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Selected Recent Trade Secret and Noncompete Caselaw

***Horizon Health Corp. v. Acadia Healthcare Co.*, 520 S.W.3d 848 (Tex. 2017).** Several members of management in Horizon coordinated a plan and left Horizon in rapid succession, taking copies of encrypted documents and using Horizon's information to compete, as a new company, for Horizon's customers. Evidence that the information was used to obtain a contract with a coveted client and statistical evidence concerning hypothetical future profitability of a poached VP of sales was legally insufficient to support an award of lost profits. However, exemplary damages were upheld because of findings of malice by individuals, supported by emails about intent to "gut punch" or "hurt" Horizon.

***Eurecat US, Inc. v. Marklund*, No. 14-15-00418-CV, --- S.W.3d ---, 2017 WL 2367545 (Tex. App.—Houston [14th Dist.] May 31, 2017, no pet.).** Two Eurecat employees started a competing company, but only some of the agreements they allegedly breached were enforceable; one agreement listed continued employment as consideration, but continuing employment of at-will employees is not consideration. The court affirmed an award to Eurecat of some $15,000 in damages and $15,000 in fees, but also an award to defendants of $600,000 in attorneys' fees.

***DGM Services, Inc. v. Figueroa*, No. 01-16-00186-CV, 2016 WL 7473947 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (mem. op.) (not selected for publication).** In a TUTSA, trade secret, and breach of covenants not to compete and solicit case, the court denied a temporary injunction because the plaintiff could not establish imminent harm. After five months, it did not show what information, if any, was used to the plaintiff's detriment or what business, if any, the plaintiff lost due to the individual's employment with a competitor. The court stated that there is no categorical rule of inevitable disclosure with respect to all nondisclosure provisions.

***Hughes v. AGE Industries, Ltd.*, No. 04-16-00693-CV, 2017 WL 94323 (Tex. App.—San Antonio 2017, no pet.) (mem. op.) (not selected for publication).** Court of appeals affirmed trial court's temporary injunction preventing former employee and current limited partner of employer from disclosing or using employer's trade secrets. Because trade secrets were acquired as result of former employee's employment by employer and not in his capacity as limited partner, former employee was under fiduciary duty arising from employment relationship to maintain confidentiality of information.

***Cooper Valves, LLC v. ValvTechnologies, Inc.*, No. 14-16-00879-CV, --- S.W.3d ---, 2017 WL 3090159 (Tex. App.—Houston [14th Dist.] July 20, 2017, no pet.).** Court of appeals reversed and rendered in temporary injunction appeal because: (1) noncompetition and nonsolicitation covenants had expired and were not reinstated when employee, who had left the company once before, was re-hired and did not sign new written agreements sufficient to satisfy integration clause and statute of frauds requirements, and (2) the temporary injunction was impermissibly vague as to actual or threatened misappropriation claims. Threatened misappropriation of trade secret information will support a temporary injunction. The *Figueroa* case was distinguishable because there was evidence that defendants had confidential information, what that information was, and that the employee was willing to reveal it to a new employer.