Trade Secret Law Evolution Podcast

Episode 59

Greenberg Traurig, LLP

Speaker 1 (00:00):

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Jordan Grotzinger (00:18):

Welcome to the Trade Secret Law Evolution Podcast, where we give you comprehensive summaries and takeaways on the latest developments and trends in trade secret law. We want you to stay current and ahead of the curve when it comes to protecting your company's most valuable assets. I'm your host, Jordan Grotzinger.

(00:38):

Hello, everybody. We are on episode 59 and we have a really special guest today. As you know, our bread and butter content is developments and case law, although last week we had an interesting general counsel who shared a great story about a criminal case. This week we have a distinguished federal judge who is willing to sit down and talk with us about his approach to these cases, because if you litigate these cases as a party or a lawyer, there's plenty of law out there and plenty of guidance, but there are just some things that arise a lot and you wonder how a judge would deal with them and maybe there's not so much law on a particular problem. We're going to talk about problems where there is a lot of law and some where there's not. And with that, I would like to introduce our guest, Judge William Young, who is a United States District Court Judge out of the District of Massachusetts.

(01:44):

His brief history, and I could talk for a long time on this because it is so distinguished, he is a graduate of Harvard University, Harvard Law School. He was nominated by President Reagan in 1985 and confirmed the same year. He served as Chief Judge of the District of Massachusetts from 1999 to 2005 and assumed Senior status on July 1st, 2021. Co-hosting with me is a partner of mine in our Boston office who has joined us before, Gregory Bombard. Hello to both of you and Judge Young, welcome and thank you so much for appearing today.

Judge Young (02:26):

Well, thank you for inviting me. I am bound to say, and you'll understand this, I still am a Sitting District judge, so while I really jump at this opportunity to share my views as candidly as I can and to engage in legal education, you'll understand that my appearance is in no way an endorsement of any particular firm or any particular approach here. And I guess I should reserve my right, as I say in the crucible of litigation, to do exactly the opposite of anything I say this afternoon should the circumstances warrant. But I'm very grateful that you asked me and I will try to be as candid and direct as I can.

Jordan Grotzinger (03:27):

Thank you very much. That is all understandable and all rights reserved, absolutely. Let's just jump right in. The first issue is an issue that is probably the most common issue in trade secret law and that is the identification of trade secrets. Greg, you want to jump in on this one?

Gregory Bombard (03:48):

Sure. And again, let me just echo what Jordan said, Your Honor. It's great to have you here on our little podcast. When you spoke on a panel at the Global IP Strategy Hub's Trade Secret Litigation Conference in September, you said that a party bringing a trade secret claim should be able to identify the trade secret with, quote, "similar particularity as a patent claim and with exquisite detail." And that may be a reference to identifying a trade secret at or close to the time of a trial. But I thought it would be interesting to talk about this issue as it arises in the different phases of a case. At pleading stage, generally speaking, the plaintiff has to identify a trade secret with reasonable particularity and we're curious, how would you describe your approach to this trade secret identification issue at the pleading stage? Is it different than the party's burden of proof?

Judge Young (04:52):

Well, actually my approach, it's no different at all, and I use those words. I say I want a list that can be subject to a protective order, but I want a list of the trade secrets here described with the particularity, the exquisite detail of a patent claim. But of course, that goes further than what the law actually requires, so I'm puffing a bit there. It does not in any way infringe upon the trade secret holder's right unto the law, but I really seek to have the plaintiff in such a case concentrate their mind. Frequently, you get the most vague claims. They think there's been some inequitable conduct here. And they throw in a trade secret claim and they hope they can justify it by discovery.

(05:58):

I'm not for that, so I'm pressing them for detail. I don't make it more rigorous during the course of the workup to trial. About the next time that I revisit it is the final pretrial conference. It does not narrow the plaintiff's ability to get discovery so long as it has something to do with the trade secret that's been identified. But at the time of the final pretrial conference, I really am going to be interested in what we're going to prove here at the trial because my focus then is on how is this going to be explained to the jury.

