

The Virginia Uniform Trade Secrets Act¹

by Milton E. Babirak, Jr.²

“To promise not to do a thing is the surest way in the world to make a body want to go and do that very thing.”³

The Uniform Trade Secrets Act (hereinafter “Uniform Act”)⁴ originally was proposed in the United States by the National Conference of Commissioners on Uniform State Laws over twenty years ago and now has been enacted in 42 of the individual states. The Virginia Uniform Trade Secrets Act (hereinafter “Virginia Act”)⁵ was enacted in Virginia, with some modifications to the Uniform Act, and became effective on July 1, 1986. In light of this brief⁶ historical perspective and the seemingly ever increasing application of the Virginia Act in contemporary litigation, it is appropriate at this time to review and partially assess the Virginia Act. The purpose of this article is to: (1) critically summarize the significant provisions of the Virginia Act, including a discussion of a few unusual and controversial features of the Virginia Act; and (2) review some of the significant published case law in Virginia concerning the Virginia Act. This article does not cover the 1996 federal Economic Espionage Act⁷ nor the very interesting inevitable disclosure doctrine.⁸

I. The Virginia Uniform Trade Secrets Act

A. Definition of Misappropriation

The initial language of Virginia’s Act, which defines the misappropriation of a trade secret, exactly follows Section 1 of the Uniform Act. Section 59.1-336 of the Code of Virginia defines misappropriation as the “...acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or the disclosure or use of a trade secret of another without express or implied consent ...” There is nothing remarkable in defining the misappropriation of a trade secret of another to mean a disclosure or use of a trade secret of another. In fact, both the Virginia Act and the Uniform Act also define misappropriation by improper means to include “... theft, bribery, misrepresentation, breach of a duty or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.” However, it is interesting that both Acts also define misappropriation as the mere acquisition of a trade

secret. In so doing, the drafters of the Uniform Act and the Virginia General Assembly recognized a reality. The United States District Court for the Eastern District of Virginia, Alexandria Division, has addressed whether the mere acquisition of a trade secret of another by improper means is a misappropriation under the Virginia Act. In *Smithfield Ham and Products Company, Inc. V. Portion Pac, Inc.*⁹, the Court held that mere acquisition is sufficient.

The Virginia Act continues its definition of misappropriation to include the disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret or who at the time of disclosure or use knew or had reason to know that his knowledge of the trade secret was:

1. Derived from or through a person who had used improper means to acquire it;¹⁰
2. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use;¹¹
3. Derived from or through a person who had a duty to the person seeking relief to maintain its secrecy or limit its use;¹² or
4. Acquired by accident or mistake.

A common example of the misappropriation of a trade secret is when an employee, who properly obtains a trade secret during the course of his employment and subsequently departs from such employment, uses the trade secret for his own benefit.

The above statutory provision concerning the acquisition of a trade secret by accident or mistake is interesting and problematic because it required the General Assembly to balance the rights of the trade secret owner with the rights of another who innocently obtained the trade secret by accident or mistake. In such a case, the Virginia definition of misappropriation prohibits the use or disclosure of a trade secret of another without express or implied consent by a person who at the time of disclosure or use knew or had reason to know that his knowledge of the trade secret was acquired by mistake or accident. *A priori*, if a person discovered that his acquisition of a trade secret was accidental or mistaken after he disclosed or used it, there is no misappropriation of a trade secret.¹³

There does not appear to have been much litigation concerning the accidental or mistaken acquisition of trade secrets and, in fact, there does not appear to be any such case reported in Virginia. However, this provision of the Virginia Act may create an unintended opportunity for misappropriators that can be problematic for a trade secret owner. A misappropriator can falsely argue that he did not use improper means to acquire a trade secret (for example, that he found it or obtained it “innocently” from another) and it was not until after he used it that he discovered that he had acquired the trade secret by accident or mistake. By so doing, the misappropriator may get off the hook because it will be difficult for the trade secret owner to contest the misappropriator’s allegation that he did not know he had acquired a trade secret by mistake or accident until after he used or disclosed it.

