

Trade Secret Law Evolution Podcast
Episode 58
Greenberg Traurig

Speaker 1 ([00:00](#)):

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Jordan Grotzinger ([00:18](#)):

Welcome to the Trade Secret Law Evolution Podcast, where we give you comprehensive summaries and takeaways on the latest developments and trends in trade secret law. We want you to stay current and ahead of the curve when it comes to protecting your company's most valuable assets. I'm your host, Jordan Grotzinger.

([00:40](#)):

On Wednesday, January 27th, 2016, the Office of Public Affairs at the United States Justice Department issued a press release. It was entitled, "Chinese National Pleads Guilty to Conspiring to Steal Trade Secrets." It read in relevant part Mo Hailong, AKA Robert Mo, 46, pleaded guilty today to conspiracy to steal trade secrets before the Southern District of Iowa. According to the plea agreement, Hailong admitted to participating in a long-term conspiracy to steal trade secrets from DuPont Pioneer and Monsanto. Hailong further admitted to participating in the theft of inbred or parent corn seeds from fields in the southern District of Iowa for the purpose of transporting those seeds to China. The stolen inbred seeds constitute the valuable intellectual property of DuPont Pioneer and Monsanto. During the conspiracy, Hailong was employed as a Director of International Business of the Beijing Dabeinong Technology Group Company, a Chinese conglomerate with a corn seed subsidiary company Kings Nower Seed.

([01:54](#)):

Hailong is a Chinese national who became a lawful permanent resident of the United States. Pursuant to an H1B visa, Hailong is scheduled to be sentenced at a date to be determined later in Des Moines, Iowa. Conspiracy to steal trade secrets as a felony that carries a maximum sentence of 10 years in prison and a maximum fine of \$250,000. The investigation was initiated when, "DuPont pioneer security staff detected suspicious activity and alerted the FBI." As all the listeners can tell by this point, this episode is going to be a little different than our usual episode where we go over developments in case law. In this episode, we're going to be talking about this case, which is actually a really fascinating story. And today, we have a very special guest. His name is Michael Stimson. He is the Vice President of Intellectual Property and General Counsel of Sun World International and was intimately involved in this case. Michael, welcome.

Michael Stimson ([03:02](#)):

Oh. Thank you, Jordan.

Jordan Grotzinger ([03:05](#)):

Well, we have the attention of our audience, and I promise this will be more interesting than our bread and butter episode about case law developments. And just so the audience knows, we met about a month ago at a seminar in Boston and we were on a panel discussing trade secret developments, and

that's how I learned of this remarkable story. Michael, I mentioned your title and your company, but why don't you say a few words about your company and what you do?

Michael Stimson ([03:44](#)):

Yeah, sure. Thanks Jordan. My current position is the general counsel and VP of IP of Sun World. We're a fruit variety development company in agriculture, generally speaking. And the last three agriculture companies that I've worked for, one of the big components and inputs into agriculture are very specialized development of plants and animals. They have genetics that improved yield relative to other plants that haven't been bred for that purpose. Yield and other qualities, disease resistance, nutrients, all kinds of different qualities. In our case, in the fruit development, we try to get fruit that'll last a while during shipping and taste delicious. In my last company where I was the Chief IP Council at a company called Genus, we did animal breeding and we produced, for example, cows that gave a lot more milk than your average or pigs that had a lot more offspring and grew faster, for example. You breed these traits into your agricultural products. Well, when I was at DuPont Pioneer, I was a corporate counsel. I was in charge of the litigation at the time that this case happened. DuPont pioneer.

Jordan Grotzinger ([05:17](#)):

What timeframe are we talking about? I know that was 2016.

Michael Stimson ([05:20](#)):

Yeah, it was a while ago. And Mo Hailong was sentenced in I think October of that year, so almost exactly seven years ago. But I think a lot of the themes in this case are pretty relevant and outside of the agriculture industry in particular, particularly relevant. Even though it's an old case, I think it's an important one to understand. Plus it's a really, like you said, entertaining story at the time of the case, like I said, was corporate counsel at DuPont Pioneer and I was in charge of the IP litigation and this case in particular. And so I helped the FBI and the Department of Justice get the information together that was used to help in this prosecution and in the investigation. In fact, there was a really good article, a contemporaneous article in the LA Times that has a lot of background and a lot of stuff that you're not going to get from the transcripts. Some of the stuff I was aware of because I worked with Mark Betten who was the FBI agent investigating the case as well as the DOJ attorneys who prosecuted the case.

