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WHITE PAPER

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2023 Annual Review: Key U.S. Trade Secret Developments

This *White Paper* summarizes noteworthy legal developments in trade secret law in the United States in 2023. Understanding these legislative and judicial developments can help trade secret owners maintain trade secret protection and guard against misuse of their trade secrets by others.

TABLE OF CONTENTS

PROTECTING AMERICAN INTELLECTUAL PROPERTY ACT

On January 5, 2023, President Biden signed the Protecting American Intellectual Property Act of 2022 ("PAIPA") into law.[1] PAIPA requires that the President submit an annual report identifying and describing any "significant trade secret theft" by a foreign person or entity against a U.S. person or entity.[2] PAIPA also requires that the President impose sanctions on certain offenders, but allows the President to choose from an enumerated list of specific sanctions.[3] To date, there has been no reported activity or imposition of sanctions under the statute, and it remains to be seen how PAIPA will be enforced and influence existing federal trade secret misappropriation laws.

NEW CHALLENGES TO NON-COMPETES

Federal Developments

On January 5, 2023, the FTC announced a proposed rule to ban all non-compete and *de facto* non-compete clauses in employment contracts, estimating that such a proposed rule would "increase American workers' earnings between $250 billion and $296 billion per year."[4] The agency received nearly 27,000 comments on the draft rule and is expected to vote in 2024.[5] Additionally, on May 30, 2023, the general counsel of the NLRB issued a memorandum explaining that non-competes violate the NLRB.[6] The expectation is that momentum to challenge the lawfulness of non-competes will continue in 2024.

State Developments

In California, non-compete agreements have long been void as an unlawful restraint on a lawful profession, trade, or business.[7] California recently expanded the reach of its public policy against non-compete agreements when SB 699 was signed into law on September 1, 2023 (effective January 1, 2024). SB 699 makes *any* non-competition agreement unenforceable and void in California, regardless of where or when the agreement was signed.[8] Using such an agreement in the future will potentially expose an employer to a "civil penalty" and may permit an employee to bring a private right of action.[9] Relatedly, under AB 1076, employers must now also notify employees that any invalid non-compete that they signed is "void."[10] Several other states have enacted or expanded non-compete laws this year (primarily in the health care space).[11] Notably, New York's governor vetoed legislation that banned non-competes—reportedly on grounds that the bill applied too broadly.

KEY DECISIONS IN 2023

After First Vacating a $280 Million Punitive Damages Award as Being Unconstitutionally Excessive, the Seventh Circuit Affirms a Punitive Damages Award Reduced to $140 Million

Epic Sys. Corp. v. Tata Consultancy Servs. Ltd., No. 22-2420, 2023 WL 4542011 (7th Cir. July 14, 2023), *cert. denied sub nom. Tata Consultancy Serv. Ltd. v. Epic Sys. Corp.*, No. 23-386, 2023 WL 8007395 (U.S. Nov. 20, 2023)

Plaintiff Epic Systems, Corp. ("Epic") sued Tata Consultancy Services Ltd. and Tata America International Corp. (collectively, "Tata") in the Western District of Wisconsin for trade secret misappropriation under Wisconsin law, among other claims, based on allegations that Tata stole Epic's trade secrets related to health care management software.[12] At trial, the jury awarded Epic $240 million in compensatory damages and $700 million in punitive damages against Tata.[13] On a motion for judgment as a matter of law, the district court reduced the compensatory damages award to $140 million (vacating $100 million of damages as speculative), and reduced the punitive damages award to $280 million, citing a Wisconsin statute that caps punitive damages at two times compensatory damages.[14] This led to two appeals to the Seventh Circuit.