Jordan Grotzinger (06:50):

Your Honor, you talked about the common scenario where a plaintiff, you used the words throw in a trade secret claim, and kind of expects to put the meat on the bone, so to speak, through discovery. I'm a California practitioner and under California state law, under our Uniform Trade Secrets Act, there's a section that says if a plaintiff doesn't adequately identify a trade secret at pleadings, it's not entitled to discovery. And there are frequently fights, if you only have a California State Court claim as opposed to a Defend Trade Secrets Act claim, that, "Your definition, Plaintiff, wasn't specific enough. And so we're not going to give you discovery on that. You've got to identify the trade secret more specifically." Have you addressed that issue with the rigor that you apply throughout the case where you see a pled definition or a pled trade secret in a complaint which you think is vague, have you ever addressed the issue of is this enough to justify discovery on this claim?

Judge Young (08:08):

Yes, I have.

Jordan Grotzinger (08:10):

How have you done so?

Judge Young (08:15):

The best way I can explain it is having been rigorous, at least in my language, when I first addressed the issue at the initial case management scheduling conference, if I get disputes during the course of discovery, it turns out that I am probably more liberal in allowing discovery than the harsh words that I use at the outset. Again, it's all, in my mind, a matter of common sense. Because the rules expressly require this, it requires proportionality, but I probably am not as rigorous as the image I am trying to convey because what I'm trying to do is focus the plaintiff's mind.

(09:24):

If they say, "Well, it's our mechanism for applying this particular veneer," well, I won't get it because I don't know what that is. So they're going to have to do better than that. But if the other side says, "I won't give discovery," I should say, I'm not one that refers things to magistrate judges. I think I should handle my own discovery and my own case management workup because you get a feel for the parties and you can pretty quickly dope out who's acting like an idiot. And I have very short shrift for that. So I am looking for a practical, common sense, and, of course, fair approach to it.

Jordan Grotzinger (10:18):

Judge Young, it's interesting to hear that you keep your discovery disputes because in my more limited experience these days, you tend to see magistrates taking over. But I just have a question about how you balance the need for particularity with the need for discovery to fill in the claim. Would you say that if you get, I suppose the logical conclusion of what you're saying is if at pleadings a definition or a pled trade secret is too vague, you would handle that by perhaps granting a motion to dismiss with leave to amend? But if it reaches a certain-

Judge Young (11:06):

That's precisely right. That would be the way I would address it. I should say, well, first of all, let me speak to this issue of referring things to magistrates. It's been my great good fortune over all my federal judicial career to work with really outstanding magistrates. So what I say is, in no way feeling uncomfortable about working with a magistrate, I'm not. But I think that to use a magistrate slows everything down. One of my techniques, if the plaintiff has been aggressive enough to seek a preliminary injunction, I uniformly combine that with trial on the merits and say, "Well, when do you want to try it?" And they say, "Well, Judge, now, now, we need discovery here." And I say, "Well, you've come into court. You say that the western civilization is in peril here unless I give you a court order. And maybe you're entitled to it, but to get there, you're going to have to produce evidence--." "Well, look at our affidavits, Judge." And I say, "Well, I really like cross-examination." So I would say, "What, you're ready next week?" And of course I'm bluffing to a certain extent, but I always try to keep a little reserve. If it's jury waived, I could fit it in in an afternoon while we are going ahead. And that same, let's drive on to trial attitude, well, it comes from the fact that I was a state judge before I was a federal judge. I didn't have magistrates. I mean, I didn't have law clerks, so I had to get the case ready for trial.

(13:06):

If then the parties say, "Well, we'll consent to a magistrate, Judge," I would say, "Oh, that's nice, fine, I love that." And then they off go to a magistrate judge for a trial. But to go back and forth on reports and recommendations and the like, those are things I should be able to do and I try to do it and make the

trial the goal. I frequently say to counsel, "But this is a trial court. That's why you came here. And my job is to give you a trial." Let's be really honest. We're too slow in the federal courts. We are vastly too expensive. And the best way to cut those things down is to get to trial. Trial focuses the minds. And this business about the confidential trade secret list in such a case, also focuses the mind, and that's what I'm trying to do.

