



Conspiracy Theory: Employees Conspire to Breach Non-Competes or Steal Trade Secrets

Insights

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In actions against former employees, it is sometimes difficult for the former employer to determine precisely who did what. Sometimes, one employee has a non-solicitation agreement, but the other does not. Sometimes, one employee takes a trade secret, but the other employee uses it. Asserting a cause of action for civil conspiracy can help overcome the efforts of former employees who seek to avoid liability by hiding the ball.

Although the elements of a civil conspiracy claim differ from state to state, generally speaking the following elements are required: (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage. Notably, not every conspirator must commit an overt act in furtherance of the conspiracy, so long as at least one does.

Employers should consider including a claim for civil conspiracy in cases where they suspect two or more parties colluded to deprive the employer of its legal rights. For the lawyers out there asking how to plead such a claim, read on. Non-lawyers, feel free to stop reading, or prepare yourselves for some old fashioned legalese. Consider the following pleading example:

CIVIL CONSPIRACY

(Against Employee X and Employee Y)

1. The allegations of the paragraphs set forth above are incorporated by reference herein with the same force and effect as if set forth in full below.
2. Employees X and Y formed and operated a malicious combination with a common purpose and object to injure Employer by performing unlawful acts by violating Employer's contractual and common law rights as described above.
3. The foregoing conduct of Employees X and Y was malicious, performed with intent to injure Employer, and was without justification or privilege.
4. One or more of the defendants in fact engaged in overt unlawful acts and conduct violative of Employer's contractual, statutory and common law rights as described above, causing actual harm

to Employer.

5. By virtue of the formation and operation of this conspiracy by defendants, and as a consequence of the above described wrongful acts and conduct and the harm and injury caused to Employer thereby, each defendant as a participant in this conspiracy is liable as a joint tortfeasor for each and every one of the above-described acts committed by each defendant/co-conspirator.

6. As a consequence of the foregoing, Employer has suffered and will continue to suffer irreparable harm and loss, and has sustained damages including but not limited to loss of capital and revenue, lost productivity, expenses incurred, and loss of intangible assets, in an amount to be determined at trial, which damages are ongoing and continue unabated at the time of the filing of this Complaint.

For more on civil conspiracy claims, see our prior post "[Employees 'Jumping Ship': 'What Can We Do When We Don't Have a Contract?'](#)"

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