On December 4, 2015, the New Jersey Appellate Division rejected a retailer’s request to afford its supplier list trade secret protection in *Samsung Electronics America, Inc. v. Westpark Electronics, LLC*, Docket No. A-3777-14T3. While the court did not go so far as to suggest that a supplier list may never attain trade secret protection, the decision continues the trend of New Jersey courts refusing to go down that path, as no New Jersey court has ever expressly provided protection to a supplier list as a trade secret.

*Samsung* involved claims of tortious interference, unfair competition and infringement of trademark brought by Samsung Electronics America, Inc. ("SEA") against Westpark Electronics, ("Westpark"). SEA alleged that Westpark had repeatedly induced SEAs authorized resellers to breach their contracts with SEA by selling SEA televisions to Westpark at reduced rates, which thereby allowed Westpark to sell the televisions to consumers at reduced prices. Westpark claimed that it purchased the televisions through proper means and from suppliers that had no contractual relationship with SEA. SEA sought production of Westpark's supplier list to verify this claim, but Westpark refused. This refusal was made despite the fact that a protective order had previously been entered by the court which mandated that any confidential information obtained during discovery be used only for the purpose of litigating the current action; thus, the order allayed any concerns that Westpark could have about SEA taking legal action against its suppliers.

In support of its position that it should not be required to turn over its supplier list, Westpark first argued that revealing the names of its suppliers would cause SEA to depose them and would thus scare them away from supplying Westpark with products in the future. Both the trial court and the Appellate Division summarily rejected this argument, noting that such an argument could be made in any litigation given that witnesses rarely want to be involved in court proceedings.

Westpark's second argument – that its supplier list is a trade secret – met a similar fate. The Appellate Division acknowledged that several foreign courts have determined that supplier lists may constitute trade secrets, but noted that a New Jersey court has never expressly done so. It then looked to the six factors which are generally analyzed in determining whether information constitutes a trade secret: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the owner to guard the secrecy of the information; (4) the value of the information to the business and to its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. In a swift analysis of these factors, the court found that the supplier list did not rise to the level of a trade secret, particularly because the list did not appear to be significantly valuable given that Westpark claimed it used only twelve suppliers in a pool of hundreds of available suppliers. The court also pointed to the existence of the protective order in support of its finding that affording trade secret protection was unnecessary.

While the Appellate Division dealt with this matter in a summary fashion (and without mentioning the New Jersey Trade Secret Act), it still serves an important message to companies seeking to protect business information from disclosure, including supplier information. To avoid a fate similar to Westpark, companies need to do a substantial amount of planning ahead and consulting with counsel to position themselves for the best possible outcome should future litigation arise which could threaten the compelled production of the company's confidential information. These efforts should include, at a minimum, developing and implementing security measures, policies, and procedures to maintain the privacy of the information; requiring employees and others to abide by contractual restrictions governing the manner in which such information can be accessed, used, and disclosed; and, in the case of litigation, using carefully drafted confidentiality agreements to ensure that any compelled production of confidential information is controlled and limited.

If you have questions about the Appellate Division’s ruling in *Samsung* or the best methods of protecting your company’s confidential information, please contact Laura Link, Esq., or any member of Archer & Greiner’s Trade Secret Protection and Non-Compete Group in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

**DISCLAIMER:** This client advisory is for general information purposes only. It does not constitute legal or tax advice, and may not be used and relied upon as a substitute for legal or tax advice regarding a specific issue or problem. Advice should be obtained from a qualified attorney or tax practitioner licensed to practice in the jurisdiction where that advice is sought.