



29th ANNUAL  
LABOR AND EMPLOYMENT LAW CONFERENCE

## Trade Secret Update – 2023 (And Non-Compete Summary)

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### TUTSA Should Significantly Change The Law

- **TUTSA DISPLACES COMMON LAW ON TRADE SECRETS**
  - this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret. TCPRC § 134A.007
- **TUTSA SHOULD CHANGE THE WAY TRADE SECRET CLAIMS ARE ANALYZED**
  - Whether there is a trade secret is primary
  - Manner of acquisition is a secondary consideration
- **PRE-TUTSA COMMON LAW IS STILL RELEVANT**
  - Generally known cases
  - General skills vs. Specialized skills

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## DTSA And Other States Court Opinions Are Important

- DTSA – TUTSA trade secret definition identical
- 49 states have adopted UTSA
- Purpose is uniformity amongst states
- *There are few differences amongst states*
  - *California allows readily ascertainable items to be trade secrets—NOT TEXAS*

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## What is a Trade Secret 134A.002(6)?

- Any information including formulas, lists, products, designs, devices, etc.
- Owner took reasonable steps to keep secret
- That derives independent economic value from:
  - Not being generally known, **and**
  - Not being readily ascertainable through proper means

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## Trade Secret Cannot Be Generally Known

- Trade Journals
- Published material
- Reference Book
- Sales materials
- Generally known in the trade
- NOT, generally known amongst the general population
- Ultimate issue: can a competitor use available information to obtain the alleged trade secret?

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## Trade Secret Cannot Be Readily Ascertainable

- Plaintiff has the burden to prove trade secret IS NOT readily ascertainable
- *Peppermill* (slot machine)
  - D inserted a device in a competitors machine to obtain the par value [% winners/losers]
  - D was fined \$1m by gaming industry for using key
  - D still entitled to jury instruction that P had to prove that it would take a significant amount of time money or expense to obtain the information
  - Jury found no trade secret in part b/c P casino had no evidence it would be difficult to find par value

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