

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

M.C. DEAN, INC., a Virginia corporation,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA AND
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 349,

Defendant.

CASE NO:

COMPLAINT

Plaintiff, M.C. Dean, Inc. (hereinafter “Plaintiff” or “M.C. Dean”), files this Complaint against the City of Miami Beach, Florida (“the City”) and International Local Brotherhood of Electrical Workers, Local 349 (“Local 349”), and alleges:

PARTIES

1. Plaintiff M.C. Dean is a Virginia corporation with its principal place of business in Dulles, Virginia.
2. Defendant City of Miami Beach, Florida is a municipal corporation and may be served with summons and complaint as provided by Fla. Stat. § 48.111.
3. Defendant Local 349 is a labor organization which maintains offices at 1657 NW 17th Ave, Miami, Florida 33125 and may be served with summons and complaint at that address by service upon its Business Manager, William Riley, as provided by Fla. Stat. § 48.141.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 as the Defend Trade Secrets Act, 18 U.S.C. § 1836, as amended, provides for federal jurisdiction over

civil actions based on the misappropriation of trade secrets. This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332 as the parties are of diverse citizenship and the amount in controversy exceeds \$75,000.

5. Venue is proper in this Court as defendants reside in this judicial district and a substantial part of the events giving rise to these claims occurred in this judicial district.

FACTS

6. M.C. Dean is an electrical design-build and systems integration firm for complex, mission-critical organizations. M.C. Dean's ability to successfully design and build complex electrical projects is dependent upon its highly skilled electricians who are a product of M.C. Dean's specialized recruitment and training. M.C. Dean invests a substantial amount of money and time identifying, recruiting, and training its employees. See Exhibit 1, Affidavit of Matthew Kilpatrick. M.C. Dean's employees also sign confidentiality agreements. The identity of M.C. Dean's employees and the specialized training they have received are very valuable to those such as Local 349 and others who do not have access to this information. See Exhibit 2, Affidavit of Steven Herscovici.

7. M.C. Dean is a subcontractor of Clark Construction Group, LLC ("Clark"), which is the general contractor for the Miami Beach Convention Center renovation project.

8. As part of its contractual obligations, M.C. Dean provides Clark with payrolls referred to as certified payrolls which contain private, personally identifying information such as names, addresses, social security numbers, and driver's license numbers of its employees along with other confidential information such as pay rates, fringe benefits, hours worked, and other similar information.

9. M.C. Dean discloses its confidential and proprietary information that is included

in these certified payrolls on a very limited basis and only when disclosure is required to comply with a legal obligation. M.C. Dean provided this information to Clark and did not provide it to the City of Miami Beach. See Exhibit 1. M.C. Dean also limits dissemination of this information within the company to very specific and limited individuals as part of its efforts to keep the information confidential and not readily ascertainable.

10. Local 349 requested copies of certain M.C. Dean certified payrolls from the City of Miami Beach through a request made pursuant to Florida Public Records Act on or about March 4, 2016.

11. M.C. Dean objected to the disclosure of the payrolls and submitted a position statement along with an affidavit from a company representative and an expert setting forth the factual and legal basis for M.C. Dean's position that the records constituted trade secrets as defined by Fla. Stat. § 812.081 and could not be disclosed pursuant to Florida law, including but not limited to Fla. Stat. § 815.04.

12. Upon receipt of this position statement, the City determined that it would only disclose redacted certified payrolls to Local 349. However, on or about the afternoon of March 21, 2016, a city clerk improperly and "inadvertently" disclosed unredacted copies of the payrolls to Local 349.

13. The City informed M.C. Dean of the wrongful disclosure on the morning of March 22, 2016. M.C. Dean immediately requested that the City take appropriate steps to secure the return of the unredacted copies from Local 349. M.C. Dean also demanded that Local 349 delete any digital or electronic copies of the information and destroy any physical copies of the information. Local 349 has refused to do so and has refused to return the information to the City. Defendants have misappropriated M.C. Dean's trade secrets which misappropriation is ongoing.

COUNT I – VIOLATION OF DEFEND TRADE SECRETS ACT

14. M.C. Dean incorporates all previous paragraphs as if stated herein.

15. Defendants have misappropriated M.C. Dean’s trade secrets as set forth above which are related to a service that is intended for use in interstate commerce.

16. Defendants’ actions are willful and malicious as M.C. Dean objected to the disclosure of the trade secrets by the City of Miami Beach and Defendants have refused to destroy and/or to return same to M.C. Dean.

17. M.C. Dean is entitled to injunctive relief prohibiting further disclosure and use of the information and requiring the return of its trade secrets.

18. M.C. Dean is entitled to damages for the actual loss caused by the misappropriation of its trade secrets and for the unjust enrichment of Local 349 as a result of the wrongfully disclosed and obtained trade secrets.

