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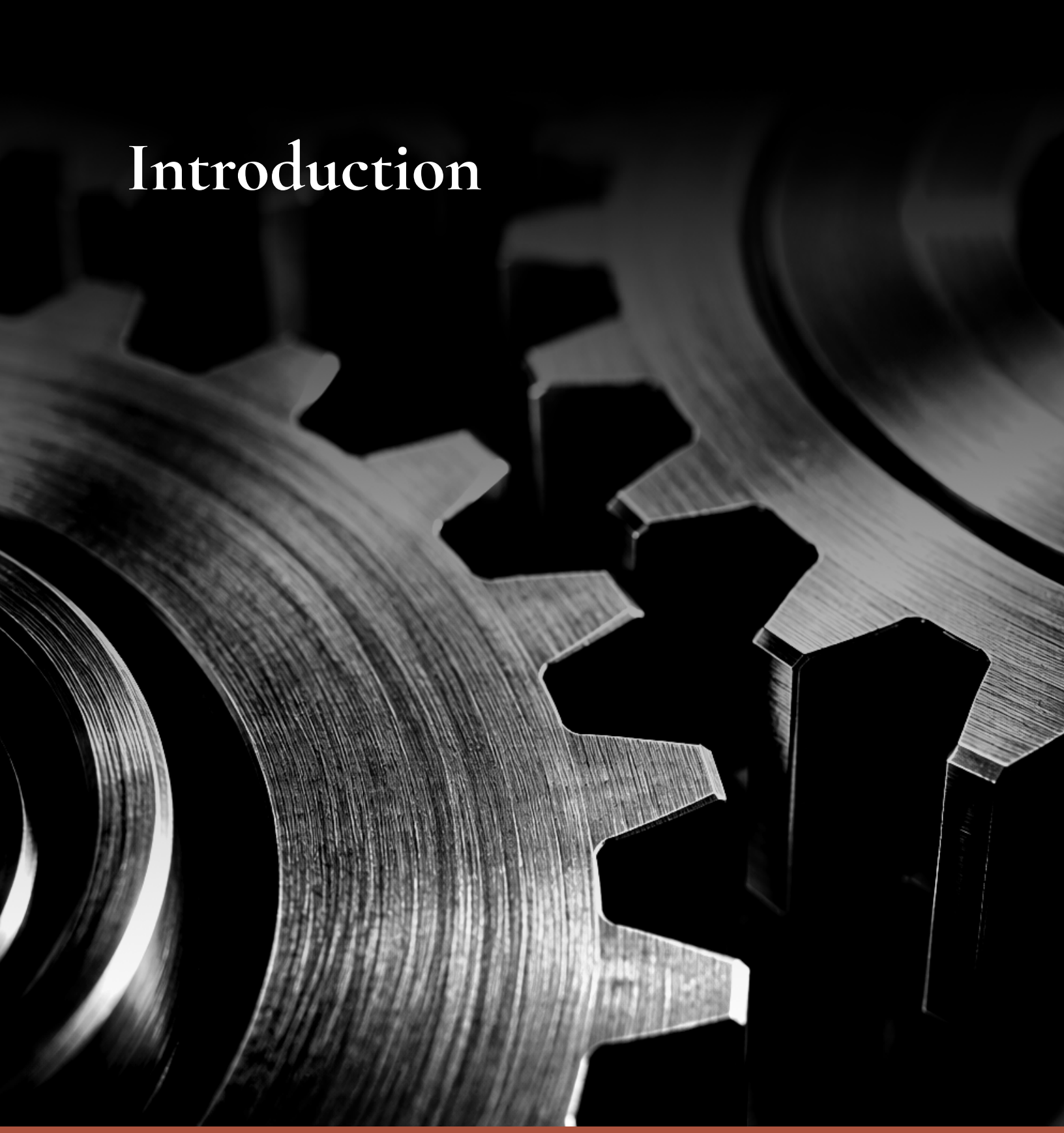
Juror Attitudes Toward Damages in Theft of Trade Secrets Disputes: A National Study



A STUDY BY THE DOAR RESEARCH CENTER

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Introduction



As trade secret verdicts reach unprecedented levels, this study sheds light on the factors that can push damages awards higher or lower in the eyes of jurors.



In the last few years, the attention paid to trade secret litigation has skyrocketed. One reason for this scrutiny is that damages, at times, have reached astronomical proportions. For example, Appian was awarded $2 billion, DuPont $920 million, Propel Fuels almost $800 million, TriZetto $855 million, Motorola $764 million, and Insulet $452 million. A significant portion of these damages has been both compensatory and punitive. Even though many of these awards get reduced by the courts, juries have shown their willingness to go nuclear when awarding damages in trade secret theft cases.

Additionally, the number of trade secret cases filed has substantially increased. Lex Machina's 2026 Trade Secret Litigation Report found that after a brief dip during the pandemic, trade secret filings have increased since 2016 and passage of the DTSA. In fact, 2025 showed the highest number of filings ever, over 1500. These increases likely stem from several sources, including employment mobility, the cost of patent protection, the growth of artificial intelligence, and the size of damage awards.

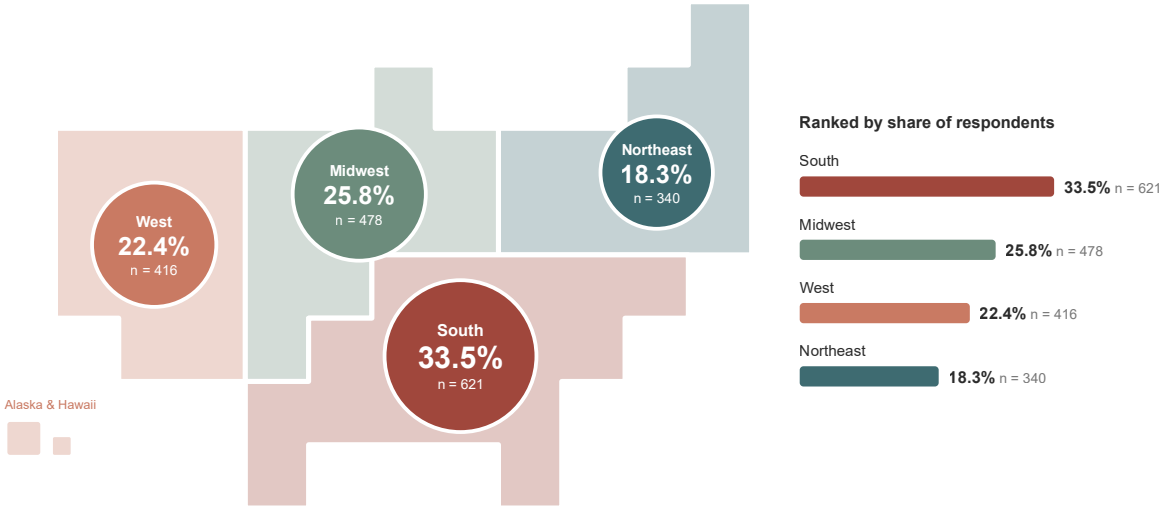
This survey examines factors that affect jury decision making when awarding damages in theft of trade secret cases. We examine attitudes about the type of company involved, i.e., small versus large and foreign versus American. We also examine the goals jurors seek to accomplish when awarding damages, e.g., punishment, deterrence, fairness, etc. Finally, we examine the influence of certain types of fact patterns common in theft of trade secret cases. In the end, we hope to shed light on what makes damage awards rise and fall in these types of cases.

The Survey

In September 2026 DOAR conducted a nationwide online survey examining attitudes toward awarding damages in theft of trade secret cases. The composition of the sample included 1855 US citizens over the age of 18 and was representative of the national population according to gender, age, race and region. The sample includes a somewhat higher percentage of college educated respondents, but it included sufficient numbers to compare differences between those with a college education and those without. In fact, comparing differences between subpopulations was our primary goal. Charts 1 through 5 show the composition of the sample surveyed[1].

Chart 1: Region of Residence

n = 1,855 · Bubble area proportional to respondents in each region



Respondents reported their region of residence only; no state-level data were collected.
Map is a stylized schematic for orientation; region outlines are approximate and not drawn to scale.
The South is the largest group, accounting for roughly one in three respondents (33.5%).