Jordan Grotzinger (14:20):

We know you have strong views on the speed of judicial proceedings and it's one of the subjects we want to talk about a little more. But first, the particularity issue that we've been discussing tends to raise another set of problems. One, that I've not seen a lot of helpful explanatory case law on this, and the problems involve the logistics of sharing trade secret information with the court to prove that you actually have a secret while protecting the trade secret from the public and to some extent the other side. And we know that courts have broad discretion to fashion protective orders and similar measures to address this issue. But I'm curious, given what I've seen as sort of a dearth of case law on this, I'm curious about how, one, at what stages of a case have you had to address this issue, for example, pleading, summary judgment, and two, how have you done it?

Judge Young (15:30):

Primarily, I try to avoid those issues and if they are not resolved by the parties, they tend to get resolved at the time of the final pretrial conference and ultimately at the trial. So does that mean I pay no attention to it earlier on in the case and during discovery? No. Most counsel today are quite eager to engage in a protective order with the other side, and they should be. The rules encourage us to vindicate protective orders, for instance, if they have clawback provisions and the like. And so routinely, we get Assented to Motions for a protective order.

(16:34):

And the problem with those motions, because at their core, at the true trade secret, I fully agree that I am bound to protect the intellectual property of its owner, but of course, that's not what the parties do. They agree upon a broad protective order that allows them freely to exchange documents. I favor that. And they have a whole gradation, "We'll mark this confidential and we'll mark this super confidential," and the like. And, if it's assented to, I routinely sign off on those as modified. And the modification is this. Don't file anything in court, anything in court, pursuant to this protective order, and don't ever cite it as a grounds for sealing. I don't want to clutter up the filings in the courts with sealed documents. I think we do that far too often.

(17:46):

And so that's my typical modification. And that largely means I've kicked the can down the road to the final pretrial conference where now we are past summary judgment. Well, no, it'll come up in summary judgment because they say, "Well, we'll just redact everything and we'll file our motions for summary judgment. You, of course, Judge, you'll get the pure full document." And to that I say, "Well, I'm going to read the redacted document and only if I can't figure things out on the redacted document, and usually I can, so you figure out some circumlocution to explain to me why this side or that side ought to get summary judgment." And usually they can because I'm serious about not reading the unredacted matter.

(18:56):

For instance, they'll start out by saying, "Well, we'll seal the brief because the brief mentions confidential data." And I'll say, "Well, no, then I won't read the brief." "Well, we'll seal the page or the

paragraph." And about at the time I get down to, "We'll seal the formula," I say, "Fine. And then you can explain blue." And blue is the code for the formula. And usually, since summary judgment is not an evaluation of evidence, rather it is an application of the law to undisputed evidence, I can apply the law. That's what I want them to talk about.

(19:44):

Then when we get to the final pretrial conference, there's a whole series of more modest steps that will protect a true trade secret from being destroyed by it being made public. One will be, and I don't like redaction in pleadings, briefs, affidavits, things that are going to go on the docket, but I am willing, for instance, if it is a jury waived case, it's easier, because I'm willing to take an exhibit that has the confidential, the true trade secret data in it, and then that exhibit does not go on the docket and it is in the possession of the court only so long as is necessary to decide the case and issue the opinion.

(20:54):

I don't redact anything out of opinions unless I can get around it. But I will try to, if I come to be convinced there's a trade secret, I'm not going to destroy the trade secret in my opinion. But so long as I make a record that I can be fully reviewed by a higher court, I will, explaining myself as best I can, preserve the trade secret. Now if it's a jury case, again, I can circulate exhibits, give proper charges to the jury and circulate what purports to be the trade secret to the jury. I have closed the courtroom. It's very rare and then it's only so a witness can say what we would have been referring to by the code word blue and I'll seal that portion of the transcript. I'm comfortable with that. We seal things in the criminal law all the time, cooperating witnesses and the like. There's a cooperation agreement. We'll seal that. And I have a very fine staff and they are right on top of that. But I'm always working to have the most public trial that I can.

