

CASE STUDY:

Trade Secret Misappropriations Litigation

The problem.

Our client, a small Vermont software company, found out that its brightest programmer, who had left the company and moved to California, had begun working for a key competitor, an international high tech giant in the computer aided design (CAD) field. The client suspected that the ex-employee had stolen the company's most critical software innovations and given them to his new employer, in order to advance his career. This was a "bet the company" problem for our client and implicated its very survival. The client asked us to assist in their investigation and possible resolution.

Our approach.

Downs Rachlin Martin's own Robert Rachlin and Walter Judge performed cutting-edge forensic work on the ex-employee's computer and confirmed that, before he left, he had indeed downloaded the client's entire software program. Downs Rachlin and the client confronted the ex-employee and his new employer, but their requests to reach a non-litigated resolution were rebuffed. Downs Rachlin then sued the ex-employee and his new employer in Vermont federal court for trade secrets misappropriation. Downs Rachlin's strategy against the competing company focused on "e-discovery": we demanded the search for relevant emails on the desktop computers of the ex-employee and other key employees of the competing company.

The outcome.

Sure enough, despite the fact that the ex-employee and others had deleted their emails, Downs Rachlin was able to perform sophisticated data extraction on the electronic files and recreate hundreds of emails showing that high-level managers at the competing company knew that our client's ex-employee had incorporated our client's software technology into their program. Also, software experts hired by Downs Rachlin were able to confirm that the competing company's new software contained our client's programming. At trial, Robert Rachlin and Walter Judge obtained a multi-million dollar judgment for the client. It remains one of the largest judgments ever obtained in Vermont, and is the subject of published legal decisions. The Wall Street Journal published an account of the case, largely because of the innovative use by Downs Rachlin of computer data. The judgment allowed the client to recoup the losses caused by the competing company's use of the client's software technology.