Chart 2: Gender of Respondents

n = 1,855 · Percent of all respondents

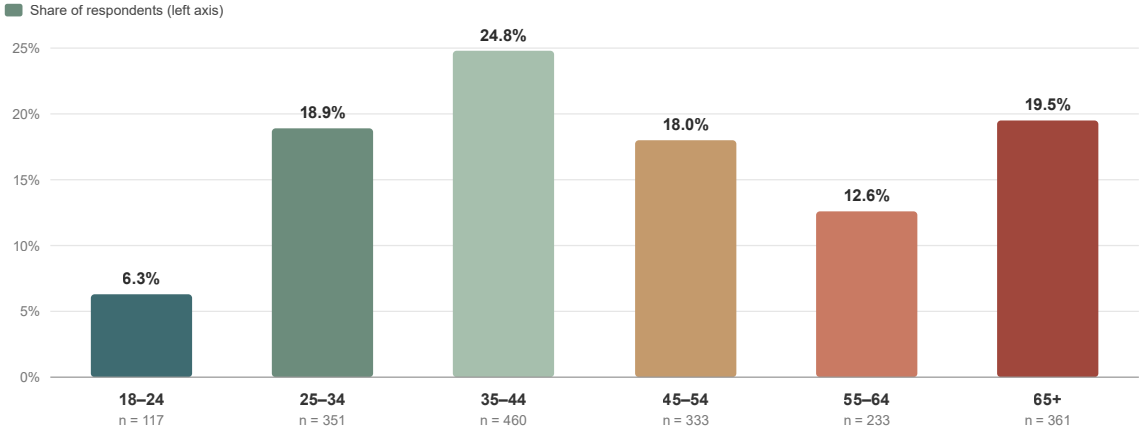


A near-even split: men outnumber women by 14 respondents (0.8 percentage points).
Three respondents (0.2%) identified as non-binary or preferred not to answer.

1 For certain issues, we split the sample and asked half one set of questions and the other a different set of questions. Specifically, some questions about large versus small companies were asked for one half of the sample and the other half were asked questions about American versus foreign companies. The two halves were similar in composition. We instituted this procedure to minimize the time required to complete the survey.

Chart 3: Age of Respondents

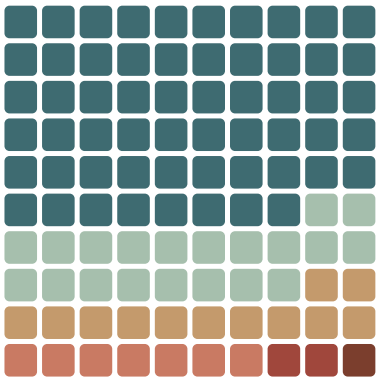
n = 1,855 · Bars show share of sample; line shows cumulative share



Median age falls in the 35–44 bracket: exactly 50.0% of respondents are 44 or younger.

Chart 4: Racial / Ethnic Affiliation

n = 1,855 · Each square ≈ 1% of respondents



57.9% Caucasian or White
n = 1,074

20.2% Hispanic or Latino
n = 375

12.3% African American or Black
n = 228

7.0% Asian
n = 130

2.3% Mixed
n = 42

0.3% Other
n = 6

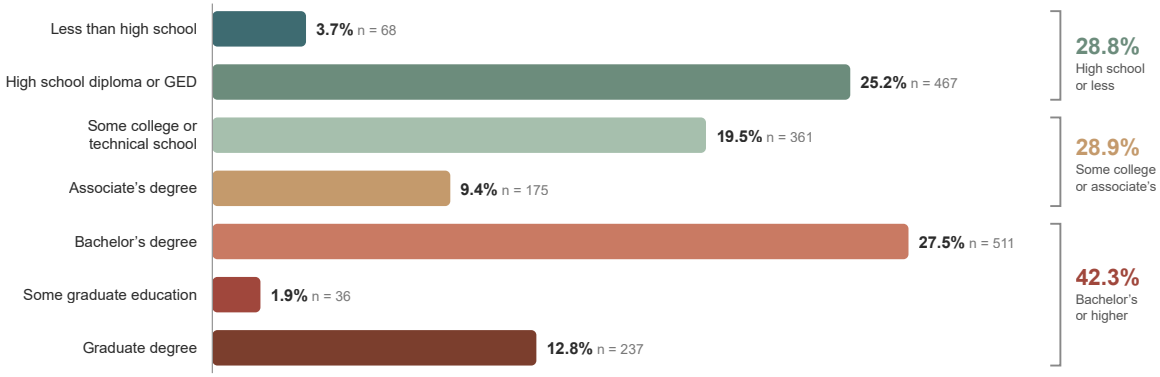
42.1%
of respondents identify with a racial or ethnic group other than Caucasian or White
n = 781

20.2%
Hispanic or Latino respondents form the second-largest group
n = 375

Squares allocated by largest-remainder rounding to total 100.
Other (0.3%, n = 6) is shown as one square so it remains visible.

Chart 5: Highest Level of Education Completed

n = 1,855 · Ordered from lowest to highest attainment



Brackets group respondents by highest level completed; group percentages calculated from counts.

Key Findings



Jurors do not evaluate trade secret theft in a vacuum; their damages decisions are shaped by both the facts of the conduct and their perceptions of the parties involved.

Attitudes Toward Large Technology Corporations

First, we focus on attitudes toward large technology corporations. We asked respondents how much they trust large tech corporations. Not surprisingly, 41% claim they do not trust large tech companies at all or trust them only a little. About one-third (35.7%) trust them "a moderate amount." And only 23% trust them "a lot" or a "great deal."

These levels of trust in large tech corporations are not universal, they vary across different groups. Differences among age groups are some of the largest. For example, a majority of those 65 or older have little or no trust in large tech companies, while only one-third of those under age 35 do. In contrast, younger respondents are the most trusting, over one third of those under 35 express a lot or a great deal of trust in large tech corporations whereas only 11% of those over age 55 do.

Less trust in large tech companies is also more prevalent among whites. Almost half (47%) express little or no trust, while only one-third of nonwhites do. Only 30% of Asians, 33% of African Americans and 34% of Hispanics express little or no trust. Interestingly, African Americans are more likely to express "a lot" or "a great deal" of trust in large tech companies (34%). This higher level of trust is less common among Asians (20%), Hispanics (26%) and even whites (20%).

Political groups also differ in their trust for large technology companies. Generally, Democrats exhibit less trust than Republicans. Forty-one percent of Democrats express little or no trust in large tech companies compared to only 34% of Republicans. In fact, Republicans, no matter their persuasion are more likely to express more trust in these corporations. MAGA (31%), America First (34%), and fiscal or traditional (43%) Republicans express more trust in large tech corporations than others (21%).

Lower income respondents also exhibit less trust in large tech companies than higher income respondents. Almost half (47%) of those earning less than $50,000 claim to have little or no trust in large corporations. In contrast, only 28% of those earning $100,000 or more do. Additionally, only 17% of those earning under $50,000 claim to trust large corporations "a lot" or "a great deal," whereas over twice as many (35%) of those earning $100,000 or over do.

Trust also varies by gender and region, but the differences are relatively small. For example, men tend to trust large corporations somewhat more than women do. They are more likely to express "a great deal" of trust (29% vs 17%) and less likely to express little or no trust (37% vs 46%). Finally, among those living in different regions of the country, significantly fewer Midwesterners express "a lot" or "a great deal" of trust compared to others (17% vs 25%).

Trust in large versus small companies consistently influenced damages outcomes, regardless of which party was accused of wrongdoing.

We also gauged relative trust in large versus small tech companies. Respondents were asked whether they trust large tech companies more than small ones, trust small tech companies more than large ones, trust them equally, or do not trust either. Data show relatively few people trust large tech corporations more than small tech companies (13%). Over one-third (34%) trust small tech companies the most. Another third (35%) trusted large and small tech companies equally. A sizable group, 17%, stated they did not trust any tech companies, large or small.

These findings present an interesting question: Who are those few that trust Goliath over David? The answer is men and Republicans. Data shows both groups are more likely to trust large corporations over small tech companies. In contrast, older individuals, Democrats, and Midwesterners are more likely to trust small tech companies the most.

Next, we examine how levels of trust affect damage awards. We asked respondents how much they would want to make a large corporation pay for stealing a small company's trade secrets. Answer options ranged from minimal damages (0) to very high damages (10). For ease of interpretation, we categorized the responses as follows: very low damages (0-1), low damages (2-3), middle-of-the-road damages (4-6), high damages (7-8) and very high damages (9-10). In a case where a large tech corporation stole a small company's trade secrets, data showed that respondents wanted to award high damages, on average. Overall, 39% wanted to award high damages and 36% wanted to award very high damages. Less than one-quarter (23%) wanted to award damages in the middle range and only 2-3% of respondents wanted to award very low or low damages.

