Thirteen Rules for Inevitable Disclosure Trials

By Bradford P. Lyerla

I suppose that what qualifies me to write about inevitable disclosure is that I have handled several inevitable disclosure cases and taken three to trial as primary trial counsel. This article will be organized as follows: First, I am going to write a little about four of the cases that I have handled. Second, using those experiences, I am going to explain what the inevitable disclosure doctrine is—and explain the two forms that it may take. Third, I am going to give you 13 rules to follow in litigating inevitable disclosure cases.

One of the inevitable disclosure cases I handled recently was *Pepsico v. Redmond*,[1] a well known trade secrets case. Quaker Oats had hired Bill Redmond, a high level Pepsi executive, to run the field operations for Quakers' then newly-combined Gatorade/Snapple business. In response, Pepsi filed an action and obtained an emergency injunction that prevented Redmond, my client,[2] from performing certain duties for Quaker. In issuing the injunction, the trial court reasoned that Redmond knew Pepsi's strategic marketing plan vis-à-vis Gatorade/Snapple and, therefore, could not perform his new duties at Quaker without inevitably using or disclosing that plan. The Court of Appeals affirmed the injunction relying on the two arguments that now are classics in inevitable disclosure litigation, namely, the "playbook" analogy and the compartmentalization argument. (More about those later.)

The second inevitable disclosure case I handled was *Rycoline v. Fuji Hunt*. There, my client Fuji Hunt,[3] a manufacturer of specialty chemicals for the graphical arts industry, hired an engineer who was the head of research and development of a competitor named Rycoline. We settled that case on the eve of a preliminary injunction trial. I will explain why we settled a little later.

Third, I represented AM International in a preliminary injunction trial against IBM. IBM had targeted a small business unit within AM that had responsibility for developing the U.S. market for a unique high speed quality color printer manufactured in Belgium. Over a six-month period, IBM hired six people out of a small group of 11 people within that business unit. AM sued for an injunction alleging that IBM was engaging in corporate raiding.

After four weeks of trial, IBM relented and we made a confidential settlement that vindicated AM's confidentiality agreements, non-compete agreements and trade secrets. It was a very successful lawsuit for AM. It was also a good result for trade secret owners generally, including IBM, which their very perceptive counsel[4] clearly recognized.

Finally, I defended Levant Gun, a former employee of Motorola, and U.S. Robotics, his new employer, in a preliminary injunction proceeding brought by Motorola.[5] Mr. Gun had been Motorola's chief engineer and head of development for Motorola's cable modem product line. U.S. Robotics hired Gun and put him in charge of developing a cable modem product line for U.S. Robotics. In this case, the circuit court judge denied Motorola's request for a preliminary injunction, and I will explain why below.

Now what is the inevitable disclosure doctrine? Very simply, the doctrine authorizes an injunction as a prophylactic to prevent a future misappropriation of trade secrets by a departing employee who is going to work for a business rival. Under the doctrine, an injunction may be available even if the employee signed no noncompete agreement. At its most extreme, the doctrine enables an employer to obtain an emergency injunction based merely on the fact that the departing employee knows trade secrets and his new job will involve the same responsibilities as his old job.

I believe that there are two versions of the doctrine—a strong version and a weak version. Compare the elements:

Strong Version	Weak Version
1. Plaintiff owns trade secrets.	1. Same
2. Plaintiff has disclosed trade secrets to employee in confidence.	2. Same
3. Employee is defecting to a rival.	3. Same
4. Employee will be doing same job for rival as he performed for plaintiff such that employee will inevitably use or disclose plaintiff's trade secrets to discharge new duties for rival company.	4. Same
5. None	5. Overt act imperiling trade secrets or some other explanation for why misappropriation is not speculative.

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Some lawyers contend that in *Pepsico v. Redmond*, the Seventh Circuit adopted the strong form of the doctrine as the law in Illinois. The *Redmond* court relied on that portion of the Illinois Trade Secrets Act (ITSA) that authorizes an emergency injunction to prevent a "threatened" misappropriation of trade secrets.[6]

The weak and strong versions of the inevitable disclosure doctrine may help explain the different results reached by the courts in these cases.

