

THE AM LAW LITIGATION DAILY

Litigators of the Week: DOJ Drops 15-Year Economic Espionage Case Against China's Pangang Group Mid-Trial

By Ross Todd

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Our Litigators of the Week are **John Potter, Bob Feldman** and **Michael Packard** of **Quinn Emanuel Urquhart & Sullivan**, who represented Chinese state-owned enterprise Pangang Group and three of its affiliates that were charged with violating the Economic Espionage Act a decade and a half ago.

Federal prosecutors in the Northern District of California accused the companies of conspiring to purchase DuPont trade secrets relating to titanium oxide, a white pigment used in items including paint, plastics and paper.

But at trial last week, the Quinn lawyers argued that already-convicted middlemen who took DuPont's trade secrets claimed they could sell them to Pangang legally. This week, federal prosecutors dropped all charges just four days into what was scheduled to be a month-long trial.

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

Mike Packard: Our clients were the Pangang Group and three related companies. They are



Courtesy photos

L-R: Robert Feldman, John Potter and Michael Packard of Quinn Emanuel.

headquartered in Panzhihua, China. They are engaged in the mining and production of various metals.

How did this matter come to you and the firm?

Bob Feldman: John and I were retained in late 2011. It's difficult to remember precisely how the client came to us. I believe they had met the late **Bill Urquhart** at one point. The clients' interest was in finding a firm that would put up a fight.

Who all has been part of the team over the years? As this case finally moved to trial, how did you divide the work?

John Potter: Bob and I started working on the case 15 years ago. Over the years, the team changed, most notably with the key additions of Mike and **Alec Levy**, an of counsel in our D.C. office. At trial, I gave the opening; Bob was expected to close; and the four of us divvied up the cross examinations. We had an extraordinarily talented group of lawyers working with us at trial, including **Kelsey Bloodworth, Michelle Wang, Chloe Connolly, Will Locke** and **Shu Nguyen. William Adams, Alex Loomis** and **Joe Reed** handle many of the appellate issues. Kathleen Sullivan, Bob and I presented oral arguments to the Ninth Circuit on three separate appeals.

This case was charged a decade and a half ago. What took so long to get it to trial?

Packard: There are two big reasons the case took so long to get to trial. First, the district court quashed the initial service of the summons based on the requirements of the former Federal Rules of Criminal Procedure. In response, the government instigated a change in the Federal Rules and then served us again. We litigated the subsequent renewed attempt to serve us, including an interlocutory appeal to the Ninth Circuit. We then litigated our claim that the Foreign Sovereign Immunity Act barred the prosecution; this effort resulted in two interlocutory appeals. The service issues and the immunity issues took approximately 11 years. Once the case was returned to the district court by the Ninth Circuit, it moved quite quickly.

Walter Liew, his company, USA Performance Technology Inc., and Robert Maegerle were convicted of economic espionage at trial more than a decade ago related to efforts to obtain the U.S. trade secrets at issue here. How did the way the government presented its case there

shape the defense you were able to put on for Pangang Group?

Potter: We certainly had an awareness that the defenses advanced in the first trial were unsuccessful. And so, tactically, we chose not to challenge much of the government's case. Instead, we sought to establish that our clients were differently situated from Liew and Maegerle—and the evidence as to Pangang did not establish it had a reasonable belief that the company was receiving trade secrets. Framed in that manner, the conduct of Liew and Maegerle became almost beside the point, and certainly not anything that we looked to defend.

Representing a criminal defendant in federal court has its inherent challenges. How are those challenges compounded when you're representing a Chinese state-owned company?

Feldman: We had strong reason to believe that many potential jurors might be inclined to believe our clients had a lot to explain. That said, we had an unshakeable belief that the evidence would control the outcome, not prejudice. Judge Corley allowed us just enough time to do proper voir dire, which helped enormously.

John, as you crafted your opening, what were the trial themes you were trying to drive home with the jury?

Potter: I wanted to make the opening simple, straightforward and clear by focusing on three interconnected points: (i) Walter Liew repeatedly represented to Pangang that he could lawfully transfer technology; (ii) Pangang genuinely believed Liew; (iii) Liew concealed his theft of trade secrets from Pangang. In our view, the case hinged on what Pangang was thinking during the alleged conspiracy, not whether Liew may have given them trade secrets.

What was your reaction to the government's decision to drop all charges with trial underway?

Potter: I think we all felt an enormous amount of relief for the client. This case was an existential moment for Pangang, and they weathered 15 years of litigation to achieve vindication on very serious economic espionage charges. We also credit the government for dismissing the case with prejudice. It could not have been an easy decision for the government, but it was the right decision.

Without getting into privileged matters, what do you think ultimately persuaded the government to walk away from the case after only a few days of testimony?

Feldman: There were three things that might explain the government's wise decision to dismiss. First, the court had granted the most important of our motions in limine, resulting in the government's case being constrained. Second, John's opening and our first few cross-examinations revealed the real weaknesses in the government's case. Third, the age of the case presented the government with challenges in marshalling its evidence.

What can other defense lawyers take from the way you litigated this case and this outcome?

Packard: Maybe the most important lesson was the way we shared the responsibility for the development of the defense case. From the

most junior associate to Bob and John, everyone listened to everyone else. It really mattered. The other lesson was how important it became to prove our case during the government's case. We planned our defense without any expectation of putting on a defense case.

What will you remember most about this matter?

Potter: The result. Getting a dismissal four days into a high-profile, federal criminal trial after 15 years of litigation may be unprecedented in the annals of criminal prosecutions. But a close second to the result was getting to work with Bob for 15 years, and the rest of the QE team as we geared up for trial. All of them are phenomenal lawyers who I now count as friends.

Packard: I will most remember sitting with the team when the dismissal motion came through. Everyone had pushed so hard, with each team member contributing so much—it was an incredible feeling to share that victory with one another. And then calling the client and hearing his elation at the news—you didn't need to speak Chinese to understand how huge a moment it was for him!

Feldman: What will I remember? Easy: I'll remember that my wife (who, as usual, attended most of the trial) wants me to deliver my closing to her—even though only a fraction of the evidence was presented and I haven't even begun to write the closing. Why not, I suppose.