

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

HELPS COMPANIES
PROTECT THEIR COMPETITIVE INTERESTS
AND BUSINESS SECRETS

APRIL, 2002

In today's highly competitive business environment, companies, both large and small, must take the necessary steps to secure the confidentiality of their trade secrets, proprietary operations information, cost structures, sales plans, sources of suppliers, customer lists, financial prospects and/or any other information that provides a company an edge in the marketplace.

Commonly, the greatest threat of disclosure occurs when a high ranking manager or other key employee leaves one company to work for a competitor. Most states have enacted laws to allow non-competition or nondisclosure agreements to exist between employers and employees. The agreements restrict the employees' rights to compete against a former employer for a specific amount of time and, frequently, within a certain geographic area. For example, a non-competition agreement may state that employees who leave the company are unable to work for a competitor within 75 miles of the previous employer's office for one year. The agreement usually contains language restricting the disclosure of trade secrets and other confidential information and can be crafted or adapted to the unique circumstances of almost any business.

There is no hard and fast rule that applies when determining which employees should be required to enter into a non-competition or nondisclosure agreement. Generally, they should be employees who possess critical information or access to critical information that could irreparably harm your business if disclosed or if they began to compete against your company.

It is important to point out that many judges are hesitant to enforce non-competition or nondisclosure agreements. Often even a well-crafted and properly applicable agreement can be frustrated by a reluctant court. However, absent an agreement, it is almost impossible to prevent unfair competition. Our attorneys have extensive experience before the courts in seeking enforcement of these agreements and in litigation of the problems that result when a former employer breaches the contract. While the focus is to prevent the competition by restraining the individual employee's employment with competitors, the practical legal issues often involve negotiating or litigating some lesser restriction. In this type of battle, your attorney's experience in handling these types of cases is crucial to a satisfactory result.

The majority of states, including Michigan, have provided

another level of protection for sensitive trade secrets by enacting the Uniform Trade Secrets Act (UTSA). Uniform acts are usually drafted by national committees or task forces who devise statutes that are meant to be adopted by the various states to standardize the laws in different jurisdictions. The UTSA is designed to prevent the misappropriation or use of the trade secrets of a company either by deporting employees through industrial espionage or other unauthorized actions. It has a provision to restrain a person or company from using any information that falls within certain statutory definitions.

The UTSA is a new statutory scheme in most states. Its scope is still being determined in the courts. One interesting aspect of the UTSA is that, under certain conditions, it can be used to protect the use of trade secrets by a former employee even if the employee was not restricted by a non-competition or nondisclosure agreement. It also offers explicit protections to proprietary industrial processes, formulas and technical information. These categories of information are not always subject to the protections afforded by patents or trademarks.

Both non-competition agreements and the UTSA problems have their effectiveness expanded by taking steps internally to manage, restrict and protect information. It is not sufficient merely to state certain information is proprietary or secret. The courts will demand a demonstration that any information one seeks to protect is genuinely secret and protected.

A number of our attorneys practice in this area. They are available for consultation and can assist in introducing non-competition or nondisclosure agreements into a corporate culture with the least negative impact on employees. Attorneys can also serve as litigators if your business becomes involved in a dispute concerning your trade secrets or unfair competition by a former employee.

To provide further information to the business community about this important management issue, our firm will be hosting a seminar in the coming months where our attorneys will discuss these areas of law and give practical advice on protecting your company's competitive interests. Please watch this newsletter for specific information or contact Greg Roberts or Jennifer Sherman at our Livonia office, and they can make sure you get direct notice of the seminar.

Gregory A. Roberts

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ATTORNEYS JOSEPH SEWARD AND PATRICK STURDY RECEIVE NO CAUSE VERDICT

On March 7, 2002, Joseph Seward and Patrick Sturdy received a no cause verdict on a highly publicized case. Joe, a partner, and Patrick, an associate, both work out of our Livonia office. They defended a metropolitan Detroit municipality and their police officer, who were being charged with gross negligence in response to the shooting of the Plaintiff.

The case started in April, 2000 when employees of a car dealership in metropolitan Detroit noticed a set of car keys and vehicle missing from the dealership's lot. The vehicle was later located and stopped in a neighboring city. The woman driving the vehicle informed officers that it was provided to her by her boyfriend. There was a bill inside the vehicle that indicated the name and address of her boyfriend.

The vehicle was recovered by police officers and the dealership was notified. The very same day the dealership was notified that the vehicle had been recovered, the Plaintiff (who had originally stolen the keys and vehicle) came back into the dealership wanting to test drive a Ford Excursion. He met with a salesperson, had a copy of his driver's license made and left with the vehicle. He filled up the gas tank at a nearby gas station and never returned the vehicle.

On April 14, 2000 police investigated the stolen Excursion. Police discovered that the Plaintiff had previously been arrested on shoplifting charges and a color photo of him was on file. With the photo of the man in hand, a police officer from the municipality where the dealership was located went to the Plaintiff's home in an unmarked car. No one was at home, and the Excursion was nowhere to be found.

Just as the officer was leaving the Plaintiff's home, the Excursion, with the Plaintiff in the driver's seat, drove by. The officer was unable to catch up with the vehicle. The officer went back to the Plaintiff's home a few minutes later, and the Excursion was sitting in the driveway. He made a call to have the vehicle impounded. The officer then informed the Plaintiff that he was under arrest. The Plaintiff claimed to be somebody else and started to run away.

