

1 V I R G I N I A:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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4 BROWN & BROWN INSURANCE AGENCY)

5 OF VIRGINIA, INC.,)

6 Plaintiff,)

7 vs.) Case No.

8 DEBRA WRIGHT and) 2008-8857

9 COVERAGE, INC.,)

10 Defendants.)

11 * * * * *

12 The above-entitled matter came on for
13 hearing on Thursday, August 7, 2008, commencing
14 at 10:20 a.m., at the Fairfax County Circuit
15 Court, 4110 Chain Bridge Road, Fairfax, Virginia,
16 before Laurel P. Platt, Registered Diplomate
17 Reporter, Notary Public.

18

19 BEFORE:

20 THE HONORABLE MARCUS D. WILLIAMS

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1 A P P E A R A N C E S

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3 ON BEHALF OF THE PLAINTIFF:

4 R. MARK DARE, ESQUIRE

5 LORI H. TURNER, ESQUIRE

6 Isler, Dare, Ray & Radcliffe, P.C.

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13 ON BEHALF OF THE DEFENDANT DEBRA WRIGHT:

14 JOHN C. COOK, ESQUIRE

15 Cook & Kitts

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22 (Appearances continued on the next page.)

1 APPEARANCES (continued):

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3 ON BEHALF OF THE DEFENDANT COVERAGE, INC.:

4 T. WAYNE BIGGS, ESQUIRE

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4 THE COURT: The subject matter of this
5 injunctive relief was the confidential information
6 which has been testified to by the complainant's
7 witnesses, the nature of which involves
8 confidential information about clients, their
9 personal information, private business
10 information, the nature of coverage that they have
11 and other information that is pertinent to
12 rendering services to the clients of the
13 complainant.

14 It is clear from the evidence that both
15 Ms. Wright, an employee at the time of the
16 complainant, and the complainant contemplated that
17 the nature of the materials and information that
18 were transmitted to Coverage by remote access was
19 intended to be confidential both in the meaning of
20 that term as it is used in the agreement between
21 Wright and Brown, and I think it may have called
22 for it in reference to the handbook, although I

1 don't have that in front of me right now.

2 It definitely talks about how that kind
3 of information is to be regarded by the employee.

4 By the evidence and even by Defendant's
5 concession, Ms. Wright did take that information
6 without the authority of the complainant.

7 The subject of the information that was
8 transmitted was a trade secret. It was both
9 collected as such, was entrusted to Brown by its
10 clients, and it was preserved in such a way that
11 was not accessible except by limited means.

12 There were multi-layers of security to
13 ensure that access. There were provisions
14 employees had to agree to concerning how this
15 material is to be treated.

16 It was certainly valuable to the
17 complainant. Indeed, we saw the criteria of what
18 the trade secret would be under the Trade Secrets
19 Act.

20 It is clear also that this is a
21 misappropriation of that material. Again, it was
22 a knowing misappropriation.

1 There is a handbook, acknowledged by the
2 defendant, concerning the usage of this kind of
3 material. And certainly even without that, I
4 think that the common-law duty of loyalty to one's
5 employer or principal would require that an
6 employee not act for the benefit of themselves at
7 the expense of their principal or to the benefit
8 of a third party, such as Coverage.

9 With regard to the nonsolicitation,
10 again, I do not find that it is overbroad. It is
11 there to protect the interests of Brown. It is
12 limited in time and is limited to apparently those
13 clients that have dealt with the defendant.

14 In looking at whether injunctive relief
15 is appropriate, the Court must, of course,
16 consider whether or not there is an adequate
17 remedy at law; in other words, whether there are
18 remedies such as damages which could satisfy any
19 harm that the complainant has suffered.

20 It has been testified to that trying to
21 measure or calculate the full measure of damages
22 in a situation such as this is near impossible, in

1 part because of the nature of the business
2 relationships developed over time with these
3 clients, and the loss of those business
4 relationships that would be expected to continue
5 perhaps into the future.

6 Given the history of these same
7 relationships, it would be difficult to put a
8 dollar amount on that. Although one may be able
9 to calculate part of the damages, one cannot
10 calculate the good will lost. So there is an
11 inadequate remedy at law.

12 Taking into consideration the harm if the
13 injunction is imposed, while it may limit what
14 Ms. Wright may be able to do, certainly the
15 equities favor the complainant in that it's clear
16 and conceded that the confidential information
17 that she took should not be used by her because it
18 is unauthorized. She has no expectation to use
19 it.

20 So it is difficult to say how could she
21 be harmed by not being able to use what she is not
22 entitled to have in the first place.

1 She is not by this in any way limited
2 from engaging in her business or trade, but she
3 cannot violate the terms of her own agreement.

4 There is also likelihood, given the
5 evidence, that the complainant may well prevail on
6 the merits. Again, a preliminary injunction is a
7 snapshot, I am sure, of what would be developed
8 more fully at a full trial. But in weighing the
9 equity, the Court does find an injunction is
10 appropriate relief of this situation.

11 The complainants ask that defendants --
12 let me just address Coverage in particular since
13 Coverage is in a slightly different position.
14 Again, the evidence, circumstantially speaking, is
15 clear that Coverage is part of this.

16 Coverage set up this remote-access
17 account with Ms. Wright while she was still an
18 employee by Brown. Her employment had not begun
19 with Brown until later.

