

Mandamus Denied: Need to Show Abuse of Discretion in Addition to Prejudice from Delay

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Addressing an emergency request for a writ of mandamus to compel discovery of electronically stored information, the US Court of Appeals for the Sixth Circuit declined to set aside a district court's denial of a request to create forensic images of all the defendant's business and personal computers and cell phones. *In re FCA US LLC*, Case No. 19-1923 (6th Cir. 2019) (*per curiam*).

FCA filed trade-secret misappropriation and other claims against Patrea Bullock, a lawyer who formerly served as outside counsel to FCA. According to FCA, while serving as defense counsel, Bullock had access to extensive confidential and proprietary information belonging to FCA, including its "defense playbook." After she resigned from her law firm, but before returning her computer, Bullock downloaded her files from the laptop onto several USB drives. Thereafter, she opened her own law firm representing plaintiffs against automobile manufacturers, including FCA. During discovery, Bullock produced 1,345 documents in response to FCA's requests for the documents she had taken FCA, however, moved to compel a forensic image of all of Bullock's business and personal laptops and cell phones so an expert could investigate what documents Bullock took.

The district court denied FCA's forensic image request. Though acknowledging the importance of Bullock's electronics to FCA's case, the district court found that asserting a trade secret claim does not give a plaintiff free reign to examine all of the defendant's electronics in search of evidence absent some more particularized need to do so. FCA requested emergency mandamus relief to compel the immediate forensic imaging.

The Sixth Circuit denied the writ. The Court concluded that FCA had "arguably established" that it could be permanently prejudiced by waiting to appeal until after final judgment because relevant data could be deliberately erased or disappear over time, even though civil litigants have a duty to preserve. The Court found, however, that FCA could not clear the hurdle to establish that the district court's decision went so beyond an abuse of discretion as to warrant the extraordinary mandamus remedy. Nor could the alleged novelty of the question prompt issuance of the writ, given that courts have exhaustively analyzed discovery issues, including the permissible scope of discovery. Accordingly, the Court denied the writ of mandamus.

Practice Note: A writ of mandamus is an extraordinary remedy. The Court's rejection of the writ here serves a broader purpose of ensuring that every discovery dispute does not morph into an appeal.

National Law Review, Volume X, Number 18

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