Of course, that provision and its pre-ITSA equivalent had been around a long time. But before *Redmond*, no Illinois court had issued an emergency injunction without a noncompete agreement or evidence that the defendant had acted overtly to imperil his former employer's trade secrets. The inevitable disclosure doctrine had been discussed in two prior Illinois cases, *AMP v. Fleischaker*,[7] and *Teradyne v. Clear Communications*,[8] but in those cases the defendants won.

There were also a few pre-*Redmond* "inevitable disclosure" cases from other jurisdictions. Those few that did exist seemed to involve extraordinary facts, however.[9] In contrast, Redmond's situation was routine and the trade secrets at risk were marketing and distribution plans—which sometimes are not thought to be strong trade secrets. Accordingly, many were surprised by the *Redmond* decision. For example, the judge in the *Motorola v. US Robotics* case criticized the ruling,[10] noting that the federal courts have no authority over the state courts in interpreting state law. As a state court judge, he found the inevitable disclosure doctrine to be repugnant to Illinois public policy because it creates a noncompete agreement without fair warning or adequate consideration to the employee. If an employer in Illinois tried to enforce a noncompete agreement in such circumstances, stated the judge, it would fail.

The weak and strong versions of the inevitable disclosure doctrine may help explain the different results reached by the courts in these cases. Compare *Redmond* with *AMP* and *Teradyne*. In all three cases, the plaintiff alleged the four elements of the strong version. In *Teradyne*, however, the judge was asked if the complaint alleged a claim upon which relief could be granted. He held that it almost did, but something was missing. What was missing it seems was an explanation, beyond speculation, for the plaintiff's belief that disclosure was inevitable. In the absence of such an explanation, the judge dismissed the complaint. He evidently adopted the weaker version of the law in deciding the case.

In *AMP*, the plaintiff made it to the summary judgment stage. It successfully raised genuine issues of material fact on the four elements required by the strong version, but that was not enough to avoid summary judgment. The court required more. It required the plaintiff to have some evidence explaining its conclusion that disclosure would be inevitable. In the absence of such evidence, there was no material issue of fact and the court entered summary judgment against the plaintiff. The AMP court evidently applied the pleading and proof requirements of the weak version.

Ironically, some say that *Redmond* itself may not be a true example of the strong version of the inevitable disclosure doctrine. As some have pointed out, the trial court commented in strong terms on its concerns about Redmond's lack of candor. Such concerns might have enabled Pepsi to satisfy the "something more" requirement of the weak version, had Pepsi tried to do so. But it didn't. And the logic behind the Seventh Circuit's opinion affirming the preliminary injunction is that of the strong version of the doctrine, not the weak version. Therefore, I put *Redmond* squarely in the strong version column.

With that background, let's talk about strategy. I next offer my 13 strategy rules for inevitable disclosure litigation.

Rule One

Know your judge. If you represent a plaintiff, you will want very badly to argue for the strong version of the doctrine. But some judges are uncomfortable with the strong version. Consider arguing for the weak. The weak version may be more palatable to some judges because it is not really new. Actually, it is not much different (if at all) from what the law always has been. The argument goes: "Even if this court does not follow *Redmond*, this defendant's conduct would warrant an injunction in any event under the traditional principles of trade secret law that authorize an injunction based on overt conduct threatening an imminent misappropriation. The court should issue an injunction here because we have shown that such a misappropriation is indeed imminent [and then refer to the defendants' bad conduct, *e.g.*, taking documents, lying, repudiating his confidentiality obligations, etc.]"

Rule Two

Beware of the different pleading standards. If you are a plaintiff and are unclear about the standard of particularity required for pleading, then make very specific allegations to establish the weak version of the doctrine. That is what Pepsi did. After *Teradyne*, it seemed that pleading inevitable disclosure in only a conclusory fashion without more would not be enough. So Pepsi pled that a misappropriation had already occurred. It was sort of a word game. Their theory was that "inevitability" constitutes a misappropriation in the present tense. That is, by accepting a job that would inevitably lead him to use Pepsi trade secrets, Bill Redmond had already committed an act of misappropriation. That theory enabled Pepsi to plead more than the plaintiff had in *Teradyne* and it got Pepsi to the next step, discovery and a preliminary injunction hearing.