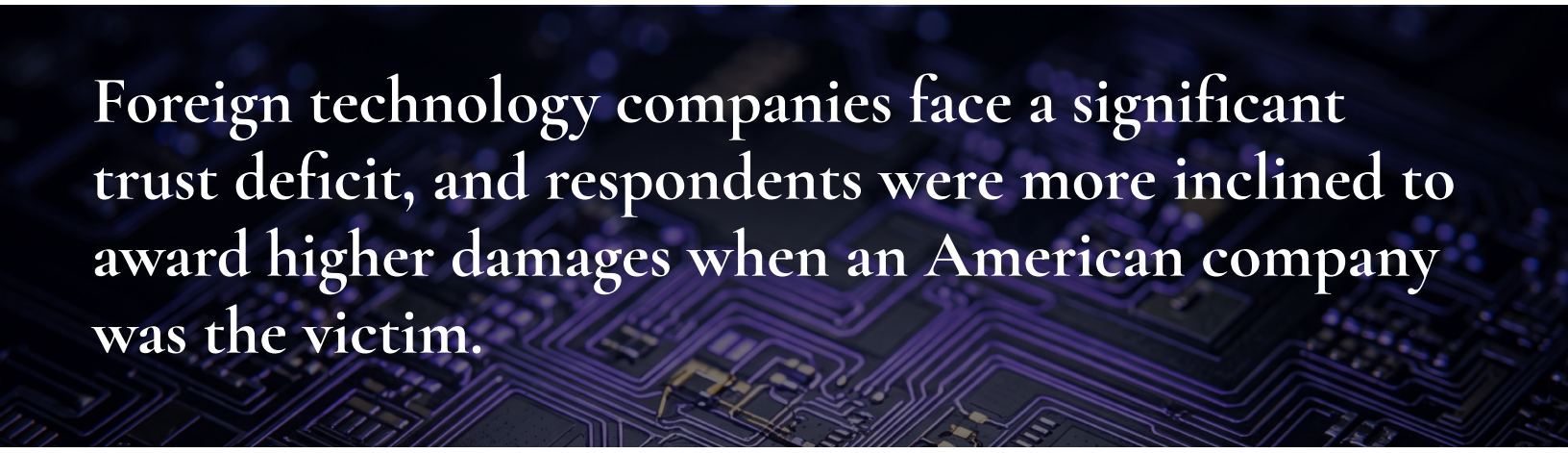
When we examined whether trust in large tech corporations affected the size of the damage awards, we found that they did. Those who trust large tech corporations the most awarded lower damages when a large corporation steals trade secrets from a small company. Interestingly, when we asked those who trust large corporations the most how much they would make a small company pay for stealing trade secrets from a large corporation, they awarded significantly more damages.

We saw a similar pattern when we focused on those who trusted small tech companies the most. When we asked them how much they would make a large tech corporation pay for stealing trade secrets from a small company, they made the large corporation pay significantly higher damages than those who trust large corporations the most. When we asked how much they would make a small company pay for stealing a large corporation's trade secrets, they awarded significantly lower damages than their counterparts. These data show that trust in large or small tech companies impacts damages whether the large or small company is the plaintiff or defendant—and it always does so in a way that favors the trusted company.

Attitudes Toward Foreign Tech Companies

We next looked at trust in foreign technology companies. Data show that foreign technology companies engendered far less trust than large American tech companies. In fact, the majority of respondents (59%) have little to no trust in them. Only 15% claim to have "a lot" or "a great deal" of trust in foreign technology companies. These findings stand in contrast to our 2024 research which shows that many, even in rural Red America, believe foreign companies make better products than their American counterparts.

This low level of trust appears to be most concentrated among older respondents. Eighty-one percent of those over 65 have little to no trust in foreign tech companies as well as almost three-quarters (74%) of those age 55-64. In contrast the majority of those under 35 have at least "a moderate amount" of trust in foreign companies.



Low levels of trust are also more common among whites than nonwhites (67% vs 48%). In fact, whites are less trusting of foreign tech companies than Asians (67% vs 54%), Hispanics (67% vs 46%), and African Americans (67% vs 43%). Among Hispanics and African Americans, a majority claim to have at least "a moderate amount" of trust in foreign tech companies. A significant number of these African Americans (26%) express "a lot" or "a great deal" of trust. This is twice as many (13%) whites that express "a lot" or "a great deal" of trust.

Similar findings exist regarding the type of residence and income. Rural and suburban are much less trusting than urban residents (63% vs 49%), and twice as many urban residents as compared to rural and suburban residents trust foreign tech companies "a lot" or "a great deal." Sixty-two percent of lower income respondents (less than $50,000) report little or no trust in foreign tech companies, while only a slight majority (51%) of higher income respondents ($100,000 or more) do. In fact, twice as many higher income respondents express "a lot" or "a great deal" of trust in foreign tech companies compared to lower income respondents (24% vs 11%).

Finally, women are less trusting than men. Sixty-five percent of women express little or no trust compared to 52% of men. Midwesterners are also less trusting than those who live in other parts of the country, with 65% expressing little or no trust compared to 56% of others.

When comparing trust levels in American versus foreign tech companies, differences between the two come into sharp focus. Almost half of the respondents (46%) claim to trust American tech companies more than foreign tech companies and only 5 percent claim to trust foreign tech companies the most. Thirty-one percent claim to trust them equally and 18% claim not to trust any tech companies, foreign or domestic.

This difference is reflected in the damages respondents would want to make a foreign versus an American company pay for stealing trade secrets. If a foreign tech company stole trade secrets from an American tech company, almost three-quarters (74%) would want to make that foreign company pay high or very high damages. In contrast, if an American tech company stole trade secrets from a foreign tech company, only a slight majority (54%) would want to make the American company pay high or very high damages. Over one-third (39%) would want the American company pay only moderate damages. These data clearly show that respondents were more inclined to make foreign tech companies pay higher damages for stealing from an American tech company than they would be if the opposite were true.

The Effect of Common Fact Patterns on Damages

The damages arising from theft of trade secret cases can often be traced to specific fact patterns. For example, a case where a party planned to steal trade secret information would likely generate higher damages than a case involving a failure to police new employees who acted on their own, without any encouragement or incentive from management.

We used fictional scenarios to examine the effect of different fact patterns. The patterns we chose to examine focus largely on questions of intent and premeditation. Although the scenarios are fictional, many are based on real cases or situations that have arisen in the cases our firm has worked over the years. However, the names have been changed to protect the guilty.

SCENARIO 1: FAKING A MERGER TO GAIN ACCESS TO TRADE SECRETS

The following is the first scenario presented to respondents:

> A large manufacturing corporation, Kingston, stole automation software from a small, software company, eTronics. The software significantly improved the efficiency of manufacturing operations. Earlier Kingston had tried to acquire eTronics, but the deal fell through. Afterwards, Kingston developed its own version of eTronics' software. Kingston used confidential documents it had seen when it was considering purchasing the company, despite signing a nondisclosure agreement.

Following this initial set of facts, we asked respondents how much Kingston should pay, if anything, for stealing eTronics' trade secrets. Responses ranged from 0 (minimal damages) to 10 (very high damages). Again, for ease of interpretation, we categorized the responses as follows: very low damages (0-1), low damages (2-3), middle-of-the-road damages (4-6), high damages (7-8) and very high damages (9-10). Responses showed 71% believed Kingston should pay high or very high damages (mean =7.47).

Breaching a nondisclosure agreement and the fact that a large corporation stole trade secrets from a small company likely became aggravating factors, causing almost three-quarters to believe that Kingston should pay high or very high damages. As discussed earlier, respondents generally want to make large corporations pay more when they steal from small corporations. These results are consistent with that finding.

