

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNUM GROUP,
Plaintiff

V.

TIMOTHY P. LOFTUS,
Defendant

CIVIL ACTION NO. 16-40154

COMPLAINT

Plaintiff, Unum Group (“Unum”) hereby states as follows:

PARTIES

1. Unum is a Delaware corporation registered as a foreign corporation in Massachusetts. Unum’s principal place of business in Massachusetts is located at 1 Mercantile Street, Worcester, MA 01608.

2. Defendant is a citizen of Massachusetts who resides at 23 Greany Drive, Grafton, MA 01536.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Unum has asserted a claim for misappropriation of trade secrets under the Defend Trade Secrets Act against Defendant. This Court has supplemental or pendant jurisdiction over Unum’s remaining claims pursuant to 28 U.S.C. § 1367 because such claims are so related to Unum’s federal misappropriation of trade secrets claim that they form part of the same case or controversy under Article III of the United States Constitution.

4. Venue is appropriate in this judicial district under 28 U.S.C. § 1391(b)(1) because Defendant is a resident of Massachusetts. Venue is also appropriate in this judicial district under

28 U.S.C. § 1391(b)(2) because the events that gave rise to this complaint occurred in this district.

FACTS

A. Unum's Business

5. Unum is a leading provider of disability benefits in the United States. In addition, Unum is a leading provider of a variety of other financial protection benefits, including voluntary benefits, whole and universal life insurance, critical illness benefits, accident coverage, and dental benefits.

6. As the leading provider of financial protection benefits to thousands of customers, Unum has access to confidential information regarding its customers, policyholders, applicants for insurance coverage, and parties with whom it does business (“Confidential Customer Information”).

7. The market for financial protection benefits is highly competitive. There are a multitude of other companies, each offering their own financial protection benefits, competing for the same customers and market share that Unum services.

8. Unum's success is dependent on its ability to protect its customers' confidential information, as well as its own confidential, proprietary, and trade secret information.

9. Unum's confidential, proprietary, and trade secret information includes, but is not limited to, its financial, business, technical, and economic information; the names of any of its customers; products; claims practices; pending litigation or litigation strategies; reserves; services; research; data bases; computer software; business or marketing plans; intellectual property; the prices it obtains or has obtained or at which it sells or has sold its products; medical and other private information about people or companies with whom Unum does business,

including insureds, customers, employees, producers, and suppliers; information that is provided to Unum on the condition that it is kept confidential, such as licensed computer software plans; and any other information of, about, or concerning the business of Unum, its manner of operation, strategic direction, and/or its plans (collectively, “Trade Secret Information”).

10. The value of Unum’s Trade Secret Information is in its exclusive use by Unum and its employees.

B. Unum’s Steps to Maintain Confidential Nature of Its Information

11. Unum relies on a combination of copyright, trademark, and trade secret laws, as well as confidentiality agreements and confidentiality policies to establish and protect its Trade Secret Information and Confidential Customer Information.

12. Unum’s Confidentiality/Non-Disclosure Policy provides, in relevant part, that employees may not use Unum’s confidential information to disadvantage the company and that Unum can discipline employees who fail to respect the confidential nature of information. See Exhibit A.

13. Unum’s Code of Conduct provides, in relevant part, that employees must “[a]lways manage personal data responsibly and in compliance with privacy laws and our company policies,” and that they may “[n]ever disclose any private, sensitive, secret or confidential information outside of the company . . .” See Exhibit B.

14. Unum reminds its employees of the confidential nature of the Trade Secret Information and Confidential Customer Information by requiring them to review and attest to their review of Unum’s Code of Conduct each year.

15. In addition, Unum requires employees to attend an annual Privacy & Information Security Training session, which details employees' responsibilities to maintain the confidentiality of Trade Secret Information and Confidential Customer Information.

16. In addition to the protective measures described above, Unum restricts access to its Trade Secret Information, Confidential Customer Information, and Confidential Employee Information by, for example, requiring encryption of external devices (such as flashdrives), utilizing software to monitor when/how Confidential Customer Information is sent outside of Unum, requiring employees to encrypt Confidential Customer Information before it is sent to a third party.

C. Defendant's Employment with Unum

17. Defendant was hired by Unum on September 9, 1985.

18. As a condition of his employment, on October 10, 1988, Defendant executed a Confidentiality Agreement, which provides, in relevant part:

a. You will keep in strictest confidence all information identified as confidential . . . relating in any way to the business and affairs of [Unum] which you may acquire in connection with or as a result of your employment . . .

c. You will not, except as may be required by your employment with [Unum], duplicate, disclose or reveal to anyone such information without the prior written consent of [Unum]; . . .

