Energy Employment Update

Energy Employment Law Group

Texas Trade Secret Update For Energy Employers

Seismic information about potential oil and gas reservoirs and other sensitive data are regularly used by energy companies to make business decisions and compete in the market. Energy companies must take reasonable precautions to protect such trade secrets. For example, trade secret status may be destroyed if the trade secret is disclosed to a party that has not signed a confidentiality and non-disclosure agreement. This area of Texas law continues to develop, as illustrated by an important new case, *Lamont v. Vaquillas Energy Lopeno Ltd.*, No. 04-12-00219-CV, 2013 Tex. App. LEXIS 14879 (Tex. App.—San Antonio, Dec. 11, 2013).

In *Lamont*, an oil and gas developer owned a working interest in and non-exclusive drilling rights for a natural gas reservoir. The developer also owned a seismic map of the area that, along with other information, revealed the gas reservoir contained an estimated $40 million to $60 million in natural gas. Lamont, a co-owner of the developer, learned of the map as he was negotiating—in conjunction with his resignation from the company—acquisition of a portion of the developer's working interest. He did not sign a confidentiality agreement before viewing the map, and the developer allegedly also disclosed the map to other potential investors. After he resigned, Lamont used the map to secretly obtain the drilling rights on an adjacent tract that covered part of the gas deposit and he removed the gas from the reservoir. The developer then sued Lamont for trade secret misappropriation and other torts, and a jury awarded $4.9 million.

On appeal, Lamont argued that the map was not a trade secret because its secrecy was forfeited when it was disclosed to him and other potential investors who did not sign confidentiality/non-disclosure agreements. The court of appeals rejected that argument and held that "[t]rade secret status is not destroyed simply by showing the protected item to prospective buyers, customers, or licensees." *Id*. at *19-20. In other words, the disclosure of a trade secret to potential investors to enable them to decide whether to invest does not destroy secrecy. Those who learn of the confidential information under such circumstances are not authorized to destroy its protection and may not use the information in a manner harmful to the interests of the one making the disclosure, even if they were not required to sign confidentiality/non-disclosure agreements.

Despite the holding in *Lamont*, it is important for energy companies to require confidentiality and non-disclosure agreements with their employees, potential investors, and others who may come in contact with their confidential and trade secret information. While common-law and other protections do provide some protection in some circumstances, such as those described in *Lamont*, the best practice is to also have agreements in place to provide an extra layer of protection.

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