



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Ex-PharMerica Exec Shakes Trade Secrets Suit

By **Matt Fair**

Law360 (March 16, 2018, 10:37 PM EDT) -- A Pennsylvania federal judge threw out a lawsuit Friday against an ex-PharMerica Corp. executive after finding that the pharmacy services company failed to allege she took advantage of any specific trade secrets or proprietary information when she launched a rival business.

U.S. District Judge David S. Cercone said that internal information about PharMerica's service methods, market opportunities, current and prospective customers, and pricing information did not constitute protected trade secrets.

As such, the judge said, the company could not sustain claims that ex-PharMerica Vice President Lena Sturgeon had violated state and federal laws protecting trade secrets as she launched rival ContinuaRX LLC.

"PharMerica may have certain 'trade secrets' that deserve protection, but in this instance has failed to identify a single quality, attribute or feature of any of these alleged trade secrets," the court said. "Moreover, PharMerica has failed to direct this court to any evidence that Sturgeon or ContinuaRX have improperly acquired, disclosed, used or threatened to use any specific trade secret."

PharMerica, which provides pharmacy chain services to nursing homes, filed suit in September 2016 accusing Sturgeon of misappropriating trade secrets after she left the company the year before to launch her own business.

The lawsuit also targeted two other ex-PharMerica employees, Adam Shimoda and Elliott Gottlieb, whom Sturgeon allegedly induced into leaving the company to join her rival business.

Shimoda and Gottlieb were ultimately freed from the suit in April 2017, after the court found that it did not have jurisdiction over the workers — both Maryland residents — given their lack of business ties to Pennsylvania.

Sturgeon and ContinuaRX moved for summary judgment in the case in June, arguing that PharMerica failed to allege they took advantage of any concrete trade secret or proprietary information maintained by the company.

On Friday the court sided with the defendants, after pointing to PharMerica's concession that there was nothing confidential about the identities of the finite number of customers in the market served by PharMerica and that nearly all pharmacies followed uniform pricing models set by Medicaid.

The court also rejected claims that Sturgeon and ContinuaRX used Gottlieb and Shimoda to solicit PharMerica customers in violation of their employment agreements with the company.

But Friday's opinion noted that both workers were placed in positions at ContinuaRX in which they were limited to clinical and operations services and that neither worker participated in any marketing strategies or customer recruitment.

Any allegations that the two engaged in soliciting customers, the opinion said, were without clear evidence.

"PharMerica's conclusion is speculative and unsupported by sufficient cognizable evidence," the opinion said. "PharMerica cannot rely upon unsubstantiated assertions, conclusory allegations, or mere suspicions to defeat summary judgment."

An attorney for PharMerica did not immediately return a message seeking comment on the decision.

PharMerica is represented by Deborah Brenneman and George Musekamp of Thompson Hine LLP and Tiffany Jenca and David Porter of Buchanan Ingersoll & Rooney PC.

Sturgeon is represented by Katherine McLay and Mark Stadler of Burns White LLC and Manning O'Connor II of Metz Lewis Brodman Must O'Keefe LLC. ContinuaRX is represented by Joshua Baker, Kenneth Komacki and John O'Keefe of Metz Lewis Brodman Must O'Keefe LLC.

The case is PharMerica Corp. v. Sturgeon et al., case number 2:16-cv-01481, in the U.S. District Court for the Western District of Pennsylvania.

--Editing by Edrienne Su.

All Content © 2003-2018, Portfolio Media, Inc.