B. Definition of A Trade Secret

“[A]n exact definition of a trade secret is not possible.”¹⁴ In recognition of this difficulty, the Uniform and Virginia Act definition of a trade secret is not specific. In Section 59.1-336 of the Virginia Act, a trade secret is defined as “information, including but not limited to, a formula, pattern, compilation, program, device, method, technique or process.”¹⁵ This definition does not cover only high tech secrets. In fact, the Virginia Act is frequently used to protect low tech secrets. Some common examples of low tech trade secrets that appear in published cases include: customer lists, business leads, financial information, marketing strategies, sales techniques and methods of conducting business¹⁶. In patent law, the definition of a trade secret does not require that the information exist in some tangible format. In fact, the information need not be more than an idea, theory or concept. Further, this definition of a trade secret does not require that the trade secret be novel.¹⁷ Several courts have held that novelty is not a requirement, but that maintaining its secrecy is necessary.¹⁸ In addition, and also unlike patent law, the definition does not impose any limit on the length of time that a trade secret can be protected. Although patents may be protected by statute for twenty years, trade secrets may be protected as long as their secrecy is maintained, they are not generally known and they are not readily ascertainable. The Virginia Act and the Uniform Act do not require a profit motive for the

misappropriation.¹⁹ Significantly under the Virginia Act and the Uniform Act, the right to a trade secret need not be exclusive. Two entities, which concurrently but independently develop the same trade secret, may both acquire rights to it.

C. Requirement That Trade Secret Not Be Generally Known

The Virginia Act and Uniform Act definition of a trade secret further requires that the trade secret not be generally known. This does not mean not generally known to the public, but instead means not generally known to those in the relevant industry or trade.²⁰ In trade secrets cases, the requirement that the information not be generally known is often a vigorously contested issue and it can be a close factual issue for a judge or jury to decide. For example, consider whether a particular method of selling a product or service is or is not generally known. A company may argue that it has developed a method of selling a product or service on which it has spent considerable money, time and effort to develop its particular sales method, trained its employees to use it and maintained the secrecy of the method. On the other hand, a departing employee of that company who wants to use the method for her own benefit may argue that the method is most certainly generally known because you can simply read a book at your local public library on sales or marketing to find information on almost any sales method. Further, a departing employee may also contend that the sales method is generally known because several of the competitors of the company use the same or a similar method. This scenario is not unlikely in a mature competitive industry.

Perhaps one of the country's more interesting trade secret cases concerning the meaning of "not generally known" is the Virginia case of *Religious Technology Center v. Lerma*²¹, involving the Church of Scientology. The U.S. District Court for the Eastern District of Virginia held that Church documents were not trade secrets because they were in an open court file available to the public and they were posted on the Internet.

In the more recent case, *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*²², the U.S. Court of Appeals for the Fourth Circuit took a different position with regard to trade secrets filed in an open court file but not posted on the Internet. In that case, a party had filed

documents, which it alleged were trade secrets, in another court proceeding. The documents had been in the open court file for several months. The Fourth Circuit reached a result different from the court in the Scientology case, holding that the presence of the information in the court files did not necessarily make it “generally known.”

D. Requirement That Trade Secrets Not Be Readily Ascertainable

The Virginia Act and the Uniform Act also require that a trade secret not be readily ascertainable by proper means. Improper means are defined in the Act and the Uniform Act and already have been discussed.²³ The Commentary to the Uniform Act lists several proper means,²⁴ including:

1. Discovery by independent invention;
2. Reverse engineering;
3. Discovery under a license;
4. Observing the product or service on public use or display; and
5. Review of publicly available literature.

