

Q&A With Fisher & Phillips' Christopher Stief

Tuesday, Oct 02, 2007 --- Courts should balance the increasing role of forensics and e-discovery with the spiraling costs for companies, says Christopher Stief in our series of chats with high-profile practice leaders.

Q. What do you mean by “employee defection and trade secrets” practice? We aren’t familiar with that description.

A. Our employee defection and trade secrets group assists clients with issues that arise when employees move back and forth between competitor firms, as well as other situations where there is potential for disclosure of confidential business information. Common issues include non-compete agreements; trade secrets; non-recruit and non-disclosure agreements; duty of loyalty and issues arising under the Computer Fraud & Abuse Act, Economic Espionage Act, and various state trade secrets and unfair competition statutes. It is an area that sits at the intersection of three disciplines: employment, intellectual property and commercial litigation.

Q. What's the most challenging employee defection and trade secrets case you've worked on, and why?

A. A few years ago, my colleague Mike Greco and I brought a declaratory judgment action to void the non-compete agreements of two high-profile “morning drive” radio show hosts. When they resigned, they had planned to live up to their contracts, but then their former employer decided to change the format of their prior station from alternative rock to hip-hop.

We felt the covenants not to compete should be nullified once their former station had basically abandoned their rock-oriented listeners. But the company contended the radio hosts still had to sit out for six months because many of the advertisers – who of course are the ones paying the bills – were common between the reformatted hip-hop station and the employees’ new rock station. In very short order, we dove deeply into expedited discovery and details of radio demographics, Arbitron listener statistics, radio advertising patterns and the study of psychographics. Ultimately, the court agreed with us and invalidated the contracts. They have since become the no. 1 morning show in their market.

Q. What's the most ridiculous employee defection and trade secrets case you've defended a client against?

A. A couple years ago, our team handled a pro bono case defending a widowed single mother whose company sued her on what we believed were very tenuous non-compete and trade secrets grounds. Her new employer

was not in a financial position to fund a lawsuit to defend her. Without free representation, she would not have been able keep working.

Q. Which aspects of non-compete or trade secrets law do you think are in need of reform? Why?

A. As with all litigation, issues of computer forensics and electronic discovery are increasingly important in ED&TS cases. Practitioners and the courts need to continue finding a way to balance the increasing role of forensics and e-discovery with the imperative that we not allow spiraling costs of these issues to make it impossible for companies to enforce basic contract, statutory or common law rights.

Q. Where do you see the next wave of ED&TS cases coming from?

A. We are seeing a large number of cases filed under the federal Computer Fraud & Abuse Act, which may provide a cause of action when a departing employee removes business information from a company computer. Liability turns not on secrecy of the information, but on whether the employee exceeded the scope of authorized computer access to obtain the data.

Q. Outside your own firm, can you name one ED&TS lawyer who's impressed you and tell us why?

A. This one is easy: our former partner, Dana Pescosolido. We've litigated with him, and in the past had litigated against him. He knows the law, is an outstanding litigator and takes the time to develop a detailed understanding of his client's business. Unfortunately for us, his understanding of one client became so detailed that they lured him in-house.

Q. What advice would you give to a young lawyer who's interested in getting into ED&TS?

A. Get good basic litigation training and connect with an experienced group who concentrates in this area. Then dive in head first. You'll learn it by doing it.

Q. I'm a general counsel with a Fortune 500 company facing a major non-compete or trade secrets lawsuit. Why should I hire your firm?

A. Our employee defection and trade secrets group has a national practice concentrating in issues surrounding employee defection, employee recruitment and trade secrets protection. The group is comprised of approximately 20 lawyers in our 18 offices throughout the country and is led by a core group of 10 lawyers who dedicate 100% of their practice to addressing these issues. Together, we have handled more than 1,000 such cases in at least 45 states, the District of Columbia and Puerto Rico, as well as international matters arising out of Asia, Europe and the Middle East. As a result, our lawyers are accustomed to rapidly deploying themselves to prosecute or defend temporary restraining orders and other emergency

situations. In addition, because we do this work all day, every day, we will not need to “ramp up” on your nickel. Almost anyplace you’re likely to have a case come up, we’re even more likely to have been there before.

Christopher Stief is the head of the employee defection and trade secrets practice group at Fisher & Phillips LLP.