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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
2013 SEP -5 PM 4:15
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIDGES
CLERK

DISTRIBUTOR SERVICE, INCORPORATED,

Plaintiff,

v.

Civil Action No.

RUSTY J. STEVENSON and RUGBY IPD CORP.
d/b/a Rugby Architectural Building Products

Defendants.

1:13-cv-1409 JMS-DKL

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

The plaintiff Distributor Service, Incorporated (DSI) brings this action against the defendants Rusty J. Stevenson (Stevenson) and Rugby IPD Corp. d/b/a Rugby Architectural Products (Rugby) and for causes of action shows the Court the following.

Jurisdiction and Venue

1. This is an action against Stevenson for injunctive relief and damages arising from Stevenson's actual and continuing violation of the non-competition, non-solicitation, and non-disclosure restrictions in Stevenson's written employment agreement with DSI, for injunctive relief and damages arising from Stevenson's actual and continuing violation of the Indiana Uniform Trade Secrets Act, Ind. Code §§ 24-2-3-1, *et seq.*, and for damages arising from Stevenson's breach of his duty of loyalty to DSI while employed by DSI.

2. This also is an action against Rugby for injunctive relief and damages arising from Rugby's actual and continuing violation of the Indiana Uniform Trade Secrets Act, Ind. Code §§ 24-

2-3-1, *et seq.* and for tortious interference with contractual and other business relations in violation of the common law of Indiana.

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332 because the plaintiff and the defendants are citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

4. Venue in this action is properly laid in this district pursuant to 28 U.S.C. §1391 because Stevenson and Rugby are residents of this district. Stevenson is an individual resident of this district. Rugby is a resident because it is a corporation that is subject to personal jurisdiction in the State of Indiana and its contacts in this district would be sufficient to subject Rugby to personal jurisdiction in this district if it were a separate state.

5. This Court has personal jurisdiction over Rugby in this action because it is a for-profit foreign corporation registered with the Indiana Secretary of State to do business in the state as such, and therefore has consented to the personal jurisdiction of the courts in Indiana.

6. This Court has personal jurisdiction over Stevenson in this action because he is a citizen of the State of Indiana.

The Parties

7. DSI is a citizen of the Commonwealth of Pennsylvania because it is a corporation organized and existing under the laws of Pennsylvania and its principal place of business is in Pennsylvania. DSI is engaged in the business of selling and distributing wholesale specialty building products to businesses in the Middle Atlantic and Midwest regions of the country.

8. Stevenson is a citizen of the State of Indiana because he is an individual resident of that state. He is a former employee of DSI and is engaged in the business of selling and distributing

wholesale specialty building products on behalf of Rugby.

9. Rugby is a citizen of the State of New Hampshire because it is a corporation organized and existing under the laws of that state and its principal place of business is in that state. Rugby is in the business of selling and distributing wholesale specialty building products throughout the country, including the State of Indiana. Rugby is a direct competitor of DSI and Rugby is the company through which Stevenson is conducting his new business.

DSI's Specialty Building Products Business

10. DSI is a family owned and operated business founded in 1968. It began as a distributor of decorative paneling to lumberyards in the Pittsburgh market, and over the ensuing forty-five years DSI has grown into a regional distributor of specialty building products with eight locations and more than 100 employees in Pennsylvania, Ohio, Indiana, Kentucky, and Michigan.

11. DSI first opened its Indianapolis Branch and expanded into the Indiana specialty building products market in 1999, hiring a sales manager and two salesmen whom DSI planned to train and develop to compete effectively in the Indiana market.

12. DSI built the Indianapolis Branch and its Indiana presence "from the ground up" by diligent market and customer research and tireless customer and vendor relations efforts. Over the fifteen years since opening there, DSI has steadily grown its customer relationships and sales in the Indiana region. DSI currently distributes more than forty specific products in nineteen product categories to more than 400 customers in Indiana.

13. At the time DSI first entered the Indiana market, Rugby held a leading position in the sale of specialty building products in Indiana. Over the fifteen years since DSI opened the Indianapolis Branch, Rugby's business has significantly diminished in Indiana as DSI has grown

to take its place.

