

## Corporate & Financial Weekly Digest

December 16, 2011 by William M. Regan

### **Pennsylvania District Court Denies Motion to Dismiss and for a More Definite Statement**

*Co-authored by Jason F. Clouser*

Plaintiff Kimberton Healthcare Consulting, Inc. d/b/a DialysisPPO (DPPO), a provider of benefits consulting services, brought an action alleging breach of contract, violation of the Pennsylvania Uniform Trade Secrets Act (PUTSA) and various tort claims against Primary Physiciancare, Inc. (PPC), a privately held medical management company.

Plaintiff Kimberton Healthcare Consulting, Inc. d/b/a DialysisPPO (DPPO), a provider of benefits consulting services, brought an action alleging breach of contract, violation of the Pennsylvania Uniform Trade Secrets Act (PUTSA) and various tort claims against Primary Physiciancare, Inc. (PPC), a privately held medical management company. The plaintiff alleged that PPC used the plaintiff's confidential information, obtained during negotiations that resulted in a consulting agreement between the parties, to create a competing cost containment program that PPC offered to its clients at no charge.

To facilitate talks about a potential business relationship, the parties entered into a confidentiality agreement in October 2007 prohibiting PPC from revealing DPPO's confidential information without prior written authorization. In December 2007, the parties entered into a consulting agreement whereby DPPO would assist PPC's clients in reducing medical claims. PPC agreed not to use confidential information to develop its own similar services. According to the complaint, PPC allegedly used confidential information without the consent of DPPO in developing its own service. PPC moved to dismiss the common law tort claims for misappropriation of confidential and proprietary information, unfair competition and conversion, arguing that those claims were preempted by PUTSA and barred by the gist of the action doctrine. PPC also sought an order requiring DPPO to provide a more definite statement regarding the breach of contract and PUTSA violation claims.

The court denied the motion to dismiss on the ground that any preemption ruling would be premature until after the parties had taken discovery on the issue of whether the confidential information constituted a "trade secret." The court similarly declined to make the fact-intensive determination of whether the gist of the action doctrine barred DPPO's tort claims. In doing so, the court noted that it would rule on the issue at the close of

discovery but before trial. The court also denied PPC's motion to require DPPO to file an amended complaint containing a more definite statement concerning the timing of alleged misconduct relating to the breach of contract and PUTSA violation claims. The court doubted that DPPO would have knowledge of the specific dates of the misconduct and, furthermore, it did not believe that the claims were so ambiguous that PPC could not craft a response.

*Kimberton Healthcare Consulting, Inc. v. Primary PhysicianCare, Inc.*, Civil Action No. 11-4568, 2011 WL 6046923 (E.D.Pa. Dec. 6, 2011).

Katten Muchin Rosenman LLP  
Charlotte Chicago Irving London Los Angeles New York Washington, DC