

'Our Spy': Corporate Espionage Case Ends in Whopping \$2 Billion Verdict

Virginia software company Appian Corp. saw its stock price jump 38% on news of the verdict, which came against Boston-based competitor Pegasystems Inc.

BY SCOTT GRAHAM

What You Need to Know

- Pegasystems allegedly recruited a developer who had access to confidential Appian code.
- Company executives referred to him internally as 'our spy.'
- Executives gained further intel by attending Appian events under pseudonyms, Appian alleged.

A Virginia software company has won a \$2 billion trade secrets verdict against a Boston-based competitor.



Adeel Mangi, a partner at Patterson Belknap Webb & Tyler LLP in New York.

Courtesy photo

Tysons-based Appian Corp. told jurors during a seven-week trial that Pegasystems Inc. had recruited a software developer who was working for government contractor Serco and used his access to confidential Appian software code to help Pegasystems conduct a corporate espionage campaign.

"He's working with Serco and Appian people



by day, and by night he's selling these same secrets" to Pegasystems, Patterson Belknap Webb & Tyler partner Adeel Mangi told the jury in his closing argument.

Appian's stock price jumped 38% on news of the verdict Tuesday. Pegasystems, known informally as Pega, was off 21%. Jurors also found that Pega violated the Virginia Computer Crimes Act.

Mangi and his colleagues told jurors that Pega executives referred internally to Youyong Zou, who was a co-defendant in the trial, as "our spy."

The company paid Zou \$23,000 over a couple of years to “mine and excavate below the surface of the Appian platform” for trade secrets relating to Appian’s architecture and design, Mangi told jurors. Pega used the information to improve its business process management software, particularly in areas where it was lagging, such as mobile and social, Mangi had said.

Aside from Zou’s involvement, Pega executives collected further intel by registering for Appian events under pseudonyms. CEO Alan Trefler registered for a confidential Appian forum under the name Albert Skii, a play on ASCII computer code, Appian alleged.

All of that won Pega \$3 billion worth of contracts that it didn’t deserve from companies such as Amazon, Lockheed Martin, Bank of America and the U.S. Air Force, Appian contended.

Pega was represented by Choate Hall & Stewart during the seven-week trial before Fairfax County Circuit Judge Richard Gardiner. Choate partner Robert Frank argued during closing that none of the material identified by Appian was a protected trade secret, that the accused products were in development long before Zou came on the scene, and that Appian was trying to win in court what it failed to achieve in the marketplace. “There is no evidence that Mr. Trefler ever obtained anything that any member of the public couldn’t have obtained,” he told jurors.

Hirschler Fleischer partner Wayne Travell represented Zou, who had once worked as a software developer for Appian. He told jurors that Zou simply told Pega what he remembered about shortcomings in Appian’s products, as opposed to affirmatively divulging actual trade secrets.

Jurors found that both Zou and Pega misappropriated trade secrets, but they found that only Pega acted willfully. Jurors awarded only \$5,000 against Zou.

Mangi said Tuesday he’s pleased that Pega is being held accountable. “What is remarkable about this trial record is the type of conduct exhibited by the senior leadership of a publicly traded company,” he said.

Appian’s trial team also included Patterson Belknap partners Muhammad Faridi and Jeffrey Ginsberg, plus Ellen Marcus and Sheila Costin of Holmes Costin & Marcus. Williams & Connolly partner John McNichols also contributed, while Appian’s deputy general counsel for intellectual property, Christopher Geyer, played a lead role in developing and managing the case.

“We are very grateful that the jury held Pegasystems accountable for its wrongful conduct,” Appian GC Christopher Winters said in a statement. “The award of substantial damages to Appian is entirely appropriate given the nature and extent of what Pegasystems did.”