On the first appeal, the Seventh Circuit upheld the reduced compensatory award and found the $280 million punitive damages award unconstitutional as excessive based on the factors established in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) (the "*Gore* factors").[15] The Seventh Circuit determined that a 1:1 ratio relative to the compensatory award was the maximum constitutionally permissible here,[16] and remanded to the district court with an instruction to "reduce the punitive damages to, at most, $140 million."[17] The district court subsequently reduced the punitive damages award to $140 million.[18] Notably, had Epic brought its trade secret claim under the Defend Trade Secrets Act ("DTSA"), such a 2:1 punitive damages ratio would have been permitted under the statute.[19]

On the second appeal, Tata argued that the district court's analysis of the punitive damages award was insufficient because it "simply rehashed the *Gore* factors already considered by the Seventh Circuit."[20] The Seventh Circuit disagreed, criticizing Tata's arguments (which were the same as those raised on the initial appeal), and finding the reduced $140 million punitive damages award constitutional under *Gore*.[21] The Seventh Circuit reasoned that the district court's assessment was justified and sensible, given that it thoroughly revisited the *Gore* factors, including Tata's reprehensibility,[22] as well as the prior disparity between punitive award and compensatory award.[23] The U.S. Supreme Court denied certiorari on November 20, 2023, leaving in place the reduced punitive damages award, for a combined award of $280 million.[24]

Courts Overturn Two Multimillion-Dollar Jury Verdicts on Judgment as a Matter of Law

Versata Software, Inc. v. Ford Motor Company,
2023 WL 3175427 (E.D. Mich. May 1, 2023)

Versata Software, Inc., Trilogy Development Group, Inc., and Trilogy, Inc. (collectively, "Versata") sued Ford Motor Company for breach of contract and trade secret misappropriation.[25] Ford licensed automotive configuration software from Versata until it developed its own competing software.[26] Versata claimed that Ford misappropriated four of Versata's "combination trade secrets" when it developed its own software.[27] At trial, the jury awarded Versata $82 million in breach of contract damages and $22 million in trade secret misappropriation damages.[28] Ford moved for judgment as a matter of law, arguing that Versata failed to present sufficient evidence to support liability for trade secret misappropriation and both damages awards.[29]

First, Ford argued that Versata failed to produce evidence that it disclosed its combination trade secrets to Ford.[30] The court disagreed and determined that the jury reasonably could have concluded that Versata disclosed the combination trade secrets in a manner that Ford's technically proficient employees would have been able to understand.[31] Second, Ford argued that Versata failed to produce evidence that each of its combination trade secrets had "synergistic" value (i.e., "a value that was greater than the sum of its parts").[32] The court again disagreed, acknowledging that Versata witnesses testified that "*when assembled as combinations of the elements*," the trade secrets allowed users of Versata's software to perform complex operations.[33] Third, Ford argued that Versata failed to present evidence that Ford "misappropriated every element" of two of its four combination trade secrets.[34] In rejecting this argument as well, the court clarified that Ford need not have incorporated Versata's technology structure into its own product.[35] Rather, the court found Ford liable for using Versata's trade secrets to "assist or accelerate" its own research and development.[36]

Despite rejecting Ford's challenges on liability, the court overturned the damages award in its entirety.[37] At trial, the court instructed the jury that any trade secret damages award should be limited to the amount of time it would have taken Ford to independently develop the combination trade secrets determined to have been misappropriated.[38] But the court held that Versata failed to provide the jury with any such evidence, and instead relied on an "all-or-nothing" damages calculation.[39] The court determined that any figure used by the jury "would necessarily have been pure speculation" and could not stand after only a portion of the trade secrets were found to be misappropriated.[40] The court also declined to issue an injunction, finding that Versata did not show that an injunction would be necessary to prevent irreparable harm to its business or reputation.[41]

Coda Development v. Goodyear Tire & Rubber,
2023 WL 2734684 (N.D. Ohio Mar. 31, 2023)

Coda Development s.r.o., Coda Innovations s.r.o., and Frantisek Hrabal (collectively, "Coda") sued The Goodyear Tire & Rubber Company and Dr. Robert Benedict, Ph.D. (collectively "Goodyear") for misappropriation of alleged trade secrets relating to Coda's self-inflating tire ("SIT") technology, and to change the inventorship of certain Goodyear patents.[42] Coda alleged that its trade secrets were orally disclosed to Goodyear under a nondisclosure agreement during the course of two meetings in 2009.[43] The jury considered alleged misappropriation of 12 trade secrets, found that Goodyear misappropriated five of them, and awarded Coda $2.8 million in compensatory damages and $61.2 million in punitive damages.[44]

