

**STATE OF MINNESOTA
HENNEPIN COUNTY DISTRICT COURT**

TELLURIDE ASSET MANAGEMENT, LLC,

Plaintiff,

vs.

ERIC FALKENSTEIN

Defendant.

Civil Action No. _____--

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION**

Pursuant to Minnesota Rule of Civil Procedure 65, Telluride Asset Management, LLC ("Telluride") has moved the Court to (1) enter a temporary restraining order, restraining Defendant Eric Falkenstein ("Falkenstein") from: (a) using or disclosing Telluride's confidential or proprietary information; and (b) misappropriating Telluride's trade secrets; and (2) issue a temporary injunction following a hearing until a full trial on the merits can take place. In support of its motion, Telluride submits this memorandum of law and its Verified Complaint that it incorporates herein by reference.

I. INTRODUCTION

Telluride operates hedge funds and Falkenstein is a former portfolio manager for Telluride who was entrusted with Telluride's trade secrets to conceive, develop and implement systematic trading strategies, concepts and models for Telluride. Falkenstein resigned from Telluride on September 1, 2006, and now is offering a proposed trading strategy that is remarkably similar to and derived from his work at Telluride.

By his own words, Falkenstein has admitted that his proposed trading strategy bears “significant similarities” to the trading strategies that he used at Telluride. He further admitted that he intends to apply the same set of factors (accruals, profitability, volatility and capital issuance) and the same algorithm (mean-variance optimization) to his proposed strategy as he did to the “sub-strategies at Telluride.” His only defense is his claim that these significant similarities, factors and algorithm are widely know and in the public domain. Armed with Telluride’s trade secrets and confidential and proprietary information as a roadmap, however, it is not surprising that Falkenstein can now locate “the needles” of Telluride’s trade secrets in the vast “haystacks” of the public domain. But when Telluride asked Falkenstein to prove that the “significant similarities,” the factors and the algorithm that he purportedly implemented in his proposed trading strategy were indeed part of the public domain by providing actual copies of the significant similarities, factors and algorithm, Falkenstein refused to do so.

Further, it is irrelevant if certain general concepts are in the public domain. Falkenstein is contractually obligated to return to Telluride everything that he made, conceived or developed for Telluride and everything that he developed on his own that is related directly to Telluride’s business, that is related to Telluride’s anticipated development or that is a result of his work for Telluride. By his own admission, Falkenstein’s strategy is related directly to his work at Telluride and is a result of his work at telluride. He simply cannot, with 20/20 hindsight, recreate Telluride’s trade secrets from the public domain. While a third party has the freedom to create trade secrets from information in the public domain without risk of liability, a former employee who has had access to, used and developed trade secret information and is contractually bound cannot. Thus, Falkenstein has violated Telluride’s trade secrets and breached his employment contract.

