

# Conn. Justices Send Trade Secrets Row Back To Trial Court

By Brian Steele

*Law360* (July 2, 2024, 7:41 PM EDT) -- The Connecticut Supreme Court ordered a "limited" new trial Tuesday in a trade secrets case that pit Dur-A-Flex Inc. against numerous companies tied to research chemist Samet Dy, its former employee, finding error in the lower court's rulings on issues including damages and the enforceability of Dy's noncompete agreement.

The justices issued two opinions covering three cases arising from Dy's work with alleged competitors of the East Hartford-based plaintiff, which produces and sells flooring systems and polymer component materials. In a 91-page opinion, the court reversed findings that Dy's business associate Stephen Lipman and two companies misappropriated trade secrets, as well as a ruling that Dy's noncompete agreement was invalid because it lacked adequate consideration, sending those issues back to the lower court for further proceedings.

The justices said the trial court erred in finding that Dur-A-Flex didn't have to show that Lipman and, by extension, competitors Durafloor and ProRez, knew about the trade secrets in order to support a claim under the Connecticut Uniform Trade Secrets Act.

"The judgment as to those defendants must therefore be reversed and the case remanded to the trial court for a new trial limited to the issue of whether they had knowledge of the plaintiff's trade secrets and, if so, whether they used that knowledge to develop or to manufacture ProKrete and ProSpartic," the opinion said, naming two of the products at issue.

Dy assisted in developing products for Dur-A-Flex, including a cementitious urethane floor coating known as Poly-Crete, the company said in its appeal brief. He resigned in January 2013, but before leaving, he incorporated his own business, A&E ProCoat LLC, and built a lab where he developed formulas and marketed products to compete with Dur-A-Flex, the company alleged.

Indue Sales and Service Inc. heard that Dy was available for consultation work on cementitious urethane and hired him in August 2013; the chemist ultimately developed a product known as Indue-Crete, according to Dur-A-Flex.

In February 2014, Dy and A&E started using Merrifield Paint Co. Inc.'s facility in Rocky Hill for production. A&E ceased operations that November, turning over its product lines to an entity run by Lipman called A&E ProCoat North America LLC, which is now ProRez Performance Resins & Coatings LLC, Dur-A-Flex said.

Dur-A-Flex sued Dy and the competitors in March 2014, claiming that he had violated his noncompete agreement. A judge in Hartford Superior Court later held that Samet Dy, his nephew and employee Auttdomm "Josh" Dy, Lipman, Durafloor and ProRez had misappropriated the Poly-Crete formula to create ProKrete and another technology used in ProSpartic, but declined to find Indue liable for misappropriation.

Dur-A-Flex argued that the lower court was wrong to find that Indue achieved faster development of its product because of stolen trade secrets, but it was not liable for misappropriation because it didn't actually "use" the secrets.

The state Supreme Court transferred the appeal to itself, taking it out of the intermediate-level Connecticut Appellate Court in April 2023.

The justices held that the ruling was not clearly erroneous, noting that Indue's product contained six ingredients

that Dur-A-Flex's did not, "Samet provided seven formulas to Indue that did not meet its special requirements before creating one that worked," the products performed differently, and other facts that showed his knowledge of the Dur-A-Flex formula "was not a substantial, contributing factor" to the development of Indue's product. The lower court in April 2021 awarded a total of \$2.64 million in damages for unjust enrichment to Dur-A-Flex. Some of the defendants who were ordered to pay damages challenged that ruling and an injunction on using the trade secrets at issue.

The high court agreed with the defendants "that the trial court appears to have been confused about how the 'head start' and 'acceleration' concepts apply to the crafting of relief for misappropriation claims," remanding the issue but keeping the injunction in place.

"The trial court also appears to have incorrectly believed that, if a defendant uses a trade secret to get a head start on the development of a new product, the court can award damages, even if the head start was not substantial," the opinion said. "If Samet did not use a substantial portion of the plaintiff's trade secrets to substantially accelerate his development of Indu-Crete, he should not be liable for use of the trade secrets."

The lower court also held that Engineered Coatings Inc. and its vice president Christopher Krone, which helped with testing Dy's products, were not liable for misappropriation or civil conspiracy, and neither was Merrifield. The justices kept those rulings intact.

The state high court's second opinion on Tuesday addressed the dismissal of similar noncompete claims Dur-A-Flex brought against Dy over his consulting arrangement with Crown Polymers Corp. and American Polymers Corp. The justices said the outcome on remand of the first case, which they referred to as Dur-A-Flex 1, is binding on Dur-A-Flex II.

In a joint statement emailed to Law360, attorneys for Lipman said the decision exonerated their client.

"It makes clear that if you do not have actual knowledge of someone's trade secret, then you could not possibly have misappropriated it. Mr. Lipman and his company developed a quality product. The plaintiff was trying to use the trade secrets statute to stifle legitimate competition," said Jonathan M. Shapiro of Aeton Law Partners and Proloy K. Das of FordHarrison.

Joseph G. Fortner Jr. of Halloran & Sage LLP, representing Indue, told Law360 in an email that his client was pleased with the Dur-A-Flex I decision.

Counsel for the other parties did not immediately respond to requests for comment.

Dur-A-Flex is represented by Lawrence G. Rosenthal and Michael D. Blumberg.

Indue is represented by Daniel J. Krisch, Joseph G. Fortner Jr. and Jennifer A. Pedevillano of Halloran & Sage LLP. Engineered Coatings Inc. and Krone are represented by Jonathan M. Shapiro of Aeton Law Partners LLP.

Merrifield is represented by Jonathan M. Shapiro of Aeton Law Partners LLP and Jeffrey O. McDonald and Raymond M. Hassett of Hassett & George PC.

ProRez, Durafloor and Lipman are represented by Proloy K. Das of FordHarrison LLP and Jonathan M. Shapiro of Aeton Law Partners LLP.

The cases are Dur-A-Flex Inc. v. Samet Dy et al., case number SC 20821; Dur-A-Flex Inc. v. Samet Dy et al., case number SC 20822; and Dur-A-Flex Inc. v. Samet Dy et al., case number SC 20823, all in the Connecticut Supreme Court.

--Editing by Patrick Reagan.

*Update: This article was updated to include comment from counsel for Lipman.*