In response to Goodyear's motion for judgment as a matter of law, however, the court set aside the jury's verdict, finding that the five purported trade secrets lacked definiteness and, instead, simply reflected "Coda's knowledge."[45] As the court explained, "one cannot claim as a trade secret an entire body of knowledge without articulating at least the boundaries within which the secret lies."[46] The court also found that there was insufficient evidence that the five alleged trade secrets were not publicly known, and that there was insufficient evidence that they were used by Goodyear. The court also found that if the jury's verdict were left intact, its $61.2 million punitive damages award—more than 21 times its $2.8 million compensatory damages—would have to be reduced to $8.4 million under the statutory limit of the Ohio Uniform Trade Secrets Act.[47] In addition, the court rejected Coda's change-of-inventorship claims in a post-trial ruling.

Second Circuit Vacates Damages Based on Avoided Costs, Finding that the Plaintiff Was Adequately Compensated by Lost Profits Award

Syntel Sterling Best Shores Mauritius Limited v. TriZetto Group, 68 F.4th 792 (2d Cir. 2023)

The TriZetto Group, Inc. ("TriZetto") partnered with Syntel Sterling Best Shores Mauritius Limited ("Syntel") to offer TriZetto's software product to health care insurance companies.[48] After TriZetto was acquired by Syntel's competitor, Syntel sued TriZetto for breach of contract, misappropriation, and intentional interference with contractual relations.[49] In response, TriZetto filed counterclaims alleging misappropriation of trade secrets.[50] At trial, the jury found that Syntel misappropriated TriZetto's trade secrets and awarded TriZetto nearly $285 million in compensatory damages and double that amount—$570 million—in punitive damages.[51]

On Syntel's motion for judgment as a matter of law, the court remitted the punitive damages award to $284.9 million and also entered a permanent injunction.[52] On appeal, the Second Circuit rejected Syntel's arguments challenging the jury's liability findings. First, the court credited testimony by TriZetto's fact witnesses and expert adequately explaining the development, value, and confidentiality of the trade secrets.[53] Second, the court disagreed with Syntel's argument that it was authorized under the parties' Master Services Agreement ("MSA") to use the trade secrets.[54]

Regarding damages, the Second Circuit vacated the jury's $285 million compensatory damages award under the DTSA.[55] The court recognized that, generally, the DTSA permits recovery of avoided costs as unjust enrichment damages (i.e., the costs a trade secret holder had to spend in research and development that a trade secret misappropriator saves by avoiding development of its own trade secret).[56] But in this instance, the court determined that avoided costs were not available because TriZetto suffered no compensable harm beyond $8.5 million in lost profits.[57] The Second Circuit referred to the district court's permanent injunction, which ended Syntel's use of TriZetto's trade secrets and, thus, its ability to profit from any avoided costs.[58] The court also noted that Syntel's misappropriation did not diminish the secrecy or commercial value of the trade secrets, as TriZetto retained their profitable use.[59] Considering that Syntel earned $27 million in revenue, awarding $285 million for avoided costs "would entitle TriZetto to a windfall."[60]

The Second Circuit recognized that its holding might "appear in some tension" with the Seventh Circuit's decision in *Epic Systems*, which upheld a $140 million avoided costs award even though Epic suffered no economic harm and the district court entered an injunction.[61] The Second Circuit disagreed with the reasoning in *Epic Systems* to the extent "it can be seen to endorse a view that avoided costs are available as compensatory damages under the DTSA *whenever* there is misappropriation of any trade secret relating to an owner's product."[62]

The court outlined several factors for courts to consider going forward, such as "the extent to which the defendant has used the secret in developing its own competing product, the extent to which the defendant's misappropriation has destroyed the trade secret's value for its original owner, or the extent to which the defendant can be stopped from profiting further from its misappropriation."[63]

Circuit Courts Provide Guidance on Pleading Trade Secret Claims

Ahern Rentals, Inc. v. EquipmentShare.com, Inc., 59 F.4th 948 (8th Cir. 2023)

Ahern Rentals, Inc. ("Ahern") sued EquipmentShare.com, Inc. ("EquipmentShare") and EZ Equipment Zone, LLC ("EZ") (collectively, "the defendants") for trade secret misappropriation under the DTSA and Missouri Uniform Trade Secret Act.[64] Ahern alleged that the defendants conspired to steal its trade secrets to gain a competitive advantage in the rental equipment industry.[65] The district court dismissed EZ from the lawsuit, criticizing Ahern's complaint for alleging EZ's knowledge and involvement only "upon information and belief."[66] Ahern appealed.

