UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CLEARWATER SYSTEMS CORPORATION, Plaintiff, v. EVAPCO, INC. and JOHN W. LANE, Defendants.	CIVIL ACTION NO. 3:05cv507 (SRU)

RULING ON MOTION FOR ATTORNEYS' FEES

Clearwater Systems Corporation ("Clearwater") sued EVAPCO, Inc. and John W. Lane (collectively "EVAPCO") alleging violations of the Connecticut Uniform Trade Secrets Act ("CUTSA"), after EVAPCO, Inc. hired Lane away from Clearwater. Clearwater and EVAPCO are competitors in the provision of systems for the non-chemical treatment of water used in heating and cooling systems, and Lane had been the person directing Clearwater's research and development efforts. Clearwater's motion for injunctive relief was tried before me over approximately four days. Having prevailed on all of Clearwater's claims for injunctive relief, EVAPCO has moved under CUTSA to recover its attorneys' fees. For the reasons set forth below, that motion (doc. # 99) is denied.

CUTSA grants a court discretion to "award reasonable attorney's fees to the prevailing party" when a CUTSA claim has been brought in "bad faith." Conn. Gen. Stat. § 35-54. No appellate court in Connecticut has interpreted the attorneys' fees provision of CUTSA. Decisions interpreting similar provisions of other states' versions of the Uniform Trade Secrets Act, however, have held that a party seeking fees for "bad faith" conduct must demonstrate that the opposing party acted in both objective and subjective bad faith. *E.g., McKesson Medical-Surgical v. Micro Bio-Medics*, 266 F. Supp. 2d 590, 597 (E.D. Mich. 2003); *Contract Materials*

Processing, Inc. v. Kataleuna GMBH Catalysts, 222 F. Supp. 2d 733, 744 (D. Md. 2002); *Computer Economics, Inc. v. Gartner Group, Inc.*, No. 98-CV-0312, 1999 WL 33178020 (S.D. Cal. Dec. 14, 1999).

Here the objective prong may well have been satisfied. The information on which Clearwater based the trade secret claims it pursued at the injunction hearing was, as I noted in my decision denying injunctive relief, "either generally known in the non-chemical water treatment industry or readily ascertainable through proper means by those who could benefit from the knowledge." *Clearwater Systems Corp. v. Evapco, Inc*., No. 05-CV-507, 2005 WL 3543717, 9 (D. Conn. 2005). The technical trade secrets Clearwater did not pursue at the hearing were even weaker. The business trade secrets Clearwater identified are less accurately characterized as trade secrets than as subjects about which Clearwater may have developed trade secrets (e.g., "competitive strategy against chemical companies," "competitive strategy against non-electric non-chemical treatment companies," "strategy for pricing and bringing the [product] to market," "strategy for achieving alliances with OEMs"). In short, EVAPCO has a strong argument that Clearwater's trade secret claims were objectively specious.

Nevertheless, I decline to exercise my discretion to award attorneys' fees in this case because I do not believe that Clearwater brought its claims in subjective bad faith, in order to harass, delay, or otherwise improperly harm EVAPCO. Clearwater is a very small company and Lane was Clearwater's Vice President of Technology. Lane had worked with Clearwater almost since its formation and had been heavily involved in the development of the last two generations of Clearwater's water treatment device, yet he was not bound by a written covenant not to compete or confidentiality agreement. Clearwater was understandably concerned that Lane could

disclose to EVAPCO every technical, product development, business strategy, and marketing secret Clearwater possessed. As it turned out, Clearwater either had no such trade secrets or never properly identified them. Accordingly, Clearwater's position in this litigation was very weak.

A permissible inference arises from the weakness of Clearwater's claims that it brought this action to harass, delay or improperly injure EVAPCO. I decline to draw such an inference, however, because I find credible Clearwater's assertions that it acted in subjective good faith. The evidence in this case failed to show that Clearwater did not possess trade secrets about product development plans, business strategies, pricing and marketing plans, and the like – only that the "secrets" identified by Clearwater were not protectible. Certainly Lane was in a position to know Clearwater's trade secrets and to share them with EVAPCO. Because there was no written contract on which it could sue Lane or EVAPCO, Inc., a trade secret misappropriation claim was a logical and reasonable claim to assert. Indeed, Clearwater initiated this action based on a theory of inevitable disclosure, not actual misappropriation. Clearwater's ineffective identification of the trade secrets pursued in this case left much to be desired and doubtless increased EVAPCO's costs in defending the litigation. Still, I am not convinced that Clearwater's problems with trade secret identification reflect a calculated strategy to gain an advantage in the litigation or to unfairly compete with EVAPCO. Nor am I convinced that the weakness in Clearwater's trade secrets claims demonstrate subjective bad faith on Clearwater's part.

Because EVAPCO has failed to carry its burden to show that Clearwater acted in subjective bad faith, the motion to recover attorneys' fees under CUTSA (doc. # 99) is denied.

It is so ordered.

Dated at Bridgeport, Connecticut, this 20th day of March 2006.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge