

## 5 Trends to Watch: 2025 Trade Secrets

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1. **Large Damage Awards May Face Scrutiny.** In 2024, courts issued several significant decisions concerning damages awards in trade secret misappropriation cases. Three recent federal court decisions overturned exceptionally large damages awards on the ground the plaintiff failed to prove causation between the proven misappropriation and the claimed damages. These cases illustrate that plaintiffs seeking recovery for misappropriation still have powerful tools at their disposal, including the potential for large damages awards and injunctive relief. But plaintiffs should consider taking care to show the causal nexus between the claimed damages and the proven misappropriation at trial.
2. **Noncompete Enforceability Limited.** The Federal Trade Commission (FTC) under President Trump's nominee, Andrew Ferguson, may well rescind the FTC ban on noncompete agreements and withdraw appeals in the Fifth and Eleventh Circuits. This action may prompt states that have allowed their own proposed noncompete legislation to languish (e.g. New York, Illinois) to refocus on narrowing the ability of employers to impose such restrictions. The health care space is expected to see more states narrowing the enforceability of noncompetes as well (such as Rhode Island, Pennsylvania, Maryland, Iowa). Within this unpredictable and inconsistent landscape concerning the enforcement of noncompetes, it is critical for companies to protect and defend their trade secrets.
3. **Plaintiffs Prevail in Trade Secret Trials.** A recent analysis of federal trade secret cases that go to trial may be either alarming or heart-warming, depending on which side clients find themselves (see Stout's "Trends in Trade Secret Litigation Report," Nov. 4, 2024). The report's findings include that out of 271 federal trade secret cases that went to verdict since 2017, 84% went in favor of the claimant. This may mean that more trade secret misappropriation filings will occur, and perhaps settlements before verdict will also be likely. Such settlements may reach higher amounts, further ratcheting up filings. As more cases are tried to verdict, the odds may stabilize toward more even outcomes, but clients and counsel

should take note of these numbers.

4. **The AI Revolution Could Dramatically Affect Trade Secrets.** AI may create innumerable systems, algorithms and other material that constitute trade secrets, raising a host of issues, like who owns them and how to protect them. AI also poses a threat to owners of trade secrets that can be reverse-engineered by AI but perhaps not nearly as easily (or at all) by a human. We expect the law to evolve to address ownership of trade secrets created by AI and to bolster protection against AI-generated reverse-engineering.
5. **Foreign Damages Are Available for Trade Secret Misappropriation.** In 2024, the Seventh Circuit held that the federal Defend Trade Secrets Act (DTSA) has extraterritorial reach. This was the first circuit court in the country to find this explicitly. In so holding, the Seventh Circuit affirmed a nine-figure compensatory damages award that consisted entirely of the defendant's foreign sales. All that is necessary to obtain foreign damages is an "act in furtherance" of the misappropriation in the United States, such as advertising products at a trade show that make use of the misappropriated information. Importantly, proximate causation between the act in the United States and damages is not required. The Seventh Circuit's decision is likely to lead to an uptick in discovery battles over foreign damages and has the potential to increase damages in trade secret cases.

***Bryan Harrison also contributed to this article.***

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