

Takeaways from Recent Trade Secret Trials

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GOLD MEDAL: For both plaintiffs and defendants, remember vicarious liability.

- Powerful tool to apply misappropriation liability to the company.
- Must show that misappropriation is a known risk in the industry.

SILVER MEDAL: As a plaintiff, don't shoot for the moon.

- Consider early what trade secrets you want to prove to a jury.
- Consider early what trade secrets drive value, both in terms of damages and jury persuasion.

BRONZE MEDAL: As a defendant, two sets of discovery—trade secrets and confidential information.

- The claims can be distinct—statutory versus contract/common law.
- Don't let the plaintiff be wishy-washy; devote discovery requests to both categories, independently.

HONORABLE MENTION: As a plaintiff, have a flexible damages expert opinion.

- Realize your permitted trade secrets claim may evolve.
- Allow your expert report to evolve too – tie different damages to different types/categories of damages.

HONORABLE MENTION: As a defendant, set a trade secret identification deadline.

- The plaintiff's goal is always to hide ball as long as possible.
- Demand as a part of the Rule 26 process a trade secrets identification deadline, that is well within the discovery period and well before the expert deadline.