

## Trade Secrets Case Involving Atul Gawande's Company Raises a Key Question: Who Counts as a Threat?

Related People:

Hugh F. Murray, III

STAT, The Boston Globe

01.25.2019

Health services company Optum has filed a lawsuit accusing former employee David W. Smith of stealing trade secrets on behalf of his new employer—a health venture formed by Amazon, Berkshire Hathaway, and JPMorgan Chase & Co and headed by Atul Gawande, MD, MPH.

Smith, a former midlevel strategy consultant at Optum, has since claimed that he never met the company's CEO, was not part of its senior leadership team, and did not have the authority to make independent decisions regarding corporate strategy or product portfolios.

His new employer, referred to as ABC in legal documents, is an emerging competitor that seeks to transform business practices in the health care industry. Two companies leading the joint venture, JPMorgan and Berkshire Hathaway, are currently clients of Optum. As a result, the company's lawyers have stated that ABC is an imminent threat to Optum's business. Ultimately, the court will need to decide if Smith is a threat to Optum.

McCarter partner and employment law specialist Hugh Murray commented, "Given the potential threat that ABC may pose to more traditional health insurers, I would expect that many will fight back in the manner that Optum has here, to at least slow down the disruption as they take other steps to meet it in the marketplace."

Murray also noted that companies sue former employees somewhat regularly, "usually when the initial employer has real evidence that the employee has taken important information or when there is some bad blood either between the employer and the employee or between the employer and the competitor."

Although high-level employees generally have access to more confidential company information, Murray noted that lower-level employees could pose a threat if they have relationships with key clients. "The right way to do it is looking at what actually is the threat," he said. "You're not going to spend the time, energy, and money unless there's a real threat."