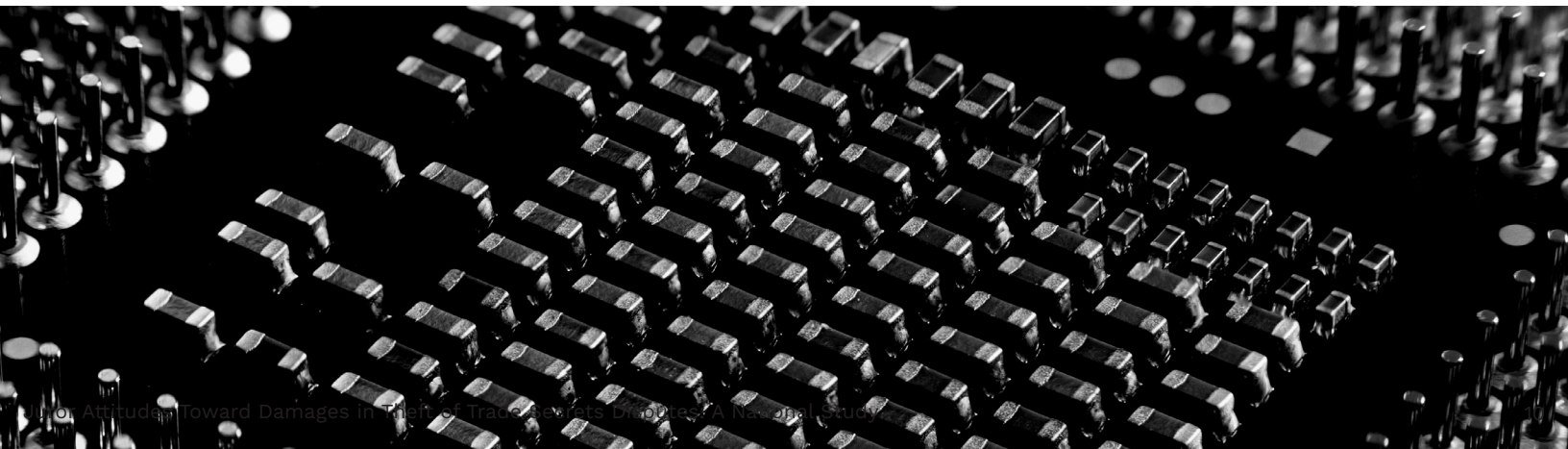
Next, an additional fact was introduced:

> Executives at Kingston discussed developing the software on their own but decided to pretend to make an offer to buy eTronics. They planned to get access to confidential documents and use them to develop the software on their own, despite signing confidentiality and nondisclosure agreements. Their plan worked.

Now, respondents learned that the illegal conduct was planned well in advance and Kingston engaged in a complicated deception as cover to get access to confidential material. Not surprisingly, respondents believed Kingston should pay significantly higher damages. While the average damage award remained high (mean = 7.70), the percentage of those believing Kingston should now pay very high damages increased from 36% to 47%. In other words, while only around one-third expressed a desire to award very high damages initially, now almost half were.

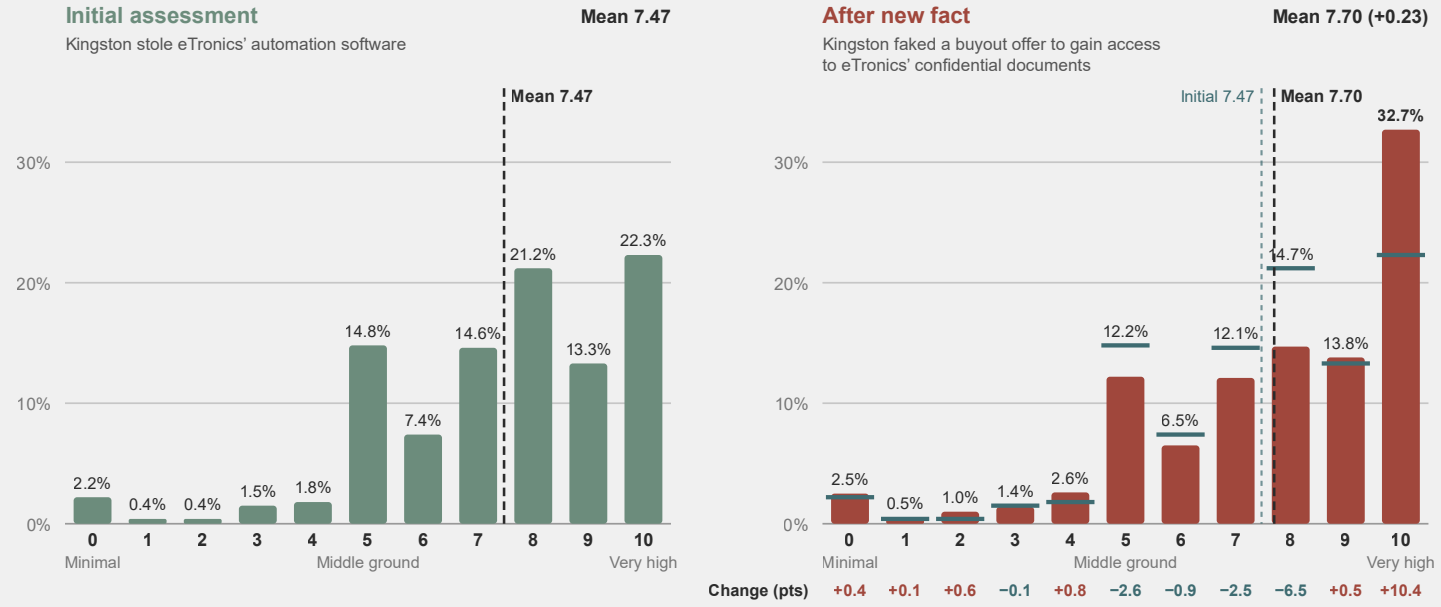
Responses to this scenario and the additional fact varied significantly by respondents' ages. Initially, older respondents were more likely to award very high damages. Almost half of respondents 65 or older (43%) awarded very high damages, while only 22% of those under 25 did. Moreover, their damages changed the most after introducing the information that Kingston pretended to buy its competitor for the sole reason of gaining access to its trade secrets. After being presented with this fact, almost two-thirds (64%) of those 65 or older and a majority of those 55-64 (53%) awarded very high damages. In contrast, only 25% of those under age 25 awarded very high damages. The largest group of those under age 25 awarded only moderate damages.

Analyses also showed that more educated and higher income respondents awarded higher damages in this scenario. For example, respondents who earned under $50,000 annually were more likely to award moderate damages, while those earning $100,000 or more awarded higher damages. While 42% of higher earners awarded high damages only 32% of lower earners did. Those with a Bachelor's degree or higher awarded higher damages as well. While the majority of higher educated respondents awarded very high damages once they learned the company used a phony offer to buy its competitor to steal its trade secrets, only 42% of less educated respondents did. In fact, almost one third of these respondents awarded moderate or lower damages, even after learning of the deception.



Scenario 1: How Damage Awards Shifted After Additional Information Was Introduced

Kingston and eTronics · n = 1,855 · Damages awarded from 0 (Minimal damages) to 10 (Very high damages)



Percent of 1,855 respondents selecting each damage rating. Change = reassessment minus initial, in percentage points (computed from counts).
Dark tick on the right panel marks the initial percentage for each rating; dashed vertical lines mark mean ratings (faint teal = initial mean).

SCENARIO 2: A FOREIGN COMPANY STEALS FROM AN AMERICAN COMPANY

The second scenario introduces a situation where a large foreign company steals from a large American company. The situation read as follows:

> An employee of a large, foreign technology corporation stole a revolutionary joint design for robotic arms used in manufacturing from a large American technology corporation. The new design allowed robotic arms to move faster, operate more precisely, and require significantly less maintenance.
>
> During an official visit to the American company's facility, security cameras recorded an engineer from the foreign corporation taking a joint from a laboratory, placing it in a bag, and walking out of the facility. The foreign corporation denied responsibility, claiming the employee acted on his own. The joint was never recovered.

As discussed earlier, respondents generally want to award higher damages against a foreign company that steals an American company's trade secrets. This finding holds true in this scenario. Two-thirds of respondents (67%) wanted to award high or very high damages in response to the theft by a foreign tech company (mean = 7.28).

We introduced a new fact that clarified the foreign company did not plan or intend for its employee to steal the trade secret, despite the fact that the company likely took advantage of these trade secrets.

Specifically, respondents were presented with the following:

> The foreign corporation's engineer decided on his own to steal the technology, but the foreign corporation used it to develop very similar technology.

This new fact did not substantively change the distribution of damage awards (mean = 7.42). Whereas initially 67% awarded high or very high damages, after the new fact was presented, only 69% did, a very small 2% change.

The situation changes dramatically with the subsequent fact:

> The foreign corporation had a bonus plan that paid huge bonuses to employees who stole valuable trade secrets from competitors. The foreign engineer who took the robotic joint was rewarded handsomely.

