

Large Private Equity Group Sued for Misappropriation of Trade Secrets

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On January 17, 2020, freight rail company MidRail LLC filed suit against a large private equity group in New York State court for common law misappropriation of trade secrets, among other claims. MidRail alleges that it signed a non-disclosure agreement (NDA) and provided confidential business information to the group because it believed that the private equity group was contemplating whether to invest “in or with” MidRail. MidRail claims that the group then used the confidential information for its own benefit, in violation of the NDA and trade secret laws.

MidRail alleges that it shared “its business model, its pipeline of mergers and acquisitions targets, its operational plans and its financial models” with the private equity group. MidRail claims that the group then used this highly technical, valuable information to compete against MidRail in a bidding war with a third-party company in violation of the NDA. The Complaint alleges that as a result of the group’s unauthorized use of the trade secrets, MidRail “ultimately bid over \$100 million more...than it had originally planned” in that bidding war.

MidRail brings common law claims of breach of contract or unjust enrichment, unfair competition, fraud, and misappropriation of trade secrets. Though New York is one of the few states that has not adopted the Uniform Trade Secrets Act (UTSA), New York’s requirements for misappropriation of trade secrets are not unusual. To successfully prove a misappropriation of trade secrets case in New York, a Plaintiff must show (1) she possesses a trade secret, and (2) the defendant is using the trade secret in breach of an agreement, confidence, or duty, or as a result of improper means. See e.g. *Marsh USA, Inc. v. Alliant Ins. Servs., Inc.*, 26 N.Y.S.3d 725 (N.Y. Sup. Ct. 2015).

TIP: Sharing confidential and trade secret information with potential partners or investors is a high-risk moment for companies and careful thought must be given to what is shared, how it is shared, and how ownership rights are defined in agreements between the parties.

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