

Litigators of the Week: Navigating a Family Food Fight Over the World's Largest Mozzarella Maker

By Ross Todd
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Business disputes that double as family disputes can be particularly messy and emotionally charged.

Over the course of a two-week trial, this week's Litigators of the Week, **Cliff Stricklin** of **King & Spalding** and **Mike Hofmann** of **Bryan Cave Leighton Paisner**, helped the majority shareholders of the world's largest mozzarella maker, Leprino Foods Co., navigate just that sort of lawsuit.

The nieces of company founder James G. Leprino claimed that as minority shareholders they'd been kept in the dark about company business and shut out of money-making loan-back deals they argued benefited majority shareholders, including Leprino's own daughters. They were seeking to dissolve the company and asking for nearly a billion dollars in damages.

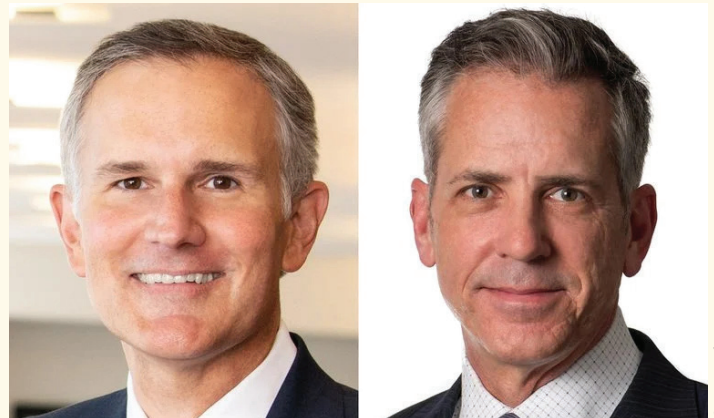
But the defense built the case that the loan deals had profited the company as a whole. They also pointed to dividend payouts to minority shareholders of nearly \$250 million over the past 10 years. "Things will change and one day all the shareholders will receive an even bigger payout that will make them all exponentially richer, but that day is not today and not from you," Stricklin told the jury during closing arguments. "The plaintiffs are not entitled to one cent more."

After just three hours of deliberations last week, a state court jury in Denver, Colorado, agreed and sided with the defense.

Lit Daily: Who were your clients and what was at stake?

Mike Hofmann: Our clients were Leprino Foods Company (LFC) and its CEO and Board Chair, James G. Leprino. We also represented the other members of the control group, Terry Leprino, Gina Vecchiarelli, and Dan Vecchiarelli. Leprino Foods Company is a \$5.5 billion company that is the largest producer of mozzarella cheese in the world. It makes almost 2 billion pounds of cheese each year, controls over 80% of the pizza cheese market and is the U.S.'s largest user of milk.

Cliff Stricklin: Two of the three non-control group shareholders sued the company and the control group on claims of oppression and breach of fiduciary duty and sought the extraordinary remedy of dissolution of the company, \$1 billion in damages, plus exemplary damages. Not only was the 60-year-old company's very existence on the line, but also the



Courtesy photos

Michael J. Hofmann, left, of Bryan Cave Leighton Paisner, and Cliff Stricklin, right, of King & Spalding.

legacy of James G. Leprino and the unique company he built.

How did this case come to you and your firms?

Stricklin: I've worked with LFC since coming to private practice in 2008 after being introduced to the assistant general counsel by a senior member of the firm on the cusp of another trial related to construction of one of their plants. Since then, I've worked with LFC on matters related to IT, corporate governance, and international M&A. Several years back, Mike and I teamed up to handle a billion-dollar False Claims Act matter that was dismissed with prejudice. The assistant general counsel at the time, **Jon Alby**, is now a senior vice president and general counsel.

Who was on your team and how did you divide the work?

Hofmann: Cliff and I have worked together on a number of important matters, and we know each other's strengths and weaknesses. Our skills complement one another. I took the lead on our written work product and arguments before the court, while Cliff focused on our themes and jury presentations, as well as keeping our clients and LFC executives up to date, and we split up most witness examinations. What is new with this matter are the young associates who worked tirelessly on the case. **Kaitlin DeWulf** is a promising trial lawyer at BCLP who grew immensely during the run-up to trial. Her work earned her the right to conduct the direct examination of a key witness at trial. **Jared Lax** clerked for a federal district judge prior to coming to K&S and is in his second year in private practice.