19. M.C. Dean is entitled to exemplary damages and its attorneys’ fees for the willful and malicious disclosure and appropriation which is ongoing.

COUNT II – VIOLATION OF THE FLORIDA UNIFORM TRADE SECRETS ACT

20. M.C. Dean incorporates all previous paragraphs as if stated herein.

21. Under the Florida Uniform Trade Secrets Act (“FUTSA”), found at Fla. Stat. § 688.001, et seq., M.C. Dean’s confidential information is protected as trade secrets because the name, address, and other personally identifying information such as social security numbers, driver’s license numbers, pay rates, fringe benefits, hours worked and similar information which is included on the payrolls is the property of M.C. Dean. M.C. Dean protects this information to the greatest extent possible and does not disclose it except under very limited circumstances, even within the company. The information compiled by M.C. Dean requires a substantial

investment and is valuable to others such as Local 349 who do not have access to this information.

22. The City of Miami Beach improperly disclosed the trade secrets and Local 349 improperly obtained the trade secrets when the City of Miami Beach disclosed the unredacted payrolls despite the City's representations to M.C. Dean that it would only provide redacted payrolls. Despite the City's and M.C. Dean's demand for the return and/or destruction of the information, Local 349 refuses to do so. But for the City's improper disclosure of the information, Local 349 would not have access to it.

23. M.C. Dean has not provided Defendants with any express or implied authorization to take, possess or utilize its confidential information.

24. M.C. Dean is entitled to injunctive relief under the FUTSA, preventing Defendants from further disclosing and/or using M.C. Dean's trade secrets and requiring the return of M.C. Dean's trade secrets.

25. M.C. Dean is also entitled to actual and exemplary damages under the FUTSA against Defendants for the willful and malicious disclosure, misappropriation, and use of M.C. Dean's confidential information.

26. M.C. Dean is entitled to recover its attorneys' fees under the FUTSA due to Defendants' willful and malicious disclosure, misappropriation and use of M.C. Dean's confidential information.

PRAYER FOR RELIEF

WHEREFORE, M.C. Dean's respectfully prays that this Court provide the following relief in this matter:

- (A) injunctive relief preventing Defendants from further disclosing and/or using M.C. Dean's trade secrets and requiring the return of M.C. Dean's trade secrets;
- (B) actual damages in amount to be determined at trial, but not less than \$75,001, to compensate M.C. Dean for the actual loss caused by the wrongful disclosure and misappropriation of its trade secrets;
- (C) compensation to M.C. Dean based on Local 349's unjust enrichment as a result of the wrongful disclosure and misappropriation of M.C. Dean's trade secrets in an amount to be determined at trial, but not less than \$75,001;
- (D) exemplary damages based on the willful and malicious actions of the Defendants; and
- (E) M.C. Dean's attorneys' fees.

BALCH & BINGHAM, LLP

/s/ Jeffrey S. York
Jeffrey S. York, Esq.
Florida Bar No. 987069
Robert P. O'Linn, Esq.
Florida Bar No. 107378
841 Prudential Drive, Suite 1400
Jacksonville, FL 32207
Telephone: (904) 348-6862
Facsimile: (866) 230-9972
jjork@balch.com

*Attorneys and Trial Counsel for
Plaintiff M.C. Dean, Inc.*

EXHIBIT 1

AFFIDAVIT OF MATTHEW KILPATRICK

STATE OF FLORIDA

COUNTY OF Pinellas

THIS DATE personally appeared before me, Matthew Kilpatrick, who, after being duly sworn according to the law, stated the following:

1. My name is Matthew Kilpatrick. I am an adult resident of Florida, over the age of 21 and competent to make this Affidavit. The facts in this Affidavit are based upon my personal knowledge.

2. I am the Operations Manager for the Florida Division of M.C. Dean.

3. M.C. Dean is performing work at the Miami Beach Convention Center Renovation Project. Specifically, M.C. Dean is constructing the power, lighting, and telecommunications systems which involve the deployment of 16,000 light fixtures, 3 independent electrical service entrances, critical power and life safety systems, and integrated telecommunications systems (including wireless communication and distributed antenna systems).

4. I have been informed that the City of Miami Beach has received a public records request for M.C. Dean's certified payrolls on this project. These certified payrolls contain information that M.C. Dean considers to be a trade secret that has value and provides an advantage or an opportunity to obtain an advantage over those who do not know or use it.

