

## Third Circuit Holds That Lawful Possession (Even Without Ownership) Is Enough for Standing to Bring Trade Secret Claims

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The Third Circuit recently upheld a district court's ruling that lawful possession, as opposed to ownership, was sufficient standing to bring a claim for trade secret misappropriation. In *Advanced Fluid Systems Inc. v. Huber et al.*, the plaintiff, Advanced Fluid Systems (AFS), developed several engineering drawings for hydraulic systems it designed and built for a NASA rocket launch facility in Virginia. *Id.* at \*6–7. Per the terms of their contract, any materials generated by AFS were the exclusive property of the launch facility, not AFS. *Id.* at \*7. Despite this ownership allocation, the drawings were marked as the “proprietary and confidential data of [AFS].” *Id.*

At trial, it was proven that an AFS employee sent some of these confidential drawings to an AFS competitor and eventually formed his own company, both of which used the stolen drawings to win bids for which AFS was competing. *Id.* at \*7–9.

Although AFS was not the owner of these materials, the Third Circuit held that AFS's lawful possession of the information was enough to confer standing to bring trade secret claims under the Pennsylvania Uniform Trade Secrets Act. *Id.* at \*14. Rejecting appellant's arguments, the court found that 1) a *per se* ownership requirement fails to take account of “the substantial interest that lawful possessors of the secrets have in the value of that secrecy” and 2) the text of the Pennsylvania Act “say[s] nothing of ownership as an element of a claim for misappropriation.” *Id.* at \*14–15.

The Third Circuit also rejected appellant's arguments that AFS failed to take adequate measures to protect the secrecy of the information, in part, because AFS did not use non-disclosure agreements to protect the information. *Id.* at \*19. The court held that, despite the lack of contractual obligations, the information had been treated as confidential and that the drawings had only been disclosed on a need-to-know basis. *Id.* at \*7, 20.

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