

TEXAS LAWYER

Holland & Knight Gets \$7.8B Trade Secrets Suit Dismissed

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What You Need to Know

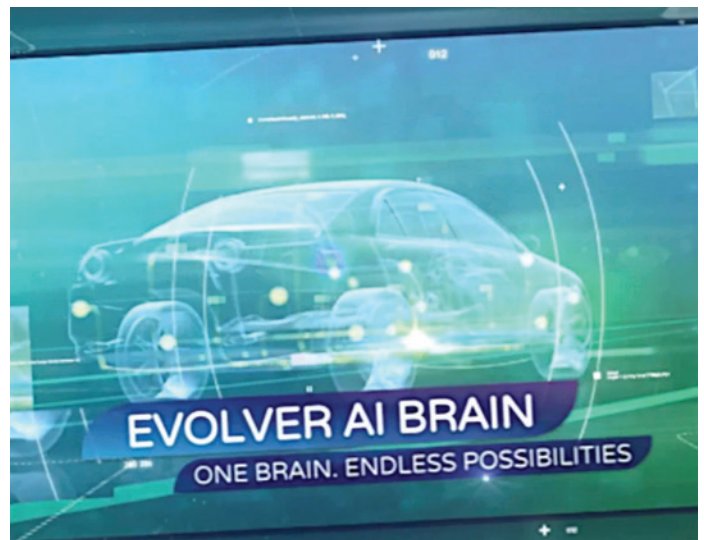
- A trade secrets lawsuit in Texas involving two Israel-based competitors in the electric vehicle technology industry was dismissed on a venue challenge.
- U.S. District Judge Alan D. Albright adopted a magistrate judge's recommendation that the case be tried in Israel.

A trade secrets lawsuit in Texas involving two Israel-based competitors in the self-driving electric vehicle technology industry was dismissed on a venue challenge.

A Holland & Knight legal team prevailed in favor of defendants REE Automotive Ltd., REE Automotive Holding Inc. and REE Automotive USA Inc. on a motion to dismiss because of forum non conveniens.

The plaintiffs, represented by the New York firm Kasowitz Benson Torres, made claims for \$2.6 billion in compensatory damages, \$5.2 billion in exemplary damages, and injunctive relief.

The dismissal order entered Monday by U.S. District Judge Alan D. Albright in the Western District of Texas was based on the January 4 report and recommendation of U.S. Magistrate Susan Hightower.



Credit: OSR Enterprises AG

OSR Enterprises AG marketing presentation of its Evolver self-driving EV technology.

The plaintiffs are OSR Enterprises, a Swiss corporation, and OSR R&D Israel Ltd., an Israeli Corp. The OSR entities allege REE stole their technology, including source code and other proprietary files, to develop a platform for electric vehicles.

OSR also alleges REE induced nine former OSR employees to join REE in breach of their contractual agreements and fiduciary duties to OSR. The most important of these employees is Ohad Stauber, OSR's former head of research and development, the OSR amended complaint states.

OSR also alleged that an Israeli police cyber-crime team, in concert with guidance from an

Israeli prosecutor's office, is investigating REE and Stauber "under suspicion of theft and computer crimes."

OSR filed suit in Texas on the basis that the REE entities have their headquarters in Pflugerville, an Austin suburb. However, the REE entities' principal place of business is in Tel Aviv, Magistrate Judge Hightower noted.

The REE defendants, in their reply brief, said the crux of the dispute centers on nine employees recruited from OSR that live and work in Israel.

"The bulk of the evidence—including the source code for both sides—is, too, in Israel," the defense reply states.

OSR made four arguments against dismissal.

1. Israel cannot adjudicate or enjoin extra-territorial conduct. The court responded finding any uncertainty around the extraterritorial reach of Israeli courts does not rise to a showing that the remedy provided by the alternative forum is clearly inadequate.
2. There is a significant question about whether OSR has an unfair competition claim in Israel. Hightower answered by observing it was unclear that OSR had a viable unfair competition claim in Texas, too.
3. The former employees may assert privilege in an Israeli action to avoid potential criminal liability for obstruction of justice. Hightower sided with the defendants' expert opinion, stating the same legal system should determine both criminal and civil aspects of the same dispute.
4. Israel is at war. Hightower said the war's duration is unknown, and significant speculation is required to conclude it will impede the functioning of the Israeli legal system to

such an extent that, as OSR contended, "conditions in the foreign forum . . . plainly demonstrate that the plaintiff is highly unlikely to obtain basic justice."

The REE defendants are represented by Holland & Knight attorneys L. Bradley Hancock of Houston; Maria Gil of Houston; Mark C. Davis of Austin; Robert S. Hill of Dallas; and Miami-based attorneys Anthony J. Sirven, and Gabriel Godoy.

The Kasowitz team was comprised of Marc E. Kasowitz, Daniel J. Koevary, Paul J. Burgo, Rachel Bandli,, and Constantine Z. Pamphilis, all of New York City.

Burgo, speaking for the Kasowitz firm, said, "We respectfully believe that Judge Albright erred in finding that Israel would be a more convenient forum than the United States for OSR Enterprises' trade secret and related claims against REE Automotive and OSR therefore intends to appeal."

Albright's order adopted Hightower's recommendations without providing any independent reasoning, and Hightower overlooked critical evidence, improperly discounted scores of key party and third-party witnesses in the United States and Texas, and misapplied relevant forum non conveniens factors, Burgo said.

The Western District of Texas is a proper forum for OSR's claims, given that REE is establishing its North American headquarters and manufacturing center in the district, Burgo added.

"All or nearly all of REE's trade secret usage is focused on the United States—including its fundraising, sales, partnerships, marketing, and regulatory efforts; and in REE's own words, its employees and executives are 'in the U.S. all the time,'" Burgo said.