



Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

How Latham Attys Won \$200M Trade Secrets Case In Ga. Trial

By Rosie Manins

Law360 (September 22, 2023, 10:36 AM EDT) -- As he addressed the jurors in an Atlanta federal courtroom for the first time, veteran intellectual property litigator Tony Sammi told them his client, a manufacturer based 40 miles up the road, wanted to be there in front of them.

Though Universal Alloy Corp. wasn't happy about being sued by Alcoa Inc. successor Howmet Aerospace Inc. and Arconic Corp., it was eager to confront head-on the allegations that had been hanging over it for the better part of a decade, explained Sammi, a global vice chair of Latham & Watkins' intellectual property litigation practice and vice chair of the firm's technology industry group.

In his trial openings, Sammi aimed to set the tone for UAC's approach as a defendant poised to attack the accusations leveled against its staff over their development of stretch-form spar chords — pieces of contoured aluminum used to construct airplane wings that for years were only produced by Alcoa.

"We were ready to run at the evidence," Sammi's trial partner, Rachel Blitzer, told Law360. "This really is not a time to be meek."

The effort to be on the front foot wherever possible was a major trial theme for UAC that proved effective, Sammi said. He and Blitzer, both based in Latham & Watkins' New York office, led a team of litigators who aimed to lay bare everything about the manufacturer in Canton, Georgia, and how its employees figured out how to rival Alcoa's production of stretch-form spar chords as a secondary supplier for Boeing.

"Nothing is an excuse, because we don't need any excuses," Sammi said of the approach. "It's a look at an unvarnished reality of the situation — not through the lens of a plaintiff, but a lens of reality."

The offensive tactic was one of several initiatives used by UAC's counsel to counter Howmet and Arconic's case, which ultimately fell at the first hurdle as **the jurors determined** Alcoa did not own the alleged trade secrets purportedly pilfered.

Here, Sammi and Blitzer highlight what they found to be successful trial methods.

Run at the Evidence Head-On

UAC's counsel wanted it known from the first day of trial that the company was not the type of defendant to be dragged into court like a dog with its tail between its legs. In his opening statements,

Sammi brought UAC's leaders into the courtroom and explained to the jurors that they were proud of the business and the work they did.

It was also crucial that UAC demystify the alleged trade secrets and try to pinpoint exactly what information was supposedly misappropriated, particularly given the complicated subject of stretch-form spar chords, Sammi and Blitzer said.

Having won intellectual property cases for plaintiffs in other trials, including a \$500 million verdict against Facebook subsidiary Oculus, Sammi and Blitzer said they knew that any vagueness in Alcoa's alleged trade secrets would work in its favor.

"Plaintiffs want their trade secrets to be, I would say, as amorphous as possible, as flexible as possible," Sammi told Law360. "Such that it makes it easier for a plaintiff in many ways to sort of make their burden if the trade secrets are a little bit of a moving target or can be malleable to some degree."

Arconic Inc. and Alcoa split in 2016, and Arconic in turn split into Howmet Aerospace Inc. and Arconic Corp. in 2020. The three were collectively referred to in the case as Alcoa.

Much of UAC's defense centered around forcing Howmet and Arconic to define the alleged trade secrets at issue, repeatedly questioning whether they included, among other things, the metal compounds used for stretch-form spar chords, the temperatures at which they were treated, and the timing of the manufacturing process.

In his closing arguments, Sammi noted the inability or unwillingness of the plaintiffs to answer with clarity, telling the jurors the alleged trade secrets remained elusive after two weeks of testimony.

"With that defense it becomes more difficult if a plaintiff wants to remain amorphous because the juxtaposition is really clear to the jury — that one side is really trying to ground, and the other side is remaining at some very hypothetical level," he said. "It was a theme throughout our entire case that whatever evidence there is of alleged trade secrets — whether it is pages that you say are in our possession, or emails, or otherwise — our goal, number one, was to run at that evidence and not away from it."

The approach saw Howmet and Arconic shift the burden of proof to some extent as they alleged UAC couldn't show its independent development. The plaintiffs claimed it took Alcoa more than 25 years to produce stretch-form spar chords and that UAC couldn't have sped up the process without their confidential information.

It was an invitation for UAC to put its employees on the witness stand to explain their work. Sammi and Blitzer said the authenticity of UAC's staff seemed to resonate with the jury.

"They weren't overly rehearsed and performative," Blitzer said. "They were really sort of salt-of-the-earth people telling their stories in their own words."

UAC also brought into the courtroom pieces of its spar chords for the jurors to see and touch.

Sammi and Blitzer said the tangible nature of the case's subject matter made it unique in the intellectual property realm, which increasingly involves disputes over computer technology.

"The physical nature was not only something that we could communicate to the jury, but that we could actually show to the jury," Blitzer said. "We were truly delighted to tell the story. We knew our witnesses very well. We'd worked with them for years. And by the time trial came around, we were just as proud of all the work they had done as they were."

Take Every Chance to Tell Your Story

UAC didn't wait for Howmet and Arconic to introduce key aspects of the dispute, despite being called on second as the defendant. From its first cross-examination of the plaintiffs' witnesses, UAC worked to give its version of events while revealing flaws in the allegations.