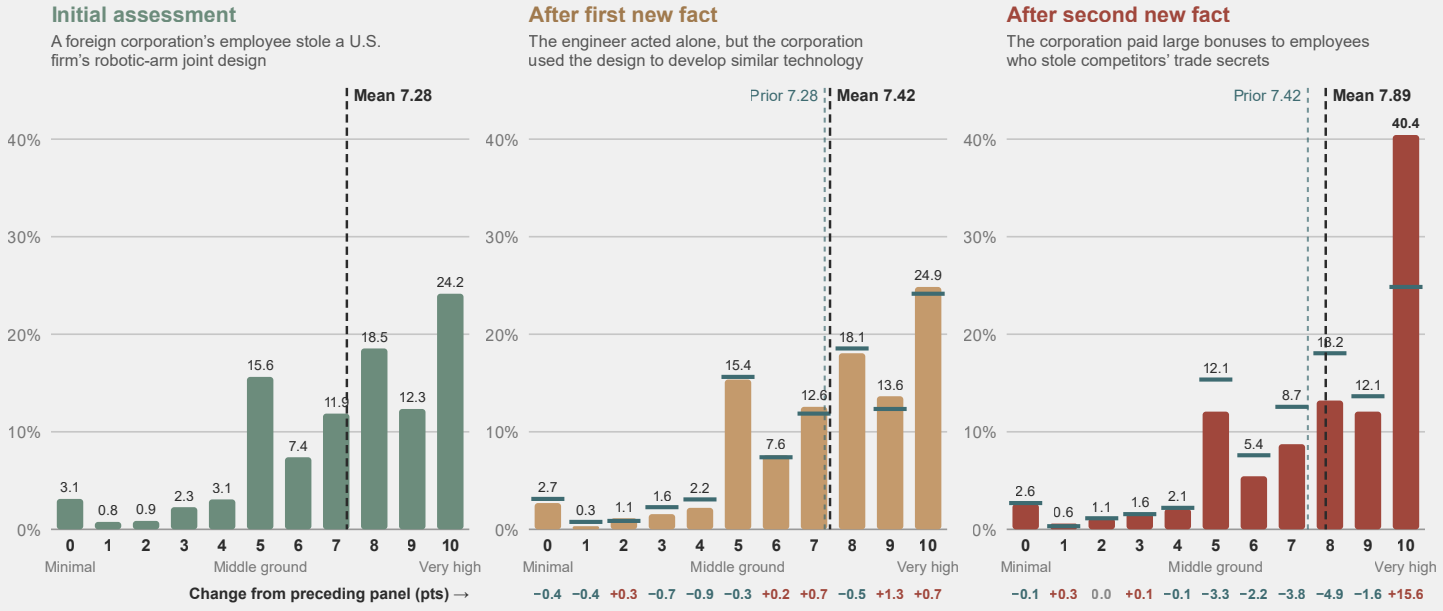
Even though the employee acted on her/his own, respondents learn that the foreign corporation had financially incentivized the theft. Data shows respondents reacted quite negatively to this fact. Before this fact, 38% awarded very high damages. As a result of this fact, the majority of respondents (53%) awarded very high damages (mean = 7.89). This data suggests that jurors react more negatively a foreign company paying employees to steal trade secrets, especially from an American company, than they do, as in scenario 1, when a company pretends to buy a company in order to get access to that company's trade secrets.

As in the first scenario, older respondents awarded higher damages. Initially, 41% of those 65 or older awarded very high damages. In contrast, only 20% of those under age 25 did. The largest group of under 25 respondents awarded only moderate damages. Importantly, older respondents continually awarded higher and higher damages after each subsequent fact was added. After the first fact was introduced 51% of those 65 or older awarded very high damages. In contrast, only 35% of those under age 25 did. After learning of the bonus plan paid for stolen trade secrets, 75% of those 65 or older, 58% of those age 55-64 and 54% of those age 45-54 awarded very high damages. In contrast, only 31% of those under age 25 and 39% of those age 25-34 awarded very high damages.

Not surprisingly, political affiliation had an impact on damages. America First Republicans awarded higher damages than others. Initially, after hearing the basic scenario, almost half of those who identify as American First (45%) awarded very high damages, while only about one-third of others (35%) did. Additionally, those with higher education and higher incomes awarded higher damages, but the differences are relatively small.

Scenario 2: How Damage Awards Shifted After Additional Information Was Introduced

Robotic-arm joint design taken by a foreign competitor · n = 1,855 · Damages awarded from 0 (Minimal damages) to 10 (Very high damages)



Percent of 1,855 respondents selecting each damage rating. Change = panel minus preceding panel, in percentage points (computed from counts).
Dark ticks mark the preceding panel's percentage for each rating; dashed vertical lines mark mean ratings (faint teal = preceding mean).
The share awarding the maximum (10) rose from 24.2% initially to 40.4% once the bonus plan was revealed; the mean rose from 7.28 to 7.89.

SCENARIO 3: HIRING A COMPETITOR'S EMPLOYEES AND OBTAINING TRADE SECRET DOCUMENTS

The third scenario represents a marked change from the first two scenarios. This scenario involves a company hiring another company's employees to get access to their trade secrets. Unlike the prior scenarios, many people have personal experiences changing jobs, working for competitors in the same field, signing nondisclosure and confidentiality agreements and taking what they have learned from one job to another.

Specifically, the third scenario states:

> A company named Breathe Right developed a new type of asthma inhaler that was just as effective as existing inhalers but much easier to manufacture. A competitor, GTO Medical, hired several employees from Breathe Right's design and manufacturing teams and, in a remarkably short time, introduced a competing product that was nearly identical to Breathe Right's inhaler and sold for significantly less.

While the scenario paints a circumstantial picture of trade secret theft, largely centered around the shortened development time, there remain many unanswered questions about the intent of the company and the conduct of the employees who were hired. Not surprisingly, damage awards were significantly lower than in prior scenarios. In this situation, two-thirds of respondents (63%) award moderate to high damages (mean = 6.69).

The new fact introduced to the scenario added more information but did not fundamentally change the landscape.

Specifically, the third scenario states:

> The former Breathe Right employees had been members of the design and manufacturing teams and used what they had learned at their prior job to help their new employer GTO Medical develop its competing product.

Now, respondents learned that the new employees actually worked on the development of the competing product, but it did not specify any planning on the part of GTO Medical to steal trade secrets. Moreover, it generally states that employees "used what they had learned at their prior job." It never directly stated they passed confidential or proprietary information. For some respondents, employees might have only used their expertise and experience to help develop the new product. Not surprisingly, damage awards did not change after the new fact was introduced (mean = 6.68).

These findings are consistent with DOAR's prior research on attitudes toward the theft of trade secrets. This research showed many were largely accepting of conduct that would raise red flags for professionals. Roughly two-thirds of individuals who lived in top IP venues [NDCA, District of Delaware, EDTX (Marshal division) and WDTX (Waco division)] believed it was acceptable for new employees to provide an employer with information about how their prior employer solved critical technical problems. A majority also found it acceptable for new employees to provide a prior employer's technical information about a product if they relied solely on their memory.

However, respondents were provided with an additional fact that had the potential to substantially increase damage awards.

Specifically, the new fact stated:

> The former Breathe Right employees not only used knowledge gained while working at Breathe Right, but also shared technical documents with their new employer that detailed Breathe Right's device and manufacturing process.

Now, these employees did not just rely on their memory or expertise. They gave their new employer their prior employer's technical documents. In this situation, respondents' damages assessments changed dramatically. Two-thirds of respondents (66%) awarded high or very high damages (mean = 7.27). More than half of those respondents, or 37% of the total number of respondents, awarded very high damages.



