

THE TOP 100 VERDICTS OF 2016

RANK	AMOUNT	TYPE	NAME/COURT/DATE	LEAD PLAINTIFFS' ATTORNEY(S)/FIRM(S)	LEAD DEFENSE ATTORNEY(S)/FIRM(S)
5	\$940,000,000	Intellectual Property	Epic Systems Corp. v. Tata Consultancy Services Limited, W.D. Wis., 14-CV-748-WMC, 4/15/2016	Rick Richmond and Nick G. Saros, Jenner & Block LLP, Los Angeles	Paul F. Doyle and Philip D. Robben, Kelley Drye & Warren LLP, New York

NATIONAL

WISCONSIN

INTELLECTUAL PROPERTY

Copyrights — Misappropriation of Trade Secrets — Contracts

Company misappropriated trade secrets, plaintiff alleged

VERDICT **\$940,000,000**

CASE Epic Systems Corporation v. Tata Consultancy Services Limited, an Indian Corporation, and Tata America International Corporation, d/b/a TCA America, a New York Corporation, No. 3:14-cv-00748-wmc

COURT U.S. District Court, Western District, Madison, WI
JUDGE William M. Conley
DATE 4/15/2016

PLAINTIFF
ATTORNEY(S)

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FACTS & ALLEGATIONS On August 10, 2005, Epic Systems Corporation, a Wisconsin-based software provider for mid-size and large medical groups, hospitals, and healthcare organizations, entered into a standard consultant agreement with Tata Consultancy Services' American subsidiary, Tata America International Corporation (TCS). The standard consultant agreement allowed TCS employees access to Epic's training programs for purposes of providing consulting services to Epic's customers related to the implementation of Epic Program Property. The agreement also obligated TCS to keep confidential Epic's trade secrets and other confidential information, and to use such information only in connection with assisting Epic's own customers and not for competitive purposes.

TCS provides consulting services for software users, including Epic's customers. The agreement defined Epic's computer program property as "the documentation for all of Epic's computer programs." The agreement also noted that Epic's program property contained secrets belonging to Epic that are protected by operation of law and the agreement. Confidentiality agreements within the agreement included a limit to access and use of Epic's confidential information to TCS employees assisting Epic customers in the implementation of Epic software. The agreement also detailed that TCS employees given access to this confidential information were required to execute written non-disclosure agreements and guarantees that TCS would notify Epic promptly in writing if any person, corporation or other entity has "copied or obtained possession of or access to," any of Epic's confidential information "without authorization

from Epic.” This agreement was written to govern TCS’s treatment of Epic’s confidential information while TCS employees tested the implementation of Epic’s healthcare software for non-party Kaiser Foundation Hospitals.

Epic alleged that in 2014, it learned from a whistleblower that TCS personnel had been allegedly fraudulently accessing Epic’s confidential information through an Epic internet portal known as UserWeb, and that the information obtained through this unauthorized access was being used to create, benefit, and improve TCS’s competing Med Mantra healthcare software. After learning of this alleged fraud, Epic discovered an account associated with a TCS employee who worked as a consultant for Kaiser in Portland, Ore., and who was engaged in testing Epic’s software at Kaiser, had downloaded from Epic’s UserWeb at least 6,477 documents totaling 1,687 unique files. Epic claimed that the access credentials of this individual were used to access Epic UserWeb from an IP address in India, and that these credentials were also utilized from other IP addresses around the United States. Epic claimed that the subject documents were downloaded by TCS personnel and included documents detailing over 20 years of Epic’s development of proprietary software and database systems, including programming rules and processes. Epic claimed that the majority of these allegedly fraudulent downloads were not required for TCS employees to perform job functions in support of Kaiser. Epic also claimed that the credentials TCS allegedly used to allegedly perpetrate the fraud were assigned to an employee using a KP.org e-mail address, an address Kaiser provides to its consultants for use to do Kaiser work, in order to mislead Epic into believing he was an employee of Kaiser rather than an employee of TCS.

The TCS employee allegedly admitted to downloading Epic materials and admitted that he shared his UserWeb login credentials with two other TCS personnel.

Epic sued Tata Consultancy Services Limited and Tata America International Corporation, doing business as TCA America.

Epic’s counsel alleged that the parties sued violated the U.S. Computer Fraud and Abuse Act and the Wisconsin Computer Crimes Act. Epic alleged misappropriation of trade secrets, breach of contract, conversion, injury to Epic’s business, common law unfair competition, and unjust enrichment. The matter proceeded to a bifurcated trial.

Defense counsel contended that the subject documents and files were accessed in good faith for the purpose of testing Epic’s software at Kaiser. TCS asserted at trial that Epic employees had actually provided some of these documents to TCS consultants directly and that the UserWeb documents were of the type needed to understand the Epic system and to create appropriate test scripts for testing the Epic software. The defense also argued that while these files were downloaded, there exists no proof that the information was used in order to create or improve TCS’s Med Mantra, which they claimed was created for the India market and did not compete with Epic’s U.S.-based product. The defense also argued that Med Mantra differed from Epic in that it had unique functions that Epic’s software did not have.

The defense’s software forensics expert testified that an analysis of Epic’s product and TCS’s product showed no similarities in operations or appearance, which would be expected if TCS had used Epic’s confidential information and trade secrets. The same expert opined that TCS did not use Epic’s information to develop Med Mantra.

INJURIES/DAMAGES

Epic sought compensatory damages and punitive damages for the alleged violations.

RESULT The jury rendered a verdict for Epic. The jury found for Epic on each of its claims, including: that Epic’s confidential information was used for purposes other than implementing Epic software on Kaiser’s behalf, that Epic’s passwords were trafficked, and that Epic’s trade secrets were misappropriated.

The jury awarded \$240 million in compensatory damages. This included \$140 million for the benefit of TCS’s use of comparative analysis and \$100 million for the benefit of TCS’s use of other, confidential information.

The jury also awarded \$700 million in punitive damages.

EPIC SYSTEMS

CORPORATION \$700,000,000 punitive damages
\$240,000,000 Compensatory
\$940,000,000

TRIAL DETAILS Trial Length: 2 weeks
Trial Deliberations: 1 day
Jury Vote: 8-0

PLAINTIFF

EXPERT(S) **Thomas Britvin, B.B.A**, business economics, Houston, TX
Wes Rishel, software code comparison, McKinleyville, CA

DEFENSE

EXPERT(S) **Brent Bersin, CPA**, economics, Houston, TX
Erik Laykin, computer software, Los Angeles, CA

POST-TRIAL The defense made a motion under Rule 50(a) for judgment as a matter of law as to damages. TCS argued that the court should not have allowed the alternative damages theory presented by Epic, focused solely on the comparative analysis following a mid-trial decision by the court that refused to allow similar testimony. The defense also argued that the punitive damages award was in excess of Wisconsin’s statutory cap and violated due process under Supreme Court precedent.

EDITOR’S NOTE This report was written using information gleaned from court documents, information provided by plaintiff’s counsel and information provided by the head of Tata Consultancy Services Limited’s North America corporate communications office.

–Jack Deming