



# THE TIPSHEET

State Bar of Texas Intellectual Property Law Section

Vol. 20 No. 1

## MESSAGE FROM THE CHAIR

Hello Members,

Welcome to 2026 and thank you for your membership in this terrific organization. The Section has been extremely active this fall as you might have seen with the many wonderful CLEs we have produced during the second half of 2025. We are grateful to all of our talented speakers. As a Section member, you can access these recordings on our CLE Resource page by visiting our [website](#) and logging in using your regular bar credentials. Over the next few months, we intend to continue to schedule and hold additional monthly CLEs – all free to our Section members.

In September, the Section Leadership, including all officers, Council members and several Committee Chairs attended a two-day retreat in Waco, Texas to discuss the direction and planning for our section. We continue to work on refining our messaging and highlighting the benefits of why you should continue to be a member and help us grow!

We have revamped our [website](#) to make it cleaner and easier for you to engage with the section by submitting ideas for CLE topics or promoting the Section to law students and newly licensed attorneys.

Please follow the Section on [LinkedIn](#).

Finally, please mark your calendars for the upcoming events in 2026:

**February 12 & 13, 2026 (Austin) - [Advanced Intellectual Property Law CLE](#)**

**February 12, 2026 (Austin, Dallas and Houston) - [IP Networking Events](#)**

**June 11 & 12, 2026 (Houston) - [SBOT Annual Meeting](#)**

The IP Section will be hosting a social networking event at Toro Toro (Four Seasons) on Thursday, June 11th with the Computer & Technology Section and the Entertainment & Sports Law Section. We will also conduct a full day of CLE presentations and our Lunch & Awards Ceremony on Friday, June 12th.

We send you good vibes for a healthy, productive and fruitful 2026 and look forward to seeing you in person or online soon!

Thank you for the opportunity to serve,

Craig Stone, Chair  
Intellectual Property Section, State Bar of Texas

### **State Bar of Texas – Women in Intellectual Property Committee**

On November 13, 2025, the SBOT IP Section's Women in IP Committee sponsored a breakfast session at the 63<sup>rd</sup> Annual Conference on Intellectual Property Law in Plano, TX. This conference is hosted annually by the Center for American and International Law's Institute for Law and Technology.

This session was a fireside chat with Janda' Carter (Assistant General Counsel, Caterpillar Inc.) moderated by Kandace D. Walter (Clinical Director at SMU Dedman School of Law, Owner of Walter Legal PLLC). They discussed leading a team through and working with outside counsel during times of change, including organizational change, legislative change and rapid technological advancements impacting business practices. Some takeaways from the session included the importance of having a growth mindset and being a life-long learner to help reduce career fatigue. They also shared tangible tips for building an online presence on professional social media accounts.

The objective of the Women in IP Committee is to provide networking and mentoring resources and opportunities to women practitioners of Intellectual Property Law throughout the State of Texas. This Committee organizes networking events in Austin, Dallas and Houston. Co-founded by Shannon Bates, Wei Wei Jeang and the late Genie Hansen in Dallas, these events present an opportunity to network in an informal, friendly and fun setting. If you are interested in learning more about the Committee's work across the state or in supporting our planning efforts, either through direct volunteering or through sponsoring an event, please email the Chair, Moriah Bisewski, at [bisewski@fyiplaw.com](mailto:bisewski@fyiplaw.com).



Photograph of session featuring a fireside chat with Janda' Carter (Assistant General Counsel, Caterpillar Inc., on right) and Kandace D. Walter (Clinical Director at SMU Dedman School of Law, Owner of Walter Legal PLLC, on left).



Additional photograph of the session. Thank you to all the attendees for listening to and participating in the lively discussion

## **One Bite at the Apple: What *Coe v. DNOW LP* Means for Trade Secret Cases in Texas**

### Authors:

Tim Hudson, *Partner at Barnes & Thornburg LLP*

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Meghan Thomas, *Associate at Barnes & Thornburg LLP*

For years, Texas employers suing departing employees for trade secret theft have relied on a familiar playbook: allege misappropriation, pile on conspiracy and breach of fiduciary duty claims, and aim for joint and several liability. That playbook was recently shredded in a decision by the Houston Court of Appeals.

