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Waymo v. Uber -- “Epic” Trade Secret Case Involving Autonomous Vehicles Settles for \$244 Million

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In one of the most watched Trade Secret Misappropriation cases of the century—which has been billed as an “epic” lawsuit, one of the “juiciest” trade secret cases ever, and one of the “highest profile court battles in Silicon Valley history”—Waymo and Uber have finally reached a settlement in the case that has raged on between them for the past year. As part of the settlement, Waymo (a subsidiary of Google’s parent company) will receive .34 percent of Uber’s equity. If that does not sound like much, considering that Uber is valued at \$72 billion, it is. This settlement translates to approximately \$244 million. One publication reports that were this amount won in a jury verdict, it would have been one of the highest trade secret jury verdicts in the United States in the past decade.

The Lawsuit

The case revolved around one of the biggest trends not only in Silicon Valley currently, but also right here in Detroit: autonomous vehicles. Anthony Levandowski, a former engineer for Waymo—a subsidiary of Google that has been one of the early companies to specialize in driverless cars—abruptly quit his job at Google in January, 2016 and started his own self-driving vehicle company called Otto. In doing so, though, he allegedly downloaded and stole nearly 14,000 files from Waymo that he took with him. Shortly thereafter, Uber purchased Otto and—according to Waymo—also acquired all of the stolen trade secrets that Levandowski took with him. Uber placed Levandowski in charge of its own driverless car division.

The technology that is alleged to have been stolen revolved around Lidar technology (known as “light detection and ranging” technology), which is used in self-driving cars to allow vehicles to “see” around them and to detect other vehicles, bikers, pedestrians, animals, or other obstacles. The technology is integral to autonomous vehicles.

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Waymo filed a lawsuit in Federal Court in California, alleging that Uber conspired with Levandowski to create a fake company that would then be purchased by Uber (along with the trade secrets). Waymo alleged that the goal was to steal its trade secrets related to its self-driving-car team. As an indication of the value of the technology, Levandowski's young company, Otto, was purchased by Uber for \$680 million in 2016.

Waymo alleges that the goal was not only to "leapfrog" Waymo and Google in the race to build self-driving cars, but also to keep Uber alive in the ever-changing transportation industry. Damages sought in trade secrets cases usually consist of lost sales for the aggrieved company, an "unjust enrichment" theory in which the company found to have misappropriated the trade secrets must pay the other company the amount it would have cost them to have developed the technology itself, or in certain cases royalties. The company who can prove that their trade secrets were stolen can also obtain injunctive relief, with a court order mandating that the guilty party cannot use the trade secrets further. In this case, Waymo was alleging and seeking \$1.8 billion in damages.

The Settlement

The case proceeded without resolution all the way to trial. In fact, the two sides tried the case for four days, presenting witness testimony and evidence. The trial was followed closely by those in Silicon Valley, in the autonomous vehicle industry in Detroit, and all of those in the trade secret world. The trial was expected to last at least three weeks. Many were shocked, therefore, when before last Friday's testimony began the two sides announced to the judge and the courtroom that they had reached a settlement agreement.

Despite its claimed damages of \$1.8 billion, Waymo ultimately accepted .34% of Uber's equity. As noted, this equates to approximately \$244 million. Uber also agreed not to incorporate any of Waymo's confidential information into its hardware or software used in its self-driving cars. Reports also indicate that the agreement includes an independent monitor review to insure that this agreed upon injunction is honored. This is in addition to Mr. Levandowski having already been terminated by Uber. Despite the settlement, Uber denies that it stole or used any of Waymo's technology or trade secrets at any time.

What does it mean?

Without a doubt, this is one of the biggest trade secret settlements in recent times. Whether or not this can set new expectations for future trade secret matters, however, is not clear. This was a unique case in which an early mover with proprietary technology was moving into not only a brand new market, but a completely disruptive market with potentially endless value. Moreover, the evidence of nearly 14,000 files being taken was beyond what many cases have in the way of a "smoking gun."

But the case will have ripple effects, to be sure. Startup companies must be wary of who they are hiring and what secrets their new employees may be bringing with them. Companies must also always be careful to include so called "White Hat Language" in their employment agreements that makes clear that the company does not want its employees to bring any secrets over from their

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former employers and to protect itself in case an employee does attempt something underhanded. The settlement could even have a chilling effect on future hiring decisions for tech startups and those in the autonomous vehicle industry. We will have to wait to see if this prompts more litigation over trade secrets in this industry.

Of interest, shares of Alphabet (the parent company of Google and Waymo) were up at least temporarily nearly 2% in trading on Friday shortly after the announcement.

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While Butzel Long is known for being one of the oldest law firms in Detroit, it is also recognized for its cutting edge leadership in staying on top of the latest trends in law and technology. Butzel's Trade Secret group is not only one of the most accomplished in the state with more attorneys recognized for their Trade Secret practices than any other firm in this area, its attorneys also handle trade secret litigation matters throughout the country. Butzel has also been one of the leading law firms in the entire nation when it comes to understanding and staying ahead of the legal atmosphere when it comes to autonomous vehicles and driverless cars. Butzel Long will continue to lead in these important areas and is here to help any clients or companies with any legal needs they come across.

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