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Recent Georgia Court of Appeals Case Highlights Alternative Theories of Relief in Unfair Competition Case

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Beginning in law school, attorneys are trained to learn from reported appellate cases, and that education never stops. In a recent Georgia Court of Appeals case involving claims of unfair competition, *Lyman v. Cellchem Int'l LLC*(decided November 19, 2015; Case No. A15A1282), the court partially affirmed a $7.4 million jury verdict against a couple accused of conspiring to create an unfairly competing business to the detriment of their previous employer. Here are my takeaways from the opinion: **It's not just about noncompetes and trade secrets**— Despite the name of this blog site, the law provides many tools to fight unfair competition in addition to noncompete and trade secrets claims. The *Lyman*opinion made no mention of restrictive covenants or trade secrets; instead the jury verdict was based upon claims of breach of fiduciary duty, tortious interference with business relations, and computer theft and computer trespass under the Georgia Computer Systems Protection Act(O.C.G.A. §16-9-90, *et seq.).* When faced with unscrupulous or disloyal former employees, employers and their counsel should make sure that they analyze every potential claim; the absence of an enforceable noncompete is not fatal to the quest to stop or punish unfair competitive activities. **Big punitive damage verdicts are possible in unfair competition cases** — This blog previously reported on several recent big verdicts in trade secret cases, and *Lyman* further illustrates the ability of juries to punish culpable defendants in unfair competition cases. The jury hit the defendants with $5.1MM in punitive damages, although surprisingly, only a fraction of the award was apportioned to the individuals who actually carried out the bad acts. **Don't take stuff when you leave!** — It continues to amaze me that even though we're well into the information age, people are still incredibly unaware that almost everything they do electronically is traceable. In*Lyman,*there was evidence that the husband/wife defendants had: (1) deleted necessary business information from the company-issued laptop before returning it upon resignation; (2) copied their employer's QuickBooks files onto a personal thumb drive in the days leading up to the wife's resignation; (3) stored the plaintiff company's information on the defendants' personal computer; and (4) used the plaintiff's computer data to make a PowerPoint presentation for a competitor. In unfair competition cases, the defendants often unwittingly leave an electronic trail of crumbs from which their illicit activities can be easily

deduced. **The Stranger Doctrine defense to a tortious interference claim is broad in Georgia** — To be liable on a claim for tortious interference with a contract or business relationship, it is required that the defendant be a “stranger” to the contract and business relationship at issue. In reversing the trial court’s rulings on the plaintiff’s tortious interference claims, the Court of Appeals confirmed that the scope of the stranger doctrine in Georgia is broad, holding that “[A] third party who would benefit from the business relationship, even if not an intended beneficiary, is not a stranger to that relationship.” The court in *Lyman*held that the defendant who was employed by the Plaintiff and interacted with customers and suppliers was not a stranger to those business relationships. Additionally, the Court reversed the judgment on the tortious interference claim against one of the corporate defendants because of Georgia law that parents and subsidiaries are not strangers to the other’s business relationships and cannot be held liable for tortiously interfering with those relationships. **BURR POINT:**Even in the absence of a noncompete or trade secret violation, Georgia law provides other legal weapons that can lead to big verdicts against unfairly competing former employees.

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