14. Specialty building products are not finished products like those a consumer may buy off the shelf in a retail store, but are specialized materials that go into the products manufactured or built by DSI's customers. Some of the primary product categories DSI distributes in Indiana include plywood, melamine board, raw board core, wood finishes, and laminate.

15. DSI's customers are sophisticated purchasers of specialty building products, having an in-depth knowledge of the products they need and very specialized requirements and specifications for the products they purchase.

16. The identity of DSI's customers in Indiana is not published or generally known, and it is information that DSI maintains as confidential and considers proprietary. In particular, DSI's customer lists are considered highly confidential. This information is referred to in this Complaint as DSI's "Customer Lists."

17. Some of DSI's Indiana customers manufacture or build their own products based on their own designs using the specialized products provided by DSI. Other DSI customers manufacture or build their products according to designs submitted by their own customers.

18. DSI works closely with both types of customers to develop unique specifications for the products DSI provides—specifications that are specially suited to the manufacturing or building process of the particular customer and its ultimate products. To do this, DSI must learn a great deal about each customer's business and manufacturing process, often including highly confidential and proprietary information about the customers own products and processes. This information is referred to in this Complaint as DSI's "Customer Product Preferences."

19. The relationship between DSI and its specialty building products customers is one

of considerable trust and confidence, and it takes months and even years of work to build such customer relationships honestly and lawfully. Moreover, those relationships of trust and confidence devolve upon the key individuals, like Stevenson in Indiana, who are tasked with servicing and maintaining those customer relationships for DSI.

20. DSI reposed enormous trust and confidence in Stevenson to service and maintain DSI's customer relationships in Indianapolis and Indiana, a city and territory distant from DSI's home office and from Stevenson's immediate supervisor, and to refrain from misusing those relationships by diverting them unlawfully to an unscrupulous competitor.

21. DSI's customer pricing is highly customized from customer to customer for the same products and product categories, depending on a number of variables that are specific to each customer, and even variables unique to specific projects for each customer. Indeed, DSI's published catalog of the products it distributes does not even list product prices because there are so many variables that go into product pricing that are special to particular customers or types of customers. This information is referred to in this Complaint as DSI's "Competitive Pricing."

22. DSI also negotiates special vendor costs with the manufacturers it represents that are customized by product, and in many cases are unique to particular customers or even projects for particular customers. As such, these specially-negotiated vendor costs form an integral part of the customized pricing DSI negotiates with its customers. This information is referred to in this Complaint as DSI's "Competitive Cost Structure."

23. DSI's Customer Lists, Customer Product Preferences, Competitive Pricing, and its Competitive Cost Structure are the cornerstone of DSI's ability to compete effectively in the specialty building products industry in Indiana, and it is information that is highly confidential and

takes months or years to develop lawfully and honestly for each customer.

24. If a Rugby obtains this confidential and proprietary information, it gains an enormous and unlawful competitive advantage by being able to know instantly—without the months and years of research and customer development normally required—each customer’s precise product needs, specifications, purchasing history, and pricing structure, and thereby know exactly where and how to frame sales proposals and product specifications and cost structures that undercut DSI.

Stevenson’s DSI and Rugby Employment

25. DSI hired Stevenson in October 1999 with the opening of DSI’s Indianapolis Branch and with the intention of training Stevenson to be a salesman and teaching him the specialty building products industry and business.

26. At the time he was hired by DSI, Stevenson had no sales experience in the specialty building products industry or in any related industry, and Stevenson had little or no sales experience at all in commercial sales.

27. DSI invested significant time and resources over the following years in teaching Stevenson about the specialty building products industry, in general and in Indiana, and about DSI’s specialty building products, DSI’s Indiana customers, and the manufacturers represented by DSI in Indiana. This training included considerable personal efforts and involvement by DSI’s branch sales manager from Columbus, Ohio, and DSI’s General Sales Manager from Pittsburgh, Pennsylvania.

28. Stevenson eventually became responsible for sales of DSI’s products within the geographic area comprising sixty-two counties in the State of Indiana. In April 2005 DSI promoted Stevenson to Sales Manager for the Indianapolis Branch, the position Stevenson held when he left DSI in August 2013. As such, Stevenson was a trusted and critical part of DSI’s presence and public

profile in the Indiana market.