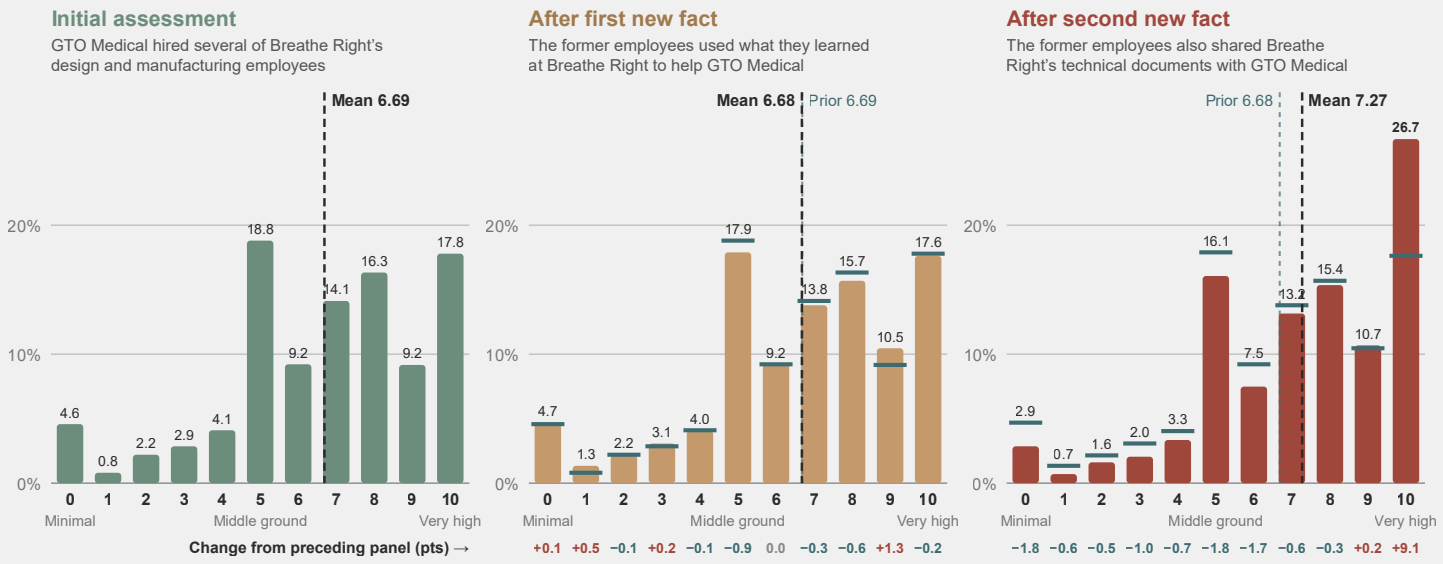
This reaction to the sharing of a prior employer's technical documents is consistent with DOAR's prior research. That research found almost three-quarters of respondents in top IP venues believed this conduct was unacceptable, with most of them finding it completely unacceptable.

Older respondents also tended to award higher damages in this scenario. While the vast majority of older respondents awarded high or very high damages (66% of those 65 or older and 62% of those age 55-64), almost half (43%) of those under 25 awarded only moderate damages. When respondents learned that technical documents were shared, older respondents awarded even higher damages. The majority of those 65 or older (53%) awarded very high damages. In contrast, only 23% of those under 25 and 28% of those age 25-34 did. In fact, the largest group of under 25 respondents (39%) awarded only moderate damages, while only 17% of those 65 or older did.

Analyses also showed that men awarded higher damages than women, higher educated respondents awarded more than lower educated respondents, and higher income respondents awarded more than lower income respondents, but these effects were modest.

Scenario 3: How Damage Awards Shifted After Additional Information Was Introduced

Breathe Right and GTO Medical · n = 1,855 · Damages awarded from 0 (Minimal damages) to 10 (Very high damages)



Percent of 1,855 respondents selecting each damage rating. Change = panel minus preceding panel, in percentage points (computed from counts).
— Dark ticks mark the preceding panel's percentage for each rating; dashed vertical lines mark mean ratings (faint teal = preceding mean).
Using know-how alone barely moved awards (mean 6.69 to 6.68); sharing technical documents raised the share at 10 from 17.6% to 26.7%.

SCENARIO 4: HIRING A COMPETITOR'S EMPLOYEE AND LEARNING ABOUT TRADE SECRET THEFT AFTER-THE-FACT

The fourth scenario continues with the themes addressed in the third scenario, with some noticeable changes.

The initial scenario reads:

> A company called Safety Pro developed a device called The Charge Pro that provided emergency power for electronic devices such as cellphones through a chemical reaction similar to a glow stick. A key component of the device was a unique power converter.
>
> The chief designer of The Charge Pro and its power converter left Safety Pro and joined a company called World Outdoors. At World Outdoors, the designer developed a product similar to The Charge Pro that was added to World Outdoors' safety equipment line up. In creating the new product, the designer relied on both his technical expertise and what he learned while working at Safety Pro.

As with the prior scenario, a company hired an employee from a competitor to help it develop a competing product. That employee happened to be the chief designer of the competitor's product. As the chief designer, he would be privy to all of his employer's trade secrets. However, the scenario merely states that he "relied on both his technical expertise and what he learned while working at Safety Pro." It did not state he took documents or that he used confidential or proprietary information. It merely stated he used what he learned.

While for employers the scenario raises a worrisome red flag, for many employees, this is completely acceptable. An employee's experience is what they offer when they apply for a job. And from their point of view, their new employers expect them to use their expertise and experience. Not surprisingly, respondents reacted similarly to scenario 3. Approximately two-thirds (64%) awarded moderate to high damages (mean = 6.09).

The new fact involved the designer taking technical documents with him when he left his job. Most employers would not just see this as a red flag, they would see it as trade secret theft. However, we added a wrinkle. The designer only took documents he created at his prior job.

Specifically, the new information stated:

> The chief designer of The Charge Pro and power converter had taken a few Safety Pro technical documents with him when he left the company, but only ones that he had personally drafted. He likely referenced these documents when he created the World Outdoors device.

Prior DOAR research found that a majority of people believe it is acceptable for employees to take technical documents with them when they leave a job—IF they helped create them. Not surprisingly, introducing this fact had no effect on damages. Whereas 64% initially awarded moderate to high damages, after the introduction of the new fact, 63% awarded moderate to high damages after this fact (mean = 6.28).

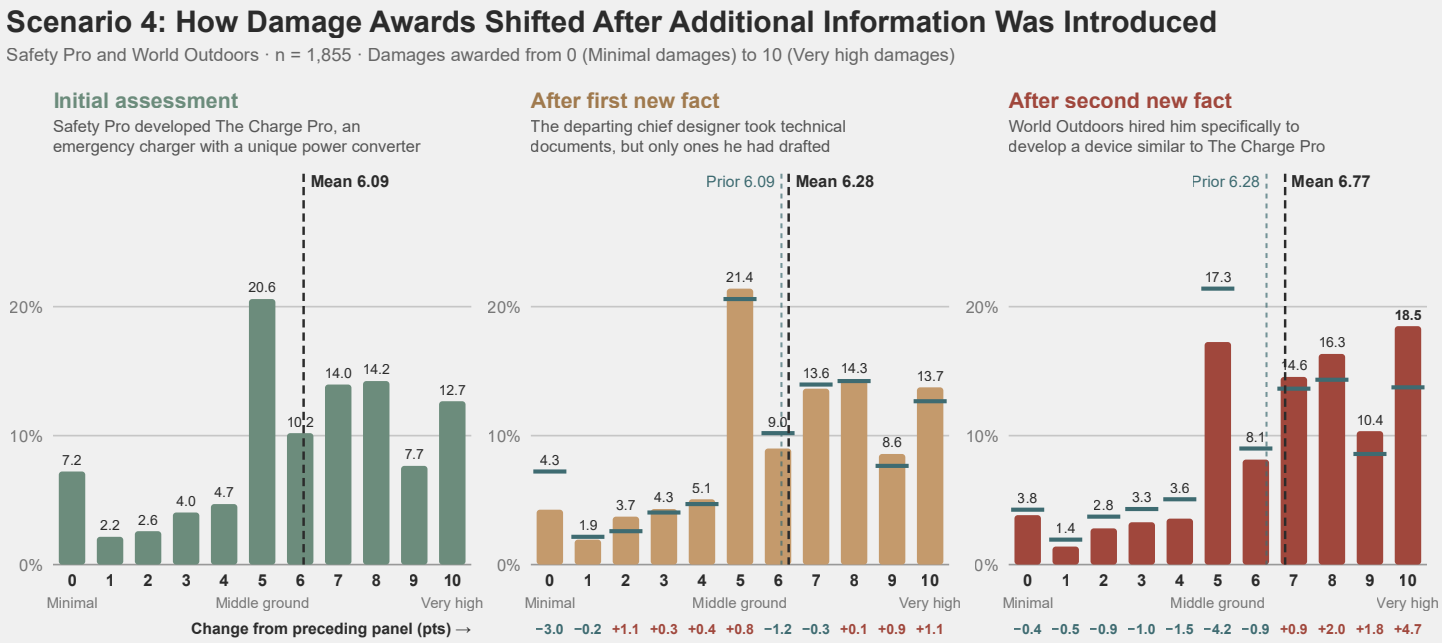
This finding is not only consistent with our prior research, but it tells us something more. People don't view referencing a prior employer's documents that you create as wrong, at least wrong enough to justify increasing damages.

