Case

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In *Sabre GLBL, Inc. v. Shan*, on appeal from the District Court of New Jersey's confirmation of an arbitration award, the Third Circuit affirmed an arbitrator's award of \$1.1 million in "head start" damages, representing the benefit obtained by the defendant based on the unlawful development and operations head start that the competitive venture received as a result of her misconduct.

Sabre GLBL, Inc. (Sabre) is a technology solutions provider to the global travel and tourism industry. The defendant, Melody Shan (Shan), was a longtime Sabre employee, who held numerous positions in the United States and in China. In 2013, Shan became a consultant and she signed an agreement that prohibited her from, among other things, disclosing or using Sabre's confidential information for her own benefit or to benefit a third party. While at Sabre, Shan started a competing Chinese company and acquired a 68% ownership interest in the business. Shan resigned from Sabre in 2014 and returned to China, where she continued to develop the competitor company. After her departure, Sabre initiated an action against Shan and asserted, among other things, a claim under the New Jersey Trade Secrets Act and a claim for breach of fiduciary duty premised on Shan's misuse of Sabre's confidential information and trade secrets.

At a five-day arbitration, Sabre pursued a "head start" damages theory to quantify Shan's unjust enrichment. Sabre presented evidence that showed the benefit to Shan of the increase in the value of the competing venture, which was two years further along in its development and commercialization than it would have been absent her use of Sabre's confidential information and trade secrets. Drawing on Sabre's expert's analysis, the arbitrator awarded \$1.1 million in "head start" damages. Ultimately, the Third Circuit affirmed the district court's confirmation of the arbitration award, finding that the arbitrator did not manifestly disregard the law by awarding the "head start" damages. In affirming the lower court's confirmation of the award, the Third Circuit, among other things, rejected Shan's argument that "head start" damages were impermissible under applicable law, noting instead that litigants in trade secrets cases have the flexibility to tailor damages theories to the facts of their cases.

TIP: Plaintiffs pursue a myriad of ways to prove damages in theft of trade secrets cases. Companies should consider what remedies are available in the forum in which a case may be brought, and they should pursue damages theories that fit the particular facts of the case.

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Author

Steven Grimes

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