In *Coe v. DNOW LP*, Houston's Fourteenth Court of Appeals held that the Texas Uniform Trade Secrets Act ("TUTSA") preempts adjacent tort claims. *Coe v. DNOW LP*, 718 S.W.3d 338 (Tex. App. 2025). In other words, if a claim is based on the same facts as trade secret misappropriation, it must be brought under TUTSA—and nowhere else. *Id.* at 353.

The result was dramatic: a \$9 million jury verdict collapsed into just \$11,250 in actual damages against a single employee. The *Coe* opinion sends a clear warning—plaintiffs no longer get two bites at the apple, and future trade secret battles in Texas will be fought on a much narrower field.

### ***Coe's* Disruption of the Exodus Theory**

Texas employers facing a wave of departures have traditionally leaned on what practitioners call the "employee exodus model." The logic was simple: if a large number of employees leave at once for a competitor, the losses must be traceable to trade secret misuse, collusion or both. Employers would frame the "exodus" itself as circumstantial proof of misappropriation, then stack claims like conspiracy and civil theft to extend liability beyond the individuals who actually handled trade secret materials.

This strategy often resonated with juries. A mass departure creates a powerful narrative—loyal employees don't just walk out in droves without something improper driving it.

*Coe* represents a sharp break from that approach. By adopting the "same conduct" test for preemption, the court effectively stripped away the ability to treat an employee exodus as a catch-all damages multiplier. *Id.* at 355. ("We conclude that the 'compare-the-facts' or 'same conduct' test employed by the majority of courts is more consistent with the Act's language and with Texas law."). The opinion makes clear that unless the plaintiff can tie each departing employee's conduct to specific trade secret misappropriation, the mass-departure narrative alone won't sustain overlapping theories like conspiracy or fiduciary duty. *Id.* at 353.

In practical terms, that means no more sweeping liability that turns thirty departures into a joint-and-several hammer against a competitor. Liability must now be individualized, calibrated to what each defendant actually did with protected information.

## Civil Theft's Retreat After 2013

Another casualty in *Coe* is the Texas Theft Liability Act (TTLA). For years, plaintiffs used TTLA as a parallel hook, arguing that copying confidential files was “theft.” That approach quietly eroded in 2013, when the Legislature amended TTLA to delete Penal Code §31.05 (theft of trade secrets), narrowing the statute to ordinary theft under Penal Code §31.03. The upshot: plaintiffs must now show “intent to deprive” the owner of property—not just copying or forwarding information.

In *Coe*, the trial court failed to instruct the jury on this “intent to deprive” element, and on appeal, the omission proved fatal. *Id.* at 365. Measured against the correct standard, there was no evidence of TTLA theft because the defendants never deprived DNOW of its data—they copied it, but DNOW still had it. *Id.* at 366. (“All of [DNOW’s] civil-theft claims rely on the copying or communication of trade secrets or confidential information without depriving DNOW of the use of the originals. Such conduct does not constitute ‘theft’ under the [TTLA].”).

That finding wiped out TTLA liability entirely and critically triggered TTLA’s mandatory fee-shifting provision. Defendants walked away not only free of theft damages but entitled to recover attorneys’ fees for beating the TTLA claims.

By enforcing the Legislature’s 2013 amendment to the Texas Theft Liability Act (TTLA), the Court in *Coe* shut the door on treating information-copying as theft. Only conduct that truly locks the owner out—like destroying files, wiping servers, or withholding access—will plausibly support TTLA liability going forward.

## *Coe* as the Culmination of a Decade-Long Realignment

The tightening of TUTSA’s preemption doctrine reflects a broader historical shift in Texas trade secret law. For decades, Texas courts operated under common law principles, where plaintiffs often layered different theories together to maximize leverage. This patchwork approach gave way in 2013, when the Legislature enacted TUTSA to align Texas with the nearly uniform model adopted in most other states, and again in 2017 with amendments incorporating features of the federal Defend Trade Secrets Act.