29. On or about June 9, 2009, Stevenson entered into a written contract with DSI, which is referred to in this Complaint as the "Employment Agreement." Attachment A to this Complaint is an accurate copy of the Employment Agreement.

30. At the time Stevenson left DSI in August 2013, Stevenson was responsible for direct sales to more than 200 DSI customers in thirty-one counties in the southern part of Indiana, and for direct sales to more than 40 specific customers throughout thirty-one counties in northern Indiana. Stevenson also was responsible for training and managing two other salesmen in the Indianapolis Branch in their sales duties for an additional 160 or more specific assigned customers, which required Stevenson to have periodic contact and communications with most such customers.

31. From 2005 until the day he left DSI, Stevenson had unrestricted access to all of DSI's Customer Lists, Customer Product Preferences, Competitive Pricing, and Competitive Cost Structure for the more than 400 wholesale customers of the Indianapolis Branch and for all manufacturers represented by DSI in the Indianapolis Branch.

32. Stevenson resigned on August 2, 2013, and announced that he was going to work for Rugby. In a meeting with DSI following that announcement, Stevenson acknowledged that Rugby is a competitor of DSI and that going to work for Rugby would be a violation of the Employment Agreement. Stevenson explained simply that he had shown the Employment Agreement to Rugby and that Rugby assured Stevenson it "would not be a problem."

33. DSI believes that Stevenson began planning his move to Rugby at least as early as the spring of 2013, and was in conversations with Rugby for that purpose at least as early as April 2013.

34. DSI believes that Stevenson planned and took specific steps to take DSI's Customer Lists, Customer Product Preferences, Competitive Pricing, and Competitive Cost Structure with him to Rugby for the purpose of using such information and materials on Rugby's behalf and for its benefit in competing against DSI.

35. With full knowledge of the existence and content of the Employment Agreement and of the competitive activities Rugby intended for Stevenson to perform for Rugby, and full understanding that those intended activities by Stevenson would be in violation of the Employment Agreement, Rugby promised Stevenson that Stevenson's breaching of the Employment Agreement "won't be a problem" for Stevenson and, on information and belief, Rugby promised assistance to Stevenson in breaching the Employment Agreement and in defending against DSI efforts to enforce the Employment Agreement.

36. Stevenson is working primarily as a sales manager for Rugby, and in that capacity is contacting DSI customers indirectly through the sales people he is managing, using the relationships and information he obtained as a sales manager for DSI and that he took from DSI.

37. In addition, Stevenson has personally contacted and solicited at least six important DSI customers to purchase competitive products, and DSI understands that Rugby has, with Stevenson's assistance or direction, already undercut DSI's prices to one of those customers. All six customers were served directly by Stevenson when he was employed at DSI.

38. Stevenson's job duties and activities for Rugby are such that Stevenson cannot perform them without disclosing or using DSI's Customer Lists, Customer Product Preferences, Competitive Pricing, and Competitive Cost Structure, or without using the customer knowledge and relationships he obtained under DSI's tutelage and auspices. Such knowledge is so central to

competing and succeeding in the sale of specialty building products that it is not possible to engage in the work without resorting to the storehouse of proprietary information he took from DSI.

39. DSI believes Stevenson has contacted other DSI customers since joining Rugby for the purpose of soliciting the purchase of products competitive with DSI's products.

Count I (Breach of Non-Competition Restriction)

40. DSI incorporates into this paragraph all of the allegations contained in paragraphs 1 - 39 of this Complaint.

41. Section 3.a. of the Employment Agreement contains a non-competition provision whereby Stevenson promised not to compete against DSI during his DSI employment and for a period of one year thereafter in certain business activities and geographic areas in which Stevenson performed work on DSI's behalf, without the express written consent of the President of DSI. Neither the President of DSI nor any other official of DSI has given written or other consent for Stevenson to engage in such activity during or after his DSI employment.

42. DSI has a legitimate business interest in enforcing the Non-Competition Clause and in securing the protections lawfully afforded thereby.

