

The Latham Team That Whittled DOJ's 'China Initiative' Case Against UMC Down to a Single-Count Plea Deal

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By Ross Todd
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Two years ago Taiwanese semiconductor foundry United Microelectronics Corp. found itself in what we'll call an uncomfortable position.

In an indictment unsealed on November 1, 2018, federal prosecutors accused UMC of partnering with a state-owned Chinese enterprise to steal trade secrets related to dynamic random access memory, or DRAM, from Idaho-based semiconductor company Micron Technology. Beyond the charges of trade secret theft, the government accused UMC of participating in economic espionage and sought penalties as high as \$9 billion. Then-Attorney General Jeff Sessions used the unsealing of the indictment in the case to announce the DOJ's new "China Initiative."

"This initiative will identify priority Chinese trade theft cases, ensure that we have enough resources dedicated to them, and make sure that we bring them to an appropriate conclusion quickly and effectively," Sessions said at the time.

To navigate the legal and political morass, UMC turned to a **Latham & Watkins** team led by **Leslie Caldwell**, the former head of DOJ's Criminal Division, and of counsel **Catherine Palmer**.

Seems like that was a good call. Last week, nearly two years to the day from the AG's press conference, UMC announced that



Leslie Caldwell and Catherine Palmer at Latham & Watkins

had agreed to pay a \$60 million fine and plead guilty to just one count of receiving and possessing a stolen trade secret.

Litigation Daily: Who was your client and what was at stake?

Leslie Caldwell: Our client United Microelectronics Corporation is a well-established Taiwanese semiconductor manufacturer with more than 19,000 employees located around the world. UMC is known in the industry for its long track record of developing sophisticated technology products. The U.S. Government's indictment of UMC, alleging that it conspired with a Chinese company to commit economic espionage and steal trade secrets for the benefit of the Chinese Government, was devastating to UMC's reputation. It also was enterprise-threatening, given the U.S. Government's announcement that it was seeking up to \$9 billion in damages.

Who all was on your team and how did you divvy up the work?

Catherine Palmer: We had a fantastic cross-office, global team. Leslie led a team of associates and counsel in San Francisco and Los Angeles, while I led a team based in Asia, including in Shanghai and Hong Kong. We also tapped into our Washington, D.C. office's deep knowledge and experience handling cases involving sanctions and trade issues. Leslie and I spoke nearly every day as we developed and deployed a strategy to protect UMC. Every single member of the team was vital to our successful outcome.

This case was brought as a part of DOJ's larger "China Initiative" and was announced by then-Attorney General Jeff Sessions with a statement saying "Chinese economic espionage against the United States has been increasing—and it has been increasing rapidly." As a lawyer representing a Taiwanese company accused of teaming with a Chinese company to effectively steal trade secrets related to DRAM, how do you begin to navigate the politics that underlie a case like this?

Caldwell: Any time you handle a case that is announced with great fanfare by the Attorney General of the United States, you are starting in a deep hole. That hole gets even deeper when the case is identified as part of a broader political strategy, in this case, to crack down on China. It also did not help that the case was mentioned by name by the President in a subsequent speech addressing China policy. But we did what we always do, assembled a bespoke cross-office team and dug into the facts and evidence, to see whether they supported the government's allegations. Fortunately for UMC, we found that many of the allegations were not supported, and we were able to show as much to the government.

Were you brought on after the indictment was filed? If so, how did that affect how you approached building the company's defense against the DOJ's charges?

Caldwell: I got a call from UMC on the day that the indictment was unsealed. UMC was a new client for Latham, so we weren't as familiar with the company or its business. Normally, when we are retained by a company that is under investigation by the government, we have at least some time to conduct a fact investigation and have some back and forth with the government before any case actually is filed. Here, we had to roll up our sleeves immediately and start from scratch. Our team quickly and repeatedly hit the ground in Taiwan and began gathering documents and conducting interviews. We were fortunate to be able to deploy lawyers from both the U.S. and Asia, which worked as one team to gather and understand a massive amount of factual information, much of which was in Chinese and related to complex technical issues. We also received invaluable assistance from local counsel in Taiwan, who was able to identify excellent local translators for our interviews and provide us with assistance ranging from office space to local insights to coffee and lunch. We were always conscious that, since the indictment already had been filed and announced, the clock on our investigation was ticking fast. That helped motivate us to pull together the facts as quickly as possible, so that we could show the government that many of the allegations in the indictment were not supported by evidence.

UMC has already been subject to a four-month criminal trial in Taiwan related to the trade secret included in the plea agreement right? How did the Taiwanese proceedings interplay with your dealings with prosecutors in the U.S.?

Palmer: That's correct. I think that the U.S. and Taiwan Governments may initially have envisioned a scenario in which parallel prosecutions would lead more or less simultaneously to one or more of the defendants pleading guilty and perhaps cooperating in both jurisdictions. That, of course, is not what happened, as the Taiwan case headed to trial earlier this year, and the court issued a ruling in June. Some aspects of that ruling were helpful to us in dealing with U.S. prosecutors; for example, after hearing four months of testimony and argument by the parties, the Taiwan court found one trade secret had been improperly leaked to UMC and that UMC was liable for failing to prevent the alleged improper acts of its employees. The court fined UMC approximately \$3.5 million, and rejected the prosecutor's request for \$700 million in additional damages because it found that there was no evidence showing that UMC used the leaked trade secret or provided it to the Chinese company. Both sides are appealing the Taiwan ruling.

How did the pandemic affect your efforts to resolve this matter for UMC?

Palmer: It probably slowed things down. Fortunately we were able to finish most of our fact investigation and make some factual presentations to the government pre-pandemic. During the pandemic, we continued to make presentations, but they all were done remotely. When we finally were in position to begin serious plea discussions, the fact that two sets of prosecutors were assigned to the case—from the U.S. Attorney's Office in San Francisco and the National Security Division of DOJ ("NSD"), in Washington, D.C.—definitely made the logistics more challenging.

Where does this plea leave UMC in terms of potential civil exposure from claims from Micron? I see their GC filed a pretty forceful victim statement with the court asking to lift the stay in its civil case so Micron can pursue restitution.

Palmer: The civil case currently is stayed, and may well remain so pending resolution of the criminal case as to the remaining defendants. The same judge oversees both the civil and criminal cases. She found in sentencing UMC that the civil case was a better vehicle for calculating restitution, if any, to Micron. As for Micron's victim impact statement, it reflects a view of the case that is not supported by the evidence.

What will you remember most about handling this matter?

Caldwell: First, UMC is a wonderful client. They had never experienced anything as enterprise threatening as this case, and they trusted us from day one to guide them through it. UMC's in-house legal department worked tirelessly to help us in our investigation, and the company made key employees available to us, in many cases, over and over again. From a personal perspective, it has been deeply satisfying for me to have been able to help a client go from standing in the spotlight in a truly terrifying place to a very fair and favorable outcome.

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