5. In staffing a project, M.C. Dean uses current employees who have been carefully vetted and selected, and in whom significant investment has been made in terms of specialized training in advanced technical skills and in terms of M.C. Dean's business. M.C. Dean also

solicits applications for electricians/electrical workers which are then screened individually by M.C. Dean. M.C. Dean then tests and interviews potential employees. This process is extremely time consuming and costly. However, through its investment in recruiting, vetting, and selection, M.C. Dean is able to hire only the very best employees. Once the electricians/electrical workers are hired, M.C. Dean then provides them with necessary training specific to M.C. Dean's processes and procedures. Some of M.C. Dean's employees working on this project have SES security clearances. Accordingly, the individuals who have been identified by M.C. Dean through this extensive process and have become employed by M.C. Dean represent a trade secret that is valuable to M.C. Dean and provides it an advantage over those who do not possess this knowledge. If the identities were released, then competitors of M.C. Dean would be able to attempt to hire these individuals away from M.C. Dean allowing them to benefit from M.C. Dean's investment.

6. The wage rates and benefits paid to M.C. Dean employees are also trade secrets because disclosure of this information would place M.C. Dean at a competitive disadvantage. Labor rates in the construction industry are treated as confidential information. Disclosure would easily allow competitors to underbid M.C. Dean because labor rates are one of the significant components of a contractor's bid amount.

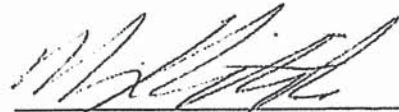
7. M.C. Dean has taken measures to prevent the disclosure of the information to anyone other than those few who have been selected to have access for limited purposes, and M.C. Dean intends to continue such measures. For example, M.C. Dean provided the certified payrolls at issue to Clark Construction Group, LLC. M.C. Dean did not provide them to the City of Miami Beach or any other entity. M.C. Dean does not disclose a listing of its employees internally. Only selected Human Resources and Payroll personnel and the top executives of

M.C. Dean have access to this information. M.C. Dean's strict confidentiality of this important information recently resulted in the M.C. Dean employee in charge of recruiting for Florida being denied access to this type of information.


8. The information sought by the public records request is not and has not been reasonably obtainable without M.C. Dean's consent by other persons by use of legitimate means.

9.. The information sought is not publicly available elsewhere.

FURTHER, Affiant sayeth naught.


Matthew Kilpatrick

SWORN TO and subscribed to me this 11 day of March, 2016.


Notary Public

My commission expires:

1.22.17



EXHIBIT 2

CITY OF MIAMI BEACH CONVENTION CENTER PROJECT
AFFIDAVIT OF STEVEN HERSCOVICI, Ph.D.
ON BEHALF OF M.C.DEAN, INC.

MARCH 11, 2016

I. Qualification

My name is Steven Herscovici and I am a Principal in the Cambridge, Massachusetts office of The Brattle Group, Inc. The Brattle Group is an international economic and financial consulting firm with eight offices in the United States, Canada, the U.K., and Europe. I apply microeconomic theory, econometrics, and data analysis to complex business problems. I have conducted economic analyses, including valuation and damages analyses in a broad range of areas including antitrust; intellectual property; finance and securities; and statistical issues more broadly. I have consulted on numerous projects involving the valuation of intangible assets, including various forms of intellectual property for tax or licensing purposes. Those intangible assets have included music copyrights, as well as assets held by technology companies. I hold B.A., M.A., and Ph.D. degrees in economics from The University of Chicago, where I was a National Institutes of Health pre-doctoral fellow at the University's Population Research Center from 1994 until 1996. My curriculum vitae is attached as Appendix A.

II. Assignment

I have been asked by Counsel for M.C. Dean, Inc. ("M.C. Dean) to provide an opinion on whether or not a list of employees as identified in certified payrolls submitted solely to the General Contractor by M.C. Dean in order to comply with a municipal ordinance of the City of Miami Beach in relation to M.C. Dean's contractor services relating to the Miami Beach Convention Center project constitute "things of value" and "trade secrets" or "confidential business information," as those terms are understood and applied in economics, business and law.

III. M.C. Dean, Inc.

M.C. Dean, as further explained in its website, www.mcdean.com, is the nation's expert electrical design-build and systems integration firm for complex, mission-critical organizations. M.C. Dean's ability to successfully design and build complex electrical projects is dependent upon its highly skilled electricians.

IV. M.C. Dean's Staffing Process

I understand that in staffing a project, M.C. Dean uses current employees who have been carefully vetted and selected, and in whom it has made significant investment in terms of specialized training in advanced technical skills and in terms of M.C. Dean's business knowledge. M.C. Dean also solicits applications for electricians/electrical workers which are then screened by M.C. Dean. M.C. Dean then tests and interviews potential employees. This process is time consuming and costly. However, through its investment in recruiting, vetting, and selection, M.C. Dean is able to hire employees it believes are well qualified and valuable to the company. Once the electricians/electrical workers are hired, M.C. Dean then provides them with necessary training specific to M.C. Dean's processes and procedures. Some of these individuals have security clearances. Accordingly, the individuals who have been identified by M.C. Dean through this extensive process and have become employed by M.C. Dean represent a trade secret that is valuable to M.C. Dean and provides it an advantage over those who do not possess this knowledge.