20 There is no need for such an account
21 unless she was misappropriating it and sending
22 misappropriated, confidential information to

1 Coverage either for Coverage's benefit or for her
2 own benefit when she began working for Coverage.
3 Coverage is the one that set up the account.

4 The Court will enjoin both defendants and
5 Coverage insofar as they cannot use this
6 information.

7 Again, I will require Coverage to destroy
8 it and certify that they have destroyed it, and
9 that is to be done by a third party. Is that what
10 you are asking for, Mr. Dare?

11 MR. DARE: Yes, Your Honor.

12 THE COURT: And also that Ms. Wright is
13 enjoined from soliciting what is defined in the
14 contract as a protected customer? Is that the
15 term that's used?

16 MR. DARE: Yes, sir.

17 THE COURT: Protected customers.

18 Does that complete the relief that you've
19 requested, Mr. Dare?

20 MR. DARE: I'm sorry?

21 THE COURT: Is that the complete relief
22 that you've requested?

1 MR. DARE: The only other thing, Your
2 Honor, I would ask is Counsel pointed out to me
3 that some of this material was sent to her home
4 computer. So that needs to be encompassed within
5 the --

6 THE COURT: What do you suggest? What
7 are you asking me to order?

8 MR. DARE: That when it is certified by a
9 third party, that they be allowed --

10 THE COURT: Ms. Wright will destroy any
11 of that information that may be held on her
12 personal computer, all right, and certify it's
13 been destroyed.

14 MR. DARE: Yes.

15 THE COURT: All right. That will also be
16 required.

17 There will have to be a bond. Do you
18 want to address that, Mr. Dare?

19 MR. DARE: Your Honor, I would suggest
20 that the bond should be minimal. Let's see. With
21 respect to the confidential information that you
22 pointed out, there is no reason why she should

1 have this.

2 So I don't really think -- I'm not sure
3 any amount is necessary. To the extent there has
4 to be an amount, I would say \$8500 or something
5 like that for that.

6 With respect to the covenant not to
7 solicit, it is a temporary injunction. What we
8 are talking about is I guess her ability to earn
9 commission during the period of approximately
10 eight or nine months. So I would say perhaps the
11 bond should be approximately \$50,000, no more than
12 that.

13 THE COURT: Did you want to be heard on
14 bond?

15 MR. BIGGS: Your Honor, I filed a motion
16 regarding the employee's own bond for \$600,000.
17 I'm not saying it should be \$600,000, but I think
18 it should be something more than nominal based on
19 the ad damnum that they're seeking themselves.

20 THE COURT: You're not at risk for any
21 kind of inconvenience or other things that may
22 happen as a result of the injunction.

1 One thing you will obviously have to do
2 with the injunction is get somebody to remove this
3 information and certify that. So that's really, I
4 think, from your standpoint, the only harm that
5 you may have is that this injunction is issued
6 wrongfully, correct?

7 MR. BIGGS: That is correct, Your Honor.

8 THE COURT: Of course, you can't use any
9 of the information. You have to destroy it, but
10 you're not supposed to anyway, right?

11 MR. BIGGS: I understand, Your Honor.

12 THE COURT: So what I'm going to do for
13 their bond, I'll just make it \$5,000 cash,
14 corporate surety.

15 Did you want to be heard on Ms. Wright's
16 bond?

17 MR. COOK: I think 50,000 is sufficient,
18 Your Honor.

19 THE COURT: I think that's reasonable,
20 too. \$50,000 cash, corporate surety on that.

21 So if you draft this now, we want to have
22 this --

1 MR. DARE: So is that one bond running
2 for the benefit of Ms. Wright and one bond for the
3 benefit of Coverage, Inc.?

4 THE COURT: Right, that's correct,
5 Coverage.

6 All right. Is it possible for you to do
7 this right now so we can get it entered right now?

8 MR. DARE: I have a draft that I can work
9 on. I'll have to do a little bit --

10 THE COURT: Just hand it in to chambers.
11 Of course, the injunction can't take effect until
12 the bond is actually posted.

13 Is there anything further?

14 MR. COOK: No, Your Honor.

15 THE COURT: All right. Court is
16 adjourned.

17 MR. BIGGS: Your Honor, I've seen his
18 draft, and we could probably agree. Is there
19 going to be a time limit on getting the
20 certification done?

21 THE COURT: Yes. Let's address that now.
22 How much time do you think it will take until you

1 get somebody?

2 MR. BIGGS: Well, I think that we could
3 certainly send the information back or do whatever
4 we are going to do within seven days. But in
5 terms of hiring some third person, IT, I think
6 something more on the order --

7 THE COURT: What we can say is, again,
8 you are not to use -- you are enjoined from using
9 the information, and that can be placed in the
10 order.

11 How much time do you want to give them to
12 actually erase it?

13 MR. DARE: I was thinking approximately
14 two weeks.

15 MR. BIGGS: If we could have 21 days,
16 Your Honor.

17 THE COURT: I will give you 21 days. All
18 right.

19 Anything else, logistical or practical
20 consideration that you need to address that you
21 can't work out yourselves?

22 MR. DARE: No, Your Honor.

1 THE COURT: Thank you.

2 MR. DARE: Thank you.

3 (Whereupon, the proceedings at 1:15 p.m.
4 were concluded.)

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