

The Sedona Conference
Commentary on Monetary Remedies in Trade Secret Litigation
(May 2022 public comment version)

The available remedies for trade secret misappropriation drive and define litigation on these claims. Recognizing this, The Sedona Conference created drafting teams of its members to identify, organize, and present consensus, nonpartisan principles on available remedies for trade secret misappropriation, which include both non-monetary and monetary remedies. The previously published *Commentary on Equitable Remedies in Trade Secret Litigation* provides principles for non-monetary remedies. This *Commentary* provides them for monetary remedies.

The rules for what money a successful trade secret claimant can recover are easy to state but often difficult to apply. This *Commentary* seeks to be a resource to assist parties and decisionmakers in addressing monetary remedies and suggests effective methods for determining whether, and in what amount, to award monetary relief for trade secret misappropriation.

To achieve these aims, this *Commentary* focuses on the statutory and decisional law that provides for the three core types of damages in trade secret cases: actual loss, unjust enrichment, and, in many cases, royalties. This *Commentary* also analyzes the difficult issues that must be grappled with regarding such damages, including apportionment, causation, reasonable certainty, the applicability and inapplicability of patent damages law precedent in trade secret cases, and many more.

This *Commentary* presents four Principles for the governance and management of trade secrets:

- Principle 1** Monetary remedies should fairly compensate the trade secret owner for damages sustained as a result of misappropriation.
- Principle 2** The existence of damages and the measurement of a monetary damages award for misappropriation must not be speculative, but the amount of damages need not be proved with mathematical certainty.
- Principle 3** Multiple theories of measuring damages for misappropriation may be applied so long as there is no double counting.

The full text of *The Sedona Conference Commentary on Monetary Remedies in Trade Secret Litigation*, May 2022 public comment version, is available free for individual download from

The Sedona Conference website at:

https://thesedonaconference.org/publication/Commentary_on_Monetary_Remedies_in_Trade_Secret_Litigation



Please note that this version of the *Commentary* is open for public comment through October 31, 2022, and suggestions for improvements are welcome.

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