Jordan Grotzinger (22:20):

Well, I see that you tend to answer our questions before we ask them. That's a very robust answer. And I don't know, Greg, if you have another question about this subject or if you want to jump to the next subject.

Gregory Bombard (22:31):

I did, a follow-up question occurred to me, Judge. Have you dealt with the issue where the dispute is over a party's access to confidential information or allegedly confidential information? And the way this comes up, seemingly with more frequency recently, is you have a plaintiff files a complaint with enough particularity to get past a rule 12(b)(6) motion and they promise, "Well, we're going to give you a trade secret list in discovery. We'll articulate. Of course these things are all secret, the formula is secret, so we can't put the secret on the public docket, but we'll give it to you in our trade secret list, but then we're going to mark that at the highest level possible, super, super-duper secret, double super secret, under the protective order." And so now the defendant, often an individual, or a corporate defendant who's been accused of misappropriation through an employee, that defendant is themselves unable to see what has been identified as the trade secret.

(23:39):

And you can see why from a plaintiff's perspective why this makes sense. "This is my confidential information. Yes, I've accused you of taking it, but I don't want to give you a roadmap to what I think to be my crown jewels." But from a defense perspective, there's just practical issues with advising a client or working with a client about challenging the trade secret with. If the lawyers don't know what it is,

who better than the accused misappropriator to look at the trade secret list and give an opinion to counsel about why it's not a trade secret? Have you dealt with this issue and I'm curious?

Judge Young (24:13):

Yes. And I largely depend on defense counsel. In other words, I try to be understanding of the problems that creates for defense counsel in advising their client, but the burden is somewhat on them. If it seems to be, from first glance, a genuine trade secret, I mean, I look at the list and for instance, if the list is adequately detailed, counsel no doubt will do a patent search and they will do various other searches. And so I will be asking defense counsel questions like, "Well, can you and why can't you advise your client. Assuming your client has told you what they know or don't know, you'll be in a position to evaluate that against the claimed trade secret which you, defense counsel, have been made privy." It's case specific and fact specific. I don't have a view that the defendant should always see the trade secret, or contrary wise, should never see it.

Gregory Bombard (25:46):

Moving on to another topic that we know you have opinions about, is the idea of arbitration versus trial. And you've written on this issue in a recent opinion. Well, you've written on this issue in a 2018 opinion and you included a very thorough discussion of your views, one of which had to do with whether arbitration is less expensive than federal court litigation. And you said in that opinion that it's a myth to think that arbitration is cheaper than a focused, well-conducted, federal trial. Why is that?

Judge Young (26:32):

Well, because those are the facts. The reason I went beyond deciding the particular case, that was a case where there was a very interesting but rather involved arbitration clause which contemplated action by the court on the preliminary injunction, if any there be, but sent the rest of it to arbitration, if I recall the case correctly. And so compliant with what I think is the controlling law... Let me stop and give a parenthetical and candidly state a bias which does not, by candidly stating it, that's a way not to be affected by it because it's my duty to apply the law the way the higher courts have decreed it. And it's very clear that in the consumer and employment area, the Supreme Court of the United States has bought, the majority anyway, has bought into these mandatory arbitration clauses. And my bias is I think those are unfair and have actually twisted the federal arbitration act out of its intended purpose.

(28:02):

But my decisions scrupulously follow the law. I try in every case to do that, but not praising myself. Let's go now to a situation where you have corporate clients advised by counsel and they've negotiated an arbitration clause. I have no problem with that. But, and I guess my feelings about what I see in the marketplace are expressed in the opinion to which, the name of the case is Cellinfo versus American Tower, and I pointed out that if you have a three person arbitration, then taking that case to arbitration, where you have to pay the arbitrator's fees and arbitration is becoming more like litigation every year. The arbitrators, who are probably skilled attorneys, are looking to fairly adjudicate a complex matter and so they issue discovery orders and various things which they can't enforce, but then you get the litigation in court to enforce the arbitrator's order that you do this and that. The fact is simply true that it is, and I'm the first person to say that, that we in the federal courts are vastly too expensive. The best way to counter that is get the case promptly to trial.

