

MEMORANDUM OF DECISION

DOCKET NO. CV064005637S

* * * * *X

WESTCO SCIENTIFIC : SUPERIOR COURT OF CONNECTICUT
VS. : JUDICIAL DISTRICT OF DANBURY
PAUL GEORGIU : AUGUST 24, 2006

* * * * *X

B E F O R E:

THE HONORABLE BARRY C. PINKUS, JUDGE

A P P E A R A N C E S:

ANTHONY MINCHELLA, ESQUIRE &
PAULA ELFONT, ESQUIRE
Attorneys for the Plaintiff

MARK SANTAGATA, ESQUIRE
Attorney for the Defendant

Kimberly Perry-Schneider
Court Recording Monitor

124
08-30-06

1 THE COURT: All right. Good morning. This
2 is Westco Scientific vs. Georgiou. And counsel for
3 the record?

4 MR. MINCHELLA: Your Honor, Anthony Minchella
5 for the plaintiff, along with Paula Elfont.

6 THE COURT: Okay. And Counsel?

7 MR. SANTAGATA: Mark Santagata for the
8 defendant Paul Georgiou.

9 THE COURT: Okay. I appreciate everyone
10 coming here today and I want everyone to know that
11 I reviewed my notes, reviewed the evidence,
12 reviewed the briefs, which I received, which were
13 very helpful.

14 And let me state the following: based upon
15 what I've heard, from November 3, 2003 to December
16 12, 2005, Westco employed Georgiou, Paul Georgiou,
17 the defendant, as an applications chemist for its
18 discrete analyzers, known as SmartChem, which are
19 marketed to the environmental testing marketplace.
20 Georgiou gained knowledge and experience with the
21 discrete analyzer.

22 He also worked with Westco's other employees
23 and software engineers in optimizing the analyzer
24 for use in the environmental market. His
25 employment exposed him to Westco's confidential and
26 proprietary information.

27 On December 12, 2005, Georgiou's employment

1 with Westco ceased. Within days, he got together
2 with Systea Scientific, LLC, one of Westco's few
3 direct competitors. Systea and Georgiou kept this
4 relationship secret, having Georgiou use a
5 fictitious name in communications with both
6 customers and Systea's contractors.

7 The Court finds that the terms of the
8 agreement Georgiou signed to be reasonable and
9 therefore valid under Connecticut law. The
10 agreement is clear that Georgiou is prohibited for
11 a period of time from working for any business
12 involved in, quote, the design, development,
13 manufacturing, marketing, distribution, sale and/or
14 licensing of environmental testing products, and/or
15 similar or any related products, and/or similar or
16 any related products, inventions or improvements,
17 which employ the discrete testing technology.

18 The Court finds that the agreement is
19 supported by consideration and was always part of
20 Mr. Georgiou's employment bargain.

21 Mr. Georgiou also admitted that he had
22 discussed the requirement of a non-compete and
23 confidentiality agreement with Mr. Platano prior to
24 coming to Connecticut to commence employment. Mr.
25 Georgiou admitted he was given the agreement on his
26 first day of employment, and had it in his
27 possession for a few days before he signed it. Mr.

1 Georgiou had other employment available at the time
2 he signed the agreement and could have refused to
3 sign the agreement and work elsewhere. The Court
4 finds that the agreement is reasonable.

5 The Connecticut Supreme Court has specified
6 five areas in which the reasonableness of a
7 restrictive covenant must be evaluated: (1) the
8 length of time the restriction is to be in effect;
9 (2) the geographical area covered by the
10 restriction; (3) the degree of protection afforded
11 to the interest of the party in whose favor the
12 covenant is made; (4) the restrictions imposed on
13 the ability to pursue his occupation; and (5) the
14 potential for undue interference with the interest
15 of the public. And those are set forth in Scott v.
16 General Iron & Welding Co.

17 A party challenging the validity of a
18 covenant not to compete bears the burden of proof.
19 Westco's agreement is reasonable in its time
20 limitation.

21 The length of time in the agreement under the
22 facts and circumstances of this case is reasonable.
23 The agreement only prohibits Georgiou from
24 competing for a competing employment for a
25 relatively short period of time. However, the
26 Court's going to further limit this to two years
27 from the termination, which the plaintiff testified

1 was the time frame in which information will become
2 irrelevant.

