

Litigators of the Week: Al Pfeiffer and Peggy Zwisler

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Credit: Photos provided by Latham & Watkins

Last week, Latham & Watkins fended off an attempt by cranberry growers to sue Ocean Spray on a class-wide basis for allegedly suppressing the market price for cranberry concentrate.

Ocean Spray is the country's largest cranberry handler, responsible for buying raw fruit from growers and turning it into products. The cooperative often buys through an auction, but plaintiffs alleged that the process allowed Ocean Spray to control the price of cranberry concentrate industry-wide.

After listening to and seeing a lot of evidence, testimony and argument, Judge Rya Zobel denied to certify a class of cranberry growers. The judge said that the proposed class failed to demonstrate that a class action would be more economically efficient than individual lawsuits.

Two Latham & Watkins partners essential to last week's victory, Al Pfeiffer and Peggy Zwisler, discussed with *GCR USA* some of the finer points of their arguments that led to the judge siding with Ocean Spray.

In an effort to provide a clear explanation of how a cooperative works and the economics behind the cranberry industry, Pfeiffer presented a tutorial to the judge. While such judicial education is more commonly used in patent litigation, the team decided it could help dispel some allegedly false notions in this case, having succeeded in using a tutorial in the *Aluminium* antitrust litigation.

Pfeiffer said the plaintiffs' depiction of an economic motive for Ocean Spray to depress the prices for raw cranberries was false, and Zwisler said it was important to show the judge differently.

His tutorial, coupled with Zwisler's oral argument, effectively made their case to the judge. The tutorial explained that the economic reality of the cranberry industry and of Ocean Spray did not match the plaintiffs' theories.

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“The court agreed and I think benefitted from [the tutorial],” Pfeiffer said.

Zwisler said she focused on a few important areas – such the evidentiary record, which included 30 depositions from people familiar with the market – in convincing the judge not to certify the class.

“We had a rich record of regular people,” she said, adding that the testimony from growers and other people who work in the market helped make a stronger case.

Zwisler said she also made a point to touch on the amount of damages plaintiffs were seeking, which she said was enough to potentially destroy Ocean Spray. She highlighted that many growers like the work the co-op does to promote the cranberry industry and did not want the company to fail.

Zwisler also said she explained that the class definition that plaintiffs sought did not work – that as the would-be class claimed, growers do not deliver fruit to a handler “for a purpose,” but instead just deliver the fruit without knowing exactly for which product a handler will use it.

Ultimately, the teamwork between Pfeiffer’s tutorial and Zwisler’s oral argument helped give the Latham & Watkins team the win for its clients, she said, in a “seamless development of how to win the case.”

“When we got to the actual presentation,” Zwisler said, “we could have traded who did what.”