

A Master at Work: Dissecting the Closing Argument in Latham's Huge Win for Middle Eastern Bank

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DAILY DICTA

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For Latham & Watkins, defending a Middle Eastern bank accused of stealing trade secrets from a plucky American entrepreneur could have been a tough sell to a federal jury in Orange County, California.

The stakes were high—more than half a billion dollars in damages—and some of the facts were, ahem, challenging.

How did Latham lawyers turn a potentially unsympathetic narrative into a unanimous win for Dubai-based Emirates NBD Bank PJSC on Thursday?

A look at closing arguments by Latham partner Kathryn Ruemmler, who made her first in-court appearance since she stepped down as White House counsel in 2014, is revealing in a watch-the-master-at-work kind of way.

Along with Latham partners Daniel Schechter and Dean Dunlavy, she faced off against an equally formidable opponent: Boies, Schiller & Flexner partner William Isaacson, who was named a litigator of the year by *The American Lawyer* in 2015.

Ruemmler parachuted into the case on May 20, replacing Steven Bauer. He had another case (on behalf of Pacific Gas & Electric) going to trial at the same time and couldn't convince U.S. District Judge James Selna to push back the trial date, which had already been delayed several times.

This was the lay of the land: Two weeks before, the *Los Angeles Times* on May 8 had run a lengthy feature that was distinctly sympathetic to the plaintiff, Farooq Bajwa. A former computer components manufacturer/ El Pollo Loco franchise owner, his latest venture was a company called InfoSpan Inc.

Bajwa is portrayed as a visionary who had an idea to allow foreign workers to easily and cheaply send funds back to relatives in their home country via the internet or cell phone.

"I realized I might make a big difference in this world not only helping these underprivileged people who don't have

bank accounts, I will also be helping bring an economic revolution," Bajwa, 64, told the paper. "I had very big dreams."

But after he struck a deal with Emirates NBD to roll out his product, SpanCash, he claimed the bank stole his proprietary technology, killed the deal and ruined his company. (Though it's hard to feel too sorry for him—he's pictured in front of his house, a mansion that would put Versailles to shame. In this David-and-Goliath story, he's a David from the 1 percent.)

Bajwa sought \$554 million plus punitive damages on trade secret misappropriation and misrepresentation claims.

Trial began on July 26 in U.S. District Court for Central District of California. On Aug. 10, Ruemmler and Isaacson summed up their opposing positions in closing arguments.

Let's take a look.

Isaacson, who did not respond to a request for comment, led with one of his strongest cards: USA! USA!

"We as a country, made up of flawed people, come together as one of the greatest countries on Earth, because we are a nation of laws," he said, according to a transcript of the proceedings. "This was about hard work and what happens when your work is destroyed and taken, how you're entitled to be treated under the laws of the United States."

For Ruemmler, the appeal was not emotional or jingoistic. It was rational all the way.

Her first line: "Mr. Bajwa has come up with an interesting story, but it's not what happened."

And then, in the most matter-of-fact, conversational way, she annihilated his case.

"There are at least five fatal flaws in Mr. Bajwa's case, and any one of those alone sinks his case. Any one," she said, according to the transcript.

Bajwa couldn't prove that SpanCash was ever fully



Kathryn Ruemmler

functional and commercially ready, Ruemmler said. In fact, she argued, it was never even a real product.

Further, she said, Bajwa didn't prove that the technology or platform was comprised of any trade secrets; or that Emirates Bank stole SpanCash; or that it ever used it. Finally, Bajwa didn't prove InfoSpan suffered any damages, she said.



Daniel Schecter

Some of her turns of phrase are refreshingly non-lawyerly. "Sham is going down there... It's not as if these guys were exactly rubes... This is some flimflam thing... One of the many, many dog-ate-my-homework excuses.... This is an absolute double-down lie."

The overall effect: she simplified without being condescending.

But there was still a hurdle for Emirates. Or as Latham's Schecter put it in an interview, "There are some facts we wouldn't script."

After the bank terminated its agreement with InfoSpan and demanded its investment back, Infospan's deputy CEO, Larry Scudder, was arrested when he tried to leave the UAE.

"At the Dubai Airport that day, the Dubai police arrested Mr. Scudder after he presented his passport at an electronic terminal. Police told Mr. Scudder that a charge of criminal fraud had been filed against him for \$1,465,000. Mr. Scudder was handcuffed and marched through the airport and then held in police detention facilities and interrogated," the complaint states.

He was handcuffed to a chair, then transferred to a cell with 30 people before being released 19 hours later, at 1 am. And then, the police kept his passport for six months before he could finally leave the country.

On the stand, he cried when he spoke about the ordeal.

Isaacson in his closing repeatedly called it extortion. "Because when the bank held Mr. Scudder's passport--I'm sorry, caused his passport to held, that just didn't cause personal pain for Mr. Scudder," he said. "What it did was give the opportunity for the bank to control the technology, to control the situation, because now InfoSpan couldn't compete in the UAE because of the fears that this type of thing would happen. And it also gave

him the opportunity to try and extort money and control of the technology from InfoSpan."

How do you counter that?

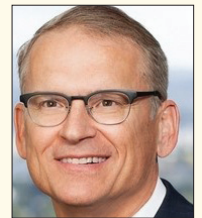
Ruemmler was not available for an interview, but Schecter said pretrial research showed people expect that if you do business overseas, you'll comply with the laws of the foreign country. And in UAE, this is how they handle fraud.

"Judge Selna has instructed you that filing a criminal complaint in Dubai for fraud is a common practice and that if you've been cheated, that's what you're supposed to do," Ruemmler said.

What about Scudder's emotional testimony?

She undercut it without coming across as callous--a fine line.

"Now, I have to mention the tears. And this is the only thing I'm going to say about it," Ruemmler said. "He was detained for less than 24 hours, nine years ago; and then, he was in his corporate apartment and had \$300,000 to live for, like, about six months. I'm just going to say this: I will leave to you to evaluate the sincerity of those tears in light of all the other evidence that you have heard in this case."



Dean Dunlavey

And then she immediately talked about how he "basically, had faked a document."

It worked. After about a day of deliberation, the jury found across the board for Emirates NBD Bank.

"It was a binary case--either they lied or we lied," said Schecter. "The plaintiff's strategy was all or nothing. There were no off-ramps for the jury."

The Latham team also included counsel Andrew Fossum and associates Nima Mohebbi, Stephanie Grace, Jonathan Sandler, Jacquelyn Levien, Elizabeth Greenman, Pushkal Mishra and Tom Rickeman.

In a statement to The Lit Daily, Lubna Qassim, chief group general counsel and company secretary of the Emirates NBD, said, "While there was no basis for this case being tried in U.S. courts, Emirates NBD Bank is deeply gratified by the jury's decision and appreciates the court's commitment to ensuring a fair trial."