

White Collar Litigation Alert  
By Matthew L. Levine, Principal

## Federal Appeals Court Affirms Lengthy Jail Sentence in Coca-Cola Trade Secrets Theft

In what may signal a growing recognition by the criminal justice system that preventing intellectual property crimes has reached a point of critical importance to the global economy, a federal appeals court has upheld an eight-year prison sentence for a former employee of Coca-Cola Company for stealing and conspiring to sell Coke's trade secrets to rival PepsiCo.

### Background

Joya Williams, an executive assistant to a high-ranking officer at Coke, secretly obtained samples of Coke products in development as well as confidential marketing materials. Williams then enlisted two co-conspirators in an effort to sell these trade secrets. One of the co-conspirators contacted PepsiCo and eventually offered to sell these trade secrets for \$1.5 million. Fortunately for Coke, PepsiCo contacted the FBI. An undercover FBI agent, posing as a PepsiCo employee, commenced negotiations for the purchase, recording telephone calls with and among the co-conspirators. Coke also installed cameras that secretly recorded Williams taking product samples and documents. The U.S. Justice Department charged all three with conspiracy to commit theft of trade secrets, pursuant to 18 U.S.C. §§ 371 and 1832.<sup>1</sup> The co-conspirators pled guilty, while Williams was convicted after trial.<sup>2</sup>

### The Sentence and Appeal -- Emphasis on Technology Companies' Trade Secrets

Although federal guidelines recommended a prison sentence for Williams ranging between five and six-and-a-half years – a range prosecutors agreed with -- the sentencing judge went higher, imposing a sentence of eight years.<sup>3</sup> This is a lengthy sentence for a white-collar case, especially one involving theft of trade secrets.<sup>4</sup>

A number of considerations compelled the sentencing judge to mete out such a harsh sentence, including his finding that Williams lied during her trial testimony. The primary factor relied on by the sentencing judge, however, was the “seriousness of the offense,” which the judge clearly articulated as the potential economic harm that could be suffered by companies that fall victim to this type of crime.<sup>5</sup>

In particular, the judge emphasized the impact of trade secret theft on technology companies. The judge pointed out that “companies like Cisco and Intel . . . have technological secrets. And the ability to develop new and improved electronic gear drives their success.”

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The judge also discussed “consumer product companies,” like Coca Cola, that depend for success on “their ability to differentiate their products, to understand better the market they sell them to, to research and discover needs for new products, and then they, like Intel or Cisco, develop new products.” The judge concluded by saying that, “[t]his case is about what it will take to protect the trade secrets of the larger companies in this country who produce products that consumers want . . . .” To his mind, an unusually long sentence was necessary to protect against “the harm that could have been done to Coca-Cola if these secrets had reached Pepsi.”<sup>6</sup>

The U.S. Court of Appeals for the Eleventh Circuit readily affirmed the sentence in an opinion that implicitly recognized the seriousness of this crime, as well. Although its opinion primarily addressed the procedural soundness of the judge’s sentencing process, the appeals court ultimately determined, too, that the lengthy sentence was “substantively” reasonable, *i.e.*, not unfair given the underlying conduct.<sup>7</sup> Arguably, this decision presages or even marks a tipping point in the criminal enforcement of intellectual property crimes – crimes historically prosecuted through civil litigation.

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<sup>1</sup> 18 U.S.C. § 371 is the general federal criminal conspiracy statute, while 18 U.S.C. § 1832 provides for the substantive criminal offenses dealing with theft of trade secrets.

<sup>2</sup> See *U.S. v. Williams*, \_\_\_ F.3d \_\_\_, 2008 WL 2001482 (11th Cir. 2008); Indictment, Dkt. No. 24, *U.S. v. Williams*, 06-CR-313 (N.D. Ga. July 11, 2006).

<sup>3</sup> See Sentencing Transcript, Dkt. No. 137, *U.S. v. Williams*, 06-CR-313 (N.D. Ga. May 23, 2007).

<sup>4</sup> According to a schedule of publicly-reported cases from the years 2000 through 2005, prepared by the Justice Department’s Computer Crime and Intellectual Property Section, the mean length of incarceration for convictions under the Economic Espionage Act, 18 U.S.C. §§ 1831 *et seq.* (which includes 18 U.S.C. § 1832) in five cases where there was a sentence of incarceration was approximately 27 months. See <http://www.usdoj.gov/criminal/cybercrime/eeapub.htm>. The Justice Department’s Bureau of Justice Statistics reported that the median sentence of incarceration for federal intellectual property crimes consisting of copyright and trademark infringement and theft of trade secrets was 15 months in 2002, up from 10 months in 1998. See <http://www.ojp.usdoj.gov/bjs/abstract/ipt02.htm>.

<sup>5</sup> See Sentencing Transcript, Dkt. No. 137, *U.S. v. Williams*, 06-CR-313 (N.D. Ga. May 23, 2007).

<sup>6</sup> *Id.*

<sup>7</sup> 2008 WL 2001482, at \*\* 7-10.