Jordan Grotzinger ([06:35](#)):

You were corporate counsel at DuPont, and you're in charge of IP litigation among other things. How does this case come across your desk, at first?

Michael Stimson ([06:48](#)):

Actually it originally came across my desk. I had inherited it from the previous person that was managing, but I was involved really at the very beginning because the DOJ got involved really after I was handling the case and started really putting the case together so that was when we had to provide witnesses and some documents that would help the Department of Justice understand exactly what our trade secrets were and what the value was so that they could demonstrate that there was really something serious going on here. And so let me explain what the business of DuPont Pioneer was and how seed production works. I don't think it's commonly known. Most of the corn that you see planted in the Midwest, if you drive through the state that I live in now, Wisconsin, you'll see in the summertime just miles and miles of corn fields. That's not for eating corn on the cob.

([07:47](#)):

It's primarily for feeding animals. And so the main trait that they're looking for in that kind of corn is yield. They want the most calories per acre. And so Pioneer spends upwards tens of millions of dollars per commercially released variety of corn seed that gets planted in those thousands and thousands of acres. And in order to do that, they produce hybrid corn seeds. That's part of their name actually. They were Pioneer Hybrid International for a long time. And what a hybrid corn seed is it's a combination of two inbred corn seeds. Inbred corn seeds have the same set of chromosomes, so they're identical. I mean, you and I couldn't live completely inbred, but it turns out corn can. And they breed these two different inbred seeds that have genetic diversity. And so those two inbred seeds combine when you breed them together, into a hybrid seed that's stronger than either of the parents and really produces a high yield. Pioneer, like I said, spends tens of millions of dollars to develop each of these varieties of inbred seeds, which they then use to create hybrid seeds, which then they sell to farmers.

Jordan Grotzinger ([09:10](#)):

Scientists at DuPont Pioneer are investing tens of millions of dollars and presumably a lot of time testing and inbreeding these genetically diverse corn seeds to produce this hybrid breed, if that's the right noun, for purposes of maximizing yield. Is that basically it?

Michael Stimson ([09:36](#)):

That's exactly right. That's exactly right. Now an important thing is the hybrid seeds that are produced go to farmers, but they can't reverse engineer those hybrid seeds back into the inbreds. The only way you're going to get hybrid seeds that are as good as the ones that pioneer sells is by buying them from Pioneer. That's an important fact. You need these-

Jordan Grotzinger ([09:57](#)):

It's an important fact. And I'm just thinking as a total lay person when it comes to breeding anything specifically or science generally, yeah, I mean, I don't know how one could reverse engineer a type of breeding, particularly in corn seeds. But I'm certainly not in a position to opine intelligently on that. But as much of our audience knows, reverse engineering is an important concept in trade secret law because if something can be reverse engineered, in other words, created independently without the theft of the trade secrets, it isn't misappropriation. And that's why it's important that these kind of seeds, as you said, cannot be reverse engineered. But if someone wants them, they have to buy them.

Michael Stimson ([10:57](#)):

Exactly right.

Jordan Grotzinger ([10:58](#)):

Or steal them.

Michael Stimson ([10:59](#)):

Or steal them or steal them.

Jordan Grotzinger ([11:01](#)):

Which we'll get to.

Michael Stimson ([11:02](#)):

Which we will get to. The way the hybrid seeds are made, like I said, the ones that are provided to the farmers, you take these inbred seeds which are never provided to farmers, and you breed them together. And so every corn plant that you see when you're driving through the Midwest was once a seed, hybrid seed in these production fields. And so you can imagine our production fields are quite big and they're usually managed by contract farmers outside of the company so that we can mix up how much of different varieties we produce every year based on market demand. One of these farmer producers for us saw somebody digging in his field and confronted them and they split.

Jordan Grotzinger ([11:51](#)):

This is one of your contract farmers?

Michael Stimson ([11:53](#)):

Yep, that's correct. Luckily, that person wrote down the license plate number of the rental car and provided that to DuPont Pioneer Security. And let me tell you, I mean, I worked closely with DuPont Pioneer Security for a number of years, and these guys are really good. They know what they're doing. Several of them are ex FBI agents who really know how to investigate things. Our security team traced down the car and identified who the people that rented it were and provided that information to the FBI. And that's when Mark Betten, I mentioned him earlier, the agent who was in charge of this particular investigation, that's when he got involved.

