

# INVESTIGATIONS FOR EMPLOYMENT LITIGATORS

The Mintz Group offers a complete range of services to counsel for employers in disputes involving prospective, current, departing and departed employees.

Following are some of the recurring issues involving employees on which we have worked successfully:

## **Deleted E-mails, Etc.**

One way we help employers investigate workplace misconduct is by finding the electronic trails that employees leave behind. Our particular ability to resurrect material that employees have deleted from company computers, particularly e-mails, has cracked many cases for our employer-clients.

The Mintz Group's Electronic Investigations team is headed by Kevin Treuberg, the former computer forensics manager at Sullivan & Cromwell LLP and a veteran US Army Counterintelligence Special Agent. Kevin has investigated computer-related cases involving employee misconduct, theft of proprietary information, financial fraud, and espionage. Kevin and the Electronic Investigations team have conducted data collections and examinations all over the world and have extensive investigative and computer forensics training.

## **Signs of Disloyalty Before Departure**

We have helped a number of companies and their counsel pursue suspicions that recently departed employees have left with trade secrets or "jumped the gun" in creating a competing business. We usually begin by helping clients search their own information systems to recreate the employee's final weeks or months of employment, including e-mails, phone calls and even building-entry logs.

Then we scour the public record, looking, for example, for a new company the employee may have created while he still owed his loyalty to our client.

And finally, we often seek to interview people that the departed employee might disloyally have tried to recruit—customers, suppliers or fellow employees.

In one case, we helped enforce a non-compete agreement on our real-estate client's former partner, who had agreed not to participate in projects within a certain geographical area. We identified and interviewed architects, contractors and other eyewitnesses who gave devastating testimony about a new project of the former partner's that clearly violated his non-compete agreement.

## **Theft of Trade Secrets**

We routinely investigate allegations that sensitive corporate information has been stolen by employees or others. A computer-company client of ours, for example, learned that a departing scientist had e-mailed some of its trade secrets out to a professor in Japan before quitting to join a competitor. As he left, the scientist claimed that the e-mail was a mistake, and that his professor friend had nothing to do with his new employer, which was a company in Oregon. We searched in the United States and found

Some details in these case studies have been changed to protect client confidentiality.



that the Japanese professor was actually the president of the Oregon company. Then we pulled public records in Japan and found the Oregon company was a subsidiary of a Japanese multinational—deep pockets for the theft-of-intellectual-property lawsuit our client brought.

### **Discrimination and Harassment**

The Mintz Group has wide-ranging experience helping employers get the facts in response to claims of race and sex discrimination and harassment. It helps that our investigative staff is racially diverse, and that we have approximately as many women investigators as men.

Jim Mintz wrote a *Wall Street Journal* “Manager’s Journal” column called “Harassment 101: How to Handle Complaints” a few years ago that offered detailed lessons from our investigations for employers. (Available on request.)

### **Other Employee Misconduct**

The *Financial Times* published the following about one of our cases on March 3, 2000:

An American computer company hired Jim Mintz, president of the James Mintz Group, to investigate an executive in its European branch office. The company, which hired Mr. Mintz on a Monday, was due to negotiate a friendly severance with the executive at the end of the week, worth about \$500,000.

The company had picked up rumors that the executive had been running a side company that had been stealing business opportunities from his employer for years. It had got as far as learning the name of the executive’s firm—Secretco for the purposes of this article. “They flew me to Europe to confirm or deny that rumor before the negotiations began in a few days,” Mr. Mintz recalls.

While Mr. Mintz was still above the Atlantic, his colleagues began searching corporate databases for European firms called Secretco. They unearthed a dozen such companies, and began to identify the executives behind each one.

Within a day, Teledata, a Swiss database to which Mr. Mintz subscribes, supplied an answer. The executive had established Secretco AG in Switzerland some years before, while supposedly working full-time for Mr. Mintz’s client.

“I spent the next two days, right up to the Friday deadline, interviewing the computer company’s distributors, and discovered that several had been quietly approached by the executive to do business on the side with Secretco,” Mr. Mintz says. Just before the Friday negotiation, one of the distributors handed the investigator a brochure produced by Secretco, providing hard evidence of the executive’s unauthorized activities.

When the planned meeting began, Mr. Mintz sat in the room as his client put its accusations to the executive. He denied ever having heard of such a company, and demanded his \$500,000 payout. “I went into my briefcase and laid Secretco’s color brochure on the table,” says Mr. Mintz. “By the end of the day he had settled for hundreds of thousands of dollars less than the severance otherwise due to him.”

While the executive received less than 10 percent of his original demand, Mr. Mintz was paid about \$11,000 for his five-day assignment.

### **Contact**

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