Like the Virginia Act’s related requirement that a trade secret not be generally known, there is no line drawn in the sand showing when information is readily ascertainable. This is a factual issue which is often litigated. A common example in trade secret litigation is the case of a departing employee who takes the customer list with him when he departs to work at a competing business, which may even be the employee’s own start up company. The former employer of the departing employee will argue that its customer list was developed only after many years of effort and great expenditures on advertising, client development and salaries. On the other hand, the departing employee, who has appropriated the list, will argue that the list constitutes information which is readily ascertainable through common business sources such as telephone books, trade magazines and published industry information sources.

E. Requirement of Reasonable Efforts to Maintain Secrecy

The Uniform Act also provides that a trade secret is protectable only if it “...is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”²⁵ Complete secrecy is not required. Trade secret protection is not lost if the trade secret is

disclosed in confidence to those who need to know it, such as employees, agents, suppliers, subcontractors and others.²⁶ However, courts have also interpreted the Act, to require that a trade secret owner demonstrate that he pursued an active course of conduct to keep the information secret.²⁷ Doing nothing is not sufficient, even though doing nothing has been good enough in the past to protect a trade secret. Although the trade secret owner must be able to demonstrate that he has pursued an active course of conduct to protect the secret, the owner need not take heroic measures. Generally speaking, if trade secret information is disclosed to outsiders or the public, trade secret protection is lost. In *Advanced Computer Services v. MAI Systems*,²⁸ the court stated simply the basic concept: “[t]rade secrets rights do not survive when otherwise protectable information is disclosed to others, such as customers or the general public, who are under no obligation to protect [its] confidentiality...”²⁹

Sometimes a court holds that not much is required to protect the information as a trade secret. However, in many cases, a court will look much more closely at the facts of the case. In a Fourth Circuit case applying the Maryland Trade Secret Act, which is identical in this respect to the Virginia Act, the Court closely looked at the facts to determine whether reasonable efforts were employed to maintain secrecy. In this case, *Trandes Corporation v. Guy F. Atkinson Co.*,³⁰ the owner of a software program used to design subway tunnels sued a licensee and its contractor, the Washington Metropolitan Area Transit Authority, for misappropriation of a trade secret. The defendants argued that the information was not a trade secret because the software was widely disclosed, mass marketed and its existence and its abilities were, therefore, not secret. The defendants argued that the software owner even offered a demonstration version of the software for sale for \$100. However, the court found that only six or seven persons inquired about the demonstration version and none were sold. The Court found that the company licensed only two object code versions of its software and they were licensed under a confidentiality agreement, the company used a password to prevent access to the program in-house and for licensed versions and there was no other unauthorized person who ever obtained a copy of the software. The Court found that owner of the software program had taken reasonable measures to keep the information secret.

Lawyers can provide an important service to their clients by advising them to implement a trade secret protection program. Today's numerous trade secret law suits are *ad hoc* testimonials to the fact that many companies still do not take measures that are reasonable under the circumstances to protect their trade secrets.³¹

F. Respondeat Superior

A very recent case in Virginia holds that the Virginia Uniform Trade Secrets Act does not preclude the application of the doctrine of respondeat superior. In a Memorandum Opinion dated February 5, 2001 in *Newport News Industrial, et al. v. Dynamic Testing, Inc., et al.*,³² an employee of a shipbuilding company invented and helped developed a shock mount for off the shelf electronic equipment for use by the U.S. Navy. The shipbuilding company asked Dynamic Testing, a testing company, to test the mount. The employee, who had been in the employ of the shipbuilding company for many years, was hired by the testing company and immediately began work on developing a competing shock mount, which mirrored the shock mount the employee invented and developed for the shipbuilding company. When still employed by the shipbuilding company and from his computer there, the employee had detailed the design of the competing mount. The shipbuilding company brought an action against the testing company and its subsidiaries on numerous counts, including misappropriation of trade secrets. The defendant companies defended, claiming they can not be vicariously liable for misappropriation committed by the employee because the Virginia Uniform Trade Secret Act does not allow the imposition of liability under the theory of respondeat superior. The defendants contended that the Virginia Act fails to explicitly provide for respondeat superior liability and the Act's preemptive provision³³ precludes the application of the doctrine. In its Memorandum Opinion, the Court cited the Restatement of Agency (Second)³⁴ and Virginia case law³⁵, finding "...the doctrine of respondeat superior is thoroughly ensconced in Virginia law..." and that the preemptive provision of the Virginia Act does not displace the doctrine of respondeat superior since that doctrine is a "...legal precept that presupposes the existence of an underlying claim and assesses liability not because of the act giving rise to the claim but because of a certain status."³⁶ The doctrine is not a "remedy" and does not "conflict" with the statute. The Court