Since then, the real battleground has been judicial interpretation. Some courts allowed extra claims if framed around “confidential information,” while others held that any misuse of business data was displaced by TUTSA. Federal district courts, often citing *Embarcadero v. Redgate*, leaned toward the broader reading. *Embarcadero Techs., Inc. v. Redgate Software, Inc.*, No. 1:17-CV-444-RP, 2018 WL 315753, at \*3 (W.D. Tex. Jan. 5, 2018) (holding that TUTSA preempts “all claims based on the alleged improper taking of confidential business information,” including those not meeting the statutory definition of a trade secret).

In this context, *Coe* can be seen as the latest step in a decade-long project: moving Texas away from sprawling common-law remedies toward a streamlined, statute-driven regime that narrows claims, clarifies duties and reinforces uniformity across jurisdictions.

## Conclusion

Texas trade secret litigation is no longer about how many claims a plaintiff can stack, but how clearly it can prove misappropriation under TUTSA. The days of treating an employee exodus as a ready-made damages model, or leaning on conspiracy and TTLA as fallback hooks, are over. Courts will demand precision: each defendant's conduct must be tied to a specific act of misappropriation, and liability will rise or fall on that showing alone.

For plaintiffs, this means recalibrating strategy—focusing on contracts, confidentiality agreements, and conduct that truly falls outside TUTSA's scope. For defendants, it offers new leverage: preemption and fee-shifting can collapse extensive claims into a narrower, more defensible fight.



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Tim Hudson is a Partner in Barnes & Thornburg's Dallas office. He oversees the litigation practice in the firm's Dallas, Atlanta, Nashville, and Raleigh offices. For over twenty years, Tim has provided tailored counsel and representation for clients in matters involving trade secrets, commercial litigation, product liability and mass torts in multidistrict litigation (MDL). Tim serves as an Officer for the Intellectual Property Law Section of the State Bar of Texas. [Read More](#)



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Meghan Thomas is an Associate in Barnes & Thornburg's Dallas office. She is a focused and enthusiastic practitioner who represents clients in an array of industries on litigation matters. Meghan knows how to get to the root of the matter and helps craft persuasive arguments for her clients. She believes in bringing strong and clear communication to every stage of litigation. [Read More](#)



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David brings is an Associate in Barnes & Thornburg's Dallas office. He is known for simplifying technical records into clear, persuasive briefs that move decision-makers. David has represented clients in both state and federal court as a student attorney under Illinois Supreme Court Rule 711. [Read More](#)

### 2025 Scholarship Recipients

The Intellectual Property Law Section of the State Bar of Texas (IP Law Section) awarded three \$5,000 scholarships at the Annual Meeting in June. The 2025 law student recipients were:



## Nadia Posluszny

**Nadia Posluszny** is a 3L at the University of Houston Law Center, where she serves as Managing Editor of the *Houston Law Review* and is active in the Intellectual Property Student Organization and the Association of Women in Law. She previously held leadership roles with The Advocates and the Nancy F. Atlas IP Inn of Court.

With a petroleum engineering degree from the University of Tulsa, Nadia is registered to practice before the USPTO. Before law school, she worked as a drilling engineer and site manager at Chevron. She later transitioned to IP law, working as a patent agent at Osha Bergman Watanabe & Burton while attending law school part time, focusing on patents in energy, mechanical, and AI technologies. This summer, she is clerking in IP litigation at Sheppard Mullin.

Nadia is passionate about increasing representation in IP law, especially in energy and tech. She mentors young women through STEM programs and Big Brothers Big Sisters, bringing a practical, inclusive perspective to the field.



## Jaylan Sanders

**Jaylan Sanders**, originally from Macon, Georgia, has called Houston home for the past five years. She recently graduated *summa cum laude* from South Texas College of Law Houston, where she was named the 2025 Outstanding Female Graduate. During law school, she earned CALI Awards in Torts and Family Law, served as a Langdell Scholar, and sat on the Dean's Advisory Board. Before law school, Jaylan earned a Public Health degree from Georgia College and worked as a Property Manager specializing in student housing. Her passion for intellectual property law centers on protecting innovation, with a special interest in diabetes-related medical technologies.

