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**Iowa Academy of Trial Lawyers**

**2021 Annual Meeting**

**February 24, 2021**

**“INTELLECTUAL PROPERTY – TRADE SECRETS”**

Presentation Outline by

Glenn Johnson and Jonathan Kennedy of

McKee, Voorhees & Sease PLC

- I. Why Trade Secrets
  - a. Trade Secret Value and Theft
- II. Trade Secret Protection
  - a. State Law
    - i. Uniform Trade Secret Act
    - ii. Other laws
    - iii.
  - b. Iowa Law and Recent CaselawFederal Protection
    - i. Statutory History of Federal Protection and development of civil cause of action
    - ii. Types of Misappropriation
      1. Acquisition
      2. Disclosure or Use
      3. “Improper Means” Requirement
    - iii. Exceptions and Defenses
      1. Reverse Engineering
      2. Independent Derivation
      3. Law Means of Acquisition
      4. Whistleblower Protections
      5. Retaliation lawsuit
      6. Court filings
    - iv. Remedies
    - v. Statute of Limitations
    - vi. Preemption
      1. No preemption under Iowa Act
      2. Be wary if asserting a claim outside of Iowa or based upon foreign law:
        - a. Nebraska – no preemption
        - b. Illinois – statute preempts common law tort claims based upon misappropriation of confidential information that does not rise to the level of a “trade secret.” (*Thomas & Betts Corp. v. Panduit Corp.*, 108 F. Supp.2d 968, 971 (N.D. Ill. 2000))
        - c. Wisconsin - statute only preempts other remedies based upon

misappropriation of “trade secrets,” and leaves untouched any other common law remedies based upon confidential information or theft of information (*Burbank Grease Servs., LLC v. Sokolowski*, 717 N.W.2d 781, 789 (Wis. 2006))

vii. Supplemental Jurisdiction of State Claims

III. Filing Considerations and Strategy

a. Federal Question

i. Interstate Commerce

b. Factual Considerations

i. Multi-jurisdictional

ii. International Parties

iii. Interest in seizure

c. Pleading Standard

d. Expert Standards

IV. Trial Considerations