

## Fifth Circuit Holds Louisiana Uniform Trade Secret Act Does Not Preempt Conversion Claim for Non-Trade Secret Confidential Information

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In a recent opinion, the Fifth Circuit held that the preemption provision of the Louisiana Uniform Trade Secret Act (LUTSA) does not preempt a claim for conversion of confidential information that does not rise to the level of “trade secrets.”

Though LUTSA’s uniformity provision instructs that it be applied in a way “to make uniform the law” among the states, courts interpreting their respective states’ versions of the Uniform Trade Secret Act (UTSA) have been anything but uniform in construing the preemption provision. The supreme courts in some states—such as New Hampshire and Hawaii—have interpreted their trade secret statutes as preempting all non-contract claims that are based on misappropriation of confidential information, regardless of whether that information would meet the statutory definition of a trade secret. The supreme courts in other states—such as Arkansas, Oklahoma, and Arizona—have concluded that their trade secret statutes only preempt misappropriation based claims when the information at issue would qualify as a trade secret. Some states have not had occasion to make such a determination.

Because Louisiana falls in that latter category, the Fifth Circuit had to predict how the Louisiana Supreme Court would decide the issue if called upon to interpret the preemption provision of LUTSA. The Fifth Circuit looked to the plain text of LUTSA’s preemption provision and the official commentary to the statute. Noting, among other things, that the Louisiana appellate courts have twice held that LUTSA does not preempt claims that are not based on trade secrets, the Fifth Circuit concluded that the LUTSA does not preempt claims for conversion of information that does not qualify as a trade secret under the statute.

**TIP: Plaintiffs aggrieved by the theft of confidential information that does not rise to the level of a trade secret should carefully consider which states’ version of the UTSA would apply to their action.**

1 Min Read

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