The officer then pulled up directly behind the Excursion in the driveway. The officer noticed that the running lights on the Excursion went on (indicating that someone had unlocked the vehicle). The Plaintiff and officer struggled to keep the vehicle from being started and moved. However, the Plaintiff was able to start the vehicle and he slammed it in reverse. He floored the vehicle, and as a result, the driver's side door slammed against the officer causing him to fall. The officer fired one shot at the Plaintiff. The bullet entered the Plaintiff's body above the fifth rib, came out the same position on the opposite side of his body and landed in the passenger side door.

gathered many conflicting reports as to what exactly happened. Some witnesses said the officer fired two or three shots, others said one. Some witnesses claimed the driver's door was open, others said it was shut.

The metropolitan Detroit municipality and police officer were sued by the Plaintiff's mother on behalf of the Plaintiff. Joe, an experienced trial attorney, immediately filed a motion for summary judgment on behalf of the municipality and was able to get them dismissed from the case. The officer was charged with gross negligence, and the case went to trial.

In preparation of the trial, Joe flew in experts from New York, and, together, they were able to reenact the scene to illustrate exactly what happened. A mock-up of the front of a Ford Excursion was built, including the driver and passenger side doors, windshield, framing, glass, roof and seats. A mannequin, the exact size and proportion of the Plaintiff, was placed in the driver's seat. Holes were drilled in the mannequin at the same location as the bullet that entered the Plaintiff's body.

During trial, the witnesses for the Plaintiff claimed the vehicle door was shut and the officer reached through a crack in the window to fire the shot. They also claimed that the officer was not falling at the time the shot was fired.



The rod through the mannequin shows where the bullet entered the Plaintiff's body.

After the Plaintiff's proofs, the Excursion mock-up was assembled in the courtroom. A rod was placed through the bullet holes of the mannequin, and when lined up, the rod clearly showed that the shot had to be fired with the vehicle door open and that the officer was falling down when the shot was fired. Because of the Excursion mock-up, the jurors were clearly able to see that the testimony the Plaintiff's witnesses had given was incorrect.

The trial lasted for two weeks and the jurors took less than seven hours to return a no cause verdict.

T. Joseph Seward

Attorney Profile

Patrick R. Sturdy



Patrick focuses his practice on Municipal Law, Corporate and Business Transactions Law and Securities Law.

He is a member of the State Bar of Michigan. During law school, he received the Juris Prudence Award in both Public Corporations and Advocacy.

Patrick received his Juris Doctorate degree, *cum laude*, from Michigan State University's Detroit College of Law in 2000, his Master of Arts degree in Language and Literature from Eastern Michigan University in 1998 and his Bachelor of Arts degree in English Language and Literature from Grand Valley State University in 1993. He works out of our Livonia office and can be reached by calling (734) 261-2400 or via e-mail at psturdy@cmda-law.com.

T. Joseph Seward



Joe focuses his practice on Civil Defense, Insurance Coverage Disputes and Insurance Defense Litigation. He is a noted expert involving assault and battery and civil rights allegations involving police and security personnel.

He is a member of the State Bar of Michigan, the Michigan Defense Trial Counsel, and is a Discovery Master for Oakland County Circuit Court and a Case Evaluator for Wayne and Oakland Counties. Joe has made presentations to the FBI/National Academy and other audiences covering topics on Police and EMS Liability.

Joe received his Juris Doctorate degree from the Detroit College of Law in 1983 and his Bachelor of Arts degree in Political Science from Wayne State University in 1979. He works out of our Livonia office and can be reached by calling (734) 261-2400 or via e-mail at tjseward@cmda-law.com.

GOOD THINGS HAPPENING AT CMDA...

CASES WON, ATTORNEY JOINS FIRM

In a recent case, Karie Holder Boylan defended a local municipality against a Plaintiff who had a long history of violating traffic laws. In the four years before his lawsuit, the Plaintiff had been stopped in eight different municipalities and ticketed on 12 different occasions. The Plaintiff brought this action against two of the eight municipalities alleging that the two traffic stops were the product of intimidation, which was in turn spurred by a motive to retaliate against the Plaintiff for engaging in certain types of political activity.

On behalf of the Defendant, Karie filed a motion to dismiss as a first responsive pleading. The motion was denied so that the parties could participate in a meaningful exchange of discovery. During discovery, it became necessary to petition the court on more than one occasion to ensure the Plaintiff's compliance with the rules governing civil procedure. At the close of discovery, the two municipal Defendants filed motions for summary judgment. The Plaintiff opposed both motions and filed a Motion to Amend his Complaint to add a claim under Racketeer Influenced and Corrupt Organizations Act (RICO), 18 USC § 1961, et. al.

On February 26, 2002, the court issued a Memorandum Opinion and signed an Order granting judgment in favor of the government Defendants and denying the Plaintiff's Motion to Amend. In doing so, the court noted that the CMDA Defendant had

attached signed and notarized affidavits, certified records and deposition transcripts in support of summary judgment. These exhibits constituted the only admissible evidence submitted to the court for consideration in ruling on the motions. After reviewing the materials, and considering the parties' arguments, the court concluded that both Defendants were entitled to summary judgment and an award of all costs, including attorney fees, for having to defend in the action.

In other news, Allan C. Vander Laan has joined our firm as an associate. He works out of both our Battle Creek and Traverse City offices. Allan concentrates his practice on Property (specializing in Arson and Fraud, Subrogation and First and Third Party Cases), Premises Liability, Products Liability and Workers' Compensation. He is a member of the State Bar of Michigan, Grand Rapids Bar Association and International Association of Fraud Investigators.

Allan received his Juris Doctorate degree from Thomas M. Cooley Law School in 1981 and his Bachelor of Arts degree in History from Calvin College in 1978. He can be reached by calling our Battle Creek office at (616) 963-7800, our Traverse City office at (231) 938-2888 or via e-mail at avanderlaan@cmda-law.com.

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Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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