Ex-Goldman Coder's Acquittal Threatens Wall Street's IP

By **Max Stendahl**

Law360, New York (February 17, 2012, 1:54 PM ET) -- The Second Circuit's Thursday reversal of a former Goldman Sachs Group Inc. programmer's conviction on charges he stole the firm's trading system code may hamper Wall Street's ability to protect lucrative trade secrets under the Economic Espionage Act, attorneys said.

In a one-page order, the appeals court overturned Sergey Aleynikov's conviction on charges of trade secrets theft and interstate transportation of stolen property. Federal prosecutors claim Aleynikov stole a confidential, high-frequency trading code from Goldman to benefit his new employer, startup fund Teza Technologies LLC.

Aleynikov was convicted in December 2010 and sentenced March 18 to more than eight years in prison, based in part on Goldman's estimate that the trading program generated more than $300 million a year for the firm.

On Thursday, the court reversed the conviction and said it would issue an opinion "in due course" explaining its decision. Aleynikov was released from a New Jersey federal prison Friday on his own recognizance.

The decision appeared to strike a blow to efforts by major Wall Street firms to protect trade secrets related to their trading systems, which rapidly gather market information and create complex mathematical formulas, known as algorithms, to process the information and make trades.

At issue in Aleynikov's case was the meaning of the 15-year-old Economic Espionage Act, which prohibits the theft of trade secrets related to a product that is "produced for or placed in" the stream of commerce. Aleynikov and prosecutors battled over whether Goldman's trading system fit that description.

Thursday's order suggested that the trading system was not a commercial product and was intended only for internal use, meaning its theft could not be criminalized under the EEA, attorneys said.

Peter J. Toren, an attorney for Weisbrod Matteis & Copley PLLC who is not involved in the case, said the ruling may undermine prosecutors' ability to bring EEA claims, to the detriment of financial giants.

"What differentiates Wall Street firms is their proprietary trading platforms, and obviously those are just for internal use," he told Law360 on Friday. "Under this decision, thefts that are highly valuable to financial services firms would not be prosecuted under the EEA."

Stephen S. Madsen of Cravath Swaine & Moore LLP said the decision could affect how the

government builds similar trade secrets cases.

"It's a surprising result and might require prosecutors to rethink their approach to these cases, depending on what the circuit says when it finally releases its opinion," he told Law360.

Kevin H. Marino, Aleynikov's attorney, did not immediately respond to a request for comment Friday. A representative for the U.S. Attorney's office declined to comment.

From May 2007 through June 2009, Aleynikov was a vice president in Goldman's equities unit, where he was tasked with developing and improving aspects of the trading system. As part of his responsibilities, Aleynikov modified the source code and algorithms on a daily basis.

Aleynikov left the firm to take on a similar role at Teza. On his last day at Goldman, prosecutors say he transferred thousands of files containing the trading system source code to a server in Germany, before moving several of the stolen files to his personal computer and onto Teza's system.

Aleynikov was arrested July 3, one day after he allegedly brought copies of the stolen code to a meeting at Teza's offices.

Prosecutors claimed that it would have taken Goldman's programmers at least two or three years to write the half-million or so lines of code in the system and that the heist cost the firm $7 million to $20 million.

On Friday, Aleynikov, 42, smiled broadly throughout a court hearing, laughing as he talked to his attorney. He left the court wearing grey sweats and a white baseball cap.

Aleynikov said that while he was in prison he was not allowed to use a computer to write computer programs, so he used paper instead. He learned about the court's decision Friday morning in an e-mail that said: "We won."

"Justice occasionally works," Aleynikov said. "This is such good news for me, I haven't had any time to think about it."

Aleynikov is represented by Kevin H. Marino of Marino Tortorella & Boyle PC.

The case is USA v. Aleynikov, case number 11-1126, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Richard Vanderford and Christie Smythe. Editing by Lindsay Naylor.