43. By going to work for Rugby in a sales or sales management position covering the State of Indiana, and by competing directly against DSI in his new Rugby position, Stevenson has breached the Non-Competition Clause.

44. Stevenson's conduct described above constitutes breach of contract in violation of the common law of Indiana.

45. As a direct and proximate result of Stevenson's conduct constituting breach of contract, DSI has suffered and will continue to suffer actual damages which are not fully

ascertainable at this time, but which DSI believes to be in excess of \$75,000.00, exclusive of costs and expenses.

46. The defendants' actions constituting breach of contract will continue unless enjoined by this Court. The plaintiff is without adequate remedy at law, and is threatened with irreparable loss, injury, and damages unless the Court grants the equitable relief requested.

47. DSI would suffer substantially more from the denial of an order restraining and enjoining the defendants from further conduct constituting breach of contract than the defendants would suffer from its issuance.

Count II (Breach of Non-Solicitation Restriction)

48. DSI incorporates into this paragraph all of the allegations contained in paragraphs 1 - 47 of this Complaint.

49. Section 3.c. of the Employment Agreement contains a customer non-solicitation provision whereby Stevenson promised not to solicit DSI customers (those with whom Stevenson communicated during his DSI employment) to purchase specialty building products from anyone other than DSI during his DSI employment and for a period of one year thereafter, without the express written consent of the President of DSI. Neither the President of DSI nor any other official of DSI has given written or other consent for Stevenson to engage in such activity during or after his DSI employment.

50. DSI has a legitimate business interest in enforcing the Non-Solicitation Clause and in securing the protections lawfully afforded thereby.

51. By soliciting DSI customers as described above, and by assisting others in soliciting DSI customers as described above, Stevenson has breached the Non-Solicitation Clause.

52. Stevenson's conduct described above constitutes breach of contract in violation of the common law of Indiana.

53. As a direct and proximate result of Stevenson's conduct constituting breach of contract, DSI has suffered and will continue to suffer actual damages which are not fully ascertainable at this time, but which DSI believes to be in excess of \$75,000.00, exclusive of costs and expenses.

54. The defendants' actions constituting breach of contract will continue unless enjoined by this Court. The plaintiff is without adequate remedy at law, and is threatened with irreparable loss, injury, and damages unless the Court grants the equitable relief requested.

55. DSI would suffer substantially more from the denial of an order restraining and enjoining the defendants from further conduct constituting breach of contract than the defendants would suffer from its issuance.

Count III (Breach of Non-Disclosure Restriction)

56. DSI incorporates into this paragraph all of the allegations contained in paragraphs 1 - 55 of this Complaint.

57. Section 4 of the Employment Agreement contains a provision whereby Stevenson promised to safeguard and protect certain confidential information and materials of DSI, not to use or disclose such information or materials to anyone except in the good faith performance of Stevenson's DSI job duties without the prior written consent of the President of DSI, and to return all such information and materials to DSI immediately upon the termination of his DSI employment, and to refrain from keeping any such information or materials after the termination of his DSI employment. This provision of the Employment Agreement is referred to in this Complaint as the

“Non-disclosure Clause.”

58. Neither the President of DSI nor any other official of DSI has given written or other consent for Stevenson to use or disclose any such information or materials other than in the good faith performance of Stevenson’s DSI job duties.

59. DSI has a legitimate business interest in enforcing the Non-Disclosure Clause and in securing the protections lawfully afforded thereby.

60. By using and disclosing DSI’s confidential and proprietary information and materials as described above, Stevenson has violated the Non-Disclosure Clause.

61. Stevenson’s conduct described above constitutes breach of contract in violation of the common law of Indiana.

62. As a direct and proximate result of Stevenson’s conduct constituting breach of contract, DSI has suffered and will continue to suffer actual damages which are not fully ascertainable at this time, but which DSI believes to be in excess of \$75,000.00, exclusive of costs and expenses.

63. The defendants’ actions constituting breach of contract will continue unless enjoined by this Court. The plaintiff is without adequate remedy at law, and is threatened with irreparable loss, injury, and damages unless the Court grants the equitable relief requested.

64. DSI would suffer substantially more from the denial of an order restraining and enjoining the defendants from further conduct constituting breach of contract than the defendants would suffer from its issuance.

