

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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