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LITIGATION

Trade secrets trial between benefits companies kicks off

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SANTA ANA — Opening statements began Friday in an Orange County Superior Court case pitting a pension benefit company against seven former brokers and support staff it accuses of stealing trade secrets.

Four employees formerly of Pension & Benefit Insurance Services Inc. left the company in 2013 to create Irvine-based Benefit Compass. Pension & Benefit sued the company later that year, claiming that the four former employees - along with three others who joined the company later - had stolen property, deleted computer data regarding clients, and solicited Pension & Benefit clients and transferred them to Benefit Compass. *Pension & Benefit Services Inc v. Benefit Compass et al.*, 00649775, (O.C. Super. Ct., filed May 15, 2013).

Pension & Benefit was founded in the 1980s by Adam DeVone and a partner who is no longer with the company. Both it and Benefit Compass help employers find health insurance and benefits for their employees.

The crux of the dispute is whether the defendants are employees or independent contractors. The plaintiff submitted evidence illustrating that they are employees, while the defense maintains they are independent contractors. Also at issue is whether the defendants involved in sales did the right thing in telling their clients they were leaving and soliciting their business before they actually left the plaintiff company.

In opening statements Friday, Randall E. Kay of Jones Day, lead counsel for the

plaintiff, painted a picture of DeVone as the leader of the company, a mentor and instrumental in client development. He portrayed the seven defendants as betraying DeVone's loyalty, after he trained and guided them, when they conspired to strike out on their own and take clients with them while still part of his company.

"DeVone trained and mentored all the defendants and rewarded them with substantial compensation, some more than \$100,000 a year," Kay said. "They took more than 50 clients without notice before leaving and would say, 'Don't tell DeVone.'"

Kay also accused the defendants of stealing trade secrets, including past client proposals, past renewal information and benefit summaries. He told the jury he would be calling an expert witness, among others, to quantify the value of the loss to Pension & Benefit after the defendants took more than 50 clients.

Bradley A. Chapin of Rutan & Tucker LLP, lead counsel for the defense, countered that the seven defendants, as independent contractors, were free to leave the plaintiff company whenever they wanted to, but felt compelled to do so on May 2, 2013 because of the "toxic" work environment and to preserve their livelihood after being threatened by DeVone with a second company he opened across the street. This company, Benefits Exchange Alliance, which opened in 2010 with some former Pension & Benefit brokers, operated in the same vein as Pension & Benefit and Benefit Compass. Chapin told the jury that DeVone opened this company to directly compete with the four primary defendants who left

to form Benefit Compass.

"They felt they had to leave and had to leave in a way they did because he was threatening their business," Chapin said. "The act of notifying clients beforehand was not devious or underhanded."

Chapin told the jury that all of the defendants involved in sales gave their clients a choice to either come with them to Benefit Compass or stay with Pension & Benefit, and that some clients elected to stay with Pension & Benefit. He also denied that any of the defendants sold any trade secrets, saying that there was nothing secretive, just confidential, among the documents that were taken.

He likened the scenario at Pension & Benefit to a hair salon where stylists tell their customers they're moving on before they leave because they've established solid relationships with their customers.

Five of the defendants have also filed a cross complaint against the plaintiff — along with Benefits Exchange Alliance and DeVone, the sole shareholder of the plaintiff company — alleging defamation and unfair business practices, among other claims. They are seeking a minimum of \$75,000 in damages, along with commission checks from April 2013, the month before they left, which they claim to have not yet received.

Judge Ronald L. Bauer is presiding over the trial, which will resume on Tuesday and is expected to last about two weeks. All seven defendants still work at Benefit Compass, except one who has since moved on. The plaintiff company is seeking an unspecified amount in damages, including punitive.