

Jury Awards Sierra Railroad \$22M In Trade Secrets Case

By Kurt Orzeck

Law360, Los Angeles (March 31, 2014, 6:35 PM ET) -- A California federal jury decided Friday that Patriot Rail Corp. owes \$22.3 million to Sierra Railroad Co. in alleged losses stemming from the misappropriation of trade secrets while Patriot attempted to buy Sierra's shortline railroad freight operations.

The jury verdict said Patriot owes \$18 million in lost business value and approximately \$4.3 million in lost profits as a result of its alleged violation of a nondisclosure agreement in an attempt to take a rail service owned by Sierra.

Sierra argued that Patriot won a contract over a business park that Sierra had served after misusing Sierra's confidential information in Patriot's bid. Sierra's counterclaims also accused Patriot of engaging in bad faith so it could run Sierra into the ground and buy its remaining assets at a cheaper price.

McGregor W. Scott of Orrick Herrington & Sutcliffe LLP, which represents Sierra, told Law360 on Monday their client "is extremely grateful to the jury for returning this verdict, which was a complete victory for Sierra Railroad."

Attorneys for Patriot Rail didn't immediately respond to requests for comment Monday.

In 2005, Patriot, a large national railroad holding company, and Sierra, which owns and operates freight and tourist shortline railroads in Northern California, started discussing the former's potential purchase of the latter, according to court documents.

The parties entered into a nondisclosure agreement under which Patriot agreed to use Sierra's confidential information only to help evaluate and negotiate the possible acquisition, Sierra claimed. Patriot also allegedly agreed not to contact any of Sierra's customers without written consent.

During negotiations, Sierra allegedly introduced Patriot to representatives for McClellan Business Park so the park, which Sierra served through a subsidiary and accounted for 34 percent of Sierra's total revenue, would feel more comfortable with the planned purchase.

Patriot then met secretly with McClellan, which terminated its contact with Sierra and hired Patriot instead, Sierra alleged.

Following that development, Sierra rejected Patriot's offer to buy Sierra's operations for less than half

the previous price the parties had been discussing, according to Sierra's redacted trial brief, which doesn't list the prices.

After Sierra sued Patriot in March 2008, the latter company negotiated a letter of intent for Patriot's purchase of Sierra in exchange for dropping the lawsuit without prejudice, according to court filings. The proposed purchase price allegedly rose again.

Patriot then allegedly delayed on closing the deal in an effort to stall Sierra from refiling the suit, and negotiations failed again.

Patriot itself sued, alleging that Sierra's breach of contract, breach of implied covenant of good faith and fair dealing and other misconduct caused it to suffer damages from the due diligence it conducted over the Sierra deal.

Sierra made the same allegations in its counterclaims, which also included fraud and unfair competition, among other claims.

Patriot argued that Sierra's counterclaims were baseless and that it had lost the McClellan contract because of its refusal to make significant capital investments. Patriot further alleged that Sierra had no evidence that it misappropriated any of Sierra's trade secrets or breached any contract.

Patriot further argued that the letter of intent wasn't a binding purchase agreement.

The jury disagreed, returning a verdict Friday that shot down Patriot's claims and favored Sierra's counterclaims.

Sierra attorney Scott said Monday that they are looking forward to the punitive damages stage of the trial later this week.

Patriot is represented by Mary-Olga Lovett and Stephen E. Paffrath of Greenberg Traurig LLP.

Sierra is represented by McGregor W. Scott and Michael C. Weed of Orrick Herrington & Sutcliffe LLP.

The case is Patriot Rail Corp. v. Sierra Railroad Co., case number 2:09-cv-00009, in the U.S. District Court for the Eastern District of California.

--Editing by Chris Yates.