V. Fla. Stat. Section 812.081's Definition of Trade Secret

I understand that Florida statutory law provides that: "Trade secret" means ... compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it...[and] includes any scientific, technical or commercial information including any design, process, procedure, list of suppliers, list of customers, business code or improvement thereof."

VI. M.C. Dean's Policy Regarding Disclosure of Employee Lists and Personally Identifying Information of Its Electricians/Electrical Workers

It is my understanding that M.C. Dean does not disclose to anyone other than certain members of its Human Resources and Payroll departments and Executive Management Team personally identifying information or employee lists including, but not limited to, employee job classifications, rates of pay and related information. It is also my understanding that even M.C. Dean employees engaged in recruiting activities or training activities of employees or otherwise regularly work with M.C. Dean's electricians/electrical workers are restricted from receiving this information. I understand that M.C. Dean's Human Resources Department has internal systems

in place to prevent employees from accessing such information except Executive Management Team members. I further understand that otherwise, M.C. Dean discloses the information only in those limited circumstances where disclosure is required to comply with a legal obligation such as submitting the names, addresses and other personally identifying information of M.C. Dean's electricians/electrical workers as part of certified payrolls.

VII. M.C. Dean's Project Responsibilities for the Miami Beach Convention Center

It is my understanding that M.C. Dean is responsible for the construction of the power, lighting and telecommunication systems for the Miami Beach Convention Center Renovation Project. This includes, but is not limited to, the deployment of 16,000 light fixtures, three independent electrical services entrances, critical power and light safety systems, and integrated telecommunications systems including wireless communication and distributed antenna systems.

VIII. The Value of Confidential Business Information and Employee Lists Containing Personally Identifying Information

Information about a company's employees, including their names, addresses, job classifications and rates of pay, is valuable when it allows the firm or organization to earn higher profits or better achieve its other stated goals than it otherwise could. In discussing information as a commodity, Nobel Laureate Kenneth Arrow observed:

An entrepreneur will automatically acquire a knowledge of demand and production conditions in his field which is available to others only with special effort. Information will frequently have an economic value, in the sense that anyone possessing the information can make greater profits than would otherwise be the case.¹

As firms (and other organizations such as unions) evaluate how best to offer their products and services, they must first seek to understand the competitive landscape. The process of obtaining this knowledge or "competitive intelligence" is continuous and systematic. As one observer noted:

¹ Kenneth Arrow, "Economic Welfare and the Allocation of Resources for Invention," The Rand Corporation, P-1856-RC, December 15, 1959, at 8-9.

Competitive intelligence (CI) is the formalized process of monitoring the competitive environment...Competitive intelligence methodologies provide the bridge between the vast amount of unstructured, but potentially important, information and empowered business strategies and action.²

This statement is true for competition between rival firms. It is also true as it relates to competition between a labor union and employer, or between two unions.

Although competitively sensitive information may be in the public domain, it often still retains competitive value because the information may not be in a readily accessible format. That is, the value may be in the effort it takes to gather and consolidate the information into a usable form. For example, some information about employees may exist in the public domain. Such information, however, may be incomplete and would, nevertheless, require considerable time and effort to locate and consolidate. Consequently, a complete list of employees' names and addresses is more than simply the information that is available in the public domain.

M.C. Dean likely would incur economic costs by providing employee names and other items identified in its certified payrolls. A list of employees is typical of confidential business information that a firm, such as M.C. Dean, would make efforts to keep confidential. It would endeavor to keep the information away from another employer or union to prevent that employer or union from soliciting its employees.

Employee names and other data detailed in the certified payrolls provide clear economic value to competitor firms and unions because they are information that such organizations would not be entitled to absent agreement by M.C. Dean. The fact that a union such as the IBEW or others request such data from the City of Miami Beach indicates that the certified payrolls do in fact provide something upon which they place value. A list of employee names and related data—including home addresses would allow for direct contact with employees away from the workplace—and may facilitate competitor recruiting or a union organizing drive, is thus of significant value to the IBEW and competitors because disclosure and their use of the data will advance the Unions' objective and competitive objective at the expense of M.C. Dean.

² Conor Vibert, Introduction to Online Competitive Intelligence Research 9-10 (Thompson Texerc 2004).

IX. Indicia of Value of Lists of Employee Names and Related Data Contained in Certified Payrolls.

One indication of the value of employee lists to unions is evidence that suggests union organizers who have access to such lists tend to experience greater levels of success than those without such lists. Access to employee lists is associated with higher rates of union acceptance. Consequently, lists of employee names added value to the Union's efforts by increasing the likelihood of success of an organizing campaign.

An additional indication of the value of employee lists is the existence of active markets selling such information. Commercially provided employee contact information is typically for management level employees. Nevertheless, it is indicative of the value of contact information. A number of data providers offer for sale competitive intelligence about employees. I understand that obtaining such information from providers such as Hoovers requires either an annual subscription or the purchase of an individual report per company for \$99. These reports, however, are often incomplete and would not provide the purchaser with the same information as is available in certified payrolls.

