



Trade Secrets in Oil & Gas - Part 2

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Most rights sharable

**At least three important ways
trade secret claims are used in
the oil and gas context:**

- Collected, existing geophysical data (where the oil might be)
- Uncollected geophysical facts (advanced as a basis for a geophysical trespass cause of action)
- To avoid disclosure of fracking chemical

Requirements for trade secrets

- Information that has independent economic value from not being known
- Reasonable efforts to keep secret
- Actually be secret

Examples

formulas
recipes
manufacturing
methods
industrial
processes
source code
search
algorithms
geological
survey data
customer lists

Blackletter law

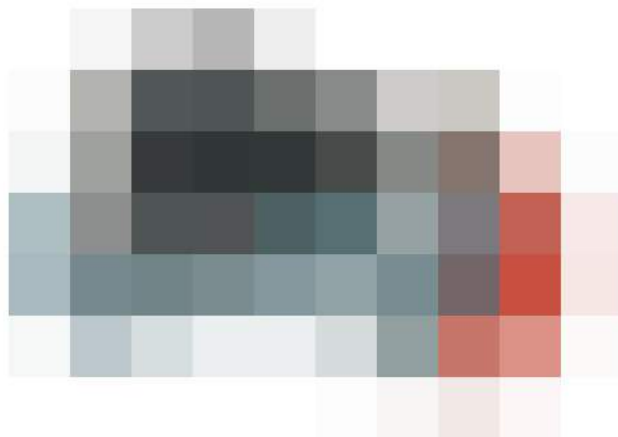
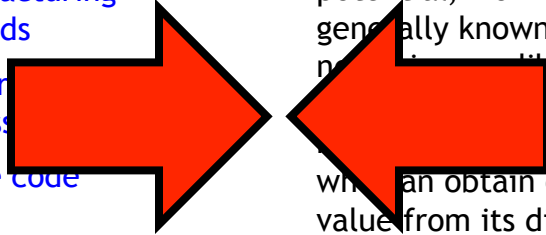
information that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

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Can an embarrassing secret be a trade secret?

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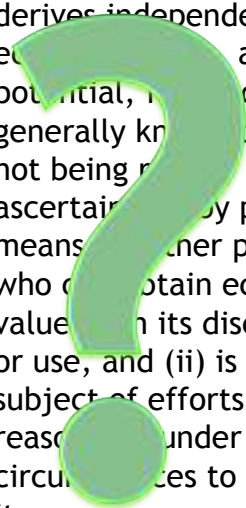
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Trade Secret - Subject Matter

Review

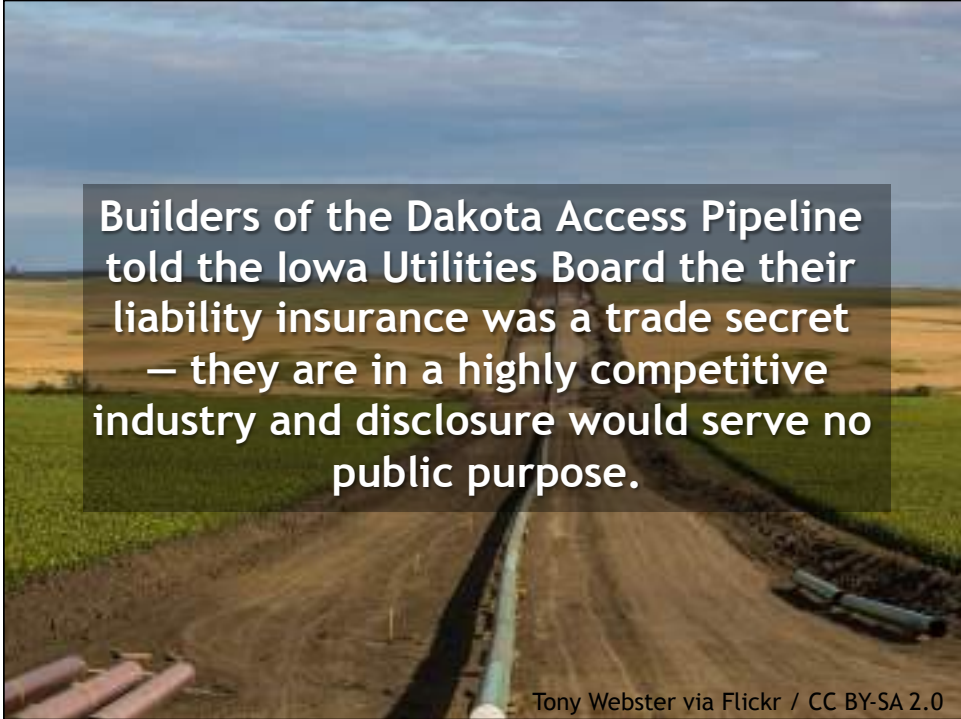
What does “independent economic value” mean?

A plausible uniting concept:

- Information that a competitor could use to the same ends as the trade secret owner to obtain commercial advantage.

Confusion in the doctrine ...

- There is room to argue for a very broad conception of trade secret subject matter.
- This is because:
 - There is a lack of development of the doctrine.
 - Precedent is slippery, since a successful assertion of trade-secret status means a court decision won't say exactly what it is (otherwise, the secret would be out!).
 - Litigants are often non-adverse when courts rule on trade secret subject matter.
 - E.g., both parties to a business dispute want to keep everything away from the press, so they will stipulate to trying to treat a wide swath of discovery as trade secret.



Builders of the Dakota Access Pipeline told the Iowa Utilities Board their liability insurance was a trade secret – they are in a highly competitive industry and disclosure would serve no public purpose.

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Chemical Disclosure Registry

HYDRAULIC FRACTURING
DISPERSED
CHEMICALS
REGULATIONS
HOW A WELL
WORKS
PERMIT

Find a Well

Map Search

Search Options ▼ Save Filter

STATE	COUNTY	WELL IN COUNTY	OPERATOR
North Dakota	Williams	Choose a Well Name	Choose One

DATE SUBMITTED DATE	DATE RANGE	RANGE START DATE	RANGE END DATE
Use Start Date	Default	<input type="text"/>	<input type="text"/>

FEDERAL WELL
INDIAN WELL

API WELL NUMBER:

WELL NAME:

CAT Number:

INGREDIENT LIST

Clear Ingredient

SEARCH RESET

			Value	1100-1104	01-1104	0.000000
			methanol	01-001	0.004	0.000016
W00-007	ALCAN	Scale inhibitor	Primary Component	Primary Component	001-104	1.430000
			ethylene glycol	01-21-1	000.000	1.430000
			methanol	01-001	000.000	1.430000
W00-01	ALCAN	Oxygen Scavenger	Primary Component	Primary Component	001-104	0.100000
			ethylene glycol	01-21-1	000.000	0.100000

** Total Water Volume sources may include fresh water, produced water, and/or recycled water
 ** Information is based on the maximum potential for concentration and that the total may be over 100%
 Ingredient information for chemicals subject to 26 CFR 1910.1202(c) and Appendix E are obtained from Supplier Material Safety Data Sheets (MSDS)