The next fact provided more information about the new company's knowledge and intent.

Specifically, the new fact reads:

> The chief designer's bosses at World Outdoors knew about his work at Safety Pro and had hired him specifically to develop a similar device to The Charge Pro and to work on other products. His bosses at World Outdoors saw Safety Pro technical documents on the chief designer's desk but said nothing.

This new fact describes a different situation than ones described earlier. Here his new bosses did not



Percent of 1,855 respondents selecting each damage rating. Change = panel minus preceding panel, in percentage points (computed from counts).
Dark ticks mark the preceding panel's percentage for each rating; dashed vertical lines mark mean ratings (faint teal = preceding mean).
Each new fact raised awards: the mean climbed from 6.09 to 6.28 to 6.77, and ratings of 0 fell from 7.2% to 3.8%.

financially incentivize him, nor did they instruct him to bring as many documents as he could when he left. They did not necessarily, although circumstances suggest they might have, intend for him to use their competitor's trade secrets to create their new product. As a result, damages did not substantially increase. Sixty percent awarded moderate to high damages after this new fact was presented (mean = 6.77).

However, the number of people who awarded very high damages increased from 23% to 29%. This change likely stemmed from the conduct of the designer's bosses. Although his new bosses never expressly intended for him to steal, their conduct suggested they were okay with him doing so, as long as their hands never got dirty. Some respondents likely responded negatively to this conduct and their damage awards increased as a result. Nevertheless, the lack of clear intent or premeditation contained damage awards for the majority.

Unlike in prior scenarios, age had a limited impact on damages awarded. Older respondents awarded higher damages but only when the final fact was introduced. At that point, those under 25 were more likely to award only moderate damages—thirty-nine percent did so. Only 17% awarded very high damages. In contrast, 40% of those 65 or older and 35% of those age 55-64 awarded very high damages. Additionally, higher educated and higher income respondents were also more likely to award higher damages, but the differences were small.

The Concerns Driving Higher Damages

People award damages for a variety of reasons. Some are concerned with punishment. Others are concerned with prevention. Others want to find common ground. We asked respondents to rank what was most important to them when awarding damages in a theft of trade secret case.

Respondents were presented with the following list:

1. Wrongdoer is punished
2. Deter wrongdoer from committing similar acts again
3. Be fair to both sides
4. Compensate victims for all of the harm they suffered
5. Award only what is supported by the evidence

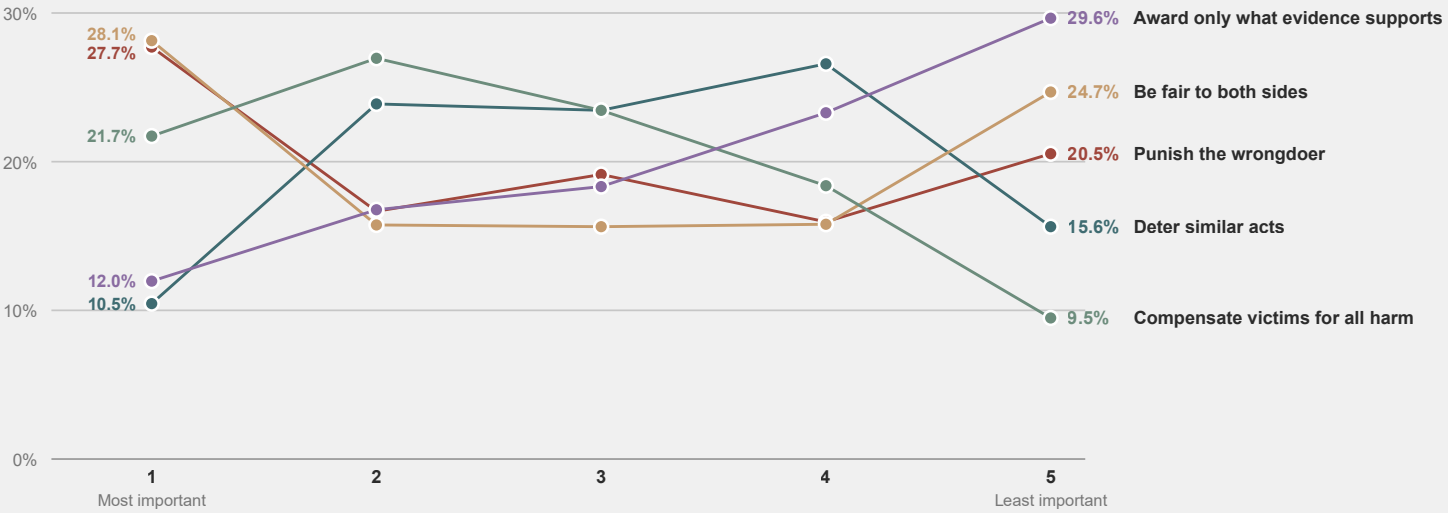
Chart 6 shows the distribution of their responses. It shows that punishment and fairness were most likely to rank at the top of the list. Compensating victims for the harm they suffered and deterring future wrongdoing tended to be ranked in the middle of respondents' lists, with compensating victims ranking slightly higher than deterrence. Awarding only what is supported by the evidence ranked lower on their list.

two most important concerns with those who ranked it their bottom two. We omitted those who ranked it in the middle. Those who value punishment the most were more likely to be Republicans and reside in a rural area. Those who value punishment the least are progressives and Democratic Socialists.

Additionally, those who value punishment the most award more damages than those who value it the

Chart 6: What Matters Most When Setting a Damage Award

Respondents ranked five goals from 1 (most important) to 5 (least important) · n = 1,855



Percent of 1,855 respondents assigning each rank to each goal; each goal's five percentages sum to 100%.
Fairness to both sides and punishing the wrongdoer drew the most #1 rankings (28.1%, 27.7%); awarding only what the evidence supports was most often ranked last (29.6%).

These results also show that there were substantial portions of respondents who also ranked punishment and fairness lower on the list. In fact at the bottom of their list. For example, the largest group of respondents (28%) rated punishment as their top concern, but 21% ranked it as their lowest. Similarly, while the largest group of respondents (28%) ranked fairness as their top concern, 25% ranked it as their least important concern.

We looked at these divergent populations and compared those who value punishment the most versus those who value it the least. And we did the same for fairness.

Let's first look at the issue of punishment. We compared those who ranked punishment as their top

least. This held true for scenarios 1, 2, and, for the most part, 3. However, it did not hold true for scenario 4. This is likely because they believed the fact patterns in scenario 4 were less unacceptable, and not deserving of punishment, as compared to the fact patterns in other scenarios.

A similar, but reversed, pattern emerged for those who value fairness the most versus those who value it the least. To begin, younger respondents, African Americans, Hispanics and those with less education were significantly more likely to value fairness the most. In contrast, fiscal Republicans were significantly more likely to value fairness the least. As far as damages are concerned, those who are most concerned about fairness award significantly lower damages than those who are least concerned

about fairness. This held true in all 4 scenarios and with each additional fact. The only exception was scenario 4. While those who value fairness the most awarded lower damages than those who value it the least, the differences were not significantly different. This suggests that both groups, as did most, did not perceive the initial fact pattern as particularly unfair.

We also asked respondents to identify what would be most important for them when determining damages in a case where a large American corporation was found to have stolen trade secrets from a small American company. Respondents were then presented with a similar list as before, with a few additions.

The list included the following:

1. Avoid awarding so much that the large corporation is forced to lay off workers
2. Avoid awarding so much that it bankrupts the large corporation
3. Punishing the large corporation
4. Deter the large corporation from stealing trade secrets in the future
5. Only make the large corporation pay for the harm it caused, no more
6. Award only what is supported by the evidence
7. Find a middle ground that is fair to both sides

Among this list of goals or concerns are five options often associated with limiting damages. These are options 1, 2, 5, 6, and 7. The others, punishment and deterrence, are often associated with increased damages.

In situations where a large tech corporation steals trade secrets from a small company, the majority of respondents (53%) state they are most concerned with punishment and deterrence. Fifteen percent are most concerned with potential layoffs and bankruptcy, 9% are most concerned with compensating victims for the harm, 14% are most concerned with evidence and 10% were most concerned with finding a middle ground.