The Eighth Circuit found that Ahern pled sufficient facts to state a claim against EZ.[67] It held that "allegations pled on information and belief are not categorically insufficient to state a claim for relief where the proof supporting the allegation is within the sole possession and control of the defendant or where the belief is based on sufficient factual material that makes the inference of culpability plausible."[68] "[A]ny hard evidence of EZ's knowledge is within the sole control of EZ or EquipmentShare."[69]

The court reasoned that Ahern pled enough details to allow the court to "draw the reasonable inference" that misappropriation occurred.[70] More specifically, the court noted that despite relying on "information and belief," Ahern offered enough facts to make it plausible that EZ was both using systems developed by EquipmentShare, and that EZ "*knew or had reason to know*" that it was using trade secrets improperly acquired by EquipmentShare.[71] For example, Ahern alleged that EZ and EquipmentShare have a close business relationship, and that EZ requires its users to use EquipmentShare's programs.[72] The Eighth Circuit reversed the district court's dismissal of EZ, vacated the subsequent dismissal of EquipmentShare, and remanded for reconsideration.[73]

Pauwels v. Deloitte LLP, 83 F.4th 171 (2d Cir. Oct. 6, 2023)

Andre Pauwels ("Pauwels") sued Deloitte LLP, Deloitte Tax LLP, and Deloitte USA LLP (collectively, "Deloitte"), as well as Bank of New York Mellon Corporation, LLP and its subsidiary, The Bank of New York Mellon (collectively, "BNYM"), for trade secret misappropriation and other claims under New York law.[74] During his work as an independent contractor for BNYM, Pauwels developed the "Pauwels Model," a bespoke valuation tool that he claimed was a trade secret.[75] Pauwels alleged that after BNYM hired Deloitte to take over Pauwels's work, the two companies misappropriated the Pauwels Model.[76] The district court dismissed Pauwels's claims for failing to plausibly allege that the Pauwels Model was a trade secret, and that BNYM or Deloitte misappropriated it.

The Second Circuit upheld the district court's ruling on appeal. First, the Second Circuit disagreed with Pauwels's assertions that he took reasonable measures to safeguard his trade secrets.[77] The court highlighted the fact that Pauwels sent his alleged trade secret material to individuals at BNYM who were not obligated to keep it secret, that any agreements with others to keep the information secret were unwritten and informal, and that Pauwels never alleged that he password-protected, encrypted, or expressly labeled his alleged trade secrets.[78] Second, the Second Circuit determined that Pauwels failed to allege that BNYM misappropriated the Pauwels Model because he failed to plead that BNYM owed him any fiduciary-like duties.[79] Finally, the Second Circuit determined that Pauwels failed to allege that Deloitte misappropriated the Pauwels Model because Deloitte did not obtain it by "improper means"—Deloitte never requested the information but received it involuntarily from BNYM.[80]

Ninth Circuit Reverses District Court Dismissal of $17 Million Trade Secret Verdict

Equate Media, Inc. v. Suthar, 2023 WL 7297328, at *1 (9th Cir. Nov. 6, 2023)

Equate Media, Inc., Budget Van Lines, Inc., Quote Runner, LLC, and Home Expert, Inc. (collectively, the "Katz companies") sued Disha Virendrabhai Suthar, Varunkumar Suthar, and Prime Marketing, LLC (collectively, the "defendants") for misappropriation of trade secrets and breach of contract.[81] At trial, the jury awarded each plaintiff $1.39 million from each defendant (nearly $17 million total) for trade secret misappropriation.[82] The defendants then moved for judgment as a matter of law, arguing that the Katz companies failed to identify a trade secret.[83] The district court granted the defendants' motion and rejected the jury's verdict.[84]

