

## Appeal Secures Seven-Figure Settlement for Philadelphia-Based Food Manufacturer

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In *Leonetti's Frozen Foods, Inc. v. Crew, Inc.*, 887 F.3d 438 (8th Cir. 2018), the United States Court of Appeals for the Eighth Circuit issued the reversal of an adverse summary judgment decision that dismissed claims filed on behalf of a Philadelphia-based food manufacturer, Leonetti's Frozen Foods, Inc. (Leonetti's), against its former broker, Crew, Inc. (Crew). Shortly after the Eighth Circuit's decision was handed down, Leonetti's policy-limits demand was accepted, resulting in a seven-figure settlement. Justin Proper and Vince Barbera represented Leonetti's with assistance from Ed Koch.

### The District Court's Summary Judgment Decision

Leonetti's develops and manufactures a variety of frozen food products such as stromboli, calzones and Philly cheesesteak sandwiches, which it sells to other businesses both as private label products and for retail sale to consumers under its own label. In 2014, Leonetti's was invited by Sam's Club to develop a stromboli product to be sold nationwide in its cafés. Leonetti's engaged Crew, an Arkansas-based broker, to assist in navigating the complex development and approval process required by Sam's Club prior to placing orders for product. Leonetti's lawsuit arose out of a "reply all" email sent by one of Crew's principals to representatives of Sam's Club, in which Crew suggested that Leonetti's could use slides taken from a favorable testing report for the stromboli Leonetti's developed for Sam's Club in an upcoming sales presentation to Costco – Sam's Club's number one competitor. Notwithstanding that Leonetti's product had passed Sam's Club's tests leading up to the "reply all" email, and despite assurances from Sam's Club that the project would move forward if it did, Sam's Club abruptly terminated the project and its relationship with Leonetti's shortly thereafter.

Crew moved for summary judgment before the United States District Court for the Western District of Arkansas on grounds that Leonetti's evidence on causation amounted only to the timing of events (*i.e.* the email followed by the adverse decision), which was insufficient to create an issue of fact for the jury. In its opposition, among other things, Leonetti's presented undisputed evidence that although it initially struggled with Sam's Club's tests, in the weeks and months leading up to the "reply all" email, it successfully passed each of the tests required by Sam's Club for the project to move forward. Leonetti's also presented evidence that although the former Sam's Club representative told Crew and Leonetti's that he would not forward the "reply all" email internally, and promised he would delete it, he did the opposite – thereafter forwarding the email to his boss. Discovery also revealed that the Sam's Club representative viewed the "reply all" email, if true, as being a grievous error. Further, he testified that he believed it would be unethical for Leonetti's to use slides documenting test results for a stromboli intended to be proprietary to Sam's Club in a presentation to Costco.

The District Court granted Crew's motion for summary judgment, concluding that Crew presented "powerful evidence" that the "reply all" email did not proximately cause Leonetti's to lose its business opportunity with Sam's Club.

### The Eighth Circuit Reverses the District Court and a Favorable Settlement is Secured for Leonetti's

Leonetti's appealed to the United States Court of Appeals for the Eighth Circuit, highlighting the wealth of circumstantial evidence it presented to the District Court, which demonstrated the existence of a genuine issue of material fact respecting the proximate cause of Leonetti's lost business opportunity. In particular, Leonetti's argued that the evidence it presented demonstrated that Sam's Club's view of Leonetti's and of the project dramatically and devastatingly changed in the wake of the "reply all" email, such that a jury could reasonably conclude that the email proximately caused Sam's Club's termination decision. Vince Barbera argued the appeal on behalf

of Leonetti's before the Eight Circuit in Kansas City, Missouri on February 14, 2018.

On April 11, 2018, the Eight Circuit handed down its decision reversing the District Court and remanding the case for trial. The Appeals Court found that the District Court failed to consider evidence rebutting the explanation for Sam's Club's decision as offered by its former representative, as well as other circumstantial evidence beyond the mere timing of events that demonstrated the "reply all" email was the reason for Sam's Club's termination of the project with Leonetti's. The Eighth Circuit explained that "[b]y doing so, the district court improperly weighed the evidence and improperly determined that [the former Sam's Club's representative's] testimony was credible." It also found that "[a]lthough Leonetti's presented no direct evidence that [the "reply all" email] caused the project termination, there is sufficient circumstantial evidence to show causation." Accordingly, the Appeals Court held that the District Court erred in granting summary judgment for Crew because a genuine issue of material fact existed as to the causation of Sam's Club's termination of its project with Leonetti's.

After receiving the reversal decision, Leonetti's tendered a policy limits demand to Crew. The demand was thereafter accepted, resulting in a seven-figure settlement and favorable resolution of the case for Leonetti's.