(29:45):

But putting that aside, the data show, and I cite it, I didn't say it simply to have something to say, the data all support that the expense is roughly comparable and frequently the federal courts are much, and

I say this, much less expensive than arbitration if you can get the case to trial rapidly. Now that's the second point. Federal courts can get cases to trial rapidly. Now there are a few courts that are so terribly overburdened that there are delays that are unconscionable, but most federal courts today, we're up in terms of cases actually being tried to pre-pandemic levels. And if you can get a case to trial within a year, you've really cut down the party's expense.

(30:52):

And a great deal of my practice has been to experiment with ways to cut down those delays. One way is, in terms of working cases, even complex cases up for trial, is to handle the case remotely until the final pretrial conference stage. And I offer other jurisdictions that are jammed up to sit as a visiting judge without ever leaving Boston and working the case up for trial. It's a great deal of fun and we ought to do more of it. So the myth that arbitration is cheaper and faster is just a myth. Those two criteria need not be the case.

(31:47):

The other advantage to arbitration, and for knowing clients who choose arbitration, this is fine. Arbitration can be confidential and the only thing that ever gets on the public docket is the arbitrator's award and the motion to confirm it or the opposition to that motion. If you want confidentiality for your business, arbitrators will give it to you. And I mean, that's what was agreed and you're paying them, so of course they will do what collectively and fairly. I don't think arbitrators are, there's studies in consumer arbitration that there's this repeat player effect and the arbitrator wants to be hired by the corporation and earn money from the corporation and the like. I mean, consumer arbitration is so unfair that the American Arbitration Association won't do it. So we're not talking about consumer arbitration now. We're talking about clients who are counseled and choose arbitration. That's fine. I just want to be as good as arbitrators.

Jordan Grotzinger (33:01):

I'm very glad you said this and it's powerful coming from a distinguished judge like you because-

Judge Young (33:11):

You keep saying distinguished. I mean, it's a very nice introduction which proves to the audience I'm old.

Jordan Grotzinger (33:21):

My point was going to be that to the extent it is a myth, and you've made a very compelling case that it's a myth to think that arbitration is cheaper or faster. It's good to hear you say all this because from my view, it is a pretty ubiquitous myth. I mean, everybody still seems to say that. "Well, arbitration's faster, arbitration's generally cheaper. That's why we generally want to enforce our arbitration clause if we have it." Those are always the two arguments. So it's refreshing to hear a judge give these views.

Judge Young (34:01):

Well, I need to be accurate. One person arbitration on balance is cheaper. My point was three person arbitration is comparable if not more expensive. That's what the data show.

Jordan Grotzinger (34:17):

Fair enough. Last question on arbitration. Do your views on trial versus arbitration apply differently or more strongly in trade secret cases?

Judge Young (34:26):

No.

Jordan Grotzinger (34:27):

Okay.

Judge Young (34:27):

No.

Jordan Grotzinger (34:28):

Greg, you want to go over some practice tips?

Gregory Bombard (34:31):

Sure. So practice tips. You have been a federal judge since 1985. You were a state court judge before that. You have a raft of experience. And have you, over that time, seen any trends in trade secret litigation? For example, how do cases today compare to cases, say, 10 years ago or even 20 years ago?

Judge Young (35:03):

Well, the trends I've seen, remember, I'm a district judge, so I'm a generalist and you say, have I seen trends in trade secret litigation? And the honest answer is I'm going to respond by pointing out some trends, but they are not particularly applicable to trade secret litigation. They apply equally to trade secret litigation, but they are not case specific. And so just as a general matter, I've been sitting long enough to predate the Supreme Court's determination of the summary judgment trilogy, which really changed the view of the Bar and jurists as to summary judgment. I am one who, I follow the law exactly the way it is set out, but there is the tendency, and I'm not criticizing my colleagues, but there is the tendency in these complex cases where you have a massive summary judgment, both motion and opposition, to conflate the separate duties that are involved in any litigation, whether it's jury or jury waived.