On appeal, the Ninth Circuit reversed, holding that a reasonable jury could have found that the Katz companies possessed trade secrets in Google ad data.[85] Specifically, the Google "conversion rates" (which summarize how many users who click on a Katz advertisement ultimately buy Katz services) and "quality scores" (which reflect Google's assessment of how relevant a particular keyword is to users) are examples of a "formula or compilation" that "derives independent economic value" from "not being generally known."[86] The Ninth Circuit also declined to affirm the district court's entry of judgment as a matter of law on the alternative ground that the evidence of damages was insufficient.[87] Although the Katz companies did not offer a "precise breakdown of the damages caused by each defendant to each plaintiff, the evidence gave the jury a sufficient basis for assessing the fault attributable to each defendant and inferring that each plaintiff suffered approximately equal harm from the misappropriation of its trade secrets."[88] The district court was instructed to reinstate the jury's verdict on remand.[89]

Fourth Circuit Evaluates "Acts in Furtherance" Under the DTSA

dmarcian, Inc. v. dmarcian Eur. BV, 60 F.4th 119 (4th Cir. 2023)

dmarcian, Inc. ("dInc") sued its Dutch partner dmarcian Eur. BV ("dBV") for misappropriation of trade secrets and related intellectual property claims.[90] The district court issued a preliminary injunction based on dInc's trade secret claims, in addition to its copyright, trademark, and tortious interference claims.[91] On appeal, dBV challenged dInc's likelihood of success on the merits.[92]

The Fourth Circuit affirmed the district court's decision, finding that dInc. would likely succeed on its trade secret claim under the DTSA.[93] The court recognized that dInc's "source code," "customer database," and business accounts are all likely trade secrets, and that dInc. took steps to keep such information secret (for example, by restricting access and requiring confidentiality agreements).[94] The court also recognized that dInc. would likely succeed in showing that dBV misappropriated the trade secrets and deployed the trade secrets in foreign commerce.[95]

Furthermore, the court addressed the "act in furtherance" of an offense requirement under the DTSA—an extraterritoriality provision that allows the DTSA to reach conduct occurring outside of the United States, where an "act in furtherance" occurred within the United States. The court agreed that certain of dBV's conduct met the "relatively low bar" for this requirement, including: (i) dBV's access to dInc's trade secrets through "data stored on servers within the United States"; and (ii) dBV's likely "use or disclosure" of the trade secrets within the United States.[96] These acts were sufficient given that a trade secret plaintiff need not show that the "entire offense" occurred in the United States, but only "an act" in furtherance did.[97]

First Circuit Confirms "Compilations" of Publicly Available Information Can Be Trade Secret

Allstate Ins. Co. v. Fougere, 79 F.4th 172 (1st Cir. 2023)

Allstate Insurance Company ("Allstate") sued two of its former insurance agents and another insurance agency (collectively, the "defendants") for misappropriating its trade secrets—spreadsheets containing customer information (e.g., names, addresses, policy types, renewal dates, etc.).[98] After the close of discovery, the federal district court in Massachusetts granted Allstate's motion for summary judgment on its trade secret misappropriation claims.[99] On appeal, the defendants argued that the lower court erred because: (i) the information in Allstate's spreadsheets was not a trade secret; (ii) Allstate did not own the documents or information in the spreadsheets; and (iii) Allstate failed to present evidence that the defendants used "improper means" to acquire the information.[100]

The First Circuit rejected each argument on appeal.[101] First, the court agreed with the district court that the content within Allstate's spreadsheets did, indeed, rise to the level of trade secret.[102] Despite recognizing that some of the information in Allstate's spreadsheets was publicly accessible, the court explained that the "compilation" of the information was not readily available to the public, and thus could be trade secret.[103] The spreadsheets also had independent economic value. In fact, agreements between the parties explicitly stated that misuse of the information would cause "irreparable damage," and Allstate took steps to protect its information through confidentiality agreements and access restrictions.[104] Second, the court found that Allstate was the owner of the customer information within the spreadsheets, given agreements that expressly attributed ownership of such information to Allstate.[105] Finally, the court dismissed the defendants' contention that the record lacked evidence of misappropriation, noting that the defendants failed to properly rebut Allstate's evidence of misappropriation.[106]