Rule Three

A defendant should argue that the strong version of the doctrine is not the law of your jurisdiction. Remember, if the strong version of the doctrine is adopted, then your defenses are VERY limited. Your best argument is: Inevitable disclosure is unfair to employees and contrary to the public policy of your state. There are tens of thousands of employees in your state who have been given access to trade secrets. Unless they have signed a noncompete agreement, they have been given no notice that their future employment opportunities have been limited by virtue of receiving trade secret information. Nor have they received any compensation for limiting their opportunities as they would have if they had agreed to a noncompete contract. Under those circumstances, a court should not create a noncompete where the employer failed to act to protect itself by negotiating for one in the first place. It makes sense for the law to put the burden on the employer. If an employer wants the ability to obtain an emergency injunction, he should negotiate for a noncompete. That is fair to the employee, and not unfair to the employer who has greater resources and can better evaluate and bear the risks of employee mobility.

A second closely related defense argument is that the inevitable disclosure doctrine is unnecessary. The law without the inevitable disclosure doctrine is completely fair to plaintiffs. If a plaintiff can plead and prove an overt threat of misappropriation, then he will get his injunction. That makes sense and it affords all the relief that an aggrieved plaintiff requires. There is simply no need to engraft the inevitable disclosure doctrine onto existing trade secret law, particularly since the doctrine carries with it some risk of authorizing injunctions based on speculation.

Rule Four

Plaintiff must decide whether to offer to pay the defendant. An issue that plaintiff's counsel must address early on is what to do about the defendant if you win an injunction. Specifically, should the plaintiff offer to pay the defendant's salary while the injunction is in effect? Offering to pay the defendant takes away one of the more sympathetic arguments that the defendant has.

My own experience with this has been unenlightening. In the cases that I have handled, Motorola offered to pay the former employee, as did Rycoline. Pepsi did not offer to pay Redmond, at least not that I can recall. Did the offer make a difference in those cases? Not that I could tell.

Rule Five

A defendant should be proactive. Protect yourself before you are sued. I counsel my clients to approach the hiring of a rival's employee very gingerly if the employee is strategically significant. In fact, in every case (including non-compete cases) where I have been made aware of the desire to hire with enough time to do so, I have obtained a lawyer to counsel the new hire about his separation from the rival company. If handled properly, that can make the difference. The lawyer assures that the new hire is candid with the old employer. She assures that the new hire does not solicit other employees or communicate inappropriately with customers. She also assures that the new hire complies completely with the exit interview process and that all sensitive materials are returned to the old employer. Providing counsel to the new hire can avoid a lot of problems.

Rule Six

A defendant should take its time. Ordinarily, the complaint will be served with a motion for a TRO. The client will be screaming for action. Your stress level will spike off the chart in the first few days. Don't worry. Be happy. Take your time. Don't commit to a position too quickly. You may have to take a few lumps early on, but gut it out. Better to let the plaintiff vent for a few days than to commit to a factual position that you will regret later.

Here is another war story from the *Redmond* case. The complaint was filed the Wednesday of the week before Thanksgiving 1994. The judge entered a TRO against Redmond and Quaker that same Wednesday afternoon. That night a very able young lawyer prepared declarations for Redmond and his new boss to be submitted in support of a motion to dissolve the TRO which was filed the next day (Thursday). The declarations were prepared with the utmost good faith, but hastily and with too little double-checking.[11] Ironically, the declarations initially were a success. When the judge read them, he dissolved the TRO. But a battle was won that helped to lose the war, as the declarations proved to be a problem later.

The next day I was hired to represent Bill Redmond individually and then had an opportunity to review the declarations. In separate declarations, Redmond and his new boss had said that Quaker had a detailed marketing and distribution plan in place and that it would be Redmond's job to execute the plan. Because the plan pre-existed Redmond's employment, it was Redmond and his new boss's stated testimony that the risk that Redmond would "inevitably" refer to Pepsico trade secrets to perform his duties was non-existent. It was an interesting theory, but when the trial started we could not produce the plan. As it turned out, the plan existed only informally and was still a work in progress.

