

In Good Hands: Compilation of Publicly Available Information Can Still Be a Trade Secret

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The US Court of Appeals for the First Circuit affirmed a district court decision, finding that a compilation of customer-related information, even if publicly available, is a protectable trade secret. *Allstate Insurance Co. v. Fougere*, Case No. 22-1258 (1st Cir. Aug. 29, 2023) (Gelpi, Lynch, **Thompson**, JJ.)

Allstate hired two agents—James Fougere and Sarah Brody-Isbill—to sell the company’s auto and casualty insurance products in Massachusetts. In connection with their employment, both agents signed exclusive employment agreements that imposed numerous responsibilities, including an obligation to maintain information identified by Allstate as confidential, an undertaking not to misuse or improperly disclose the information and a promise to return the information to Allstate when their agency relationships terminated. Allstate eventually terminated its agreement with the agents because of noncompliance with Allstate regulations and Massachusetts state law.

After the agreements were terminated, Allstate believed the agents had retained confidential information belonging to Allstate and had been using it to solicit Allstate customers. Allstate ultimately learned that the agents had kept confidential Allstate spreadsheets that contained the names of thousands of Allstate customers, along with their renewal dates, premiums, types of insurance, Allstate policy numbers, driver’s license numbers, home addresses, phone numbers and email addresses.

Allstate filed suit against the former agents, bringing claims under both Massachusetts law and the federal Defend Trade Secrets Act (DTSA). The agents brought counterclaims under Massachusetts law, alleging that Allstate failed to provide adequate notice before their terminations, misappropriated information that belonged to the agents and wrongfully interfered with the agents’ contractual relations by engaging in bad-faith business practices. On summary judgment, the district court found that the agents misappropriated Allstate’s trade secrets and dismissed the agents’ counterclaims. The agents appealed.

The agents argued that the customer information was available from various publicly available sources and therefore did not constitute a trade secret. The First Circuit disagreed, explaining that the compilation of publicly available information could constitute trade secrets, particularly where attempts to duplicate that information would be “immensely difficult.” The Court also found that the

factual record suggested that not all of the customer information was publicly available—and certainly not in the same compilation as it would be from Allstate.

The agents also argued that the customer information had no economic value. In analyzing this argument, the First Circuit looked to the employment agreements between the former agents and Allstate, which specifically stated that the misuse of Allstate’s confidential information would cause “irreparable damages” to Allstate. The employment agreements also provided a mechanism for terminated agents to sell their “economic interest” back to Allstate. The Court also relied on its finding that this sort of information would be valuable to Allstate’s competitors in attempting to market policies to Allstate customers so that the competitor could offer lower pricing. Taken together, the Court found that the customer data had economic value.

The agents next argued that Allstate had not sufficiently protected the customer information. The First Circuit, affirming the district court, found that Allstate had multiple protections in place. For instance, the employment agreements contained provisions about how the confidential information should be stored. Allstate also took steps such as requiring passwords, restricting access to keep the information safe and revoking access upon termination. The Court found that these acts were sufficient to protect the customer information.

Ultimately, the First Circuit affirmed the district court’s decision.

Practice Note: The public availability of information subject to a confidentiality obligation is not a viable defense for a trade secret claim when recreating the full document would be “immensely difficult.” Additionally, language about the value of confidential information found in employment contracts can be used to support a claim of economic harm in a breach of trade secret action.

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