When asked about their most important concerns when a small company steals trade secrets from a large tech corporation, the pattern reverses. In this situation, only 35% are most concerned with punishment or deterrence. Almost two-thirds are most concerned with other things. Nineteen percent stated potential layoffs and bankruptcy are their most important concerns. Twenty-one percent are most concerned about only awarding damages supported by the evidence, 11% were most concerned about compensating the victim for their harm, and 14% were most concerned about finding a middle ground. In other words, people are much more interested in punishing Goliath rather than David, even if David is the bad guy.

We also asked respondents what would be their most important concern if a large foreign tech corporation steals trade secrets from a large American tech corporation and vice versa. Results showed a similar but more muted pattern. In a situation where a large foreign tech corporation steals trade secrets from a large American tech corporation, almost half (48%) are most concerned with punishment and deterrence. Fifteen percent are most concerned with awarding damages supported by the evidence, 11% are most concerned with compensating the victim for their harm, 12% are most concerned with finding a middle ground and 14% are most concerned with awarding damages that avoid causing layoffs or bankruptcy.

In a situation where a large American corporation steals trade secrets from a large foreign tech corporation, only 40% state they are most concerned with punishment and deterrence, down from 48% in the reverse scenario. Eighteen percent are most concerned with awarding only those damages supported by the evidence, 16% are most concerned with finding a middle ground, 16% are most concerned with avoiding potential layoffs and bankruptcy and 10% are most concerned with making the victim whole.

The smaller differences in these findings are likely because both the foreign and American corporations are large. There is no power imbalance or inequity that exists when considering small companies versus large corporations. What is most curious about these findings is that the majority are less concerned with punishment and deterrence as a whole when it comes to foreign versus American corporations. Given the prior findings regarding large corporations, it would be reasonable to expect the majority to favor punishment or deterrence whether the foreign or American tech corporation steals trade secrets. However, that was not the case.

Key Takeaways



Jury attitudes toward trust, fairness, and corporate behavior can be just as influential as the underlying trade secret allegations themselves.

We started this analysis to gain a better understanding of how jurors make damages decisions in theft of trade secret cases. When examining attitudes toward the different types of parties involved in this litigation, we found that a person's level of trust in a type of company affects their damages decisions regardless of whether that party was a plaintiff or defendant. People who trust small tech companies more than large ones award higher damages when a large corporation steals from a small one, but lower damages when a small company steals from a large corporation. This shows that the David versus Goliath effect impacts damages whether David is the good guy or the bad guy.

We found that the same holds true when trust in foreign versus American tech companies is compared. Individuals who trust large American corporations more than large foreign corporations award more damages against foreign corporations that steal from American ones and less damages when American corporations steal from foreign ones. The home field advantage appears to be alive and well when it comes to damages in trade secret litigation.

Examining the goals jurors hope to achieve or their concerns when awarding damages gave more texture to these findings. Those who value punishment the most award higher damages while those who value fairness the most award lower damages. Interestingly, while some people value fairness or punishment more than others, these values appear to be context dependent. They change depending on the circumstances. When someone trusts small companies more than large ones, they tend to focus on punishment in cases where a large corporation steals from a small one. When the situation is reversed and the small company is the thief, they focus on other factors typically associated with limiting or containing damages, such as only awarding what the evidence supports, making the victim whole, finding a middle ground, etc. The same holds true when it comes to foreign versus American tech companies.

When assessing the potential upside or downside for any particular case, these findings would be beneficial to litigators and general counsel alike. For a large corporation accused of stealing trade secrets from a small company, the potential downside is greater for the large corporation. Conversely, for the small company in this situation, the potential upside is greater. Additionally, for a foreign tech corporation accused of stealing trade secrets from an American one, the potential downside is greater, but, for the American corporation in this situation, the potential upside is greater.

But favoritism toward one party or another is not the whole story. Jurors focus on the facts of a particular case, and it is those facts that also drive damage awards. This research shows that premeditation and planning are important components in theft of trade secret cases. The more planning and premeditation that can be shown to jurors, the higher the damage awards. Without that premeditation and planning, damage awards might increase but not nearly as much. For example, damages increased the most when executives organized a faux merger or instituted a bonus plan to award theft. When executives learned of theft after the fact or had no intent to steal trade secrets, damage awards barely moved—even when the trade secrets were used to develop a competing product.

The research also shows while some behavior may be a red flag to employers and managers alike, for jurors, it means nothing. An employee passing a former employer's trade secret documents to a new employer ratcheted up the damage awards, as expected. However, if the employee helped to create those trade secret documents from their prior job, damage awards did not significantly increase. They stayed largely the same.

Additionally, damages did not significantly increase in instances where circumstantial evidence of theft could easily be explained by employees using the knowledge and expertise in a new job, even if the circumstances suggested that theft had occurred, e.g., substantially shorter development time of a competing product. These findings are in line with DOAR's prior research into trade secret cases.

While we were only able to test a small number of fact patterns, what we learned can inform discovery requests, theme development and focus the story you tell at trial on fact patterns that will have the biggest effect on damages. The lessons might be different for plaintiffs and defendants, but their impact remains the same.

Finally, the results of this research have implications for jury selection in these cases. Some people are more likely to award higher damages than others in theft of trade secret cases. For large corporations, older people, Caucasians, Democrats, lower income individuals, lower educated individuals, women and Midwesterners pose greater risks, especially in cases against small corporations. In contrast, men and Republicans are likely to be favorable to large corporations, as they are more likely to trust large corporations over small ones. For foreign corporations in disputes with American corporations, the list is quite similar. Older people, Caucasians, lower income individuals, women, Midwesterners and rural and suburban residents pose greater risk. America First Republicans also pose a greater risk.

Notably, older people consistently award higher damage awards than their younger counterparts and they do so across almost all of the different factual scenarios. This is interesting as young people are sometimes viewed as more likely to award higher damages because they are inexperienced, haven't learned the value of money, or are more than happy to give away someone else's money. Older people are often viewed as less likely to award substantial sums because, for example, they grew up in a time when a million dollars was a lot of money. This research, in conjunction with DOAR's prior research on trade secrets, suggests that older people are, in fact, much more likely to award higher damages because they view trade secret theft as more wrong and unacceptable than younger people.

We also found that higher educated and higher income individuals consistently award higher damages. However, the differences between damages awarded by higher versus lower educated individuals and higher versus lower income individuals are not large. Nevertheless, if you are a plaintiff, younger, lower educated and lower income people are worth special attention, as they are more likely to award lower damages, For defendants, the opposite is true. Older, higher educated and higher income individuals should receive special attention because they are more likely to award higher damages.

Aside from maximizing or controlling damages, this research provides additional guidance for those who will be focusing on punishment themes versus those who focusing on themes of fairness. Republicans and those who live in rural areas will be the most receptive to punishment themes while progressives and Democratic Socialists will be the least. Younger individuals, those with lower educations, African Americans and Hispanics will be the most receptive to themes of fairness, while traditional fiscal Republicans will be the least.

In the end, stoking or containing damages and picking the right jury to achieve your clients' ends is much more complicated and involves many more considerations than those presented here. While cases can be similar, their differences may present an entirely new set of obstacles. Targeting discovery on key issues and themes, developing those themes for trial, testing those themes, and strategically picking a jury are all key components of courtroom victory in theft of trade secret cases. ■

Email us at inquire@DOAR.com to schedule a partner briefing of our survey findings. Visit DOAR.com to learn more about our trial consulting services and follow us on LinkedIn and X at @DOARLitigation.

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Chad Lackey Ph.D. is a Director in DOAR's jury consulting practice. He has extensive experience designing and conducting focus group, survey, and mock trial research to test the persuasiveness of case themes and arguments. Additionally, he routinely partners with clients throughout all aspects of jury selection, including helping clients negotiate issues with the court and opposing counsel, identifying personal experiences and attitudes that bias deliberations and decision making, and drafting and grading supplemental juror questionnaires.

Dr. Lackey has a widespread consulting background. He has consulted on hundreds of civil and criminal matters across the country involving employment, complex commercial, insurance, patent, insider trading, child sexual abuse, securities fraud, murder, political corruption, terrorism, and the death penalty.

Dr. Lackey has a Ph.D. from the University of Colorado Boulder. He regularly lectures on jury selection and presentation strategy to civil, criminal, and regulatory attorneys.

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DOAR is a litigation strategy consulting company that provides legal teams with strategic clarity, expert insight, and thoughtful perspectives to win complex, high-stakes matters. By bringing together leading litigation strategy consultants and the most qualified testifying experts under one roof, we help our clients develop stronger cases that drive better outcomes.

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