

Does Arkansas Recognize the Doctrine of Inevitable Disclosure?



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Does Arkansas recognize the doctrine of inevitable disclosure in the context of trade secret issues? In some circumstances, yes. This doctrine has been applied by courts in Arkansas where:

- after moving over to a competitor, the employee continued to work with clients serviced during the former employment;
- the new employer says it will tell the customers why the new employer is better than the former employer;
- the new employer seeks to compare itself to the future plans and operational capacities of the former employer; and
- the new employer expresses an intention to exploit the holes in the former employer's software program.

Based on such a fact pattern, an Arkansas court found that the new employer had no compunction about using or disclosing information covered under the former employer's confidential agreement to gain an unfair competitive advantage. The Arkansas Supreme Court held that such evidence and findings are more than sufficient to show a threatened or inevitable misappropriation of a former employer's trade secrets. *Cardinal Freight Carriers, Inc. v. J.B. Hunt Transp. Servs., Inc.*, 336 Ark. 143, 153, 987 S.W.2d 642, 647 (1999).

However, Arkansas courts generally will not assume an inevitable disclosure as a means of demonstrating misappropriation unless certain exceptions apply. As should be clear from reading the above, this is a doctrine that applies to a very specific set of facts.

Litigating unfair competition cases is a complex and nuanced area of the law. The facts matter immensely, and there is often no one-size-fits-all approach. By assisting clients who want to prosecute trade secret claims, and by defending businesses that are being wrongfully accused of alleged trade secret violations, we have deep experience in focusing on the right issues to best meet our clients' goals. While doctrines like the doctrine of inevitable disclosure can sometimes aid a case, there is no absolute substitute for understanding the facts and circumstances of each business, and shaping legal strategies to meet the needs of each client's situation.