The First Circuit thus affirmed the lower court's grant of summary judgment to Allstate on liability on its trade secret claims based on the particular facts of the case.[107]

Eleventh Circuit Addresses Trade Secret "Ownership"

Highland Consulting Grp., Inc. v. Minjares,
74 F.4th 1352 (11th Cir. 2023)

Highland Consulting Group, Inc. ("Highland"), a consulting firm, sued a former employee for misappropriation of trade secrets related to best practices for consulting projects in the mining industry.[108] After the litigation commenced, defendant's counsel returned "five USB drives containing 15.4 gigabytes of data" containing Highland's trade secrets.[109] A jury in the Southern District of Florida found in favor of Highland and returned a verdict of $1.2 million.[110] The defendant renewed a motion for judgment as a matter of law and a new trial, and the district court denied his motion.[111]

On appeal, the defendant argued that Highland failed to prove it was the "owner" of the trade secrets, as opposed to one of its affiliates, and thus lacked standing to assert a DTSA claim.[112] The Eleventh Circuit rejected this argument, finding that a reasonable jury could have found that Highland owned the trade secrets based on the fact that hundreds of pages in evidence were stamped with Highland's marketing name, Highland's owner testified that he developed the trade secrets for Highland, and Highland used the trade secrets for a specific project.[113] The court also rejected defendant's argument that Highland's ownership claim was undermined by the existence of its foreign affiliates, and the affiliates' simultaneous use of the trade secrets.[114]

Because sufficient evidence supported the jury's finding that Highland owned the trade secrets at issue, the Eleventh Circuit upheld the lower court's ruling.[115]

Sixth Circuit Upholds Summary Judgment Ruling Based On Failure to Demonstrate a Confidential Duty

Novus Grp., LLC v. Prudential Fin., Inc.,
74 F.4th 424 (6th Cir. 2023)

Novus Group, LLC ("Novus") sued Prudential Financial, Inc. ("Prudential") for trade secret misappropriation under Ohio's Uniform Trade Secrets Act.[116] Novus claimed that Prudential (via two employees who formerly worked at a competitor, Nationwide) stole its concept for an annuity product.[117] The district court granted summary judgment in favor of Prudential because Novus failed to address whether Prudential acquired the trade secret as a result of a confidential relationship.[118] The Sixth Circuit upheld the district court's decision, finding that even if Novus had addressed the issue before the district court, Novus's arguments fail on the merits.[119] Novus pointed to a "web of agreements," none of which actually demonstrated that Novus formed a confidential relationship with Nationwide, or that any relevant agreements actually covered the trade secrets at issue.[120] The court also rejected Novus's attempt to "recast its theory of the case" to include a misappropriation theory on acquisition through "improper means," as opposed to only acquisition through a confidential duty, because it failed to raise the theory before the district court.[121]

The Sixth Circuit upheld the district court's grant of summary judgment in Prudential's favor.

LOOKING AHEAD

All signs indicate that 2024 will present more non-compete legislation, greater reliance on trade secrets as a preferred form of intellectual property protection, and an increasing number of trade secret disputes. While the courts are equipped to manage these controversies, companies with strong security measures, policies, and procedures remain most likely to avoid misappropriation of their trade secrets.

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ENDNOTES

1 50 U.S.C.A. § 1709, Pub. Law 117-336.

2 *Id.*

3 *Id.*

4 U.S. Fed. Trade Comm'n, Non-Compete Clause Rulemaking (2023).

5 Dan Papscun, *FTC Expected to Vote in 2024 on Rule to Ban Non-Compete Clauses*, BLOOMBERG, May 10, 2023; Samuel Estreicher and Alexander Gelfond, *The FTC's Initial Policy Case for Banning All Non-Compete Clauses in Employment Agreements*, VERDICT, Oct. 24, 2023.