See Exhibit C.

19. In or around, December 2004 Defendant was promoted to Director of Individual Disability Insurance ("IDI") Benefits.

20. As the Director of IDI Benefits, Defendant's job duties included, but were not limited to, "managing a team of employees that are responsible for quality management of complex IDI claims for an assigned block of customers," "achieving a high level of quality and

customer satisfaction,” “attracting, developing, and retaining professional claims resources,” “be[ing] involved in daily activities and decisions associated with claims,” “ensur[ing] all appropriate actions are taken and all information is received on claims before a decision is made,” and “participate in development of regional specific business plans.” See Director, IDI Benefits Job Description, attached hereto as Exhibit D.

21. Accordingly, as the Director of IDI Benefits, Defendant had access to (a) Confidential Customer Information; (b) Unum’s Trade Secret Information; and (c) confidential information of Unum’s employees (“Confidential Employee Information”).

22. On August 29, 2016, Defendant attested to his receipt of the Code of Conduct, which contains policies regarding confidentiality and security as described above.

23. On April 6, 2016, Defendant attended the 2016 Privacy & Information Security Training.

D. Defendant’s Wrongful Conduct

24. On Wednesday, September 21, 2016, Defendant was interviewed by Unum’s inside counsel as part of an internal investigation into claims practices.

25. Defendant was informed and understood that if he “provide[d] incomplete or untruthful information during [the] interview, [he] will be subject to disciplinary action, including termination from employment.” See Upjohn Warning, attached hereto as Exhibit E.

i. Sunday, September 25, 2016

26. On Sunday, September 25, 2016 – which is not Defendant’s usual workday – Defendant went to Unum’s Worcester Office (“Unum’s Office”) and entered the building at 12:40 p.m. with, what appeared in the security video to be, an empty box. See Exhibit F.

27. Nine minutes later, Defendant left Unum's Office with a full box and brought the box to his car. See Exhibit G.

28. Empty handed, Defendant then re-entered Unum's Office at 12:52 p.m. See Exhibit H.

29. Over one hour later, at 2:09 p.m., Defendant left Unum's Office with a *second* full box of documents, as well as a full briefcase, and brought the box and briefcase to his car. See Exhibit I. Defendant did not re-enter Unum's Office.

30. Defendant had no legitimate business reason to remove at least two boxes of documents from Unum's Office on Sunday, September 25, 2016.

ii. Tuesday, September 27, 2016

31. On Tuesday, September 27, 2016, Defendant worked at Unum, arriving at 9:53 a.m. and leaving sometime after 3:44 p.m. After leaving for the day, Defendant returned to Unum's Office at approximately 7:45 p.m.

32. Approximately one hour later, Defendant left Unum's Office with a shopping bag full of documents and a full briefcase. See Exhibit J.

33. Defendant had no legitimate business reason to remove a shopping bag full of documents from Unum's Office at night on Tuesday, September 27, 2016.

iii. Thursday, September 29, 2016

34. On Thursday, September 29, 2016, Charlie Wade, Assistant Vice President of Corporate Investigations, spoke with Defendant via telephone at approximately 10:00 a.m. as part of Mr. Wade's investigation into Defendant's removal of documents on Sunday, September 25 and Tuesday, September 27, 2016 from Unum's Office.

35. After Defendant was asked if he had printed documents on Sunday, September 25, 2016 and/or Tuesday, September 27, 2016, he refused to answer questions or participate in Mr. Wade's investigation regarding what Defendant removed from Unum's Office.

36. At 11:14 a.m. on September 29, 2016, Defendant left Unum's Office with the laptop provided to him by Unum ("Unum's Laptop") for business, as well as a shopping bag, which appeared to be full. See Exhibit K.

37. Defendant had no legitimate business reason to take Unum's Laptop out of Unum's Office on Thursday, September 29, 2016.

38. At approximately 12:00 p.m., Janine Hughes Goldberg, a Senior Employee Relations Consultant, and Holly Hayes, Assistant Vice President Employee Relations, called Defendant and asked him to return Unum's Laptop. Defendant agreed to do so.

39. As described above, on September 21, 27, and 29, 2016, Defendant removed two boxes and two shopping bags of documents from Unum's Office, as well as documents contained in his briefcase which he removed from Unum's Office on the three occasions described above (collectively, "Unum's Documents").

40. It is highly likely that Unum's Documents contain Confidential Customer Information, Confidential Employee Information, and/or Trade Secret Information.

