

“Data Dump” Trade Secrets Prosecution Tactics: Untouched by SCOTX in the Oil Patch

Energy Law, Trade Secrets / April 5, 2018 / Demetri J. Economou

Ah, the “data dump”:

- Party A sends a request for production;
- Party B gives responsive documents *plus* an extra 50,000 pages.

The tactic is used by plaintiffs’ and defense attorneys alike – and in each scenario, the receiving side feels the pain. The hourly-rate defense attorney reviews those 50,000 pages at the standard billable rate, and the contingent-fee plaintiffs’ attorney reviews them on his/her own dime.

Terra’s Alleged Misappropriation and Sanchez’s “Data Dump”

The ongoing dispute between Terra Energy Partners, LLC and Sanchez Oil & Gas Corp. (and its affiliates) has been characterized by Terra as a “data dump” case. In it, Terra and several employees who formerly worked for Sanchez were sued for misappropriation of Sanchez’s trade secrets, specifically that Terra used Sanchez’s proprietary asset valuation processes to bid on and acquire assets in Colorado.

Terra sent early discovery, and Sanchez responded with 170,000 pages of production. Terra also sent interrogatories to determine which of the 170,000 pages were the misappropriated trade secrets, but Sanchez did not respond except to refer Terra to the existing production. Terra characterized this response as Sanchez saying, effectively, “*Go fish.*”

The trial court did not intervene to force Sanchez’s identification, and Terra’s petitions for mandamus to the **Court of Appeals** and **Supreme Court** were both denied.

“Growing Consensus” Among UTSA States

Terra argued before the Supreme Court that there is a “growing consensus” among the 46 states that have adopted the Uniform Trade Secrets Act, such that trade secrets plaintiffs must disclose – at an early stage of litigation – exactly what has been misappropriated.

In its arguments, Terra notes several federal decisions applying the Texas Uniform Trade Secret Act and requiring a specific disclosure, as well as decisions from federal courts in New York, Minnesota, Florida, and the states of Delaware and Florida. Terra argued the decisions in favor of early, specific identification (1) ensure the defendant has fair notice of the charges when the case commences, rather than at the close of discovery; (2) assist the court in setting the boundaries for the scope of discovery; and (3) prevent the plaintiff from using the discovery process as a fishing expedition.

Despite this, the Texas Supreme Court was not induced to step in and adopt these decisions. For now, trade secrets defendants in Texas state court will have to continue to live with potential “data dump” disclosures, without controlling

authority as to specific identification, while litigants in federal court may have a better time compelling a plaintiff's identification.

Demetri Economou is an associate in KRCL's Energy and Labor & Employment Practice Groups, based in Houston. Should you have any questions about this or other legal issues, please contact Demetri at deconomou@krcl.com.

Related Attorneys

Demetri J. Economou

Related Practices

Energy, Oil and Gas