X. Conceptual Basis for Valuing Employee Lists

I have not been asked to estimate the value of a specific list of employees. However, a conceptual basis for such a valuation demonstrates that a list of employees and related data are "things of value." The approaches to valuation described below provide frameworks for estimating the value and describe what would likely be paid for such data. For the current purposes, it is unnecessary to consider what specifically the possible requesters would be willing to pay for the data.

Economists use three basic approaches to valuation:

- *Income Approach:* This approach estimates the net income that the asset being valued is expected to earn for the owner. In the current context, an Income Approach would estimate value by first estimating the value of a successful organizing campaign M.C. Dean's loss of electricians to a union or competitor electrical contractors and then assigning a portion of that value to employee lists

and related data that contribute to the success of the campaign or M.C. Dean loss of electricians.

- *Market Approach:* This approach would estimate value by examining marketplace transactions for items comparable to certified payrolls.
- *Cost Approach:* This approach assigns value by estimating the avoided costs that would be incurred if the item being valued were unavailable. The value of something is set, therefore, by the next least cost alternative to the thing being valued.

Absent publicly available data on market transactions for sales of comparable certified payrolls, the Cost Approach provides the most useful foundation for understanding why certified payrolls are of value. It estimates the value of certified payroll as the cost to recreate the list without the aid of the employer; alternatively, it is the value of the efforts not avoided by acquiring the certified list. Activities that might yield the information contained in a certified payroll (e.g., posting union representatives outside of the workplace to survey employees as they entered or existed) can be costly from a resource perspective and, nevertheless, may only partially replicate a complete certified payroll list. The fact that a union or a competitor employer saves real economic resources when it receives a list of employees is the basis for the value of the list to the union or a competitor employer.

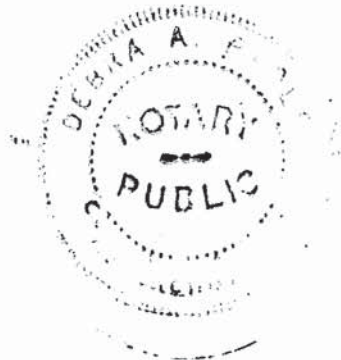
XI. Conclusion


Certified payrolls provide real economic value to unions and competitor employers because they are assets that those parties would not be entitled to, absent an agreement with the employer(s). In particular, a list of employee names, including home addresses that allow for direct contact with employees outside of the workplace is thus of value to a union because it will advance the Union's objective of successfully organizing employees and of adversely affecting the employer by permitting the union and competitor employers to solicit M.C. Dean's workforce. Furthermore, neutrality agreements that include employee list provisions are associated with higher rates of union acceptance. Consequently, lists of employee names/certified payrolls add value to the union's efforts by increasing the likelihood of success of an organizing campaign.

Finally, application of valuation approaches such as the Cost Approach demonstrates that the provision of an employee list/certified payrolls allows the IBEW to avoid using resources to create its own list. Activities that might yield the information contained in a list of employees (e.g., posting union representatives outside of the workplace to survey employees as they entered or existed) can be costly from a resource perspective and, nevertheless, might not replicate the complete employee list. The fact that a union or competitor saves real economic resources when it receives a list of employees confirms that the list possesses economic value.

For the above reasons, certified payrolls include employee and personally identifying information which constitutes M.C. Dean's trade secrets and confidential business information especially since M.C. Dean maintains the confidentiality of such information.

FURTHER, Affiant sayeth naught.





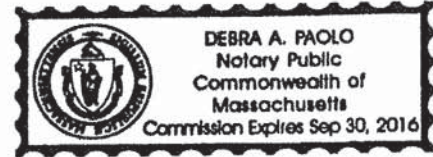
Steven Herscovici

SWORN TO and subscribed to me this 11th day of March, 2016.

Debra A. Paolo
Notary Public

My commission expires:

September 30, 2016



Appendix A

Curriculum Vitae of Steven Herscovici

STEVEN HERSCOVICI, PH.D.

Principal

Cambridge, MA

+1.617.864.7900

Steve.Herscovici@brattle.com

Steven Herscovici is an economist specializing in the application of economics, finance, and data analysis to litigation and other complex business issues. He has served as an expert witness in antitrust, employment discrimination, and commercial damages litigation. He has also testified on the valuation of music copyrights on behalf of performing rights organizations, music publishers, and record companies. In addition, Dr. Herscovici has provided economic analyses and damages estimates in finance, environmental, and general business litigation matters across a wide range of industries, including payment cards, entertainment, financial services, travel, and utilities.