6 National Labor Relations Board, Non-Compete Agreements that Violate the National Labor Relations Act (2023).

7 Cal. Bus. & Prof. Code § 16600.

8 Cal. Sen. Bill No. 699 (Sept. 1, 2023).

9 *Id.*

10 A.B. 1076 (Cal. Oct. 13, 2023).

11 For example, Connecticut passed a law making certain non-competes for physicians, registered nurses, and physician assistants unenforceable. *See* Conn. Pub. Act 23-97 (June 28, 2023). Indiana passed two laws: one that establishes a task force to study and make recommendations on non-compete clauses (*see* Ind. House Bill 1004 (May 4, 2023)), and another that prohibits certain non-competes for primary care physicians (*see* Ind. Sen. Bill 7 (May 4, 2023)). Iowa passed a law narrowing the scope of a 2022 prohibition on non-compete clauses in health care employment contracts. *See* Iowa House Bill 357 (June 1, 2023). Kentucky passed a law narrowing the scope of a 2022 prohibition on non-compete clauses, by excluding contracts with permanent direct care staff or with an assisted living community, a long-term care facility, or hospital for the placement of permanent direct care staff. *See* Ky. House Bill 502 (March 22, 2023). Tennessee passed a law prohibiting temporary health care staffing agencies from using non-compete clauses in contracts with direct care staff. *See* Tenn. Sen. Bill 702 (May 24, 2023). Maine passed a law banning non-competes for veterinarians. *See* Me. House Bill 688 (May 25, 2023). Minnesota passed a law making non-competes void and unenforceable. *See* Minn. Sen. Bill 3035 (May 24, 2023).

12 *Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, No. 14-CV-748-WMC, 2017 WL 4357993 (W.D. Wis. Sept. 29, 2017), *aff'd in part, vacated in part, remanded*, 971 F.3d 662 (7th Cir. 2020), and *aff'd in part, vacated in part, remanded*, 980 F.3d 1117 (7th Cir. 2020).

13 *Id.* at *1.

14 *Id.*

15 *Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, 980 F.3d 1117, 1145-1146 (7th Cir. 2020).

16 *Id.*

17 *Id.*

18 *Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, No. 14-CV-748-WMC, 2022 WL 2390179, at *3 (W.D. Wis. July 1, 2022), *aff'd*, No. 22-2420, 2023 WL 4542011 (7th Cir. July 14, 2023), *cert. denied sub nom. Tata Consultancy Serv. Ltd. v. Epic Sys. Corp.*, No. 23-386, 2023 WL 8007395 (U.S. Nov. 20, 2023).

19 *See* 18 U.S.C. § 1836(b)(3)(C).

20 *Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, No. 22-2420, 2023 WL 4542011, at *2 (7th Cir. July 14, 2023), *cert. denied sub nom. Tata Consultancy Serv. Ltd. v. Epic Sys. Corp.*, No. 23-386, 2023 WL 8007395 (U.S. Nov. 20, 2023).

21 *Id.* at *2–3.

22 *Id.* For example, the district court described how Tata employees deliberately and repeatedly accessed Epic's web portal to download confidential information to compete with Epic. *Id.*

23 *Id.*

24 *Tata Consultancy Serv. Ltd. v. Epic Sys. Corp.*, No. 23-386, 2023 WL 8007395, at *1 (U.S. Nov. 20, 2023).

25 *Versata Software, Inc. v. Ford Motor Co.*, No. 15-11264, 2023 WL 3175427, at *1–2 (E.D. Mich. May 1, 2023).

26 *Id.*

27 *Id.* at *2.

28 *Id.*

29 *Id.* at *11–19.

30 *Id.* at *11.

31 *Id.* at *12.

32 *Id.* at *13.

33 *Id.* (emphasis in original).

34 *Id.* at *14.

35 *Id.*

36 *Id.* at *15.

37 *Id.* at *16.

38 *Id.*

39 *Id.* at *16–17.

40 *Id.*

41 *Id.* at *19. The court also entered judgment in favor of Versata on its breach of contract claims in the amount of $3, reducing the original contract damages award of more than $82 million.

42 *Coda Dev. s.r.o. v. Goodyear Tire & Rubber Co.*, 15-cv-1572, 2023 WL 2734684, *1 (N.D. Ohio Mar. 31, 2023).