Count IV (Recovery of Attorneys’ Fees and Other Expenses)

65. DSI incorporates into this paragraph all of the allegations contained in paragraphs

1 - 64 of this Complaint.

66. Section 7 of the Employment Agreement contains a provision whereby Stevenson promised to reimburse DSI for all attorneys' fees and other expenses incurred by DSI in enforcing the Employment Agreement.

67. DSI has incurred attorneys' fees and other expenses in bringing this lawsuit and in other efforts to enforce the Employment Agreement, all as a direct and proximate result of Stevenson's conduct in violation of the Employment Agreement, for which DSI demands reimbursement by Stevenson in an amount to be ascertained and established at trial.

Count V (Misappropriation of Trade Secrets)

68. DSI incorporates into this paragraph all of the allegations contained in paragraphs 1 - 67 of this Complaint.

69. DSI's Customer Lists, Customer Product Preferences, Competitive Pricing, and Competitive Cost Structure all is information that derives economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. It also is information that is the subject of reasonable efforts by DSI to maintain its secrecy.

70. During the course of Stevenson's employment with DSI, he acquired information regarding DSI's Customer Identity and Product Preferences and Competitive Pricing for more than 400 DSI customers in the Indianapolis Branch, as well as the Competitive Cost Structure for all of the manufacturers represented by DSI in Indiana: (1) in circumstances giving rise to a duty to maintain the secrecy of such information or limit its use; or (2) from or through a person who owed a duty to the plaintiff to maintain the secrecy of such information or limit its use; or (3) by improper

means including the breach or inducement of a breach of a confidential relationship or other duty to maintain secrecy or limit its use.

71. Before and after his resignation from DSI employment, and continuing to the present, Stevenson disclosed or used some or all of the above-described information without the express or implied consent of DSI.

72. At all times that Stevenson has disclosed or used such information, he knew or had reason to know: (1) he had acquired such information in circumstances giving rise to a duty to maintain its secrecy or limit its use; or (2) he had derived such information from or through a person who owed a duty to DSI to maintain its secrecy or limit its use.

73. Following his resignation from DSI, Stevenson became an employee of Rugby, a direct competitor of DSI, and he continues to be an employee of Rugby.

74. Before and after Stevenson's resignation from DSI employment, Rugby acquired the information described above when Rugby or their agents knew or had reason to know that such information was acquired by improper means, including breach or inducement of a breach of a confidential relationship or other duty to maintain the secrecy of such information or limit its use.

75. Rugby, acting by and through its various employees and agents, also has disclosed or used such information without DSI's express or implied consent.

76. At the time of Rugby's disclosures or use of such information, it knew or had reason to know that its knowledge of such information was derived from or through a person who had utilized improper means to acquire the information or who owed a duty to DSI to maintain the secrecy of such information or limit its use, or that its knowledge of such information otherwise was acquired in circumstances giving rise to a duty to maintain its secrecy or limit its use.

77. The acquisition, disclosure, or use by Stevenson and Rugby of the above-described information constitutes a misappropriation of trade secrets under the Indiana Trade Secrets Act.

78. As a direct and proximate result of Stevenson's and Rugby's conduct constituting misappropriation of trade secrets, DSI has suffered and will continue to suffer actual damages which are not fully ascertainable at this time, but which DSI believes to be in excess of \$75,000.00, exclusive of costs and expenses.

79. The defendants' actions constituting misappropriation of trade secrets will continue unless enjoined by this Court. The plaintiff is without adequate remedy at law, and is threatened with irreparable loss, injury, and damages unless the Court grants the equitable relief requested.

80. DSI would suffer substantially more from the denial of an order restraining and enjoining the defendants from further conduct constituting misappropriation of trade secrets than the defendants would suffer from its issuance.

Count VI (Breach of Duty of Loyalty)

81. DSI incorporates into this paragraph all of the allegations contained in paragraphs 1 - 80 of this Complaint.

82. One or more months before resigning his employment with DSI, and unbeknownst to DSI, Stevenson entered into an agreement or understanding with Rugby to sell specialty building products and accessories for Rugby and in competition against DSI.

