Colorado Supreme Court Ruling May Result in Disclosure of Trade Secrets

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Earlier this month, the Colorado Supreme Court ruled that a party in litigation seeking to prevent responsive discoverable information from disclosure under a protective order must first demonstrate that the information in fact constitutes trade secrets or other confidential information before a protective order can be entered. This seemingly obvious requirement illustrates the dangers that can be posed by cutting corners early on in litigation.

The case, *In Re Rumnock v. Anschutz*, arose out of a car accident that made its way to the Colorado Supreme Court because of a discovery dispute between the parties. After being ordered to produce information requested in discovery, American Family Insurance disclosed some of the information, and also moved for a protective order seeking to preclude the Plaintiff from using American Family's trade secret information outside of the litigation. After a hearing on the motion for a protective order, the trial court granted the motion in part, but only ordered that the information not be disclosed to American Family's competitors, instead of the blanket order prohibiting use outside of the litigation that American Family had sought.

American Family then petitioned the Colorado Supreme Court to exercise its original jurisdiction and direct the trial court to enter the protective order American Family had sought. In a somewhat surprising move, the Supreme Court affirmed the holding from below, and held that American Family was not entitled to the protective order it sought because it failed to actually present evidence to the trial court that the information at issue constituted trade secrets or other confidential information.

In so ruling, the Court held that while the question of whether certain information constitutes trade secrets is ordinarily a question of fact, where there is no genuine dispute, the Court may make such a determination as a matter of law. In this case, the Court ruled that the information did not constitute trade secrets as a matter of law because American Family failed to provide any evidence demonstrating that the information was trade secret or otherwise confidential. The Court suggested that American Family had the opportunity to submit an affidavit or to provide the information in question to the trial court for *in-camera* review, but it failed to do either of those things. Ultimately, the Court allowed the ruling from below to stand, which exposed American Family's trade secrets to potentially broad disclosure by non-parties to the litigation, or to anyone or any entity that is not a competitor of American Family.

The case underscores the importance of fully litigating all matters that may be in dispute at any stage of the proceeding. Here, there was no indication from below that the Plaintiff had challenged the trade secret or confidential status of the information at issue, but that did not matter to the Supreme Court, because the Court held that American Family failed to meet its burden to demonstrate that it was entitled to the protective order it sought. The case also serves as a warning to litigants nationwide of the dangers of failing to adequately establish that information sought to be protected from disclosure actually constitutes trade secrets or other confidential information. It is simply not enough to rely on stipulations between counsel or mere argument of counsel in the pleadings. Instead, the ruling implies that parties should always submit accompanying affidavits or other evidence demonstrating the trade secret or confidential nature of information sought to be protected, or at the very least seek *in-camera* review of the information.

Though some would characterize the case as a halfhearted attempt to resolve the matter without ruling on the merits of the actual question presented, it serves a valuable reminder to all litigants to make sure to not overlook the baseline requirements of any relief sought from a court, and to ensure that all matters that may be in question are adequately proven with appropriate evidence.