

White Collar Group Of The Year: Latham

By Jack Queen

Law360 (January 26, 2022, 2:03 PM EST) -- Latham & Watkins LLP won a full defense verdict for an engine maker's CEO and narrowed what the feds described as a multibillion-dollar trade secret case against a Taiwanese chipmaker to a one-count guilty plea and nominal fine, earning the firm a spot among Law360's 2021 White Collar Groups of the Year.

Latham also resolved a three-year U.S. Securities and Exchange Commission accounting investigation targeting General Electric Co., scoring a no-admit, no-deny global resolution and a penalty representing only 1% of the market cap losses that sparked the investigation.

Douglas N. Greenburg, a Latham partner and chair of the firm's white collar defense and investigations practice, told Law360 that his group's ability to both conduct complex internal investigations and stare down the government at trial set it apart from the competition.

"Having both of those skills is critically important, and they feed together nicely," Greenburg said. "Lawyers trained in the litigation context become better investigators because they see how things you think you know can fall apart through an adversarial process ... then when you're doing an internal investigation, you apply that analysis."

Latham represented Power Solutions Inc. co-founder and former CEO Gary Winemaster during an internal investigation into a former executive's claims of accounting fraud during the oil crash of 2015–16. PSI's external auditor resigned as a result of the investigation, and the company was delisted from the Nasdaq and forced to restate its financials.

Winemaster was hit with a 14-count indictment in the Northern District of Illinois for allegedly misleading investors about PSI's financial performance. The SEC also filed a parallel enforcement action.

"Any time a CEO gets charged in a criminal case, the odds are usually stacked against them because the government gets to choose the cases they bring and has the power to subpoena witnesses and strike deals with them," Latham partner and complex commercial litigation practice chair Sean Berkowitz told Law360.

Winemaster faced long odds. The government had immunized multiple cooperators, and PSI itself had inked a nonprosecution agreement where it admitted to conduct outlined in Winemaster's indictment.



But Winemaster took his chances with a bench trial, and in a rare turn of events, a judge ruled before closing arguments that the government hadn't proven the existence of a conspiracy, barring an important set of evidence. Winemaster was acquitted on all counts.

"In my view, we were able to put his narrative out there in a way that he had not been able to do before," Berkowitz said. "The company hadn't even bothered to talk to him during the internal investigation. ... We put our story out there and explained in a pragmatic, business-oriented way that these were not criminal acts."

Latham also represented Taiwanese semiconductor company United Microelectronics Corp. in a flagship case for the U.S. Department of Justice's China Initiative, a Trump-era push to root out Chinese economic espionage. UMC was charged with trade secret theft, economic espionage and conspiracy for allegedly stealing technology that the DOJ said was worth tens of billions of dollars.

"We assembled a cross-border team in Hong Kong, Shanghai, Beijing and the U.S., rolled up our sleeves, learned the company and interviewed tons of people," Latham partner Leslie Caldwell told Law360. "It became clear to us that the DOJ's indictment was highly overstated."

The case centered on an engineer who brought a confidential document from his former company when taking a job at UMC. That left Latham with limited room to maneuver, but the firm steadily chipped away at the government's evidence of a conspiracy.

"A lot of that evidence fell away once we looked at it closely," Caldwell said. "We actually got the government to listen to us, despite the great fanfare with which this case was announced."

The government ultimately abandoned the conspiracy charges, and UMC pled guilty to a single count of possessing a stolen trade secret. Despite the government's initial claim that the technology was worth billions, UMC only paid a \$60 million penalty.

The same rigor was on display in the GE case, which stemmed from a \$150 billion hit to its market cap the company took after disclosing weaknesses in its power business and a \$15 billion reserve charge in its insurance business.

Latham dove into the two-track investigation and proved that the financial issues were related to business performance, not fraud. GE's insurance business relied on long-term actuarial estimates of how sick hundreds of thousands of policyholders might get some 50 years down the line. It was a similar story in the power business, where demand for GE's products simply fell off dramatically and unexpectedly.

Latham reached a no-admit, no-deny settlement with the SEC based solely on an alleged negligent failure to disclose business risks, avoiding any accounting implications or the need for a restatement. GE also paid a \$200 million fine, a tiny fraction of the company's market cap losses.

"That case underscored the rigor we bring to the investigative process," Greenburg said. "What turns the tide on the matters and leads to the best resolutions for clients is that diligent analysis and intense focus on the details, and we bring that intense effort to everything we do."

--Editing by Andrew Cohen.

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