



Major Lindsey Drops Suit After Federal Court Nixes Computer Fraud & Abuse Act Claim and Hints at RICO Dismissal

Insights

9.10.10

A few days ago, this blog reported on two recent noncompete cases in which former employers have asserted RICO claims against departing employees. (Click [here](#) to see that post.) Previously, we have also commented on [Computer Fraud & Abuse Act](#) claims in similar contexts. It is the rare case, however, that involves claims under both statutes by employers against a departing employee. A few days ago, U.S. District Judge Colleen McMahon dismissed a CFAA claim in just such a case, and she hinted that a dismissal of the RICO claim could soon follow. Shortly thereafter, the plaintiff voluntarily dismissed the action reserving its right to pursue its claims in arbitration or state court.

The suit began in May, 2010, when legal recruiting firm Major, Lindsey & Africa filed a complaint against a former Managing Director, Sharon Mahn. Until recently, it was difficult to piece together the allegations because the complaint was sealed by the court, but the recent decision granting Mahn's motion to dismiss the CFAA claim sheds some light on MLA's claims.

According to the court, MLA alleged that Mahn disclosed confidential information, which she obtained from MLA's computers, to a few of its competitors. This was purportedly done in violation of the confidentiality provisions in Mahn's employment agreement, but MLA filed in federal court basing jurisdiction in part on the CFAA. Simply stated, the CFAA makes it unlawful for a person to access a protected computer "[without authorization](#)" or "in excess of one's authorization" to obtain something of value or to impair the integrity of data. Some courts hold that an employee acts "without authorization" or "exceeds authorization" if an employee is accessing information for purposes contrary to his or her employment. Other courts note that the statute's legislative history suggests Congress enacted the statute simply to address computer hacking, and not to provide employers with a remedy against faithless employees. Judge McMahon agreed with the latter school of thought, but noted that a conclusion to the contrary is not "implausible."

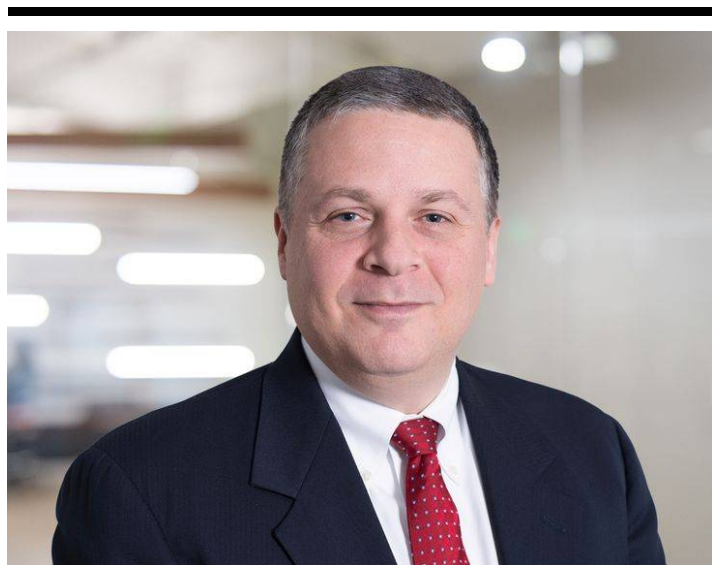
Dismissing the CFAA claim, Judge McMahon noted that continuing federal jurisdiction was dependent upon the survival of MLA's RICO claim. In this respect, her comments took on a more colorful tone. "This Court has ample experience with the assertion of bogus RICO claims for the purpose of (1) obtaining federal jurisdiction over an action that belongs in the state courts, and/or (2) extracting a coercive settlement due to the *in terrorem* nature of labeling someone a racketeer." She continued, "I frankly have no interest in retaining a case in which it appears that federal charges have been trumped up in order to avoid litigating what are essentially state and common law claims

in [state] court.” Against this backdrop, Judge McMahon stated that she would not permit discovery to proceed until MLA supplemented its “thermonuclear” allegations with a RICO case statement and Mahn (along with the other defendants) has an opportunity to file a motion to dismiss. Whether the RICO claims would have survived will never be known. In the face of this ruling, MLA dismissed its federal court claims.

For a copy of the order dismissing MLA’s CFAA claim, click on the pdf file below.

[Order Granting Motion to Dismiss CFAA Claim.pdf \(130.14 kb\)](#)

Related People



Michael R. Greco
Regional Managing Partner
303.218.3655
[Email](#)