E. Defendant's Refusal to Return Unum's Property

41. Despite informing Ms. Goldberg and Ms. Hayes that he would return Unum's Laptop on September 29, 2016, Defendant failed to do so.

42. At approximately 3:00 p.m. on September 29, 2016, Defendant's then-attorney, Keith Higgins, called Unum and spoke with Ellen Donovan McCann, Assistant Vice President

and Senior Counsel of Unum's Law Department. Attorney Higgins represented to Attorney McCann that Defendant would return Unum's Laptop by the end of the day.

43. Defendant did not return Unum's Laptop to Unum on September 29, 2016.

44. On October 4, 2016, Attorney McCann wrote to Attorney Higgins to again demand the return of Unum's Laptop and Unum's Documents. See Exhibit L.

45. On October 5, 2016, Defendant's new attorney, Roy Bourgeois, emailed Attorney McCann a letter, in which he stated that he had taken custody of "certain items and a computer in the custody of [Defendant]," and indicated that he would not return the "items" and Unum's Laptop unless they were held in escrow and Unum provided him with copy of the Upjohn warning signed by Defendant. See Exhibit M.

46. On October 7, 2016, Unum's outside counsel, Jonathan Sigel, responded to Attorney Bourgeois and demanded the return of Unum's Laptop and Unum's Documents by October 12, 2016, together with a signed representation that Defendant and his counsel had not retained or destroyed any copies of Unum's Documents or data contained on Unum's Laptop. See Exhibit N. With his letter, Attorney Sigel provided Defendant a copy of the Upjohn warning signed by Defendant. Id.

47. On October 12, 2016, Attorney Bourgeois wrote to Attorney Sigel, stating that Defendant "simply" would not return Unum's Laptop or Unum's Documents because Unum did not provide an assurance that its own laptop, files, and documents would be safeguarded. See Exhibit O.

48. On October 14, 2016, Attorney Sigel expressly stated that Mirick O'Connell would maintain Unum's Laptop and Unum's Documents "in its custody and not destroy or alter them in any way pending the resolution of this matter." See Exhibit P. Since Unum provided

the requested assurance, Attorney Sigel demanded the immediate return of Unum's Laptop and Unum's Documents taken by Defendant.

49. On October 18, 2016, Attorney Bourgeois wrote to Attorney Sigel and, despite receiving Unum's assurance, refused to return Unum's Laptop unless Unum executed an Agreement, which required Unum to "negotiate in good faith" *with Defendant* "a protocol for electronic access to, and duplication of, the information stored on" Unum's Laptop and provided that Unum's Laptop would be "equally available" to Defendant. See Exhibit Q. With respect to Unum's Documents, Attorney Bourgeois stated that they would be "dealt with" by copying and bates stamping them, at some point. Id.

50. On Friday, October 21, 2016, Unum's outside counsel, Amanda Marie Baer, spoke with Attorney Bourgeois and stated that she would sign the Agreement for the return of Unum's Laptop. With respect to the documents, Attorney Baer explained, over the phone and in an email, that Unum has responsibilities under Massachusetts law to safeguard its documents and files that contain personal information regarding Massachusetts residents. Exhibit Q. Attorney Baer stated that Defendant exceeded his authority with respect to Unum's Documents when he removed them from Unum's Office and then refused to return them to Unum despite repeated demands to do so. Id. Attorney Baer demanded the immediate return of Unum's Documents so that she could review them to determine if any redactions of Confidential Customer Information, Confidential Employee Information, and/or Trade Secret Information needed to be made. Id.

51. Defendant's counsel responded by stating that he did not trust Attorney Baer to make a complete copy of Unum's Documents.

52. On Monday, October 24, 2016, Attorney Baer took custody of Unum's Laptop.

53. On Monday, October 24, 2016, Attorney Baer again demanded the immediate return of Unum's Documents, and offered for Defendant's counsel to *watch* while Unum's Documents were copied so that Defendant could be assured that a complete copy was made. See Exhibit S.

54. Defendant's counsel responded to Attorney Baer's email and explained that – despite Attorney Baer's explicit instructions otherwise – he was making copies of Unum's Documents. Exhibit T.

F. Unum's Duty to Report

55. Pursuant to M.G.L. c. 93H, § 3, Unum has a duty to provide notice when personal information of a resident of Massachusetts has been acquired or used by an unauthorized person or used for an authorized purpose.

56. Unum's Documents taken by Defendant likely contain personal information of residents of Massachusetts, including Unum's customers and/or Unum's employees and, if so, Unum may be required to provide notice as required by law.

