

## Trade Secrets in Oil and Gas: Litigation and Discovery Issues

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### Overview

- What is a “Trade Secret”?
- Discovery Considerations
  - Discoverability of trade secret data
  - Protective orders
  - Logistics of production and cost shifting
- Trade Secret misappropriation claims under the Texas Uniform Trade Secrets Act (“TUTSA”)

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## What is a Trade Secret?

### *In Re Bass*

113 S.W.3d 735, 739 (Tex. 2003).

- Is geophysical data a trade secret?
- Applied six factor test from RESTATEMENT OF TORTS §757 cmt B:
  - Extent to which information known by others;
  - Extent to which it is known by employees;
  - Measures to guard secrecy;
  - Value to owner and potential competitors;
  - Effort/money expended to develop information;
  - Ease/difficulty with which information could be independently developed by others.

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## What is a Trade Secret?

### *In Re Bass*

113 S.W.3d 735, 739 (Tex. 2003).

- **Held: Seismic data is a protectable trade secret**
- Court focused on:
  - Bass's considerable steps to maintain secrecy
  - Only shared data with operating agent
  - Data kept in a secured, climate-controlled vault with tightly controlled access
  - Expert testimony of seismic data's estimated \$800,000 - \$2,200,000 value
- Must a party claiming a trade secret satisfy all six factors?

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## Application of *Bass* Factors

### ***In re Kuntz***

124 S.W.3d 179 (Tex. 2003).

- Request for consultant's letters to a client which included geological & seismic data
- Defendant resisted:
  - No possession or ownership because belonged to the client
  - Trade secrets
- **Held: Production not required. No possession or ownership.**
- Concurring opinion emphasized trade secret status under *In re Bass*.

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## Trade Secrets in Oil & Gas Cases

### ***Anadarko Petroleum Corp. v. Davis***

CIV.A. H-06-2849, 2006 WL 3837518 (S.D. Tex. Dec. 28, 2006).

- Southern District of Texas grants preliminary injunction barring two former Anadarko employees from working for competitor.
- Downloaded confidential and proprietary information:
  - Reserve reports
  - Images from RockPilot gamma ray imaging program
- **Held: Citing *In re Bass*, this was “. . .the type of data protected under Texas trade secret law.”**

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