3 The geographical area covered by the
4 agreement is reasonable.

5 The evidence presented established that the
6 restriction is narrowly tailored to Westco's
7 particular business operations and restricts the
8 defendant from a small portion of the field in
9 which he is trained. He is not restricted at all
10 in the clinical field, which is a much larger
11 market.

12 The covenant not to compete is necessary to
13 protect Westco's business. Westco clearly has a
14 legitimate business interest in preventing Mr.
15 Georgiou from disclosing its confidential and
16 proprietary information to a competitor such as
17 Systea, and to prevent Mr. Georgiou from providing
18 its competitor with an unfair advantage by
19 immediately transferring to its competitor the
20 skills, knowledge and relationship developed while
21 an employee of Westco.

22 The agreement provides a reasonable degree of
23 protection to Westco. Mr. Plantano testified at
24 length about the investment Westco made over more
25 than a decade. He testified that they spent over a
26 million dollars in developing its discrete analyzer
27 and the efforts to optimize the application of that

1 product to the environmental marketplace.

2 The evidence also clearly established that
3 while an employee of Westco, Georgiou was exposed
4 to trade secrets and confidential and proprietary
5 processes, technical and marketing knowledge, and
6 techniques and other methods, and confidential
7 information which constitute trade and business
8 secrets of Westco.

9 By entering into the agreement, Mr. Georgiou
10 clearly and unequivocally acknowledged that the
11 damage done to Westco as he works for a competitor
12 would result in irreparable harm to Westco, and
13 that an injunction would be necessary to enforce
14 his obligations under the agreement. Thus, the
15 level of protection that the restriction affords to
16 Westco is reasonable -- reasonably necessary to
17 protect Westco's business rights.

18 The covenant does not prohibit Mr. Georgiou
19 from obtaining other employment. The agreement
20 does not prohibit Georgiou from working for other
21 analyzer businesses that do not compete with
22 Westco's discrete analyzer business for the
23 environmental testing marketplace where Westco's
24 confidential information would not be directly or
25 indirectly involved at risk.

26 Under the agreement, there are essentially
27 only a handful of companies that Mr. Georgiou would

1 be prohibited from working for, and one of those
2 companies is Systea. And again, only in the
3 environmental market using the discrete analyzer,
4 not flow technology, not in the clinical field,
5 both of which are much larger markets than the
6 restricted market.

7 Enforcing the agreement does not violate
8 public policy. Affording Westco protection under
9 the agreement does not violate the public interest.
10 In particular, the covenant does not prevent Systea
11 from continuing its operations. The Defendant
12 offered no evidence that the agreement would have
13 any impact on competition that would be adverse to
14 the public's interest. Thus, the Court's
15 enforcement of the Agreement will not harm the
16 public interest.

17 Westco has taken more than reasonable
18 measures to protect the confidentiality of this
19 information by having Mr. Georgiou sign the
20 agreement providing for confidentiality and non-
21 disclosure of this information.

22 In the present case, Systea, LLC is a direct
23 competitor of Westco. Injunction relief against
24 Mr. Georgiou is therefore warranted to protect
25 Westco from the very harm that the restrictive
26 covenant in the agreement was intended to prevent.

27 Westco has spent over a decade and in excess

1 of a million dollars developing its product,
2 maintaining its existing customers, as well as
3 procuring potential new customers. Georgiou -- Mr.
4 Georgiou acquired valuable skill, expertise and
5 intimate knowledge during his employment with
6 Westco. In particular, Georgiou -- Mr. Georgiou
7 had become extremely familiar with the strengths
8 and weaknesses of Westco's products, especially in
9 the optimization and improvement of its products.
10 Indeed, he was considered to be an integral part of
11 the product team.

12 Mr. Georgiou was instrumental in assisting
13 Westco with optimizing its nitrate method, and also
14 with working with Westco's software engineers in
15 optimizing other EPA methods for the SmartChem
16 generally and for specific Westco customers.
17 Evidence was introduced at trial that clearly
18 established that Mr. Georgiou did in fact have
19 knowledge of Westco's trade secrets and
20 confidential information.

21 The Court does not credit the testimony of
22 Mr. Chinchilla or Mr. Georgiou that the
23 competitor's machine simply had a faulty bulb which
24 caused it not to be able to do a proper nitrate
25 test. The Court does not find that testimony all
26 to be credible under the circumstances.

27 The Court does not find any of the testimony

1 of Mr. Chinchilla to be credible. He clearly did
2 not present to the Court as a credible witness.