Jordan Grotzinger ([12:34](#)):

One of these farmers literally saw some guy what digging in the fields?

Michael Stimson ([12:39](#)):

Digging up these... Shortly after the inbred seeds were planted in this production field that he managed, he saw somebody digging up those very same inbred seeds.

Jordan Grotzinger ([12:51](#)):

And was there any sort of barrier or no trespassing type notification that he would've had to have crossed or was he able to just walk on and start digging?

Michael Stimson ([13:08](#)):

Yeah, that's a very, very good question. And I think we should talk about this maybe a little out of order because it kind of makes sense, and that goes to really reasonable measures, I think. And so when you're thinking about what reasonable measures are to protect a field of trade secrets, and actually we have hundreds of fields of trade secrets that are tens of acres or more. Like I said, remember every single corn plant that you see when you drive through the Midwest started out in one of these production fields. So you can imagine these are huge production fields. Now, if we were to fence them in, how many fenced in cornfields have you ever seen, right?

Jordan Grotzinger ([13:52](#)):

I cannot recall one.

Michael Stimson ([13:54](#)):

Nope. Nope.

Jordan Grotzinger ([13:55](#)):

I've seen a lot of corn fields.

Michael Stimson ([13:56](#)):

The area of land is just too big, so they don't do that. If we did that in our production fields, it would kind of call attention to them. You kind of have to balance that. Do we take the fenced in security measures or do we try to remain anonymous among all of the many acres of field corn that is planted in the Midwest?

Jordan Grotzinger ([14:14](#)):

That's so interesting. You use the term of art reasonable measures, and that of course refers to one of the elements of a trade secret, which is that it must be subject to reasonable measures to maintain the secrecy of the secret material. And in the normal case where you're talking about data or documents or lists or formulas, you think of reasonable measures like employment contracts and confidentiality clauses and corporate policies that prohibit confidential information sharing. But now we've got, we're talking about trade secrets that are planted over tens of thousands of acres of land. And your company's in a position where, as you said, it's got to... What is the more reasonable or effective measure? Is it putting up fences, a massive volume of fences if it was going to do it completely.

Michael Stimson ([15:26](#)):

Huge cost.

Jordan Grotzinger ([15:26](#)):

And thereby notifying people, Hey, for some reason or another, we don't want you crossing this fence. Or is it more secret to have it just unfenced and be apparently just another cornfield? What an interesting decision a company in that position has to make.

Michael Stimson ([15:50](#)):

Exactly. Exactly. And I don't think we're really all that unique. I mean, every business has its own little tweaks. You're right, data maybe you present that, you protect that in maybe the same way in all industries, but other things like how do I make that widget? Things like that. Maybe you need to protect it in a different way depending on what the widget is and how you make it.

Jordan Grotzinger ([16:13](#)):

So here, this field where this person was caught digging up seeds, I suppose the strategy there was sort of to hide in plain sight, right?

Michael Stimson ([16:24](#)):

That's what it was. I mean, there were some security cameras around and we did have people who were actively monitoring the field. As you might imagine, a production field takes a little more work. It certainly takes quite a bit more work than a regular cornfield. So we did have people out there and as evidenced by the fact that one of our contract farmers saw it happening, that in this case was good enough to detect the theft. Let's put it this way, whether those measures were in fact reasonable was never tested in this case.

Jordan Grotzinger ([16:59](#)):

Right. Right. But yeah, we're just talking about a whole different toolbox of measures. You're talking when a trade secret is actually seeds in the ground. And if this ever was a civil case, I could absolutely see that the things that you've just described, people walking around and monitoring security cameras, even hiding in plain sight as maybe counterintuitive as that seems, could be found to be reasonable measures. But as you said, that was never tested.

Michael Stimson ([17:33](#)):

And it would be a huge fight, a huge issue to fight in a trade secret civil fight. For sure.

Jordan Grotzinger ([17:38](#)):

No doubt. That's super interesting. This farmer, this contract farmer sees this guy digging and did he confront him or what happened?

Michael Stimson ([17:48](#)):

He did, and the guy took off, but luckily he got the license plate.

