

Trade Secret Ruling Limited Damages and Could Incentivize Theft

JULY 27, 2018

In *E.J. Brooks Co. v. Cambridge Security Seals*, the New York Court of Appeals held, in a 4-3 decision, that damages for trade secret theft may not be measured by the costs the defendant avoided due to its unlawful activity, such as costs on research and development that it did not need to undertake. The majority explained that damages must reflect the plaintiff's loss, not merely the defendant's gain, explaining that "it is neither automatically nor presumptively the case that the costs avoided by the defendant will be an adequate approximation of the plaintiff's investment losses."

The minority opinion argued that the majority's position rejected the "predominant rule accepted by most states" and even "encourage[s]" stealing of trade secrets. The minority argued that a bad actor could decide it would be better off stealing trade secrets that would allow it to avoid significant development costs as it would likely be risking a mere injunction and potential damages based on the owner's lost sales, which can be difficult or even impossible to prove. To this end, the minority wrote: "The incentive for others to innovate will be replaced by the incentive to steal."

TIP: Companies should consider in which forum to bring a trade secret suit given differences in how damages may be calculated.

1 Min Read

Author

[Steven Grimes](#)

Related Locations

Chicago

Related Topics

Trade Secrets

Related Capabilities

Privacy & Data Security

Trade Secrets, Non Competes & Restrictive Covenants

Related Regions

North America

Related Professionals



Steven Grimes

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.