Dr. Herscovici has extensive experience managing large, high-profile economic consulting projects, many involving multiple expert witnesses. He has led case teams providing consulting support throughout all stages of litigation, from the pre-complaint phase through trial. He has also presented economic analyses in response to civil investigations and merger reviews to the Department of Justice, the Federal Trade Commission, the Securities and Exchange Commission, and state agencies.

Prior to joining The Brattle Group, Dr. Herscovici was a managing principal at Analysis Group.

EDUCATION

The University of Chicago, Ph.D., M.A., and B.A. in Economics

AREAS OF EXPERTISE

- Antitrust/Competition
- Commercial Damages
- Financial Institutions
- Intellectual Property
- Securities
- Telecommunications and Media
- Valuation

STEVEN HERSCOVICI

EXPERIENCE

Selected Casework

- *United States District Court, Eastern District of Pennsylvania*
Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Company
Economic and statistical analyses supporting four expert witnesses in pharmaceutical antitrust case involving allegations of “product hopping.”
- *United States District Court, District of Minnesota*
Khoday et al. v. Symantec Corp. and Digital River, Inc.
Economic analysis of damages claims involving claims that consumers were misled into purchasing add-on products.
- *United States District Court, Southern District of New York*
The Authors’ Guild, Inc., et al. v. HathiTrust, et al.
Economic analysis of claims that university repository of digital library content infringed on authors’ copyrights.
- *United States District Court, Eastern District of New York*
Drug Mart Pharmacy Corp., et al. v. American Home Products Corp., et al.
Expert Declaration on pharmacy prescription dispensing of brand name pharmaceutical drugs in Robinson-Patman matter.
- *Before the Massachusetts Attorney General’s Office*
Steward Health Care Acquisition of Morton Hospital
Managed economic analysis evaluating competitive effects of hospital acquisition in Greater Boston area.
- *United States District Court, Southern District of New York*
Confidential Matter involving Auction Rate Preferred Securities
Assisted Special Litigation Committee of independent directors of mutual fund evaluating liability and damages claims in action resulting from auction failures in Auction Rate Securities markets.
- *United States District Court, Southern District of New York*
Public Employees’ Retirement System of Mississippi et al v. Merrill Lynch & Co et al
Economic analysis in class action involving claims of misrepresentation of the quality of mortgage-backed securities offerings.
- *In the Court of Appeals for the Fifth Judicial District of Texas*
Dean Foods Company v. Ernest Yates and National Dairy, LLC
Economic Analysis of competitive effects of Non-Compete/Non-Solicitation Agreement.
- *Before The Public Service Commission of Maryland*
In The Matter Of The Current And Future Financial Condition Of Baltimore Gas And Electric Company
Led analysis concerning impact of sale of nuclear generation assets into joint venture on credit ratings.

STEVEN HERSCOVICI

- *United States District Court, Southern District of New York*
NRG Energy, Inc. v. Exelon Corporation and Exelon XChange Corporation
Economic analysis of proxy contests in litigation related to hostile offer.
- *In The Court of Chancery In The State of Delaware*
Rohm and Haas Company v. The Dow Chemical Company and Ramses Acquisition Corp.
Analysis of impact of acquisition on corporate credit ratings.
- *Before The Department of Justice*
Confidential Civil Investigation
Managed economic analysis for music-industry client whose business practices were under investigation by Antitrust Division.
- *United States District Court, District of Maine*
Deborah Boyajian v. Starbucks Corporation
Expert report and statistical analysis of applicant data in age discrimination matter.
- *United States District Court, Southern District of New York*
Discover Financial Services et al. v. Visa U.S.A. Inc. et al.
American Express Travel Related Services Company, Inc. v. Visa U.S.A. Inc. et al.
Managed economic analyses supporting multiple experts in antitrust cases involving monopolization and foreclosure claims.
- *Librarian of Congress, Copyright Royalty Judges*
Adjustment of Rates and Terms for Preexisting Subscription Services and Satellite Digital Radio Services
Deposition and trial testimony in proceeding to determine royalty rate for sound recordings paid by satellite radio services.
- *United States District Court, Central District of California*
Rondor Music International, Inc. et al. v. TVT Records LLC et al.
Managed econometric analysis estimating effect of individual song on album sales in copyright infringement matter.
- *American Arbitration Association*
SESAC, Inc. v. Television Music License Committee
Expert report and testimony involving valuation of music performed on broadcast television.
- *Before The Department of Justice*
Archipelago Holdings, Inc.
Analysis of competitive implications of merger of New York Stock Exchange and Archipelago Holdings.
- *Circuit Court of The 11th Judicial Circuit In And For Miami-Dade County*
TicoFruit, S.A. v. E.I. DuPont de Nemours & Company, Inc.
Managed economic and data analysis in product liability and RICO case brought by Costa Rican orange grower.

