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Litigator of the Week: Rick Richmond of Jenner & Block

By Scott Flaherty
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The verdict that Jenner & Block's Rick Richmond won for health care software company Epic Systems Corp. last Friday may be the year's biggest so far.

At $940 million, it's also one of the largest ever in a trade secrets case.

But even if a court eventually whittles down the damages, the jury's message was clear. According to Richmond, the alleged trade secret theft by Indian outsourcing giant Tata Consultancy Services Ltd. went to the core of Epic's business. It involved software for hospitals and other medical providers that the Epic spent decades developing and refining, he said.

"If somebody could just short circuit all that," Richmond said, "you could just destroy the business."

A Wisconsin federal jury reached the damages verdict on April 15, capping a 10-day trial. A day earlier, the jury found that TCS employees had improperly accessed confidential documents on an Epic Web portal, and then used the trade secrets to develop a rival hospital management software program.

Rick Richmond

Epic's complaint alleged that TCS's employees used credentials they obtained while working for Kaiser Permanente—a mutual customer of TCS and Epic—to access Epic's Web portal without authorization.

TCS quickly vowed to appeal the massive verdict. In a statement, the company denied that it benefited from any of Epic's files. TCS, represented in the case by Kelley Drye & Warren, also noted that U.S. District Judge William Conley announced in court that he'll likely reduce the damages award.

Epic, meanwhile, has pushed for a permanent injunction to block TCS from using Epic's trade secrets to gain a competitive advantage. The judge previously said he would impose that sort of injunction if TCS is found liable.

For Richmond—who started Jenner & Block's Los Angeles office in 2009 after leaving his former firm, Kirkland & Ellis—the verdict comes just a year into his role as Epic's lead counsel. His firm's involvement goes back to October 2014, when partners Nick Saros and Brent Caslin initially filed the suit alongside local counsel from Quarles & Brady.

In November, Richmond led Epic's team in a partial summary judgment bid that urged the judge to find TCS liable on breach of contract and other claims. The judge largely sided with Epic in early March, finding that there was compelling evidence that a number of TCS employees accessed Epic's confidential documents without permission.

But Conley didn't decide whether TCS improperly used the documents that it accessed, leaving that for a jury trial, which began on April 4.

TCS and its lawyers maintained that the company hadn't misused Epic's documents, and argued that its software programs—known as Med Mantra and DaVita—weren't developed with the idea of competing with Epic in the U.S.

Richmond and others on Epic's litigation team confronted a challenge in establishing how, exactly, TCS misused information. In part, they argued that TCS had deleted key computer evidence that could have helped provide answers.

"It was hard to figure out with complete specificity what they did with the information because they allowed evidence to be destroyed," said Richmond. "We did not have all the smoking gun evidence that we could have had."

In light of those issues, Conley agreed to give an adverse inference instruction to the jury, telling them that if they agreed with Epic that TCS destroyed evidence in bad faith, they could assume that the evidence would have harmed TCS's case.

But Richmond's team had also developed some specific evidence that TCS misused Epic's trade secrets, and they pressed those examples at trial. On one front, they argued that TCS drew from Epic's confidential documents to conduct a detailed analysis comparing the Med Mantra program and Epic's software. They also pointed to evidence that TCS used information stolen from Epic to develop a general strategy for entering the U.S. market with its software.

In the end, the jury sided fully with Epic, finding that TCS trafficked passwords, misappropriated trade secrets, engaged in unfair competition and was unjustly enriched as a result.

JENNER & BLOCK LLP