(36:57):

And the separate duties, and they are separate though there are mixed issues, one is fact finding and the other is law ruling. Summary judgment deals only with the latter where a judge determines that there are no really, well, language is clear, genuine issues of material facts, and then applies the law. I was taught by the judge for whom I clerked, who was a state judge, a state appellate judge, but this is absolutely right. He says, "We don't find anything." He was a state high court judge. "We rule." And when I get a motion for summary judgment, I hold myself to that standard. So you're drafting or you've got a law clerk who does a first draft and the word find creeps in there. Take a look at the summary judgment jurisprudence. How often courts say, "Oh, well, look at this undisputed evidence. On this, I find that this side wins so that side wins." No, no, no, no. It's not supposed to work that way.

(38:24):

You're supposed to draw all inferences against the moving party. Well, rather than lecture on summary judgment practice, I find that summary judgments are overused, but most district judges would tell you that, even those who are going to find things and resolve the case. Now more recently, of course, there is the Iqbal-Twombly change as to motions to dismiss. So now we get far more motions to dismiss than we had. Both these changes, in my view, are unfortunate, and gin up a lot of useless litigation. If we're

calling this practice tips, I go back to a mentor of mine, a superb judge. He argued six times, I think, before the Supreme Court and never lost a case, Francis H. Fox.

(39:25):

And one of the things Fran Fox told me when I was just starting out is say, you don't want to make a motion to dismiss unless you're really going to knock the case out. If you can really knock it out, then it's worth your client's time and money to make a motion to dismiss. What you do is you raise the issue in your answer and then you let it all sit until the final pretrial conference. That's when the judge wants to get rid of the case. And you say, "Judge, this claim, that's nothing to this claim, broom this claim out." And that's when the judge is most inclined to rule in your favor. And that, in fact, is the case, to rule in your favor.

(40:20):

Now, another practice tip, and this comes from what I have seen is, and we in the judiciary are largely responsible for this. I'm a heretic on this point. What's happened to the litigation Bar or what I will honor by calling the trial Bar, everyone will put their life's blood into the motion for summary judgment. And when that motion is resolved and the judge says, "We're now going to trial," you get people, you have lawyers, sometimes good lawyers, I mean, they're looking at you like deer in the headlights. I mean, "We're going to trial?" And I'm an old trial judge. I like trials. I want to move to trial. But I like them not because they're fun, though they are, another bias, I believe passionately in our jury trial system and our trial system. Put a case to trial and you can make sense out of it. The rules of evidence mean something. So let's apply them to these self-interested statements and the like and sort it all out.

(41:39):

We have the finest justice system of any country in the history of the world and unfortunately we don't honor it as we should. We should be making trials the absolute be all and end all. Well, not end all because frivolous cases ought not go to trial. I believe in summary judgment. I believe in motions to dismiss. I've been reversed by appellate courts for both granting motions to dismiss and granting summary judgment, so I can make mistakes. But making generalizations, I would opt for trial. Let me finish up because I'm running out of time, with something that I am fond of touting. The real division in the courts today, in the judiciary, is not between liberal and conservative, or activist, whatever that means, and non activist. It's between trial judges and managerial judges.

(42:57):

And I just leave you with this. You can have exactly the same case, exactly the same case, and you have a motion and you go before a judge and you argue the motion and you go out in the hall and his lawyers will... The judge takes the motion under advisement. And so you're in the hall and you're talking to your brother counsel and you're wondering what he's going to do. And our listeners know what managerial judges are. The managerial judge, the lawyer will say, "He's trying to figure out how to get rid of this case." Now argue the same motion, exactly the same motion in the same case before a trial judge, and you go out in the hall, judge has taken it under advisement, and the lawyer will say to the other lawyer, "She's wondering what the verdict slip is going to look like." Now, those are overlapping skills, but the skillset is different.