STEVEN HERSCOVICI

- *Before The Securities And Exchange Commission And The State of New York*
Securities and Exchange Commission v. Gary L. Pilgrim, Harold J. Baxter, and Pilgrim Baxter and Associates, Ltd.
Estimation of losses to mutual fund shareholders resulting from market timing and excessive short-term trading.
- *United States District Court, Southern District of New York*
MasterCard International Incorporated v. First National Bank of Omaha, Inc.
Expert report and deposition testimony analyzing competition in payment card industry in trademark dispute involving chip-based cards.
- *United States District Court, Eastern District of Missouri*
Frederick L. Sample et al. v. Monsanto Co. et al.
Managed economic and data analyses related to class certification issues in price-fixing case involving genetically modified corn and soybean seeds.
- *United States District Court, Eastern District of New York*
In Re Visa Check/MasterMoney Antitrust Litigation
Managed economic damages analyses and implemented consumer surveys supporting multiple expert witnesses in antitrust tying case.
- *Before The Federal Trade Commission*
P&O Princess Cruises plc
Directed economic analysis of cruise industry, and prepared “white paper” evaluating impact of industry consolidation.
- *Superior Court of California, County of Alameda*
Adam A. Schwartz v. Visa International, Inc., Visa International Service Corp., and MasterCard International Incorporated
Managed economic analysis evaluating claims regarding foreign currency conversion.
- *United States District Court, Western District of Pennsylvania*
SESAC, Inc. v. WPNT, Inc. et al.
Economic analysis of relevant product market in antitrust case involving music licensing on broadcast radio.
- *United States District Court, District of New Jersey*
Masda Corporation v. Empire Comfort Systems, Inc.
Expert report and deposition testimony estimating damages in contract dispute involving termination of exclusive distribution agreement.
- *Before The Environmental Protection Agency*
US Gen New England
Performed benefit-cost analysis evaluating alternative technologies designed to reduce heat and flow discharge of power generating station for compliance with Clean Water Act.

STEVEN HERSCOVICI

- *United States District Court, Eastern District of Pennsylvania*
Whetman et al. v. IKON Office Solutions
Analyzed company 401(k) plan and estimated damages in ERISA litigation involving claims of “touting” and suitability of investment alternatives.
- *United States District Court, Southern District of New York*
United States of America v. Visa USA, Inc., Visa International Service Association, and MasterCard International Incorporated
Managed economic analysis of competition and industry structure in antitrust case in payment card industry.
- *United States District Court, Western District of Pennsylvania*
Allegheny Energy, Inc. v. DQE, Inc.
Managed analysis estimating whether regulatory decisions constituted “material adverse event”.
- *United States District Court, Eastern District of Pennsylvania*
Litigation involving Eastern European bank and information services and technology firm
Estimated lost profits from breach of contract and fraud allegations in support of multiple expert witnesses in matter on behalf of computer software development firm.
- *United States District Court, Southern District of New York*
Virgin Atlantic Airways v. British Airways PLC
Estimated the impact of competition on airfares in antitrust case in airline industry.
- *Commonwealth of Massachusetts, Middlesex Superior Court*
Helen Brown et al. v. Town of Lexington
Expert report and deposition testimony analyzing claims of monopolization and tying cemetery lots to burial enclosures.
- *Commonwealth of Massachusetts, Suffolk Superior Court*
Barbara Montgomery et al. v. Helping Hands
Designed statistical survey to estimate damages in class-action claim for unpaid wages by home health care workers.
- *Before The Federal Trade Commission*
Royal Ahold Supermarket Acquisitions
Prepared white papers submitted to U.S. Federal Trade Commission and state Attorneys General assessing the competitive impact of merger-related divestitures in the food retailing industry.

Selected Business Consulting Assignments

- *Coalition of Recorded Music Interests*
Forecasted growth across multiple distribution channels
- *Major Music Publisher*
Estimated profitability of current catalog and forecasts of royalties.

STEVEN HERSCOVICI

- *International Music and Film Association*
Evaluated methodology and findings of survey designed to estimate the extent of physical piracy of CDs and DVDs in China.
- *Major Music Library Catalog*
Estimated extent of use of production music and music libraries on broadcast television.
- *Broadcast Music, Inc.*
Performed numerous analyses related to determination of statistically valid estimates of broadcast use of copyrighted music.
- *Asbestos Manufacturer*
Performed statistical analyses of asbestos claims settlement data to determine whether client paid disproportionate share of settlement payments.
- *Electricity and Gas Utility*
Performed multiple adverse impact analyses of workforce reductions in advance of restructurings.
- *Long-Term Care Facility*
Performed review of wage structure of nursing staff to assist at nursing home experiencing high employee turnover