Jaylan is honored to be a 2025 recipient of the Intellectual Property Scholarship from the State Bar of Texas and is proud to support greater access and advancement in healthcare through IP law.





## Twinkle Tharwala

**Twinkle Tharwala** is a 3L at UNT Dallas College of Law with a B.S. in Biomedical Engineering and a Business minor from UT Austin. Before law school, she worked four years as a patent agent, drafting and prosecuting applications in AR/VR, electronic displays, medical devices, and imaging systems. She has interned with Fish & Richardson's patent litigation group and the Texas Advocacy Project.

At UNT Dallas, Twinkle serves as Vice President of the Intellectual Property Society. She is a Sidney B. Williams Scholar and active in ChIPs. Passionate about empowering women of color in STEM and law, she brings both technical depth and advocacy to her legal career.

### **ANNOUNCEMENTS AND CALLS FOR NOMINATIONS**

**Inventor of the Year:** Nominations are now being accepted for the IP Section's Inventor of the Year Award. The Inventor of the Year award honors a recipient whose invention(s) has significantly impacted the Texas or U.S. economy. Nominees must have at least one United States patent, either expired or existing. The nomination form is available online at [www.texasbariplaw.org/awards](http://www.texasbariplaw.org/awards), and can be submitted via email to [Stephanie Dowdy](mailto:Stephanie.Dowdy@texasbar.org). All nominations are due by **April 15, 2026**, and the 2026 Texas Inventor of the Year will be recognized at the Annual Meeting of the State Bar of Texas in Houston on June 11-12, 2026.

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**Fritz Lanham Annual Trademark Award:** Nominations are now being accepted for the IP Section's 2026 Fritz Lanham Trademark Award (formerly the Annual Trademark Award). The purpose of the award is to recognize lawyers and businesses for their accomplishments on brand-related projects. Attorney nominees must be licensed in Texas. If a business or brand team is nominated, the company should have a headquarters or significant business operations based in Texas. Additional requirements and the nomination form are available online at [www.texasbariplaw.org/awards](http://www.texasbariplaw.org/awards), and can be submitted via email to [Shiro Jaleel-Khan](mailto:Shiro.Jaleel-Khan@texasbar.org). The 2026 Fritz Lanham Trademark Award will be recognized at the Annual Meeting of the State Bar of Texas in Houston on June 11-12, 2026.

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**2026 IP Scholarship Application:** The application process is available at [Intellectual Property Law Section - Awards](http://www.texasbariplaw.org/awards), and the deadline is **May 1, 2026**. The purpose of the scholarships is to encourage law students who have not traditionally been represented in Intellectual Property practice to enter the Intellectual Property profession in Texas by providing financial assistance to help defray the expenses of a law-school education.

Questions can be directed to [Juanita DeLoach](mailto:Juanita.DeLoach@texasbar.org) and [Marylauren Ilagan](mailto:Marylauran.Ilagan@texasbar.org).

## **CALL FOR SUBMISSIONS**

The TIPSHEET welcomes the submission of articles for potential publication in upcoming issues, as well as any information regarding IP-related meetings and CLE events. If you are interested in submitting an article to be considered for publication or adding an event to the calendar, please email [tim.hudson@btlaw.com](mailto:tim.hudson@btlaw.com).

### *Article Submission Guidelines*

STYLE: Journalistic, such as a magazine article, in contrast to scholarly, such as a law review article. We want articles that are current, interesting, enjoyable to read, and based on your opinion or analysis.

LENGTH: We accept a wide range of articles, with most falling into the 500-2500 word range.

FOOTNOTES AND ENDNOTES: Please use internal citations.

PERSONAL INFO: Please provide a one-paragraph bio and a photograph, or approval to use a photo from your company or firm website.

If you have any questions, please email [tim.hudson@btlaw.com](mailto:tim.hudson@btlaw.com).