43 *Id.*

44 *Id.* at *6.

45 *Id.* at *9–16.

46 *Id.* at *9.

47 *Id.* at *17.

48 *Syntel Sterling Best Shores Mauritius Ltd. v. The TriZetto Grp., Inc.*, 68 F.4th 792, 796–797 (2d Cir. 2023), *cert. denied*, No. 23-306, 2023 WL 7117087 (U.S. Oct. 30, 2023).

49 *Id.*

50 *Id.* at 797–798.

51 *Id.* at 797–799.

52 *Id.* at 799–800.

53 *Id.* at 801–03.

54 *Id.*

55 *Id.* at 806–07.

56 *Id.* at 809.

57 *Id.* at 811–14.

58 *Id.*

59 *Id.*

60 *Id.* at 814.

61 *Id.* at 812–13.

62 *Id.*

63 *Id.* at 813–14.

64 *Ahern Rentals, Inc. v. EquipmentShare.com, Inc.*, 59 F.4th 948 (8th Cir. 2023).

65 *Id.* at 952.

66 *Id.* at 953. Ahern also appealed the dismissal of Ahern's claims against EquipmentShare, on the grounds that they were duplicative of other claims in an ongoing MDL. *Id.* The Eight Circuit vacated the order and remanded for reconsideration in light of its decision regarding EZ. *Id.* at 958.

67 *Id.* at 954–55.

68 *Id.* at 954.

69 *Id.* at 956.

70 *Id.* at 956.

71 *Id.*

72 *Id.*

73 *Id.* at 958.

74 *Pauwels v. Deloitte LLP*, 83 F.4th 171, 177 (2d Cir. 2023).

75 *Id.* at 178.

76 *Id.*

77 *Id.* at 181.

78 *Id.* at 182.

79 *Id.* at 183–84.

80 *Id.* at 185.

81 *Equate Media, Inc. v. Suthar*, No. 22-55681, 2023 WL 7297328, at *1 (9th Cir. Nov. 6, 2023).

82 *Equate Media, Inc. v. Suthar*, No. 22-cv-00314, 2022 WL 2824973, at *1 (C.D. Cal. June 22, 2022), *rev'd and remanded*, No. 22-55681, 2023 WL 7297328 (9th Cir. Nov. 6, 2023).

83 *Id.* at *2–4.

84 *Id.*

85 *Equate Media, Inc. v. Suthar*, 2023 WL 7297328, at *1.

86 *Id.* at *2 (citing Cal. Civ. Code § 3426.1(d)(1), 18 U.S.C. § 1839(3), and *United States v. Nosal*, 844 F.3d 1024, 1042 (9th Cir. 2016)).

87 *Id.* at *2.

88 *Id.*

89 *Id.*

90 *dmarcian, Inc. v. dmarcian Eur. BV*, 60 F.4th 119 (4th Cir. 2023).

91 *Id.* at 138.

92 *Id.*

93 *Id.* at 141.

94 *Id.*

95 *Id.*

96 *Id.*

97 *Id.* at 142.

98 *Allstate Ins. Co. v. Fougere*, 79 F.4th 172, 176 (1st Cir. 2023).

99 *Id.* at 180.

100 *Id.* at 188.

101 *Id.* at 188–96.

102 *Id.* at 188–89.

103 *Id.*

104 *Id.* at 191–93.

105 *Id.* at 193–94.

106 *Id.* at 195–96.

107 *Id.* at 196 (also affirming the lower court's grant of summary judgment on Allstate's contract claims).

108 *Highland Consulting Grp., Inc. v. Minjares*, 74 F.4th 1352 (11th Cir. 2023).

109 *Id.* at 1356.

110 *Id.* at 1357.

111 *Id.*

112 *Id.* at 1358.

113 *Id.* at 1358–59.

114 *Id.* at 1359.

115 *Id.* at 1360.

116 *Novus Grp., LLC v. Prudential Fin.,* Inc., 74 F.4th 424 (6th Cir. 2023).

117 *Id*. at 426–28.

118 *Id*. at 428.

119 *Id.*

120 *Id*. at 428–29.

121 *Id*. at 429.