

Discovery of Trade Secrets: A Procedural Quagmire

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62 ATENEO L.J. 1218 (2018)

SUBJECTS: *TRADE SECRET LITIGATION, INTELLECTUAL
PROPERTY LAW, REMEDIAL LAW,
CONSTITUTIONAL LAW, CIVIL PROCEDURE*

KEYWORD/S: *TRADE SECRETS, DISCOVERY, PROTECTIVE
ORDERS, RULES OF COURT, PUBLIC HAZARDS*

The Article examines trade secrets in relation to procedural law. In particular, the nature of trade secrets is analyzed in light of liberal discovery procedures under the discretion of courts. While there are many challenging issues relating to trade secret litigation, the Article aims to tackle and resolve only one of these myriad of concerns — the scenario that arises when a court issues a protective order to keep discovery materials involving hazardous trade secrets confidential in order to protect the trade secret owner's interests, to the detriment of the public.

The Article first analyzes trade secret protection within the Philippines. Thereafter, a discussion of discovery procedures is undertaken. An overview of the dynamics relative to the discovery of trade secrets follows. This overview would suggest that trade secret litigation is far from simple; complexities arise due to the very nature of trade secrets. Recognizing that trade secret owners are faced with a dilemma when a court grants discovery procedures, the Authors put forward general alternatives for trade secret owners to consider as they wade through the atypical waters of trade secret litigation. With the issuance of a protective order as an evident viable alternative, the Article then seeks to resolve the scenario where the protective order becomes a shield preventing the disclosure of hazardous trade secrets. Given the difficulty of disclosing these public hazards under the current legal machinery, the Article proposes measures to address the perceived gaps.