Jordan Grotzinger ([17:51](#)):

He gets the license plate.

Michael Stimson ([17:54](#)):

Yeah. That was enough of a lead. And Mark Betten, he actually spent some time tailing these guys, and he watched them doing the same thing in fields owned by Monsanto and Pioneer across Iowa, Illinois, and Indiana. That guy got around. He must have had some way, I'm sure he had some way of recognizing, or maybe he had some intel about where our production fields were. He was definitely targeting production fields, not digging up corn seeds randomly.

Jordan Grotzinger ([18:28](#)):

Did the farmer go right to the FBI? Did he go to you guys and then you called the FBI? Were there local police involved. What was sort of the chain of events after they took the license plate?

Michael Stimson ([18:41](#)):

Right. Contacted DuPont Security, DuPont Pioneer Security, which then actually tracked down who rented that particular car at that time and gave that information to the FBI.

Jordan Grotzinger ([18:53](#)):

So you went right to the federal authorities?

Michael Stimson ([18:57](#)):

We did. Yeah. Yeah, we did. There was another case, actually, he might've been involved too. There was a sheriff who 85 miles away from that initial finding, saw the same thing, a suspicious thing, somebody pulled over by the side of the road, somebody digging up corn seeds. And so he kind got involved and Mark Benton found his report and sort of made that part of the bigger case. A number of people, two, at

least two, thought that what they were doing was suspicious enough to elevate that to law enforcement authorities.

Jordan Grotzinger ([19:39](#)):

What happened? How did you work with the FBI to, I suppose at first continue to monitor this and then build a case?

Michael Stimson ([19:50](#)):

The main thing during the main investigation phase... Pioneer's involvement in the beginning was really to help with the investigation by telling them what exactly was at stake. After that when the Department of Justice got involved-

Jordan Grotzinger ([20:06](#)):

Well, let me just stop you there, because that is actually interesting to me from the perspective of a civil trade secret litigator, because you are sharing with the authorities, at least in part what the secret is. And that is a fine line, right? Because you don't want to divulge too much, but you need to divulge enough to let the FBI know that this is actionable. I'm curious how the company walked that fine line when reporting to the FBI that this is proprietary. Was it just, "Hey, this is a trade secret," or how detailed were you when persuading the FBI that you were actually dealing with trade secret theft?

Michael Stimson ([21:01](#)):

Yeah, I'm not even sure that we necessarily said trade secrets right away. That did become part of the theory of the Department of Justice's case for sure. But when you think about it, each of the inbred seeds themselves is worth a tremendous amount of money. It's almost like they could have done a larceny charge.

Jordan Grotzinger ([21:25](#)):

Interesting.

Michael Stimson ([21:25](#)):

I think that the conspiracy to steal trade secrets was actually easier to prove. The reason that larceny would actually be an adequate charge is the inbred seeds themselves. You can multiply them. If you take one inbred seed and you grow it and then you self pollinate it, you can have hundreds of inbred seeds and then you can use those in turn to make the hybrid seeds that we were talking about before. The seeds themselves have a tremendous amount of value, even outside of being trade secret and unavailable outside of Pioneer.

Jordan Grotzinger ([22:00](#)):

And I suppose that was this, I'll call him a spy, that was the spy's point that he was going to go plant this and multiply it and-

Michael Stimson ([22:13](#)):

Send it back to China was exactly the plan so that his company could offer pioneer germ plasm for sale in China, thus stealing our opportunity to do that.

Jordan Grotzinger ([22:25](#)):

He worked for a company named King's Nower Seed Company, which I believe was a Chinese company.

Michael Stimson ([22:30](#)):

Correct. Yes, correct. And in fact, unfortunately for both Pioneer and Monsanto, these conspiracy, conspiracists actually were able to smuggle some inbred seeds out of the country and into China. So that happened before they were apprehended.

Jordan Grotzinger ([22:54](#)):

DuPont Pioneer tells the FBI that these are highly valuable proprietary seeds.

Michael Stimson ([23:05](#)):

Yeah.

Jordan Grotzinger ([23:05](#)):

How was the case built from there? What did the FBI do to follow up and ultimately have enough to charge this guy?