noted that reaching this result is consistent with the application of the doctrine of respondeat superior in the analogous contexts of Virginia's conspiracy to injure others in trade or business statute and the Lanham Act.³⁷

III. Other Provisions of the Act

A. Section 2. Injunctive Relief

Because of the nature of trade secrets cases, money damages may be inadequate and injunctive relief may be necessary. In recognition of this, Section 2 of the Uniform Act and Section 59.1-337 of the Virginia Act specifically provide that a court may order an injunction in the case of actual or threatened misappropriation. The court order imposing the injunction can specify that the injunction shall terminate when the trade secret has ceased to exist. However, the court may continue the injunction for an even longer period in order to eliminate any commercial advantage that otherwise would be derived from the misappropriation. It is notable that even threatened misappropriation is the proper subject of an injunction under both Acts. A significant consequence of the Act's authorization of an injunction is that the plaintiff will not have to prove irreparable injury or inadequacy of money damages, which might otherwise be required for an injunction in Virginia. Virginia case law clearly supports the proposition that, when a statute specifically authorizes an injunction, the moving party does not have to prove irreparable injury or inadequacy of money damages.³⁸ The moving party must show only that there has been an actual or threatened misappropriation.

B. Section 3. Damages

1. Actual Loss, Unjust Enrichment and Reasonable Royalty

Pursuant to the Virginia Act, damages can be measured by actual loss, unjust enrichment or by a reasonable royalty, but only ...[i]f a complainant is unable to prove a greater amount of damages by other methods of measurement." One commentator has also argued that the Racketeer Influenced and Corruption Organizations Act (RICO) is applicable to causes of action based on the misappropriation of trade secrets.³⁹ RICO provides for treble damages and legal fees.⁴⁰

Measuring damages by a royalty amount instead of by actual loss or unjust enrichment may be advantageous for some plaintiffs. Plaintiffs may not easily be able to determine their own actual losses because the defendant has kept secret his misappropriation and the plaintiff may not be aware of, or be able to reasonably calculate the effects of the defendant's misappropriation on his business. Additionally, plaintiffs may not be able to calculate the defendant's unjust enrichment because the defendant may not fully disclose the amount he has profited by the misappropriation. A royalty amount may be much easier for the plaintiff to prove. He has the information concerning his trade secret and he may already know its value. From a defendant's point of view, measuring damages by a royalty amount may be disadvantageous. The defendant may have had the secret for only a short time, may not have been able to use it to its full potential and may not have generated much money from it because it was wrongfully obtained. Also, the defendant may not have all of the facts concerning the secret necessary to disprove the alleged value that the plaintiff attributes to the secret.

Virginia may have one of the very few reported cases awarding a reasonable royalty as damages. *American Sales Corporation v. Adventure Travel, Inc.*⁴¹ involved a multilevel marketing company, which previously licensed its customer list to one of its suppliers. After the supplier's contract with the multilevel marketing company terminated, the supplier took the customer list and used it to start a competing business. There was no substantial actual loss to the plaintiff because the defendant did not disclose the list to others and there was little unjust enrichment to the defendant because the defendant had gross sales from the subject list in the amount of only \$1,178.00. However, the Court found that the lack of significant profits did not insulate the defendant from being obligated to pay for what it had wrongfully obtained.⁴² The Court awarded a reasonable royalty and attempted to define a reasonable royalty as an approximation of the actual value of the infringed secret to the defendant, relying on the fiction that a license was granted at the beginning of the infringement and determining what the license price should have been had both parties tried to reach a reasonable agreement.

