

CLIENT ALERT

Second Circuit Holds That Employee's Misuse of Information on a Computer Server Alone Satisfies Minimum Contacts Test for Personal Jurisdiction in That State

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The Second Circuit Court of Appeals has given employers more flexibility in pursuing trade secret claims that are based on an employee's theft of a company's computer files. In *MacDermid, Inc. v. Deiter*, No. 11-5388-cv (2d Cir., Dec. 26, 2012), the court found that misappropriation from a computer server located in one state is a sufficient basis to haul the employee into court in that state. The decision suggests this is true regardless of the lack of other contacts with the forum state.

The plaintiff, chemical company MacDermid Inc., has its principal place of business in Waterbury, Connecticut. The defendant, Jackie Deiter, worked for a MacDermid subsidiary in Mississauga, Ontario, Canada. MacDermid terminated Deiter in April 2011. On the eve of her termination, Dieter forwarded allegedly confidential and proprietary data files from her MacDermid corporate account to a personal email address shortly before her termination. In so doing, the company files were downloaded from a computer server located in Connecticut to a personal computer in Canada.

MacDermid sued Deiter, alleging unauthorized access and misuse of a computer system and misappropriation of trade secrets in violation of Connecticut General Statute §§ 53a-251 and 35-51 *et seq.* MacDermid claimed personal jurisdiction over Deiter in part on Connecticut's long-arm statute, which provides that a court "may exercise personal jurisdiction over any non-resident individual" who "uses a computer...or computer network...located within the state." Conn. Gen. Stat. § 52-59b(a).

Deiter moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction, arguing that her utilization of the host computer server in Connecticut was both passive and unknowing, given that her only conscious act was to use her company laptop to transfer files to her home computer for the purpose of printing materials for meetings. She further argued that she never worked in the United States for MacDermid, and that she had no reason to expect that a suit against her would be heard anywhere other than in Canada or close to the border in northern New York.

Deiter's motion to dismiss was successful at the district court. The judge there held that not only did the alleged tortious conduct and the alleged injury occur outside of the state, but also that Deiter had not "used" a computer network located in the state in the manner required by the statute. The opinion noted that Deiter had "merely emailed herself information from one computer in Canada to another computer in Canada," and that if the legislature had intended the definition of "computer network" to encompass the "internet," it would have indicated so deliberately, as it had in other statutes.

MacDermid appealed the decision, and a unanimous three-judge panel of the Second Circuit reversed the lower court and rejected its narrow view of the long-arm statute. Writing for the panel, Circuit Judge Barrington Parker stated that MacDermid's server qualified as a "computer" under Connecticut law, and that it did not matter that Deiter had only accessed the servers from outside the state because the statute only required that the computer itself be located in Connecticut.

The Second Circuit also held that this exercise of jurisdiction met the constitutional requirement of due process, stating that while many defendants would not know the location of servers where confidential and proprietary documents would be stored,

the allegations of the complaint, assumed to be true, indicated that all MacDermid employees, including Deiter, were informed of the Waterbury servers as a condition of employment. This awareness of the location and Deiter's deliberate use of the servers provided sufficient minimum contacts with the forum state to warrant personal jurisdiction.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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