He threw himself into the LFC's defense and took the lead on crafting the outlines of key witnesses and closing arguments. You'd often find him barely visible under piles of exhibits and outlines. **Desi Hamilton** joined K&S from another firm in mid-September, where she had an almost-exclusive securities and internal investigation practice. What she lacked in trial experience she made up in enthusiasm and the willingness to do whatever it took to get us over the goal line. The firms worked seamlessly together and trusted each other completely. LFC's General Counsel Jon Alby was an invaluable part of the team with his command of company history and the facts and added seasoned insights for nearly three years. That translated to a nearly flawless work product in court.

Can you give me the general outlines of the loans that the plaintiffs were taking issue with?

Hofmann: In 2017, the plaintiffs received \$90 million in dividends that had been previously taxed. The control group's share of dividends was \$400 million. Because of the cash needs of the LFC, the control group loaned the money back to the LFC at the applicable federal rate of 2.68% for 20 to 30 years. The plaintiffs complained that they were not given the same opportunity. Although we presented facts that they knew about the loans, we focused on the fact that the loans were an obligation of the control group, not an opportunity. Not only did LFC increase its net profits by investing the money it borrowed back and making money off the spread, we presented evidence that the plaintiffs invested their money and made more than they would have if they had lent the money back. Damages are an element of breach of fiduciary duty, and no damages means no claim.

What were your key trial themes and how did you drive them home with the jury? When you're dealing, as you were here, with a business dispute between family members, how do you as defense counsel deal with the emotions at play? Do you try to keep the focus firmly on the technical aspects of the claims? Or do you try to humanize your individual clients by showing the emotional impact of the dispute on them as well?

Stricklin: From day one, the plaintiffs have tried this case from an emotional perspective, focusing on the history of the company and family relationships. We saw this entire matter as a business dispute and treated it that way. We put all of our focus on how the actions of the control group benefited the company and its long-term financial health. While we were respectful of the plaintiffs' feelings, we always brought our focus back to the business reasons for the actions the control group took. We even embraced the plaintiffs' deceased father, the original minority shareholder, who always put business first and didn't want his daughters, the plaintiffs, to own

the stock. The number one question asked by the plaintiffs' lawyers was, "How did that make you feel?" Ours was, "How did that benefit the company?" At the end of the day, it was a breach of fiduciary duty case, and it does not get any more business-focused than that.

Mr. Stricklin, Law360 reported that the jury forewoman approached the defense team after the verdict came in to compliment you, saying "the closing really pieced together a lot of the evidence we had questions about or thoughts about." Tell me what you set out to do in your closing and how you prepared for it.

Stricklin: The closing outline really started when Mike crafted his opening statement. Our goal was to stay disciplined and hyper-focused with our points and themes from jury selection, opening, the plaintiffs' case and our case. As the facts came out during the trial, we subtly adjusted certain points while remaining true to, well, the truth. It became clear to us during the two weeks of evidence that the plaintiffs were not being fully forthcoming on their motives. We were careful not to personally attack them, but still let the jury arrive at their own conclusions by piecing together small but important clues we left along the way. Our closing was based on the law and facts that were highlighted with clear graphics that told the full story. We were making changes with our team at 3 a.m. In the last hours before closing, we sensed in light of the evidence that we had more room to go on the offensive in our close and to walk up to the line of practically demanding the jury not give the plaintiffs one cent more. I believe that lots of lawyers can try a case, but true trial lawyers can sense and practically feel what is happening in the courtroom. The close relationship and mutual trust between Mike and me let us use that insight to touch the points that we believed were important to this jury. We are glad they agreed.

What was your initial reaction when you heard the jury had come to a verdict so quickly? Did you think that was a good thing or bad thing for your client?

Stricklin: We were confident we had won the case after closing and knew that a quick verdict would support that view. Still, juries are their own living thing and with so much on the line there is always that moment of "what if?" After the judge read the verdict, our first thoughts were with Jim Leprino and his family. He has built a wonderful, unique company, and is a true American success story. And he has made everyone around him rich. He did not deserve this lawsuit, and we are pleased his positive legacy will go on for generations to come.

What will you remember most about this matter?

Hofmann: Being a part of the uniquely American success story that is Leprino Foods Company and Jim Leprino. It has been an honor.