57. Defendant's failure and refusal to return Unum's Documents prevent Unum from (a) evaluating whether notice under M.G.L. c. 93H, § 3 is required; and (b) if so, providing notice to Massachusetts residents and/or the Massachusetts Attorney General.

Causes of Action

Count I

Misappropriation of Trade Secrets Under the Defend Trade Secrets Act of 2016

58. Unum re-alleges and incorporates by reference all preceding paragraphs as if fully alleged herein.

59. While employed by Unum, Defendant obtained access to Unum's Trade Secret Information.

60. The Trade Secret Information obtained by Defendant is related to Unum's services that are offered and provided in interstate commerce.

61. The Trade Secret Information obtained by Defendant is a "trade secret" under 18 U.S.C. § 1839(3).

62. Defendant has maliciously and willfully misappropriated Unum's Documents, which contain Unum's Trade Secret Information.

63. Unum has demanded the return of its property and Trade Secret Information, and Defendant has failed and refused to return that property without any appropriate basis to do so.

64. As a result of Defendant's misappropriation of Unum's Trade Secret Information, Defendant has violated the Defend Trade Secrets Act of 2016 (18 U.S.C. § 1836(b)(1)).

65. As a direct and proximate result of Defendant's violation of the Defend Trade Secrets Act of 2016, Unum has sustained substantial damages in an amount that will be established at trial of this matter.

66. Defendant's actions in converting and misappropriating Unum's Trade Secret Information for his own gain was willful, wanton, and malicious, and was taken with reckless disregard for the rights of Unum.

67. Defendant's actions have caused and will continue to cause Unum irreparable harm if not preliminarily and permanently enjoined.

68. Unum has no adequate remedy at law.

Count II
Misappropriation of Trade Secrets Under the Massachusetts Trade Secrets Act

69. Unum re-alleges and incorporates by reference all preceding paragraphs as if fully alleged herein.

70. While employed by Unum, Defendant obtained access to Unum's Trade Secret Information.

71. Unum took reasonable steps to preserve the secrecy of its Trade Secret Information.

72. Unum's Trade Secret Information is a "trade secret" under M.G.L. c. 93, § 42 (the "Massachusetts Trade Secrets Act") and M.G.L. c. 266, § 30.

73. Defendant has misappropriated Unum's Documents, which contain Unum's Trade Secret Information, for his own benefit.

74. Defendant has copied Unum's Trade Secret Information.

75. As a result of Defendant's misappropriation of Unum's Trade Secret Information, Defendant has violated the Massachusetts Trade Secrets Act.

76. As a direct and proximate result of Defendant's violation of the Massachusetts Trade Secrets Act, Unum has sustained substantial damages in an amount that will be established at trial of this matter.

77. Defendant's actions in converting and misappropriating Unum's Trade Secret Information for his own gain was willful, wanton, and malicious, and was taken with reckless disregard for the rights of Unum.

78. Defendant's actions have caused and will continue to cause Unum irreparable harm if not preliminarily and permanently enjoined.

79. Unum has no adequate remedy at law.

Count III
Conversion

80. Unum re-alleges and incorporates by reference all preceding paragraphs as if fully alleged herein.

81. Defendant is in wrongful possession of Unum's Documents, which likely contain Unum's Trade Secret Information, Confidential Customer Information, and/or Confidential Employee Information.

82. Defendant has wrongfully asserted dominion or control over Unum's property in a manner inconsistent with Unum's ownership and entitlement to such property.

83. As a direct and proximate result of Defendant's conversion of Unum's property, Unum has suffered or will suffer damages.

WHEREFORE, Unum respectfully requests that this Court:

1. Order Defendant and his attorney to deliver Unum's Documents as well as any other Confidential Customer Information, Trade Secret Information and/or Confidential Employee Information in Defendant's and/or his attorney's possession, custody, and control to the undersigned counsel within twenty-four (24) hours, together with a signed representation that he, and his attorney, did not alter, destroy, remove, copy, or retain any document, file, or information;
2. Order Defendant and his attorney to destroy any and all copies of Unum's Documents;
3. Enter a judgment declaring that Defendant misappropriated and converted Unum's property and Trade Secret Information;
4. Award monetary damages to Unum in an amount to be proven at trial; and
5. Grant Unum such other relief as the Court deems just and equitable.

Respectfully submitted,

UNUM GROUP,

By its attorneys,

/s/ Amanda Marie Baer

Jonathan R. Sigel, BBO # 559850

Amanda Marie Baer, BBO #681386

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Dated: October 25, 2016