It is now clear what choice of law rule applies to claims brought under the North Carolina Trade Secrets Protection Act (NCTSPA). No North Carolina appellate court had ever answered that question prior to the Supreme Court of North Carolina’s opinion in *SciGrip Inc. v. Osae & Scott Bader Inc.*, No. 139A18 (February 28, 2020), a case defended by Ogletree Deakins lawyers Phillip J. Strach and Brodie D. Erwin.

The case involved a dispute between SciGrip, Inc., and Samuel B. Osae—who had worked for SciGrip for years developing structural adhesive products—and Scott Bader, Inc.—a competitor that later employed Osae. SciGrip sued Scott Bader and Osae in the North Carolina Business Court under the NCTSPA alleging misappropriation of information related to one of its structural adhesive formulas, among other claims. Prior to the lawsuit, Scott Bader, Inc., a company based in the United Kingdom, employed Osae as a chemist in its laboratory in England. Importantly, while Osae maintained a residence in North Carolina during this time period, he did not perform any work for Scott Bader, Inc. within the state.

Scott Bader, Inc. argued that under the *lex loci delicti* choice of law doctrine, the NCTSPA could not apply to SciGrip’s claim because all alleged misappropriation took place completely outside the state of North Carolina, in Scott Bader, Inc.’s UK-based laboratory. The *lex loci delicti* (or “law of the place of the wrong”) doctrine requires the use of the law of the jurisdiction “where the injury or harm was sustained or suffered.” Federal district courts in North Carolina, and elsewhere, previously determined that the “injury” or tortious act in trade secret cases occurs where the “misappropriation and use of the trade secret occurred,” the supreme court stated. SciGrip argued that the “most significant relationship test” should be utilized to answer the court’s choice of law question. This test provides for the use of the substantive law of the state with the most significant relationship to the claim in question, with that determination to be made on the basis of an evaluation of a multifactor test.

The Supreme Court of North Carolina unanimously held that misappropriation of trade secret claims sounded in tort, which under North Carolina’s traditional conflict of laws principles required application of the *lex loci* doctrine. The supreme court explained that while its result was overwhelmingly supported by the weight of authority in both state and federal jurisdictions, it was also supported by more practical considerations. The *lex loci* doctrine “is an objective and convenient approach which continues to afford certainty, uniformity, and predictability of outcome in choice of law decisions.” The supreme court further opined that although the *lex loci* doctrine “can be difficult in some circumstances, including cases involving
events that occur in and entities associated with multiple jurisdictions, those
difficulties pale in comparison with the lack of certainty inherent in the application
of a totality of the circumstances test such as the most significant relationship test.”

The supreme court’s ruling definitively puts to rest any question about whether
claims can be pursued under the NCTSPA for misappropriation occurring wholly
outside of North Carolina.