

미국 변호사의 영업비밀보호 및 경업금지 분쟁 최근 판결 분석 발표자료 중에서 흥미로

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Optum Inc. et al v. Smith, U.S. District Court for the District of Massachusetts (Feb. 22, 2019)

- Amazon, Berkshire Hathaway and JPMorgan Chase have created health care startup
 - Nonprofit
 - “ABC”/Haven
 - Atul Gawande is CEO
 - Renowned surgeon, author, speaker
- Optum
 - \$100 billion business
 - A large pharmacy benefit manager and other businesses
- An Optum mid-level executive, David Smith, left Optum in January 2019 to work for ABC

- ABC's plans were unknown to the public
 - But Optum was very concerned that Smith would use Optum's trade secrets for the benefit of ABC
 - Optum believed/feared that ABC would become a competitor
 - Amazon
 - Computer forensics for the day of Smith's first interview with ABC's COO show that Smith:
 - Printed confidential documents
 - including a memo about Optum's long-term goals and strategies
 - Made suspicious requests for information
 - Smith had contract with Optum
 - No non-compete
 - Disputes to be arbitrated, but parties may seek injunctive relief first
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- Optum filed trade secret misappropriation suit in federal court against Smith
 - Sought TRO to prevent Smith from working for Optum
 - Trial court denied injunction
 - No showing that ABC posed an imminent threat
 - ABC COO testimony
 - Mission: Make health care
 - » Easier to understand
 - » Less expensive
 - » Produce better outcomes
 - ABC is focused on finding new ways to provide health care to employees of the 3 founding partners

- “Can we reinvent what insurance looks like in terms of benefit design?”
 - Not a competitor to Optum
 - Optum builds, operates and sells products; ABC purchases products.
 - No plan to compete with pharmacy benefit managers like CVS or Optum
 - Rather, will consider:
 - » “Could we contract with a PBM to get more transparency?”
 - » “Can we actually understand what costs are?”
- Held:
- No showing that ABC planned to compete
 - Unlikely that ABC will have *any* products or services to offer in 2019, much less products or services to compete with Optum

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- ABC is in a fledgling, uncertain state
 - » Fewer than 30 employees
 - » Only now beginning to collect and analyze data from the three founding companies
- “Any prediction about ABC’s future now would be speculative”
- Public interest best served by Smith continuing to work for ABC
 - especially if ABC succeeds in providing better health care beyond A, B, and C
- Case now to arbitration

첨부: 미국변호사 발표자료

경업금지, 전직금지, 영업금지, 영업비밀, 형사고소, 민사소송, A~Z 수행경력

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