Michael Stimson ([23:15](#)):

The agent in charge was tenacious and really smart. With the evidence that he had, he was able to get an order for a bug, to put a bug in their car. That was part of it also, and I'll get to that in a moment, but he actually followed them throughout three different states and observed behavior and recorded their behavior of stealing these seeds out of production fields.

Jordan Grotzinger ([23:44](#)):

You're using the word them. We're talking about more than just Mo as he was called.

Michael Stimson ([23:53](#)):

Yeah. Yeah. So that's a good point.

Jordan Grotzinger ([23:55](#)):

How many other people are we talking about here?

Michael Stimson ([23:57](#)):

There were at least four. I'm not real clear to me. There were at least four people who were part of this conspiracy, but three of them were able to get to their final destinations in China, in one case through Canada back to China, notwithstanding the case that Mark had built against them. Turns out when they were smuggling these seeds through O'Hare Airport customs seized the seeds. They had tried to smuggle them through in microwave popcorn bags. They emptied out the microwave popcorn and they put these super valuable inbred seeds in those bags and then resealed them, but custom seized those, but then allowed them to proceed to their destination in China. And actually the same thing happened at the Canadian border. Our inbred seeds were seized there as well. But because customs-

Jordan Grotzinger ([24:58](#)):

They were trying to get from O'Hare direct to China.

Michael Stimson ([25:02](#)):

I don't know if it was a direct flight.

Jordan Grotzinger ([25:04](#)):

I mean, right, but it wasn't through Canada.

Michael Stimson ([25:07](#)):

No. No, that's right. Only one of them, I believe, tried to smuggle the seeds through Canada ultimately to China, but two of them tried to do it through O'Hare.

Jordan Grotzinger ([25:18](#)):

Backing up. This tenacious FBI agent gets a court order allowing him to bug a car or cars of these thieves.

Michael Stimson ([25:32](#)):

Yeah.

Jordan Grotzinger ([25:32](#)):

The FBI, I mean this is like movie material. The FBI goes and secretly puts bugs on these cars.

Michael Stimson ([25:42](#)):

Well, that's exactly what happened in this case. And you want to build a great conspiracy case. You just quote the transcript of that bug and let me just read you part of it. One guy says to the other, "These are actually very serious offenses." Lynn told [inaudible 00:26:00] according to Justice Department transcripts of secretly recorded conversations, "They could treat us as spies." He said, "This is what we've been doing." Lynn replied. You can see how that might help the Department of Justice build a conspiracy case. I mean, it was so slam dunk by the end that they had at least wanted to steal trade secrets.

([26:23](#)):

And that's really in the end, all the government had to prove, which is fantastic, right? If you were a civil litigant, if all you had to prove was somebody tried to steal my trade secrets, that would be so much easier than to prove that you had a trade secret, that they stole the trade secret, that they used the trade secret, and you were damaged by that use. The government didn't have to prove any of that. They just had to prove that these guys intended to do it and that they were conspiring to do it. That was a pretty-

Jordan Grotzinger ([26:51](#)):

But they didn't even need to get to the stage of proving whether the seeds rose to the level of trade secret status.

Michael Stimson ([27:00](#)):

That's exactly right. They didn't need to get there.

Jordan Grotzinger ([27:03](#)):

Because they had evidence that the defendants were talking about how they knew or how they thought they were stealing trade secrets. That was enough. You got the conspiracy charge. No need to address, even though it seems pretty clear that it was. No need to address or prove whether the seeds actually were trade secrets.

Michael Stimson ([27:28](#)):

Exactly. Right. That made the case so much easier, and I think that's why they got the guilty plea without going to trial because the conspiracy after all the evidence was pretty much a slam dunk. Now we did, I think we should spend some time talking about this. We did try to help the government put together a trade secret case as well, or at least-

Jordan Grotzinger ([27:50](#)):

[inaudible 00:27:50] do that.

Michael Stimson ([27:51](#)):

... we convinced them that the seeds were a trade secret as trade secrets aren't just information that can also be devices. If you have a device that makes a product that nobody else can make because they don't have that device, then you have a trade secret. And that's how we viewed the seeds, and that's really what we told the government. But the other part of it is, and an interesting part was we had to prove that what the defendants stole was what we owned. And to do that, we had, I'll call it the 23 and me of corn. Although I'll tell you, we looked at a whole bunch more corn, DNA than 23 and me looks at human DNA. We looked at each corn plant all across each chromosome, thousands of what they call the markers that allow you to genetically distinguish your plants from other people's plants.