2. Punitive Damages

Under the Virginia Act, a court may award punitive damages not exceeding twice the actual damages if there is a finding of willful and malicious misappropriation A...or, \$350,000 whichever amount is less.⁴³ Although some states= uniform trade secrets acts do not contain any punitive or exemplary damages provisions, it appears that, among those states whose acts do provide for punitive or exemplary damages, Virginia is the only state that sets a cap on its damage provision.⁴⁴ As many Virginia trial lawyers know, Virginia law does not favor punitive damages and reserves them for only the most egregious conduct.⁴⁵

C. Section 4. Attorney Fees

Section 59.1-338.1 of the Virginia Act and Section 4 of the Uniform Act specifically provide that the Court may award reasonable attorney's fees to the prevailing party if there is willful and malicious misappropriation. Both Acts also provide that reasonable attorney's fees will be awarded if a claim of misappropriation is made in bad faith. "Willful and malicious" and "bad faith" are two different standards, but the use of different standards may be appropriate because the types of acts and actors are different. However, both "bad faith" and "willful and malicious" conduct are interpreted by the courts to require egregious conduct of a similar degree.⁴⁶ In *American Sales* for instance, the court also considered the award of attorney fees under the Virginia Act. After the plaintiff was awarded reasonable royalty damages in the *American Sales* case, the plaintiff sued for attorney's fees.⁴⁷ The Court awarded attorney's fees but refused to do so under the Virginia Act. It awarded them based on an indemnity clause in the contract between the parties. The Court refused to find the requisite willfulness and maliciousness, even though defendant's representative admitted that he wanted to Adestroy≅ plaintiff.

D. Section 5. Preservation of Secrecy

During the course of a court proceeding, Section 59.1-339 of the Virginia Act, and Section 5 of the Uniform Act require that a court preserve the secrecy of any alleged trade secret by reasonable means and sets forth some examples. Of course, by stipulation⁴⁸ and by motion for protective order,⁴⁹ the parties and the court also can protect the secrecy of discoverable information under the Rules of the Supreme Court of Virginia. Quite frequently

in trade secret litigation, the alleged trade secrets of both plaintiff and defendant are discoverable. In such cases, counsel for both parties may negotiate, prepare and submit to the court a stipulated protective order, applicable to all parties, restricting the disclosure of information in discovery, depositions, and hearings and at trial.

E. Section 6. Statute of Limitations

Section 59.1-340 of the Virginia Act and Section 6 of the Uniform Act set forth a statute of limitations of three years for violations of these respective Acts. This three year period starts after the misappropriation is discovered or should have been discovered by the exercise of reasonable diligence.

IV. Conclusion

The Virginia Uniform Trade Secrets Act was enacted just when many high tech businesses were starting up in or moving to Virginia. After fourteen years since the Virginia Act's enactment, Virginia courts have decided numerous cases under the Act which have interpreted the provisions of the Act. A critical review of the Act and much of the reported Virginia trade secrets case law suggests that the Virginia Act currently meets the needs of both the high tech and non-high tech trade secret litigants for a unified and comprehensive body of law governing this subject matter area without the apparent need for substantial amendment or supplementation by the General Assembly. The increasing volume of case law under the Act reflects the increased need for this unified and comprehensive body of law governing the protection of trade secrets. This case law also suggests that many Virginia businesses are not making efforts that are reasonable under the circumstances to maintain the secrecy of their trade secrets. Accordingly, Virginia lawyers should advise their clients as to the need for a comprehensive and demonstrable program to establish and maintain efforts that are reasonable under the circumstances to maintain the secrecy of such trade secrets.

