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TUTSA DAMAGES

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The legal arsenal for employers to address disloyalty, theft of information, and unfair competition by employees or former employees has changed significantly in recent years. Use of non-compete agreements to prevent and remedy such problems is increasingly restricted, prompting employers are more likely to look to common law breach of fiduciary duty and theft of trade secret statutes to support their causes of action. In Texas, the Texas Uniform Trade Secrets Act (TUTSA), effective September 2013, governs misappropriation of trade secret claims. Though injunctive relief is available in response to trade secret misappropriation, it is often a big ask for a court to effectively put someone out of work or require a newly formed company to cease operations as a remedy. As an alternative to injunctive relief, and sometimes also *in addition to* injunctive relief, TUTSA contains several methods for measuring and awarding monetary damages in response to trade secret theft: actual loss, unjust enrichment, and reasonable royalty. In recent years, Texas state and federal courts have delivered verdicts in the tens to hundreds of millions of dollars under these measurements. This paper explores the nuances of each of these damage models and contrasts TUTSA's monetary remedies with those that are available under a breach of fiduciary duty theory.

I. Trade Secret Litigation is Big Money in Texas.

In many trade secret cases, particularly those involving former employees, the primary objective of the litigation is securing emergency, interim, and permanent injunctive relief safeguarding the trade secret and preventing its further use. Priority number one for an employer facing unfair competition from a former employee who stole the employer's trade secrets is stopping the damage to their business in the marketplace. Not lagging far behind that priority is recovering for the damage that has been done. Texas juries have been delivering top verdicts in this space. This section describes a few notable examples.

On December 4, 2024, a Tarrant County district court judge rendered judgment on a $27 million verdict in a Texas Uniform Trade Secrets Act case, *VBI Group LLC vs. Spartan Automotive Technology Providers Inc., et al*; it was the largest verdict from her court in all her years on the bench. *See Kelly Hart Wins $27M Judgment for Arlington Company in Trade Secrets Case*, FORT WORTH INC. (Dec. 20, 2024), https://fortworthinc.com/news/kelly-hart-wins-27-million-judgment-for-arlington-based-comp/. The case alleged VBI's former president misappropriated trade secrets to create a competing business. The judgment does not appear to have been appealed.

In June 2024, the Northern District of Texas entered judgment on an advisory jury verdict under the Defense of Trade Secrets Act for $56,151,583 in compensatory damages for unjust enrichment, $112,303,166 in exemplary damages, and $25,773,576.60 in pre-judgment interest for a grand total topping $194 million in the case of *Computer Sciences Corp. v. Tata Consultancy Services, Ltd*., Northern District of Texas, No. 3:19-cv-0970-X, Dkt. 532 (June 13, 2024) and Dkt. 487 (Nov. 17, 2023). Computer Sciences Corp., an IT company, accused Tata Consultancy Services Ltd. of stealing its source code and documentation for life insurance software to create Tata's own system. *See id*. The case is currently on appeal to the Fifth Circuit and is set for oral argument at the end of April 2025. *Computer Sciences Corp. v. Tata Consultancy Services, Ltd.* (Docket Report), Fifth Circuit Court of Appeals, Aug. 9 2024, No. 24-10749, retrieved March 11, 2025. Tata argues on appeal, *inter alia*, that the district court erred in awarding unjust enrichment damages (representing the cost Tata would have incurred in developing the trade secrets on its own) and also enjoining Tata from using the trade secret

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