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Third Circuit Addresses Application Of Inevitable Disclosure Doctrine

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For an employer seeking to protect its trade secrets, the inevitable disclosure doctrine – when recognized – provides a sound basis for obtaining injunctive relief. This doctrine typically applies when a former employee, with knowledge of the former employer's confidential or trade secret information, accepts a similar role with a competitor. Oftentimes, such an employee cannot "unlearn" the information provided by the former employer and will inevitably use it to the former employer's competitive disadvantage. *Utilisave, LLC v. Miele*, 2015 WL 5458960 (Del. Ch. Sept. 17, 2015) (citing, *W.L. Gore & Assocs., Inc. v. Wu*, 2006 WL 2692584 (Del. Ch. Sept. 15, 2006)). In its recent opinion in *Fres-co Systems USA, Inc. v. Hawkins*, the U.S. Court of Appeals for the Third Circuit appeared to recognize and apply the inevitable disclosure doctrine. Although the court remanded, for other reasons, the district court's grant of a preliminary injunction, the Third Circuit approved the finding of irreparable harm, stating: "Given the substantial overlap (if not identity) between Hawkins's work for Fres-co and his intended work for Transcontinental – same role, same industry, and same geographic region – the District Court was well within its discretion to conclude Hawkins would likely use his confidential knowledge to Fres-co's detriment." The court based its finding, in part, on the fact that "threatened misappropriation" is sufficient under both the Federal Defend Trade Secrets Act and the Pennsylvania Uniform Trade Secret Act. This recognition that an employer may protect its confidential information from disclosure by a former employee who accepts a similar position with a competitor is important. It also is important that application of the inevitable disclosure doctrine is not dependent on proof that trade secrets were misappropriated. As noted by the Third Circuit, "threatened misappropriation" is sufficient. This and similar decisions provide comfort that an employer can demonstrate irreparable harm where a former employee seeks to take – for the benefit of a competitor – knowledge and information learned from the employer.

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