([28:48](#)):

And so we were able to show the government that within 99.9% certainty, these were our inbred seeds. They were that genetically identical. And so we were kind of going back and forth there. We could say the trade secret is the information about what the genetics are of these seeds. But then again, nobody can really use that information. If you just have that information and then not the seed itself, it's not particularly useful, so the value component of the trade secret wasn't there. And so that's why we settled on the seeds themselves as devices being the trade secrets.

Jordan Grotzinger ([29:25](#)):

Your scientists that spent all that money and all that time developing this hybrid breed, I know you guys sort of settled on the devices as the valuable thing that was being stolen, but I would presume that there are documents, obviously there would've been documents that these scientists develop with, and I don't know if I'm using the right word here, but the formula for these seeds, which itself, it sounds like it must have been a trade secret.

Michael Stimson ([30:05](#)):

Yeah.

Jordan Grotzinger ([30:05](#)):

I understand why the case didn't focus on that, but I would imagine that the documents showing how exactly the scientists develop this process to breed these high yield hybrid seeds themselves are trade secrets, which were subject to, I'm sure pretty strict measures to maintain their secrecy.

Michael Stimson ([30:31](#)):

Yeah, a hundred percent. A hundred percent. DuPont Pioneer had a bunch of what I might call more conventional trade secrets, like information type trade secrets, like you're saying. How did I select this particular inbred with this other particular inbred to make this hybrid? What's the art behind doing that breeding. At least know-how, if not documented, standard operating procedures that would both qualify, I think as trade secrets.

Jordan Grotzinger ([30:58](#)):

It sounds like you, DuPont Pioneer and the government sort of developed the straightest path to the best solution, which was... And the best solution was to stop these thieves. And the straightest path was to focus on the protection of the seeds themselves and the thieves intent or their own subjective understanding that they knew they were stealing something valuable and secret, whereas we discussed before, you didn't actually have to prove that they were secret. It's just that that's what they thought they were doing. And that in and of itself is a crime.

([31:48](#)):

I'm curious, to what extent did you sort of huddle with the FBI to find that most straight of paths, as opposed to, for example, you could have discussed with the FBI that, "Look, we've got these formulas that we developed with these scientists, and that's a trade secret, and by stealing these seeds, they're stealing that." There would've been other sort of more complicated ways to prosecute this case. But it sounds like you guys collectively built a very sharp focused case, and I'm just curious the extent to which you and the FBI worked on theories to make that so, and to really make the case as uncomplicated as possible.

Michael Stimson ([32:44](#)):

I want to make sure that I'm clear that I take zero credit for that strategy. Never been a criminal lawyer. The last time I even thought about it was in law school. Yeah, that was entirely the Department of Justice, and really they deserve a lot of credit because it was a brilliant strategy. As you say, they went straight to the result they wanted and they didn't have to prove all the stuff in the middle. I wish I could do that in civil cases, but unfortunately I'm not the Department of Justice.

([33:17](#)):

Yeah. But our role really was to provide all of the factual information and background that they needed to put their case together. And it was fascinating watching the evolution of their theory of the case, because I think it did probably start out mostly as like, "Well, what are the trade secrets here? How do we prove their trade secrets?" But it evolved, I think when you study the transcripts, when you study what was going on, when you study the connections between these people, the fact that they all came from the same company establishing... I think it became readily apparent to them that establishing a conspiracy would be quite simple.

Jordan Grotzinger ([33:57](#)):

And I suppose the FBI confirmed that the stolen seeds were in fact the ones belonging to Pioneer and Monsanto.

Michael Stimson ([34:10](#)):

So we had-

Jordan Grotzinger ([34:11](#)):

What happened there?

Michael Stimson ([34:13](#)):

That was a very good point. I mentioned the 23 and me of corn, we can absolutely identify with complete certainty whether an inbred or hybrid seed is one of ours. And so when they seized those popcorn bags at the airport, when customs seized those, the FBI took possession and we did tests. Now, certainly our own tests may or may not stand up in court if we had to use them, but the FBI kept a good chain of custody and ultimately they would've, I'm sure, used some standard government testing lab if they needed to confirm the results that we had.