The defense would have been far better off to have suffered the indignity of a TRO for a few more days, than to rush to take a position on the facts that we could not substantiate at the trial.

Rule Seven

Plaintiff, get your discovery. The plaintiff MUST depose the departing employee and his new boss before the injunction hearing. Often, there will be others to depose as well.

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Inexplicably, in the last few years, I have twice observed opposing counsel in non-compete cases forego depositions and proceed immediately to a preliminary injunction trial. Is this a trend? If it is, it is a foolish one. Representing the defendant in both of those cases, it was easy for me to see how depositions would have brought to light facts that could have been problematic for the defense.

Ultimately, both of those cases were decided for the defendant. I don't know if the result would have been different if the plaintiffs had taken depositions, but I do know that there were questions that when unasked, had me worried.

Rule Eight

A related point—Plaintiff, get the new job description. Plaintiff must establish what the new job entails and that the responsibilities of the new job overlap greatly with the responsibilities of the old job. If they overlap, then you can argue, taking a lesson from the Seventh Circuit, that it would require someone who is superhuman (not the defendant—who, if anything, is pathetically human) to "compartmentalize" what he knows from his job and not use it for the purpose of performing his new job.

The best way to get at the new job is to depose the new boss. You may develop inconsistencies between his view of the new job and the new employee's view. Inconsistencies can be helpful. Also get the paperwork. Frequently, there will be a job description that makes the job sound grandiose. The job description can be used to discredit the defendant if he tries to minimize the importance of the new job, which is a great temptation to some defendants.

Rule Nine

Plaintiff's counsel must identify the trade secrets that plaintiff contends are imperiled. Don't let your client rely on generalities. Be specific.

Most lawyers are savvy to this and, subject to appropriate protective orders, will come forward with fairly detailed evidence of their client's trade secrets. If the plaintiff doesn't do it of his own accord, most of the judges that I know will make him do it. Don't let that happen to you and lose an opportunity to make easy points. From the first moment you begin to plan to file suit, you should be thinking about ways to present your client's trade secrets to make the most favorable impression on the fact finder.

I think that it pays to lay it on very heavily. The more impressive the trade secrets and the more concrete and specific the trial presentation, the easier it is for the finder of fact to appreciate the risk of disclosure and the grave injury that could result to the plaintiff if the secrets fall into the hands of a business rival. Also, present your client's policing efforts. Serious measures taken to police trade secrets will reinforce their importance to the finder of fact.

Think about ways to demonstrate the value of the trade secrets. For example, show the court how much it cost to develop the technology in question. Show the court how revenues, cost savings or market share improved once the trade secrets were perfected. Generally, the proof methods to be used on this issue will be the same as in other trade secret trials. However, failure to make a compelling case about the trade secrets in an inevitable disclosure case can be even more fatal for the plaintiff than in other trade secret cases. One reason why the *AMP* case was decided for the defendants was because the plaintiff made a weak showing on its trade secrets.

Rule Ten

Plaintiff's counsel should think of ways to show why disclosure is "inevitable." In the pre-*Redmond* inevitable disclosure cases, there was a common fact pattern in many of the cases. Plaintiff had figured out the only commercially viable process to create something of value. Its rival tried, but failed through lawful means to duplicate the process. Then, after many failures, the rival hired a key employee of the plaintiff's and put that employee in charge of developing a similar process for the rival. On those facts, plaintiffs easily convinced courts that the employee would inevitably use the plaintiff's secret process. Disclosure or use is inevitable in such circumstances, reasoned those courts, because there is only one way to do it. The courts could see for themselves that the plaintiffs' fears were well grounded and not based on speculation or paranoia.

> ***Defense counsel must offer reasons for why disclosure is not 'inevitable.'***

If your client has such an explanation for why disclosure is inevitable, then by all means use it. It may be the single most compelling weapon in your arsenal. And it can make the difference between winning and losing. In the *Teradyne* case, the judge dismissed the complaint because the plaintiff alleged inevitable disclosure with nothing more. I believe that if plaintiff had alleged a clear reason for believing that its trade secrets would be disclosed, then the complaint would not have been dismissed.[12]

Please indulge another war story. In the *Motorola* case, plaintiff cited some of the pre-*Redmond* cases and argued, at least impliedly, that its signaling protocols and etc. for cable-based modems were the only commercially viable system for cable modem products. Thus, inevitably the former employee would use his knowledge of Motorola's secrets to design new products for US Robotics.