83. By making preparations to compete against DSI for several months while he was still an employee and key trusted representative of DSI as described above, Stevenson breached his duty of loyalty to DSI.

84. Stevenson's conduct described above constitutes breach of duty of loyalty in violation of the common law of Indiana.

85. As a direct and proximate result of Stevenson's conduct constituting a breach of fiduciary duties to DSI, DSI has suffered and will continue to suffer actual damages which are not possible to determine at this time, but which DSI believes to be in excess of \$75,000.00, exclusive of costs and expenses.

Count VII Tortious Interference

86. DSI incorporates into this paragraph all of the allegations contained in paragraphs 1 - 85 of this Complaint.

87. Rugby has tortiously interfered with DSI's Employment Agreement with Stevenson, and Rugby and Stevenson are now attempting to tortiously interfere with DSI's lawful customer relationships in Indiana.

88. The defendants' conduct described above constitutes a tortious interference with DSI's contracts and other business relationships in violation of the common law of Indiana.

89. As a direct and proximate result of the defendants' conduct constituting tortious interference with contracts and other business relations, DSI has suffered and will continue to suffer actual damages which are not fully ascertainable at this time, but which DSI believes to be in excess of \$75,000.00, exclusive of costs and expenses.

90. The defendants' conduct constituting tortious interference with business relations will continue unless enjoined by this Court. DSI is without adequate remedy at law, and is threatened with irreparable loss, injury, and damage unless the Court grants the equitable relief requested.

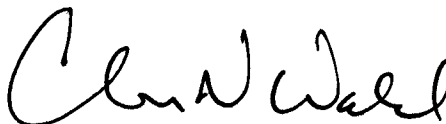
91. DSI would suffer substantially more from the denial of an order restraining and enjoining the defendants from further conduct constituting tortious interference with business relations than the defendant would suffer from its issuance.

Remedy

WHEREFORE, the plaintiff prays for relief as follows:

- (1) that process issue requiring the defendants to appear and answer this Complaint as required by law;
- (2) that, after a hearing, the Court issue a preliminary order enjoining the defendants: (1) from further conduct constituting breach of contract, misappropriation of the plaintiff's trade secrets, tortious interference with the plaintiff's contracts and other business relations; (2) from failing to return to DSI immediately all originals and copies of any materials that contain DSI's trade secrets and other confidential information; and (3) from failing to take certain other actions to protect DSI's interests pending a hearing and litigation of the matter;
- (3) that the preliminary injunction be made permanent;
- (4) that judgment be entered for the plaintiff and against the defendants for compensatory and punitive damages in an amount to be ascertained and established at trial;
- (5) that judgment be entered for the plaintiff and against Stevenson for attorneys' fees and other expenses incurred by the plaintiff in the enforcement of the Employment Agreement;
- (6) that judgment be entered for the plaintiff and against the defendants for attorneys' fees and other expenses incurred by the plaintiff in bringing this action pursuant to the Indiana Uniform Trade Secrets Act;
- (7) that the plaintiff be granted leave to amend its complaint to allege further specific damages when ascertained;
- (8) that the plaintiff be awarded its other costs and reasonable attorney's fees and have such other and further relief as the Court may deem proper.

Respectfully submitted this 5th day of September, 2013



John J. Myers (Pa. No. 23596)
William S. Myers (Pa. No. 38565)
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, Pennsylvania 15219
412-566-6000 (telephone)
412-566-6099 (facsimile)

Christopher N. Wahl (No. 24435-49)
Hill Fulwider, P.C.
One Indiana Square, Suite 2400
Indianapolis, Indiana 46204
317-488-2000 (telephone)
317-630-2768 (facsimile)

Attorneys for Plaintiff

VERIFICATION

My name is Dave Dascenzo. I verify under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that I am the General Sales Manager for Distributor Service, Incorporated, the plaintiff in the foregoing Verified Complaint for Injunctive Relief and Damages, that I am authorized to make this verification on behalf of the plaintiff, that I have read the foregoing complaint, and that the facts stated therein are true to the best of my knowledge, information, and belief.

Executed this 5th day of September, 2013.



Dave Dascenzo