Jordan Grotzinger ([34:58](#)):

You mentioned that customs agents seized these popcorn bags with the seeds at O'Hare. Is that because the FBI had been following them and tipped off the customs agents, or was the customs agents seizing of the popcorn bags just sort of a lucky break?

Michael Stimson ([35:22](#)):

That is a really good question, and I don't know the answer to it. I don't know. Can you take... They probably what it was Jordan is, I know they didn't have just a couple of popcorn bags. They had a box, like a big box of microwave popcorn.

Jordan Grotzinger ([35:37](#)):

Yeah.

Michael Stimson ([35:38](#)):

And it may be that... I don't know what customs rules are. I just don't want to speculate on that.

Jordan Grotzinger ([35:43](#)):

Sure. Yeah. I suppose it looks a little strange if you're trying to transport a very high volume of popcorn.

Michael Stimson ([35:51](#)):

And if you're nervous enough, it may be just like, "Oh, keep it. We'll go without, let's get the heck out of here."

Jordan Grotzinger ([35:56](#)):

Right. Right. Was the seizing of the popcorn bags really the key evidence in the criminal case?

Michael Stimson ([36:06](#)):

It was after that, yeah, that the FBI turned it over to the Department of Justice. They definitely had a buttoned up case by that point.

Jordan Grotzinger ([36:15](#)):

And what happened in the case? Was there a... I don't believe there was a trial. It looks like there was a plea.

Michael Stimson ([36:22](#)):

There was no trial. That's right. There was a plea. And in fact, even though, like I said, it was this conspiracy to steal trade secret case. During the sentencing hearing after he'd already pled guilty, the judge in that case, I attended the sentencing hearing, said that she was handing down the sentence, which was prison for three years, as well as disgorgement of two of the farms that he owned. And she said that the sentence was intended to send a message to China to halt economic espionage.

([36:57](#)):

That was completely acknowledged by the judge as being the underlying motivation for this case. Let me just add one more thing. I've since then, been able to attend a couple of seminars put on by the FBI about cases like this generally, and they encourage you, they encourage you if you have a suspicion of trade secret theft, particularly by any foreign nationals, to contact them about it. You and I talked about when we started this conversation, how much can you share with law enforcement without handing over too much? In our case, it was easy, right? We were saying it's the seeds themselves that can't be stolen. And it didn't seem like we were giving information to anybody that was particularly harmful. But I do think that it's a resource that companies should consider rather than private litigation, rather than civil litigation, if the situation warrants.

Jordan Grotzinger ([38:02](#)):

To that end, and pardon me if... I doubt you're going to know numbers here or remember them, and you might not want to say anyway. But when you're talking about the choice between civil litigation and criminal prosecution, I mean, I got to imagine that by going this route, having the government do the legwork and press the charge and get the plea and get the relief, that seems like it would've been a lot cheaper for the companies than civil litigation. A lot cheaper.

Michael Stimson ([38:43](#)):

Yeah, for sure. And there's no way any damages that we could recover from that case, from this individual would've been adequate to cover even probably the attorney's fees that we would've paid if we were trying to take this as a civil case, because the company, the deep pockets were in China and they didn't do business in the US. So how do we bring a civil case? Even starting that civil case would be difficult, and certainly against the individual, it just wouldn't be worthwhile.

Jordan Grotzinger ([39:15](#)):

And I suppose that's why, particularly when you're dealing with a foreign national, the issue of whether you go the criminal reporting/prosecution route versus the civil route should be scrutinized pretty seriously. You mentioned that the judge ordered disgorgement of this guy's farms. He owned domestic farms?

Michael Stimson ([39:39](#)):

Yeah, he owned two farms in the United States that we think he used to bulk up and test the inbreds that he was stealing.

Jordan Grotzinger ([39:48](#)):

And how did that, if you know, how did that... I mean, who did the farms belong to after they were disgorged?

Michael Stimson ([39:58](#)):

I learned the rules there. The Department of Justice recovers their costs before any of the disgorged proceeds go to the victims. And as far as I know, neither Monsanto nor DuPont has seen any of that, but we're just happy to have stopped the infringement and sent a message.

Jordan Grotzinger ([40:21](#)):

Right. We think as far as we know, the government owns those farms.

Michael Stimson ([40:25](#)):

Yeah. They maybe sold them at some fire sale.

Jordan Grotzinger ([40:28](#)):

Right. Wow. Were they in Iowa as well?

