Federal Judge Refuses To Close Courtroom During Trade Secret Trial Between Silicon Valley Titans

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In a closely watched trial in which Waymo LLC—a subsidiary of Google's parent company, Alphabet—has sued Uber for theft of trade secrets, a California federal judge has denied Waymo's motion to close the courtroom to the public whenever sensitive business information is discussed. While the court's decision does not rule out the possibility of briefly closing the courtroom at a later date, it nonetheless reaffirms the public's right to attend and observe judicial proceedings.

In February 2017, Waymo, the autonomous vehicles producer, filed a lawsuit in the Northern District of California accusing Uber and two of its subsidiaries of stealing trade secrets involving Waymo's self-driving technology. The proceedings have garnered considerable media attention, with many observers opining that the outcome of the trial could have a significant impact on the future of driverless vehicles and on employment practices in the high-tech sector.

In September 2017, shortly before the trial was scheduled to begin (the trial date has since been moved to February 2018), Waymo filed a motion requesting that the courtroom be closed to members of the media and general public whenever the following categories of information were discussed: Waymo's trade secrets; terms of Google M&A deals related to the case and Waymo's collaboration with Lyft; Waymo's non-public financial information, projections, and business plans; and confidential information concerning Waymo's current and former employees. After receiving the motion, the Hon. William Alsup, the federal district court judge presiding over the matter, invited the news organizations covering the case to respond to Waymo's motion.

In response to Judge Alsup's invitation, a coalition of 11 media organizations filed a motion to intervene for the purposes of challenging Waymo's closure motion. The media coalition argued that the First Amendment protects the public's right to attend civil trials (as well as to inspect judicial documents filed in those proceedings), and that Waymo did not meet its burden of overcoming that constitutional right.

Specifically, the media coalition emphasized that neither Waymo's invocation of the term "trade

secrets," nor its other conclusory assertions of potential harm, demonstrated a substantial probability of harm to a compelling interest that is required to justify closure of the courtroom. The media coalition further argued that even if Waymo could identify a substantial probability of harm to a compelling interest, it failed to explain why that interest could not be served by less restrictive means, such as requiring the trial attorneys to phrase their questioning in a way that would avoid disclosure of confidential information, or displaying documents in a manner that would allow them to be seen only by the witnesses and jury.

After holding oral argument on the matter in November 2017, Judge Alsup issued an order on January 18, 2018 denying Waymo's motion. In doing so, the court adopted one of the alternatives proposed by the media coalition, ordering that the courtroom screens display three different levels of visibility so that certain documents could be seen by the witnesses and jury, but not the members of the public and press seated in the gallery. Although Judge Alsup further held that he would consider closing the trial for specific items of evidence for which closure is "truly necessary," he cautioned that the parties should agree on protocols to ensure that trial participants refer to such materials at a level of abstraction that would allow the public and press to remain in the courtroom.

The trial is expected to last three weeks.

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