

Unpacking Trade Secret Damages

Elizabeth A. Rowe

Professor of Law | University of Florida Levin College of Law

P.O. Box 117625, Gainesville, FL 32611 | rowe@law.ufl.edu | (352) 273-0927

This study is the first to conduct an in-depth empirical analysis of damages in trade secret cases in the U.S. From an original dataset of cases in federal courts from 2000 to 2014, I assess the damages awarded on trade secret claims. In addition, a wide range of other variables are incorporated into the analysis, including those related to background court and jurisdiction information, the kinds of trade secrets at issue, background details about the parties, the related causes of action included with claims of trade secret misappropriation, and details about the damages awarded.

Analysis of this data and the relationship between and among the variables yields insightful observations and answers fundamental questions about the patterns and the nature of damages in trade secret misappropriation cases. For instance, I find average trade secret damage awards comparable to those in patent cases and much larger than trademark cases, very positive overall outcomes for plaintiffs, and higher damages on business information than other types of trade secrets. The results make significant contributions in providing deeper context and understanding for trade secret litigation and IP litigation generally, especially now that we enter a new era of trade secret litigation in federal courts under the Defend Trade Secrets Act of 2016.