Jordan Grotzinger (44:02):

Well, boy, I feel like I've got a lot more questions and I'd love to have you back. As I explained earlier, Judge Young, for about a year and a half since our CEO gave me this idea, our guest or co-host is invited to say something fun or interesting about themselves that has nothing to do with trade secret law. It

really can be anything. A fun fact, a fun story, really, whatever you want. So please, what do you have to share with us?

Judge Young (44:34):

I want to recite a poem. Let me invite the listeners to come to Boston and visit, I am privileged to sit in courtroom 18. We call that our admiralty courtroom. And in that courtroom, the portrait of the Judge is Peleg Sprague, who was one of the most famous admiralty lawyers of the 19th century. And that's where we have our replica of the Silver Oar of Admiralty from which our court, the District of Massachusetts, is descended. And so just to emphasize, because it's a good story, the breadth of issues that come before the courts, I want to recite a poem by Professor Arthur Sutherland, a professor of constitutional law. He was a clerk to Justice Holmes. And I think it's a good story and perhaps a good way to end, because trial judges have a wide variety.

(45:51):

And so here is a poem. It's called The Ship Blair O. In the days when Cranch and Dallas published wisdom from the courts, the cases told of brave tall ships and sailor men and ports, of gunships and carronades, and cargoes from Brazil that had run the Portuguese blockades. The very names of cases have a music for a man, the brig Penobscot, schooner Jane, the Active and the Ann, the Nancy, the Port Shallot, the names of ships long broken up, and girls long since forgot. But the best of Cranch's stories is about the ship Blair O, with sugar out of Martinique, heavy laden, destined for Bordeaux. She was run down in the channel by a Spanish 64, her bow stove in by the heavy man o' war.

(47:04):

Her stem was sprung, her shrouds undone. She was taking water fast and the Spanish took her people off. All that is but the last, a stupid stubborn fool, a mariner from Ireland by the name of Tom O'Toole. Alone he cut away her bowsprit where it hung like something dead. He cut away her anchors so as to raise the Blair O's head. But the water in the Blair O's hold was three feet deep or more. When there happened by a British ship, the firm with salt from Baltimore, the Britisher of 16 men put six aboard to save the stove Blair O. Six seamen. One was Tom, a slave. Well, they patched the Blair O's stove in bow with canvas and sheet lead. They rove again the heavy shroud from haws to foremast head, and they pumped her hour by weary hour to pace the steady leak and sailed her near 3000 miles to raise the Chesapeake.

(48:35):

Well, now they file their libels and they cite Sir William Scott. The sailors say the French must pay. Their counsel argues not. And in the yellowed pages, you can read John Marshall's rule, that salvage goes to every man, including Tom O'Toole, to black and white, to each his right, old Marshall squarely gave. You see, in salvage, salvage knows no man a slave. You can have your searcharare eyes to administrative boards, United States versus one Chevrolet or 16 Fords. But give me a case in Dallas or one of Cranch's tales, of iron men in wooden ships who went to sea with sails.

(49:35):

Thank you very much. I'm going back on the bench.

Gregory Bombard (49:38):

That was beautiful. Can you just give me the name of that poem one more time, please?

Judge Young (49:43):

Ship Blair O. It's found in a publication put out by Massachusetts Continuing Legal Education called Massachusetts Chowder.

Gregory Bombard (49:56):

Thank you, Judge Young. That was great and we're very grateful.

Judge Young (50:00):

Take care.

Jordan Grotzinger (50:06):

Okay, that's a wrap. Thanks for joining us on this episode of the Trade Secret Law Evolution Podcast. As the law evolves, so will this podcast. So we value your feedback. Let us know how we can be more helpful to you. Send us your questions and comments. You can reach me by email at grotzingerj@gtlaw.com, or on LinkedIn. And if you like what you hear, please spread the word and feel free to review us. Also, please subscribe. We're on Apple Podcasts, Stitcher, Spotify, and other platforms. Thanks, everybody. Until next time.