

Appian Wins \$2B Jury Verdict In Va. Trade Secrets Suit

By **Britain Eakin**

Law360 (May 10, 2022, 3:20 PM EDT) -- A Virginia jury has awarded tech company Appian more than \$2 billion in damages upon finding that Cambridge, Massachusetts-based software company Pegasystems willfully pilfered Appian's trade secrets.

The jury handed down its verdict Monday following a seven-week jury trial in Fairfax County Circuit Court in Virginia, with Appian announcing the win Tuesday. The jury also found that Pegasystems violated the Virginia Computer Crimes Act, but only awarded \$1 in damages for that breach. The jury, however, awarded Appian nearly \$2.09 billion for trade secrets theft.

Appian's 2020 suit against Pegasystems alleged that Pegasystems "engaged in an unlawful campaign of corporate espionage" against Appian as part of a scheme to steal Appian's trade secrets to figure out how to better compete with the company. According to the suit, Pegasystems gained access to Appian's software by hiring Youyong Zou, an employee of a government contractor who was working for Appian as a developer.

Zou handed copies of Appian's confidential software and documentation to Pegasystems, even though he was subject to confidentiality restrictions that barred him from sharing the trade secrets, the suit said.

"In exchange for payment by Pegasystems, Zou breached those duties by secretly copying Appian's software and documentation," Appian's suit alleged.

The jury also found that Zou was liable for misappropriating Appian's trade secrets, but said the theft wasn't willful and determined he should only pay \$5,000 in damages.

Christopher Winters, Appian's general counsel, said in a statement the company is grateful for the jury verdict.

"We put forward strong evidence that Appian trade secrets were misappropriated by Pegasystems," Winters said. "The award of substantial damages to Appian is entirely appropriate given the nature and extent of what Pegasystems did."

Adeel Mangi of Patterson Belknap Webb & Tyler LLP, who represents Appian, told Law360 the legal team is "pleased that the jury held Pegasystems to account."

"The trial record lays bare extraordinary conduct by the senior leadership of a publicly traded company," Mangi said.

Attorneys for Pegasystems did not immediately return a request for comment, but the company's vice president of corporate communications, Lisa Pintchman, told Law360 an appeal is on the horizon.

"We strongly disagree with the claims and the verdict, and believe the verdict is not supported by the facts of the case or the law and is the result of significant error. We plan to vigorously pursue our post-trial remedies and will certainly appeal what we believe is an unjust result," Pintchman said.

Pintchman said that, although the appeals process could play out for years, the company believes it has "meritorious defenses" with "strong grounds to overturn" the verdict, which she said won't impact the company's products or services.

Both Appian and Pegasystems make software that allows companies to develop their own applications. Appian said it didn't become aware that its trade secrets had been misappropriated until 2020, and filed suit almost immediately.

During closing arguments May 5, Mangi, the Appian attorney, told the jury that Pegasystems' conduct — using fake identities to gain access to company information and trial versions of its software — was "shady and arrogant," according to a transcript of the proceedings.

Meanwhile, Pegasystems attorney Robert Frank of Choate Hall & Stewart LLP characterized Appian's suit during closing arguments as a bid to compensate for lost sales because of the superiority of Pegasystems' product.

"This case is an effort by Appian to achieve in court what Appian has failed to achieve in the marketplace because Appian's software doesn't have certain of the product designs, product features that caused Pega's customers to want to buy from Pega," he said.

Appian is represented by Adeel Mangi, Jeffrey Ginsberg, Muhammad Faridi, Matthew Weiss, Clinton Morrison, Maggie O'Neil and Abhishek Bapna of Patterson Belknap Webb & Tyler LLP, and Sheila Costin and Ellen Marcus of Holmes Costin & Marcus PLLC.

Pegasystems is represented by Robert Frank Jr., Anita Spieth, John Calhoun, Bryana McGillycuddy, Marina Pullerits and Adam Bookbinder of Choate Hall & Stewart LLP, Douglas Kay of Offit Kurman Attorneys At Law and Monica Monday of Gentry Locke.

The case is Appian Corp. v. Pegasystems Inc. et al., case number 2020-07216, in the Circuit Court of Fairfax County, Virginia.

--Editing by Orlando Lorenzo.