On its face, it seemed a good argument. But the former employee told me that there were lots of companies designing cable modem products using systems completely different from Motorola's system. We found industry literature showing it to be true. Moreover, the Institute of Electrical and Electronics Engineers (IEEE) had not adopted standards for cable modem products as of the time of the trial. That enabled me to argue that there was no inevitability that US Robotics would use an approach like Motorola's because there were so many other possible approaches to choose from and no standards had been adopted. Still, I think it was smart of Motorola's counsel to try to provide an explanation rather than to rely on a naked assertion of inevitability.

Sometimes, however, there will not be an easily explained, persuasive reason for fearing inevitable disclosure. The plaintiff will be left with *Redmond*-like arguments such as "he can't compartmentalize what he learned from us from what he will do for them" or "he has our playbook and now he is setting the defenses for the opposing team."

In a court that recognizes the strong form of the doctrine, those *Redmond*-like arguments should be enough. In fact, the only meaningful difference between the strong form of the doctrine and the weak form is that the strong form does not require an explanation for why misappropriation is inevitable.

Indeed, Pepsi never came up with anything beyond the "playbook" and "compartmentalization" analogies. Pepsi's COO, Brenda Barnes, was Pepsi's principal witness on its trade secrets. She did an excellent job describing Pepsi's trade secrets, the steps taken to maintain their confidentiality and the fact that the secrets were known to Redmond. However, when she was asked specifically why she thought Redmond would inevitably use those secrets for Quaker's benefit, she responded with the compartmentalization argument. She said, "I don't see how he cannot use them." When she was asked specifically how Bill would use the secrets, she made the "playbook" argument. My memory of it is that she said, "I don't know, but if I had that kind of information about my competitor's (marketing) plans, I would come up with some way to use the information to block my competitor." Pepsi never offered an explanation beyond those for why disclosure or use of its trade secrets was "inevitable." Yet, it won an injunction.

Rule Eleven

Defense counsel must offer reasons for why disclosure is not "inevitable." Some of the pre-*Redmond* cases seem to suggest that the defendant should offer some explanation for why disclosure is not inevitable. *IBM v. Seagate* (discussed earlier and not precedential) is an example. There, the district court, in the initial opinion granting an injunction (which was later reversed), referred to the defendant's failure to explain how IBM's secrets would not be disclosed as one reason for granting an injunction. The defense must decide how to approach this issue.

One thing that a defendant can do to help itself is to ask new employees to promise in writing not to disclose confidential information from prior employers. In the case of a particularly sensitive hiring, have a senior officer of the company meet with the new employee to discuss the importance of not disclosing confidential information from the previous employer. Such a meeting can make for good testimony later if there is a problem. If specific steps have been taken to minimize the risk of disclosure (a conflicts wall is created, a recusal from certain matters is made, or similar things), then document what has been done and present it to the court as further evidence of your client's good faith.

Rule Twelve

Defense counsel must identify the warts in the defense case and devise a strategy for dealing with them. The biggest recurring problem defense counsel have to contend with in cases involving former employees is the possibility that the departing employee was not fully candid or took documents or other information with her when she left.

Obviously, a lack of candor was a problem in the *Redmond* case. While working for Pepsi, Redmond had talked to Quaker and its outside recruiter several times over a number of months. He had even received a job offer from Quaker, but it did not interest him. Like most employees who are quietly looking for new employment, he did not volunteer this information to Pepsi.

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Then one Tuesday morning in November, Quaker offered him a job that he did want. He accepted on the spot early in the day. He tried to call his boss, Brenda Barnes, but she was out of town. Instead, he told Pepsi's Senior VP of HR, who was named Bensyl, of Quaker's offer and the compensation. Then he made a mistake. Instead of telling Bensyl that he had already accepted Quaker's offer, he said that he favored accepting the offer ("60/40"). He also exaggerated the responsibilities of the position, telling Bensyl that he would be the COO of Quaker's beverage business. Bill's real title was to be VP of Field Operations, the closest thing that Quaker had to a COO in that part of its business, but still not a true Chief Operating Officer.

