

# TRADE SECRETS NEWSLETTER

May 2022

## In This Issue

**Jury Awards \$2B Verdict in  
Virginia Trade Secrets Suit**  
Page 1

## Jury Awards \$2B Verdict in Virginia Trade Secrets Suit

*By Bambo Obaro and Amy Le*

On May 9, 2022, a jury awarded Appian Corp. \$2.036 billion in unjust enrichment damages in its trade secrets case against Pegasystems Inc. and individual defendant Youyong Zou. While the facts of this case are atypical and the jury verdict remains vulnerable to appeal, this verdict highlights the potential for large damages awards in trade secret cases.

We highlight the relevant facts of the case below:

- Appian and Pegasystems are both software companies that provide, among other things, low-code development platforms allowing companies to create apps quickly and easily using a graphical user interface.
- On May 29, 2020, Appian filed a lawsuit in the Circuit Court of Fairfax County, Virginia, alleging that from 2012 to 2014, Pegasystems hired Zou, an employee of a government contractor using Appian's software, to provide Pegasystems with access to Appian's software to allow Pegasystems to better compete against Appian.

- According to Appian, Pegasystems specifically sought to hire someone with access to the Appian development platform. However, Pegasystems did not want this person to work directly for Appian or be “loyal” to Appian.
- Zou allegedly helped Pegasystems create dozens of video recordings of the Appian development platform. These videos allegedly contained various Appian trade secrets, which Pegasystems employees utilized to improve the Pegasystems development platform and train Pegasystems’ sales force. The recording and sharing of Appian’s trade secret information allegedly violated Zou’s employer’s code of conduct and the employer’s agreement with Appian.
- Appian also alleged that Pegasystems employees later gained access to free Appian product trials under false pretenses. These false pretenses included using false identities and false companies to sign up for Appian product trials, as well as gaining access to Appian’s software using credentials provided to Pegasystems’ partners in India.

Appian brought claims for: (1) misappropriation of trade secrets under the Virginia Uniform Trade Secrets Act against both Pegasystems and Zou; and (2) violation of the Virginia Computer Crimes Act against Pegasystems.

Depending on the jurisdiction, plaintiffs in trade secrets cases may be entitled to one of three measures of damages: unjust enrichment, lost profits, or reasonable royalties. Unjust enrichment damages aim to compensate the plaintiff for a benefit that the defendant unfairly obtained at the plaintiff’s expense. In this case, Appian argued that the correct measure of its unjust enrichment damages was the amount of Pegasystems’ net profits attributable to the platform improvements it made using Appian’s trade secrets. Appian’s expert valued this net profit at \$3.032 billion. Along similar lines, Appian’s expert valued Zou’s net profits from providing Pegasystems with Appian’s trade secrets at \$23,608. Appian also sought \$1 in nominal damages from Pegasystems for breach of the Virginia Computer Crimes Act.

After a seven-week trial, the jury found that Pegasystems willfully and maliciously misappropriated Appian’s trade secrets and that Pegasystems violated the Virginia Computer Crimes Act. The jury awarded \$2,036,860,045 against Pegasystems for the misappropriation claim and \$1 for the Virginia Computer Crimes Act claim. The jury awarded only \$5,000 against Zou, finding that while Zou misappropriated Appian’s trade secrets, his misappropriation was not willful and malicious.

The jury’s finding that Pegasystems’ conduct was willful and malicious may entitle Appian to a further award of attorneys’ fees. We will continue to monitor this case as it moves through the post-trial and appeals processes.

**Trade Secrets Newsletter** is published by the Litigation Department of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, +1 212 310 8000, [www.weil.com](http://www.weil.com).

If you have questions concerning the contents of this issue of the Trade Secrets Newsletter, or would like more information about Weil's Trade Secrets practice, please speak to your regular contact at Weil or to the contacts listed below:

**Editors:**

Bambo Obaro	<a href="#">View Bio</a>	<a href="mailto:bambo.obaro@weil.com">bambo.obaro@weil.com</a>	+1 650 802 3083
John Barry	<a href="#">View Bio</a>	<a href="mailto:john.barry@weil.com">john.barry@weil.com</a>	+1 212 310 8150

**Contributing Authors:**

Bambo Obaro	<a href="#">View Bio</a>	<a href="mailto:bambo.obaro@weil.com">bambo.obaro@weil.com</a>	+1 650 802 3083
Amy Le	<a href="#">View Bio</a>	<a href="mailto:amy.le@weil.com">amy.le@weil.com</a>	+1 650 802 3955

© 2022 Weil, Gotshal & Manges LLP. All rights reserved. Quotation with attribution is permitted. This publication provides general information and should not be used or taken as legal advice for specific situations that depend on the evaluation of precise factual circumstances. The views expressed in these articles reflect those of the authors and not necessarily the views of Weil, Gotshal & Manges LLP. If you would like to add a colleague to our mailing list, please [click here](#). If you need to change or remove your name from our mailing list, send an email to [weil.alerts@weil.com](mailto:weil.alerts@weil.com).