"Those crosses weren't just an opportunity for gotcha moments," Blitzer said. "They were really an opportunity for the jury to start hearing the other side, right from the very beginning. We weren't going to let anything surprise us, and really, we weren't going to let anything surprise the jury."

Blitzer said that instead of simply anticipating what might come next in trial, UAC aimed to present it before Howmet and Arconic had an opportunity to do so. She said when UAC's counsel was directly examining its witnesses, the aim was to incorporate into the manufacturer's story anything that might be perceived as a defense weakness, thereby taking the teeth out of the plaintiffs' bite.

"We let [our witnesses] explain why what might be perceived to be a weakness actually wasn't, or what the truth behind it was, so that by the time [Howmet and Arconic] came around to their crosses, there was no opportunity left there," Blitzer said. "To the extent that [the plaintiffs] addressed those issues, that fell flat. And in many instances they just didn't because the questions had already been asked and answered by us before they could do it with their own spin."

Putting the contested issues directly in front of the jury instead of shying away from them meant UAC gained the jurors' trust, Sammi and Blitzer said. They said that gave UAC credibility in addressing the hard topics as well as those it saw in its favor.

Blitzer said the UAC trial team was also careful not to bombard the jurors with endless information about the manufacturer's work, recognizing that the plaintiffs carried the burden of proof.

"Some of it was just about making decisions about when to rein ourselves in — how much of our work we needed to show without getting to the point of boring the jury or taking up more of their time away from their families and their jobs," she said.

Skip the Grandstanding and Legalese

Trial is not the time to pontificate or use lawyerly language, though that can be tempting when in a courtroom with an audience, Sammi said.

"You're not out to show people how smart of a lawyer you are and how much law you know and how fancy your words can be," he said. "Tell people what you're going to show, show what you say you're going to show, and do it in a way that respects the audience and gets to the point."

UAC's counsel tried to keep the jurors on board with simple, direct questions that led to answers they could easily comprehend.

"At the end of the day, people, like jurors, want to hear questions and answers that make sense to them," Sammi said. "Like questions that don't have massive preambles or bents or angles. The finest legal and technical arguments don't mean much unless you can present them and communicate them in a cogent, lucid and effective way."

Boiling down complicated issues into something palatable does not mean ignoring details or solely focusing on the basics, Sammi said. He said a lot of work goes into a simple presentation of a case, starting with an in-depth understanding of the most complex aspects.

The ability to explain a case simply is invaluable in any trial and one of the least recognized parts of being an effective litigator, Sammi said.

"I've been across the aisle from folks who have simplified things without understanding them, and that can often backfire," he said. "So it's not ignoring the details. And I do think, point-blank, it is an exceedingly effective way in communicating regardless of what side of the V you're on as a trial lawyer."

Sammi also drew on his own experience as a juror in an unrelated armed robbery case to ensure UAC's witnesses were introduced in a meaningful way. He said the first questions anyone should ask of their witnesses are ones that establish who they are, what they are going to say, and why that matters.

"It's so amazing to understand that the jury has absolutely no context as to when a witness takes the stand," Sammi said of his juror experience. "The jury will have zero background whatsoever, and it's very easy to forget that. You better make sure everybody knows what your game plan is."

Be Adaptable and Read the Room

It was imperative for UAC's employees to be introduced to the jury during trial openings after their photographs had been pinned to a corkboard by Howmet and Arconic's counsel "like some sort of FBI most-wanted list," Sammi said.

He and Blitzer said adapting to the other side's case in real time is as important as having a strong plan for trial. Though defendants shouldn't merely be reactionary, their ability to respond to a plaintiff's courtroom antics is paramount, they said.

"Mike Tyson said it best: 'Everyone's got a plan until you get hit in the face,'" Sammi said. "We by and large presented the case we wanted to present, but by no means does that mean we did not have to be adaptable and shift as to where [Howmet and Arconic] were putting their emphasis and what they would focus on."

Sammi and Blitzer said they were somewhat surprised that Howmet and Arconic did not explore certain aspects of the case after telling the jurors they would, and that the plaintiffs appeared to modify or change some of the alleged trade secrets as the trial wore on.

"Those were things we had to adapt to, but we used those to our advantage," Sammi said.

He said UAC's trial attorneys asked themselves at every courtroom break which direction to follow as they were presented with forks in the road, and did their best to make sure that every decision inured to their client's benefit.

Part of the strategy included tuning in to the feeling in the courtroom, Sammi and Blitzer said. They said knowing when to stop asking questions or how long to hammer home a point comes with practice.

"There's something in the air when you realize you're going on too long," Sammi said. "Or there's electricity in the air when there's things that are very interesting that are coming up. It's a live play and you have to read the room and feel what's going on. It's very, very important."

Both Sammi and Blitzer said their successful defense of UAC in the biggest case the manufacturer has faced was one of the most personally satisfying achievements of their careers, especially given the rarity of a trade secret defense victory at trial.

"It's a remarkably emotional thing," Sammi said. "Once that verdict comes in and the weight is lifted, the emotions run very high."

--Editing by Robert Rudinger.