That all took place on Tuesday. Barnes was not due back in Pepsi's office until Thursday. On Thursday, Redmond met with Barnes and repeated what he had told Bensyl. He also repeated the same story, including the inaccuracies, to Pepsi's CEO Craig Weatherup over the telephone. Weatherup and Barnes tried to talk Redmond out of leaving and pointedly told him that his long-term prospects at Pepsi were excellent, reminding him that Pepsi is a much bigger fish in the beverage pond than Quaker. However, they did not do the one thing that might have interested Redmond. They did not try to out-bid Quaker. On Thursday afternoon, two days after accepting Quaker's offer, Redmond told Pepsi that he was going to take the Quaker offer. Bensyl escorted Redmond out of the building and Pepsi sued him six days later.

Why did Redmond lie to Pepsi? Because he was young and clumsy. A more polished businessman would have found a way to "shop" the Quaker offer without being untruthful. No one, however, ever suggested that the lies had any connection to or imperiled Pepsi's trade secrets. They were completely innocuous to Pepsi's trade secrets.

Still, Redmond had been untruthful. So what to do about it? The defense strategy had three components: (1) Don't compound it by trying to cover it up. (2) Keep reminding the court that there was no nexus between the lies and Pepsi's trade secrets. In terms of trade secrets, the whole episode was completely innocuous. (3) Rely on the district court's opinion in *AMP*. There, the trial judge had rejected the plaintiff's efforts to paint the defendant as dishonest because the alleged acts of dishonesty occurred in the context of the events giving rise to the lawsuit. The district court in *AMP* believed that what was more probative was the defendant's long track record of honesty before the events giving rise to the lawsuit had occurred. We hoped to persuade the judge to take the same approach in our case. Until he was fired, Redmond had been held in high regard at Pepsi.

Our strategy did not work. Redmond's lack of candor after accepting the Quaker offer was compounded by the problem with the early filed declarations discussed above. But analytically, those issues may not have mattered. If Illinois truly follows the strong form of the inevitable disclosure doctrine, then the result was correct regardless of whether Redmond was untruthful or whether any lack of truthfulness was related to Pepsi's trade secrets.

Rule Thirteen

Choose your witnesses with your audience in mind. As trial lawyers we need to think always about communication. Ours is mostly a performance art. Yet, we bore our audiences and then grouse when they don't grasp the important nuances that we hope to convey. Calling the right witnesses can help to avoid such problems.

I believe that judges, even more so than juries, pay closer attention if the witness is important. Choose witnesses who are of the same social status as the judge or who are likable, good communicators. There is no point in calling a witness who everyone ignores. Even if that witness has the Rosetta Stone to the case, it won't matter if no one is listening.

In emergency trade secret litigation, it has been my observation that parties who call members of senior management fare better than parties who do not. That is especially true for the plaintiff. Having top management testify conveys the right sense of urgency and importance. And, quite frankly, judges seem more interested in what the president has to say than in the testimony of some obscure bean counter or engineer.

In "inevitable disclosure" litigation, the defendant should want to show off its senior management too. After all, ultimately, these are the people who have the responsibility for assuring the ethical conduct of their company. If the senior management conveys a strong sense of trustworthiness and morality, then the defendant will have accomplished a lot toward winning the case.

In *Pepsico*, three of the plaintiff's very top executives testified—the CEO, Craig Weatherup, the COO, Brenda Barnes, and Bensyl, who was an executive VP. I believe that that made an important impression on the judge.

In *AM International*, I called as my first witness the President of the company. He was put through a blistering cross-examination, but he started the case off on the right note. It was priceless to see this honest, straightforward, Midwestern businessman being tormented by a powerful New York lawyer. It mirrored the way that AM had been tormented by IBM. Although IBM capitulated before it could happen, I had planned to call the Chairman of AM also as a rebuttal witness.