Michael Stimson ([40:34](#)):

I don't know. They may have been in two different states, but I actually don't know. I don't remember.

Jordan Grotzinger ([40:40](#)):

Right. Well, let me ask you this. I'm sorry I didn't ask this earlier. What was Monsanto's role in this? You worked for DuPont Pioneer and it sounds like they were DuPont Pioneer's seeds. What was Monsanto's role here?

Michael Stimson ([40:58](#)):

Monsanto was also a victim. They were our main competitor at the time, but they were also a victim. They also had production fields in the same areas that we had production fields, and they also cooperated with the FBI, I would imagine in a pretty similar way that we did. I frankly had very limited contact with my counterpart over in Monsanto. And so as you can imagine, these strong competitors don't really want to be interacting with each other much, even if it's to cooperate with the FBI.

([41:35](#)):

But one thing to note about that, by the way, there is a question when things like this happen, how do you handle the PR, right? I mean, there's an aspect of you that wants to just shout from the rooftops, "Look what's happening. Don't do this anymore." But then on the other hand, sometimes it's like, well, we would be highlighting maybe a in our armor. So what do you do? It's interesting. Monsanto and Pioneer didn't really take very different approaches to this. Pioneer said, "No comment," when they were asked by the press to comment, and all Monsanto said, "We're glad this is over, and we cooperated fully with the FBI."

Jordan Grotzinger ([42:18](#)):

Wow.

Michael Stimson ([42:19](#)):

Yeah. Interesting, isn't it?

Jordan Grotzinger ([42:22](#)):

Yeah. It's really interesting on so many levels, that these deeds can be bred in a way that is trade secret protectable. And also, I think this case really highlights the issue of when the victim should be looking to litigate in civil court or going to the government and asking for help with a potential criminal prosecution.

Michael Stimson ([42:59](#)):

Exactly.

Jordan Grotzinger ([42:59](#)):

And you guys had the perfect case where it made all the sense in the world to do the latter for all the reasons you said. What were you really going to recover from these guys who weren't the deep pockets domestically when the goal was to stop this theft and of course watch your own costs and you let the government do the work, and it sounds like they did a good job. Really, really interesting case. Thank you for that. I have to say, I think this is episode 58, I believe. This is absolutely one of my favorites. Just a really, really fascinating story. I really appreciate you coming on. And as I mentioned for about the last year and a half, we end every episode with our co-host saying something interesting about themselves or fun about themselves, which has nothing to do with trade secret law. Fire away. Mike, what do you got?

Michael Stimson ([44:06](#)):

Thanks, Jordan, and thank you for having me on. This has really been a great time, and I'm always glad to talk about this case in particular. I agree. It's really fascinating. My interesting thing is when I went in-house about 10 years ago, I decided, well, I'm not going to be having to build 2,500 hours a year anymore, so what am I going to do with all my free time? And in fact, I took up guitar and formed a folk band and have a great time here in Madison, but even I think more pertinent to my current job as general counsel, I got the whole C-suite to sing along with me on a song that I wrote specifically for Sun World. And we did that in front of an all employee gathering, so that was a good time, and it fostered a little team spirit.

Jordan Grotzinger ([44:57](#)):

That's amazing. And this is not published by video, but I can see on our call here, a pretty impressive guitar collection behind you.

Michael Stimson ([45:09](#)):

Thank you. This is my studio in my office. I love it here.

Jordan Grotzinger ([45:12](#)):

That's very cool. Mike, thanks again. We're really, really grateful. I hope you become a recurring guest. There is so much to talk about in this field, and thanks a lot, man. I'm glad we met a month ago, and I know the audience is going to love this.

Michael Stimson ([45:29](#)):

Yeah, thank you for the opportunity. I'll come back anytime. I love your show.

Jordan Grotzinger ([45:35](#)):

Excellent. Bye everybody.

Okay, that's a wrap. Thanks for joining us on this episode of the Trade Secret Law Evolution Podcast. As the law evolves, so will this podcast, so we value your feedback. Let us know how we can be more helpful to you. Send us your questions and comments. You can reach me by email at grotzingerj@gtlaw.com or on LinkedIn. And if you like what you hear, please spread the word and feel free to review us. Also, please subscribe. We're on Apple Podcasts, Stitcher, Spotify, and other platforms. Thanks everybody. Until next time.