CLIENT ALERTS & INSIGHTS

$2B Trade Secrets Verdict Overturned by the Virginia Supreme Court

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Featured Practices: Trade Secrets, Restrictive Covenants & Unfair Competition

Key Takeaways

- The Virginia Supreme Court overturned a record $2 billion trade secrets verdict against Pegasystems, ordering a new trial after finding that the trial judge made significant legal errors, including improperly shifting the burden of proof to the defendant.
- This decision highlights the importance of correctly applying legal standards in trade secrets cases. Restricting defense evidence can invalidate verdicts. Trial court errors that prevent defendants from presenting revenue segmentation or product demonstrations can materially skew damages and expose verdicts to reversal.
- Large trade secrets verdicts face intense appellate scrutiny. Legal teams should closely monitor this retrial and review their own litigation strategies to mitigate risk in high-stakes intellectual property cases. Even where misappropriation is supported, procedural and legal missteps-especially around jury instructions-can overturn historic jury awards and force retrials.

In 2020, Appian Corp. sued Pegasystems Inc. for misappropriating over a dozen trade secrets through a government contractor who had access to Appian's software. After a jury trial, in 2022, a Virginia jury awarded Appian with the biggest jury award in Virginia history: $2B. Pega appealed and the Virginia Court of Appeals vacated the $2B jury award and ordered a new trial. Appian then appealed to the Virginia Supreme Court hoping the highest court of the state would agree with Appian that the trial court properly decided the issues and awarded a fair judgment.

The Virginia Supreme Court, however, upheld the state appellate court's decision vacating the $2B jury verdict-the largest jury award in Virginia history-and ordering a new trial. The Virginia justices found that the evidence presented at trial was sufficient to support Appian's claim that Pega stole its trade secrets. Nonetheless, the justices overturned the circuit court's opinion and ordered a new trial based on four significant errors made by Fairfax County Circuit Judge Richard E. Gardiner which directly influenced the large jury award, including barring Pega from presenting evidence that some of its revenue came from noncompeting product lines, preventing the company from demonstrating versions of its software to jurors and telling jurors that the number of people with access to Appian's platform was irrelevant.

Arguably, however, the justices found that Judge Gardiner's most significant error was instructing jurors that it was the defendant's burden to prove which of its sales were not tied to the alleged trade secret theft. Not only is this an inaccurate representation of Virginia law as it is the plaintiff's burden to establish that defendant's misappropriation proximately caused the damages sought to be recovered, once Appian had established Pega misappropriated its trade secrets and had sales, the instruction improperly required Pega to convince the jury its sales were unrelated to the misappropriation or otherwise Appian was entitled to all of Pega's sales revenue. On retrial, the circuit court must apply the proper burden of proof and the trial court's award will likely reflect the evidence which was previously not allowed to be considered.

While this case involves Virginia state-level trade secret claims, it has drawn nationwide attention not only because of its large judgment but also the number of critical trade secret questions it raises.

Benesch attorneys are following the retrial and developments in trade secret law in similar actions. If you have any questions, please reach out to the authors listed at the top of the page and in the right panel.