¹This article is derived from excerpts from a law review article published at 5 Va. J.L. & Tech. 15 (2000) which can be found at www.vjolt.org.

²A shareholder of Babirak, Albert, Vangellow & Shaheen, P.C., 47539 Coldspring Place, Sterling, Virginia 20165-7446, Phone: (703) 406-4600; Fax: (703) 406-4365, E-mail: mbabirak@mindspring.com.

³Mark Twain, *The Adventures of Tom Sawyer* (1876), 22.

⁴Uniform Trade Secrets Act, 14 U.L.A. 437, *et seq.* (1990).

⁵Uniform Trade Secrets Act, Code of Virginia, Trade and Commerce, Chapter 26, Sections 59.1-336 to 343.

⁶For a discussion of the historical development of trade secrets law, see footnote 1.

⁷P.L. 104-294. See J. Derek Mason, Gerald J. Mossinghoff, David A. Oblon, *The Economic Espionage Act: Federal Protection for Corporate Trade Secrets*, \cong 16 No. 3 Computer Law. 14 (March, 1999).

⁸See footnote 1.

⁹905 F.Supp. 346 (1995).

¹⁰See *e.g.*, *Religious Technology Center v. Lerma*, 897 F.Supp. 260 (E.D. Va. 1995); *DSC Communications Corp. v. Pulse Communications*, 976 F.Supp. 359 (E.D. Va. 1997).

¹¹See *e.g.*, *Trandes Corp. V. Guy F. Atkinson Co.*, 996 F.2d 655 (4th Cir. 1993); *Smithfield Ham and Products Company, Inc. V. Portion Pac, Inc.*, 905 F.Supp. 346 (1995).

¹²*Dionne v. Southeast Foam Converting & Packaging, Inc.*, 240 Va. 297, 397 S.E.2d 110 (1990); *Comprehensive Technologies International, Inc. v. Software Artisans, Inc.*, 3 F.3d 730 (4th Cir. 1993).

¹³There is no shame in the accidents of chance, but only in the consequence of our own misdeeds. Phaedrus, *The Cripple and the Bully*, \cong *Fables* (1st Century), tr. Thomas James.

¹⁴See, Restatement of Torts, Section 757, comment b.

¹⁵The Uniform Act does not contain the words *but not limited to*. \cong Illinois, Maine and West Virginia have added the same phrase as Virginia. *Compare*, Alabama which requires that information specifically fit within one of its designated categories.

¹⁶*Religious Technology Center v. Lerma*, 897 F.Supp. 260 (E.D. Va. 1995).

¹⁷*Sperry rand Corp. v. Electronics Concepts, Inc.*, 325 F.Supp. 1209.

¹⁸*Avtec Sys. v. Peiffer*, 21 F.3d 568 (4th Cir. 1994); *Dionne v. Southeast Foam Converting & Packaging*, 240 Va. 297 (1990); and *Kewanee Oil Co. V. Bicron Corp.*, 416 U.S. 470, 181 USPQ 673 (1974).

¹⁹*American Sales Corp. v. Adventure Travel, Inc.*, 862 F.Supp. 1476 (E.D. Va. 1994). See also 867 F.Supp. 378 (E.D. Va. 1994).

²⁰Uniform Trade Secrets Act, Section 1, 14 U.L.A. 439 (1990) Commissioners= Comment.

²¹908 F.Supp. 1362 (E.D. Va. 1995), 37 U.S.P.Q.2d 1258.

²²174 F.3d 411 (4th Cir. 1999).

²³Uniform Trade Secrets Act, Section 1, 14 U.L.A. 439.

²⁴Uniform Trade Secrets Act, Section 1, 14 U.L.A. 439 (1990) Commissioners= Comment.

