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Where Trade Secret Preemption Meets Insurance Coverage

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Virtually every state has adopted the Uniform Trade Secrets Act in one form or another.

As enacted, the UTSA typically preempts "other laws of this State providing civil remedies for misappropriation of trade secrets." This preemption provision has generated a surprising split in decisions where a party asserts claims based on confidential information that does not rise to the level of protected trade secrets. And a preemption ruling can impact an insured's efforts to secure insurance coverage for an action involving claims alleging misappropriation of confidential information that does not constitute a trade secret.

This article analyzes the continuing judicial divide over the application of UTSA preemption to non-trade secret information, including comparing two recent district court decisions that reached opposite conclusions. It also discusses the related question of the applicability of a "trade secret" exclusion to an insured's demand for coverage of claims based on non-trade secret confidential information. These doctrines intersect, as a preemption ruling in an underlying case can impact an insured's request for coverage under a policy containing a trade secret exclusion.

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