



California Appellate Court Upholds Injunction Prohibiting Former Employees From Destroying Stolen Electronic Information

The California Court of Appeal has upheld an injunction to prevent former employees from destroying electronic information they stole from their employer. In *Dodge, Warren & Peters Insurance Services, Inc. v. Riley*, several employees of Dodge, an insurance brokerage firm, decided to open their own insurance brokerage firm and agreed that they would obtain copies of documents maintained in Dodge's files and computer system. When Dodge discovered their plan, the defendants were fired. However, they managed to abscond with Dodge files prior to departing. Dodge sued the now former employees for misappropriation of trade secrets, unfair business practices, breach of fiduciary duty and breach of contract. Dodge also sought and obtained a temporary injunction that prohibited the former employees from destroying or deleting any of their electronic storage media, and required them to permit a court-appointed expert to copy all of it, including computer hard drives and disks, to recover lost or deleted files and to perform automated searches for discovery purposes. Dodge claimed that even innocent use of the media could result in the destruction of potential evidence. The appellate court affirmed the injunction, noting that because the former employees took voluminous amounts of both paper and electronic information from Dodge, and in view of litigants' liberal discovery rights, the trial court was reasonable in determining that the former employees' computers and other electronic storage media contained information that Dodge would have the right to discover. In addition, Dodge had demonstrated that, absent an injunction, it could irretrievably lose evidence that otherwise would have been available to it, and the harm to defendants would be negligible. This case demonstrates a potentially powerful discovery tool that may be available to companies that move quickly where former employees depart with company data.

Nine-Month Delay In Reporting Sexual Harassment No Bar To Title VII Suit

A Pennsylvania federal court has ruled that a worker who delayed complaining about her supervisor's alleged sexual harassment for nine months nonetheless may proceed to trial on her Title VII claim. In *Hawk v. Americold Logistics, LLC*, plaintiff Susan Hawk, a forklift driver at Americold, was allegedly harassed verbally and physically by her supervisor, Jack Bambarly. Hawk did not report Bambarly's behavior initially because she was a temporary employee at the time and Bambarly "had control of the situation" — he was her boss and knew she could not leave her job due to her financial and familial situation. After two months, Hawk did tell one of her other supervisors that someone was harassing her, but said that she could handle it herself. Finally, after an additional six months of harassment, Hawk reported the harassment to Americold's HR manager, who immediately began an investigation. Pending the investigation, Hawk and Bambarly were assigned different shifts to minimize their contact, and Hawk was

temporarily transferred to another nearby Americold facility. The investigation concluded that Bambarly's behavior had been unprofessional, but was not harassment. Bambarly was disciplined and directed not to have contact with Hawk. Despite this limitation, Hawk encountered Bambarly on her first day back at her original facility. Because of this encounter, Hawk resigned and informed HR that she had been constructively discharged. Based on this information, the HR manager interviewed additional employees and discovered that Bambarly had made harassing comments to others. Americold then terminated Bambarly's employment. Hawk sued for sexual harassment. The district court determined that Hawk had raised a genuine issue of fact as to whether Hawk had been sexually harassed. Americold, however, raised an affirmative defense—available to Title VII defendants but not to California employers sued under FEHA—that it had exercised reasonable care to prevent and promptly correct any harassing behavior and that Hawk unreasonably failed to take advantage of preventive or corrective opportunities by delaying her reporting of Bambarly's harassment. The court found that a jury could find that Hawk did not unreasonably fail to take advantage of corrective opportunities because her delay stemmed from a reasonable fear of losing her job, since her alleged harasser was her supervisor.