²⁵Uniform Trade Secrets Act, Section 1(4) (ii), 14 U.L.A. 439 (1990); *Secure Services Technology, Inc. v. Time and Space Processing, Inc.*, 722 F.Supp. 1354 (E.D. Va. 1989).

²⁶*Dionne v. Southwest Foam Converting & Pkg.*, 240 Va. 297 (1990), citing *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 475 (1974).

²⁷*Jet Spray Cooler, Inc. v. Crampton*, 282 N.E.2d 921, 925 (Mass. 1972)

²⁸845 F.Supp. 356 (E.D. Va. 1994).

²⁹*Id.*, p. 370, citing *Secure Services Tech., Inc. v. Time and Space Processing, Inc.*, 722 F.Supp. 1354, 1361 (E.D. Va. 1989).

³⁰996 F.2d 655, certiorari denied 114 S.Ct. 443, 126 L.Ed.2d 377.

³¹See Richard C. McCrea, Jr., AProtecting Trade Secrets & Confidential Business Information (with Forms),≅ 44 No. 5 Prac. Law. 71 (July, 1998).

³² Memorandum Opinion, U.S. District Court for the Eastern District of Virginia, Richmond Division, Docket Number 3:0cv 379, filed February 5, 2001.

³³ Section 59.1-341 of the Virginia Code.

³⁴ Section 219 cmt a, Sections 216 & 248.

³⁵ Memorandum Opinion, U.S. District Court for the Eastern District of Virginia, Richmond Division, Docket

Number 3:0cv 379, filed February 5, 2001, pp. 10 and 11.

³⁶ Memorandum Opinion, U.S. District Court for the Eastern District of Virginia, Richmond Division, Docket Number 3:0cv 379, filed February 5, 2001, p. 14.

³⁷ Memorandum Opinion, U.S. District Court for the Eastern District of Virginia, Richmond Division, Docket Number 3:0cv 379, filed February 5, 2001, p. 22 n 8.

³⁸ *Environmental Defense Fund, Inc. v. Lamphier*, 714 F.2d 331, 71 A.L.R. 166 (4th Cir. 1983); *Hart v. Riverside Hosp., Inc.*, 899 F.Supp. 264 (E.D. Va. 1995); and *Virginia Beach S.P.C.A., Inc. v. South Hampton Roads Veterinary Ass'n*, 329 S.E.2d 10, 22 Va. 349 (1985).

³⁹ Thomas P. Heed, *Misappropriation of Trade Secrets: The Last Civil RICO Cause of Action That Works*, 30 J. Marshall L.R. 207 (1996).

⁴⁰ 18 U.S.C. 1964(c).

⁴¹ 862 F. Supp. 1476 (E.D. Va. 1994). *See also* 867 F. Supp. 378 (E.D. Va. 1994).

⁴² *Id.*, pp. 1479-80, citing *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518 (5th Cir. 1974).

⁴³ *Id.*, Subpart B.

⁴⁴ A few states that do not have any punitive or exemplary damage provision in their state act are Arkansas, Michigan, Mississippi and Nebraska.

⁴⁵ *American Sales Corp. v. Adventure Travel, Inc.*, 862 F.Supp. 1476, 1481 (E.D. Va. 1994), citing, *Owens-Corning*, 413 S.E.2d at 639.

⁴⁶ For egregiousness for punitive damages, *see American Sales*, 862 F. Supp. 1476 (E.D. Va. 1994). *See also* 867 F. Supp. 378 (E.D. Va. 1994). For egregiousness in bad faith cases, *see Optic Graphics, Inc. v. Agee*, 87 Md.App. 770, *cert. denied* 598 A.2d 465, 324 Md. 658.

⁴⁷ 867 F. Supp. 378 (E.D. Va. 1994).

⁴⁸ Rules of the Supreme Court of Virginia, Part 4, Rule 4:4.

⁴⁹ Rules of the Supreme Court of Virginia, Part 4, Rule 4:1(c).