3 And now for these reasons, the Court enters
4 an order enjoining Mr. Georgiou from working for
5 Westco's direct competitors, including Sysstea, for
6 a period of 24 months from the date of his
7 termination with Westco, and also relief regarding
8 the use of trade secrets.

9 And so there was a proposed injunction that
10 was presented by plaintiff with regard to Paragraph
11 A. The change is on the first page. It's going to
12 be until December 12, 2006, not the date of August
13 25, 2008. The testimony was clear by Mr. Platano
14 that after two years the information is of no
15 relevance at all. And Paragraph B, that is kept in
16 its entirety. And Paragraph C, I've deleted. as to
17 the first count only. So that's the order of the
18 Court.

19 Only deals with the first count. You have
20 the other counts that have not been addressed, that
21 have not been any -- there's been no hearing on. I
22 don't know what the parties intend to do with
23 those, but you need to consult with the Clerk's
24 Office about scheduling.

25 MR. MINCHELLA: Your Honor, may I just
26 indicate Your Honor's order was 24 months from the
27 date of employee -- of the employment ceasing,

1 which would be December 12, '07.

2 THE COURT: '07, that's correct. That's
3 correct. That's correct. Thank you.

4 MR. MINCHELLA: And if I could just clarify,
5 plaintiffs have requested that it be from the date
6 of the Court's order, and the Court's decision is
7 that it's two years from the date employee ceased
8 despite the request.

9 THE COURT: Yes. The testimony I believe was
10 clear and unequivocal that the two years was all
11 the information he received -- that after two years
12 the information he received was of relatively no
13 value.

14 So, I do want to commend counsel on their
15 presentations. And so that's the order.

16 Any -- without argument, are there any
17 questions?

18 MR. MINCHELLA: No, Your Honor.

19 THE COURT: Okay.

20 MR. MINCHELLA: Just that this injunction is
21 personal to Mr. Georgiou so he must comply with it
22 wherever he is in the --

23 THE COURT: Well, yes.

24 MR. MINCHELLA: Okay.

25 THE COURT: Yes. It is to Mr. Georgiou,
26 that's correct.

27 MR. MINCHELLA: And relief, if there's a

1 violation, would be a motion for contempt with the
2 Court.

3 THE COURT: That you're going to have to
4 figure out yourself.

5 MR. MINCHELLA: Okay.

6 THE COURT: Okay?

7 MR. MINCHELLA: All right.

8 THE COURT: All right. I'm going to order
9 the transcript of what I just stated, and that's
10 going to be put in the file as my Memorandum of
11 Decision.

12 MR. MINCHELLA: And judgment will enter on
13 the first count.

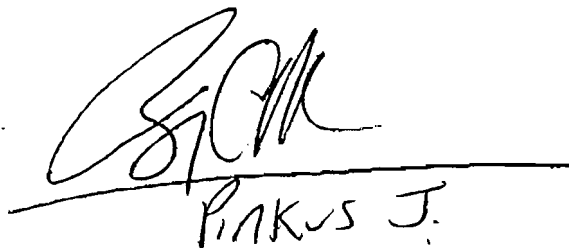
14 THE COURT: That's -- the permanent
15 injunction is judgment on the first count only.

16 MR. MINCHELLA: Thank you.

17 THE COURT: All right?

18 MR. MINCHELLA: Thank you, Your Honor.

19 (The matter was concluded.)
20
21
22
23
24
25
26
27


PINKUS J.

DOCKET NO. CV064005637S

* * * * * X

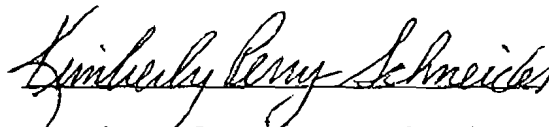
WESTCO SCIENTIFIC : SUPERIOR COURT OF CONNECTICUT
VS. : JUDICIAL DISTRICT OF DANBURY
PAUL GEORGIU : AUGUST 24, 2006

* * * * * X

C E R T I F I C A T I O N

I, Kimberly Perry-Schneider, a court recording monitor in and for the State of Connecticut, do hereby certify the foregoing is a true and accurate transcript of the above-entitled matter as monitored and heard before the Honorable Barry C. Pinkus, Judge, on August 24, 2006.

Dated at Danbury, Connecticut on this 25th day of August 2006.



Kimberly Perry-Schneider
Court Recording Monitor
