

California Jury Awards More Than \$220 Million in Trade Secret Theft Case, with over \$1 Million to Cover Costs Spent Investigating the Theft

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On November 28, 2018, a California jury awarded the U.S. branch of a Dutch semiconductor maker, ASML, \$223 million in its suit against a local rival, XTAL, for misappropriating trade secrets. Finding that XTAL also violated provisions of California's computer fraud statute, the jury ordered XTAL to pay an additional \$1.2 million to compensate ASML for its investigation expenses.

According to the complaint, XTAL induced multiple ASML employees to work for XTAL while they were still employed by ASML and induced those employees to copy ASML's trade secret information onto hard drives for XTAL's benefit. After ASML filed suit, the court required XTAL to surrender computers, source code, and other devices for inspection, which included evidence of ASML's information. ASML contended that XTAL was able to bring its lithographic technology to market remarkably quickly—and even managed to take one of ASML's customers—because it used ASML's trade secrets. As a result, the jury found that XTAL had misappropriated ASML's trade secrets and awarded ASML \$223 million. Because the jury also deemed XTAL's conduct malicious, the judge may now also order punitive damages and attorneys' fees under California's trade secret statute.

Having found XTAL also violated California's computer fraud statute, the jury awarded ASML an additional \$1.2 million in compensatory damages as reimbursement for ASML's investigation expenses.

TIP: Theft of trade secrets can require a costly investigation and cause significant damage to the victim-company and, if proven, can result in large civil judgments. This case illustrates that investigative costs, actual damages, and potentially punitive damages are recoverable by the victim.

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