In *Motorola*, I think that the plaintiff may have made a mistake. Plaintiff's only witness other than the former employee, who was called adversely, was a senior engineer. He may have been logical because he had been Levant's boss, but he was not impressive enough to carry the case on his own.

In *Rycoline v. Fuji Hunt*, the quality of plaintiff's witnesses persuaded me to recommend a settlement. The plaintiff's principal witness was the president of the company, an athletic, white-haired, tan, well-spoken man in his late 50s. That made him about the same age as the judge. He was not technical (that case involved formulas for chemical solutions used in printing and graphic arts), but as a communicator he was effective. He also believed without question that if Jim Whitehead went to work for Fuji Hunt, then, notwithstanding the best motives in the world, Whitehead would inevitably use Rycoline's secrets. On that point, he was unshakable. I knew that he would be a problem at trial. So even though I was completely happy with my own witnesses, I recommended a settlement. As it turned out, the other side had good counsel,[13] and we settled the case. It was the right thing to do.

Never forget that the witnesses are of paramount importance to judges as well as juries. Once you make it to trial, it is the witnesses who win or lose the case, not the lawyers.

NOTES

1. *54 F.2d 1262 (7th Cir. 1995).*
2. *Pepsi was represented by Roger Pascal of Schiff Hardin & Waite. Quaker was represented by Mike Sheehan of Connelly Sheehan & Moran in Chicago and by Helene Jaffe of Weil Gottschall in New York. I was asked by Quaker to represent Bill Redmond with Debbie Berman of my old law firm, Jenner & Block.*
3. *I represented Fuji Hunt with Kay Boychuk, another former Jenner & Block colleague. Roseanne Faraci of the McDermott firm represented Rycoline. My friend, Bill Sullivan of Martin, Brown and Sullivan represented Jim Whitehead, the chemist in question.*
4. *Evan Chesler of Cravath Swain & Moore in New York City represented IBM. I tried that case with Larry Schaner and Kay Boychuk of Jenner & Block. My former partner, Jim McKenna, wrote our briefs and ran our war room during that trial.*
5. Motorola v. U.S. Robotics, *No. 96 Ch. 7575 (Cir. Ct. of Cook Co. Ill., 1996). Motorola was represented by Mike Levinson of Seyfarth Shaw. My trial partner on that case was the superlative Reggie Hill, formerly of Jenner & Block and now my colleague at Ryndak & Lyerla.*
6. *765 ILCS 1065/3(a).*
7. *823 F.2d 1199 (7th Cir. 1986).*
8. *707 F. Supp. 353 (N.D. Ill. 1989).*
9. See FMC Corp. v. Varco International, Inc., *677 F.2d 500 (5th Cir. 1982). Non-Illinois cases cited by Pepsico in support of the inevitable disclosure doctrine included:* IBM v. Seagate, *1991 USDist LEXIS 10406 (D. Minn. 1991)**;* American Totalisator v. Autotote, *1983 WL 21374 (D. Del. 1983);* Emery Ind. v. Cottier, *202 USPQ 829 (S.D. Ohio 1978);* FMC v. Varco, *677 F.2d 500 (5th Cir. 1982);* Den-Tal-Ez v. Siemens Capital Corp., *566 A.2d 1214 (Pa. Sup. Ct. 1989);* Air Prods. & Chems v. Johnson, *442 A.2d 1114 (Pa. Sup. Ct. 1982);* Weed Eater v. Dowling, *562 S.W.2d 898 (Tex. App. 1978);* Allis Chalmers v. Continental, *255 F. Supp. 645 (E.D. Mich. 1966);* Fountain v. Hudson, *122 So. 2d 232 (Fla. App. 1960).*
10. *The transcript of his ruling is posted on the Web at* www.ryly.com.
11. *I don't fault the lawyer in question. His completely forgivable lack of experience led him to do something a seasoned trade secrets lawyer would have avoided. But the mistakes that we make while we are young teach us the lessons that make us wise as we get older.*
12. See Abbott v. Chiron, *1997 WL208369 (N.D. Ill. 1997), Conlon, J. reaching a similar result.*
13. *Roseanne Faraci of McDermott Will.*