PRIOR TESTIMONY

- **Devi Khoday and Danise Townsend v. Symantec Corp. and Digital River, Inc.**
United States District Court, District of Minnesota
Deposition testimony concerning damages involving claims of unfair competition
- **In the Matter of Adjustment of Rates and Terms for Preexisting Subscription Services and Satellite Digital Radio Services**
Before the Copyright Royalty Judges, Librarian of Congress
Deposition and trial testimony in proceeding to determine royalty rate for music broadcast on satellite radio services
- **SESAC Inc. v. Television Music License Committee**
American Arbitration Association
Testimony involving valuation of music performed on broadcast television
- **MasterCard International Incorporated v. First National Bank of Omaha, Inc.**
United States District Court, Southern District New York
Deposition testimony concerning competition in payment card industry
- **Masda Corporation v. Empire Comfort Systems, Inc.**
United States District Court, District of New Jersey
Deposition testimony concerning lost profits in distributor termination case
- **Helen Brown et. al. v. Town of Lexington**
Commonwealth of Massachusetts, Middlesex Superior Court
Deposition testimony concerning market definition and tying allegations

STEVEN HERSCOVICI

PUBLICATIONS

- “An Economic Framework for Analyzing Covenants Not to Compete,” *Expert Witnesses* 7 (Spring/Summer 2011) (with Elaine Fleming and Keith R. Ugone).
- “The Changing Landscape For Credit Ratings,” *Securities Law360* October 18, 2010 (with William J. Chambers).
- “Is Delaware’s Antitakeover Statute Unconstitutional? Further Analysis and a Reply to Symposium Participants,” *The Business Lawyer* 65 (May 2010) 799-808 (with Guhan Subramanian and Brian Barbetta).
- “Is Delaware’s Antitakeover Statute Unconstitutional? Evidence from 1988-2008,” *The Business Lawyer* 65 (May 2010) 685-752 (with Guhan Subramanian and Brian Barbetta).
- “Getting the Most out of Your Experts,” *Expert Alert* 4 (Summer/Fall 2007) 1,4-6 (with Pierre Y. Cremieux and Elizabeth A. Eccher). Reprinted in *PP&D [Pretrial Practice & Discovery]* 16 (Fall 2007) 12-14.
- “Assessing Conflict, Impact, and Common Methods of Proof in Intermediate Indirect-Purchaser Class Action Litigation,” *Economics Committee Newsletter* 6 (Spring 2006) 4-10 (with Pierre Y. Cremieux, Adam Decter, and Robert Mascola).
- “Migration and Economic Mobility: Wealth Accumulation and Occupational Change Among Antebellum Migrants and Persisters,” *Journal of Economic History* 58 (December 1998) 927-956.
- “Distribution of Wealth,” in N.L. Shumsky (Ed.) *The Encyclopedia of Urban America: The Cities and Suburbs*. (Santa Barbara, Calif.: ABC-CLIO), 1998.
- “Progress Amid Poverty: Economic Opportunity in Antebellum Newburyport,” *Journal of Economic History* 57 (June 1997) 484-488.
- “Ethnic Differences in School Attendance in Antebellum Massachusetts: Evidence from Newburyport, 1850–1860,” *Social Science History* 18 (Winter 1994) 471-496.
- “The Distribution of Wealth in Nineteenth Century Boston: Inequality Among Natives and Immigrants, 1860,” *Explorations in Economic History* 30 (July 1993) 321-335.

OTHER PUBLICATIONS, PRESENTATIONS, AND PROFESSIONAL AFFILIATIONS

- “How to Excel in Complex Cases Involving a Large Number of Documents and Multiple Experts,” SEAK 22nd Annual National Expert Witness Conference, April 28, 2013.
- “Credit Rating Agencies and the Credit Crisis: What Securities Attorneys Need to Know,” Webinar Presentation, April 13, 2010 (with William Chambers).
- Referee, *Antitrust Law Journal*, *B.E. Journal of Economic Analysis & Policy*, *Economic History Review*, *Social Science History*.
- Member, Editorial Advisory Board, *Competition Law360* (2009).

JS 44 (Rev. 11/15) Revised 03/16

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS M.C. DEAN, INC., a Virginia corporation

DEFENDANTS CITY OF MIAMI BEACH, FLORIDA AND INTERNATIONAL BROTHERHOOD OF

(b) County of Residence of First Listed Plaintiff Loudoun, VA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Balch & Bingham LLP, 841 Prudential Drive, Suite 1400, Jacksonville, FL 32207, (904) 348-6862

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

- | | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY - Product Liability <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 424 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence Other: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment 8 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE _____ DOCKET NUMBER _____

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

VII. CAUSE OF ACTION 18 U.S.C. § 1836 Fla. Stat. § 688.001
 LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** 75,001.00 **CHECK YES only if demanded in complaint:** **JURY DEMAND:** Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
 DATE May 16, 2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Jeffrey S. York

FOR OFFICE USE ONLY
 RECEIPT # _____ AMOUNT _____ IFP _____ JUDGE _____ MAG JUDGE _____