



Government Charges Five, Including Two Scientists, With Stealing Trade Secrets And Confidential Information From GlaxoSmithKline

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On January 20, 2016, the United States Attorney's Office for the Eastern District of Pennsylvania announced the indictment of five people, including two research scientists at GlaxoSmithKline ("GSK"), on charges of stealing trade secrets from the company, wire fraud in connection with the theft of confidential information, money laundering and conspiracy. While the majority of the charges in the 43-count indictment focus on the role of Yu Xue, described in the indictment as "one of the top protein biochemists in the world," the indictment describes an elaborate scheme to sell the stolen information through companies in China, and to launder the proceeds.

The indictment charges Yu Xue and, to a lesser extent, Lucy Xi, with emailing trade secret and confidential information, including information about biopharmaceutical products under development, GSK research data, and GSK processes regarding the research, development, and manufacturing of biopharmaceutical products, and a business plan for a quality control unit, to their co-conspirators, Tao Li and Yan Mei, who is Lucy Xi's husband.¹ Yu Xue, Tao Li, and Yan Mei allegedly formed three corporations: Renopharma, Inc., which was incorporated in Delaware; and Nanjing Renopharma, Ltd, and Shanghai Renopharma, Ltd., which were established offshore and operated in China (collectively "Renopharma"), to market and sell the stolen trade secrets and confidential information. According to the indictment, Renopharma advertised that it operated as "a drug research and development company in China with limited U.S. affiliation," and promoted itself as "a leading new drug research and development company, [which] specialized in providing products and services to support drug discovery programs at pharmaceutical and biotech companies." As the indictment also noted, the stolen documents contained information which would be especially useful for a start-up biopharmaceutical company such as Renopharma represented itself to be.

The indictment alleges several means by which the defendants intended to carry out their scheme, including: (1) selling the stolen GSK information as Renopharma research; (2) using the stolen information to secure lucrative consulting contracts with third parties; (3) performing additional research to finalize and perfect GSK products still in development based upon the stolen information; (4) patenting some of the GSK products still in development ahead of GSK; and (5) using the stolen information to bolster Renopharma's credentials and reputation to secure lucrative investments and grants from private investors, government entities, and other sources. The indictment further alleges that, in order to secure these investments and grants, the defendants provided gifts and interest in Renopharma to certain individuals, who are not named in the indictment.

While the indictment provides few details, it hints at institutional and governmental support for Renopharma in China. Thus, defendant Tao Li allegedly claimed that governments "in different levels" supported the company with almost two million yuan, free office space, tax waivers, and bank loan assistance. The indictment specifies that these benefits included: 32,000 yuan from a university; 30,000 yuan from the Nanjing Jiangning Science Park for Talents; 200,000 yuan from the State Fund for Youth Foundation; 30,000 yuan from the Ministry of Human Resources and Social Security; 250,000 yuan from the 2014 Provincial Medium and Small Science and Technology

¹ The fifth defendant, Tian Xue, who is identified as Yu Xue's twin sister and was allegedly responsible for placing funds in the names of family members and others in order to conceal Yu Xue's involvement in the scheme, is charged only with conspiring to launder the proceeds of the scheme.

business Science Innovation Fund; 40,000 yuan for “expert service” from the Ministry of Human Resources and Social Security; and 30,000 yuan in government rent subsidies. Defendant Yu Xue allegedly claimed she could get investments in Renopharma through a “special government fund,” and planned to meet with certain government officials in China to persuade the government to invest in the company. As part of this effort, the indictment states, Yu Xue planned to give a two hour presentation in China for government officials, and to give the two most critical officials expensive gifts.

The case confirms the growing evidence that pharmaceutical companies are prime targets for trade secret and confidential information theft. While the indictment highlights the necessity for pharmaceutical companies to safeguard their trade secrets and confidential information, based on recent history, the case also carries risks for the government – even as Congress has expanded the protection of trade secret information. In December 2012, the President signed the Theft of Trade Secrets Clarification Act of 2012, which broadened the definition of trade secrets under the Economic Espionage Act, and the Penalty Enhancement Act, which significantly increased the financial penalties where the trade secret theft benefits a foreign entity.

In July 2013, the United States Attorney’s Office for the Southern District of Indiana brought charges against two Eli Lilly scientists accused of selling trade secrets to one of China’s largest drug companies, Jiangsu Hengrui Medicine Co. The defendants were accused of selling nine drug discovery trade secrets related to the early-stage clinical development of potential new drugs to treat cardiovascular diseases, diabetes, and cancer. The defense argued vigorously that the information was not trade secret information, but, rather, information in the public domain. Shortly after a detention hearing in which the judge modified the defendants’ terms of confinement based in part on these arguments, the government filed a superseding indictment *that removed any mention of trade secrets*. Instead, the superseding indictment charged the defendants with wire fraud, aiding and abetting, and conspiracy to commit wire fraud. In December 2014, however, the government moved to dismiss the charges in their entirety, commenting only that the decision “was based on a variety of factors that occurred throughout the case.”

In fact, since 2013, the results in trade secret cases have been decidedly mixed for the government. In August 2013, Hua Jun Zhao, a Medical College of Wisconsin researcher accused of stealing a patented cancer research compound in order to benefit a university in China was allowed to plead instead to a charge of intentionally accessing a computer without authorization, and sentenced to time served. Conversely, after a two-month trial, Walter Liew, the owner and president of a consulting services company, was sentenced in July 2014 to 15 years on charges related to the theft and sale of trade secrets from DuPont to state-owned companies in China. More recently and notably, in September 2015, based on “additional information” it had received since filing the case, the United States Attorney’s Office for the Eastern District of Pennsylvania moved to dismiss charges against Xi Xiaoxing, a Temple University physics professor accused of providing secret technology information to China. In fact, as has since been widely reported, the information was neither restricted nor covered by a nondisclosure agreement.

While problems with defining and identifying “trade secrets” continue to impede and bedevil these cases, the government remains committed to bringing them. Based on the indictment of Yu Xue and her co-defendants, however, the government appears to have taken some lessons from the recent failed cases. The 43-count, 66-page indictment carefully distinguishes “trade secret” information from confidential information, while the charges – theft, etc. of trade secrets and wire fraud, based on the theft of confidential information – reflect the distinction. To some extent, then, the indictment also is a blueprint for the defense, which now may dissect and counter the government’s claims regarding the nature of the information.

As the parties litigate the complexities of confidential vs. trade secret information; the meaning of “publicly available” information; the extent or limitations of nondisclosure agreements; and similar related issues, pharmaceutical companies should be mindful of the growing risks to their intellectual property. In particular, companies should take steps to safeguard proprietary information, including through tighter controls and restrictions, stricter nondisclosure agreements, and careful monitoring of how information is disclosed internally.

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