Caught in the Act

Dairy equipment manufacturer Relco wins $22.78 million in a theft of trade secrets lawsuit.

By Suzy Frisch

Loren Corle didn’t think much of it when two salesmen left Relco, his Willmar-based manufacturer of dairy equipment, for positions in Wisconsin. That is until he started hearing from competitors and clients that other dairies were installing highly specialized systems just like Relco’s.

Strangely enough, the company manufacturing the look-alikes was exactly the same business where Corle’s employees went to work in early 2010. Custom Fabricating and Repair (CFR) of Marshfield, Wisconsin, had launched a subsidiary called Cheese Systems, and Roger Ochsner and Troy Gascoigne purportedly left to help get its cheese-making line off the ground.

Even though the pair had signed confidentiality and noncompete agreements, Corle wasn’t too concerned about their new jobs. Cheese Systems’ equipment just wasn’t as specialized and complex as Relco’s. During the past 32 years, Relco built an international reputation as a sophisticated manufacturer of complicated, highly engineered—and very expensive—whey processing systems.

It would be highly unlikely for this new start-up to accurately reproduce Relco’s equipment quickly without having access to its designs and blueprints. Yet, “they were able to quote, execute, and win very large projects in a very short amount of time after they started, and that’s very difficult to do,” says Corle, Relco founder and
Company President Loren Corle grew Relco into a $68 million business with operations in Willmar, the Netherlands, and New Zealand through constant improvement to engineering and design, deep specialization in dairy and food processing, and a willingness to make acquisitions.

president. “It’s a momentous undertaking to produce shop drawings, select the materials, the vendors, the suppliers, get everything dimensioned properly and in the workshop to build it if you have no history to work from.”

After losing about five contracts to CFR/Cheese Systems in 2010 and 2011—in addition to fruitlessly spending $20,000 to $40,000 each time Relco bid on a project—Corle decided to retain a lawyer. Was Cheese Systems somehow competing in this niche industry on the back of Relco’s proprietary and confidential business secrets?

Relco sued, and after a nine-day trial this fall, a Kandiyohi County jury found that CFR, Cheese Systems, Oehsner, and Gascoigne stole trade secrets, then used the information to compete against Relco while interfering with its ability to do business. The jury awarded Relco $22.78 million, holding CFR responsible for 90 percent of the damages.

“Justice was served,” says lead attorney Dean LeDoux, a principal at the Gray Plant Mooty firm in Minneapolis. “If someone stole a $1,000 laptop, that would constitute a felony and they would serve several years in prison. If you steal millions of dollars worth of computer files, more often than not the outcome is a civil lawsuit. Think of the harm to the economy if people aren’t held accountable.”

A DAIRY (EQUIPMENT MANUFACTURER) ON THE PRAIRIE

Corle didn’t grow Relco into a $68 million business with operations in Willmar, the Netherlands, and New Zealand by resting on its laurels. Constant improvement to engineering and design, deep specialization in dairy and food processing, and a willingness to make acquisitions helped Relco expand to 150 employees.

The origins of Relco begin in 1982 after Corle was laid off from a welding company. He started working as a contractor doing sanitary pipe installation and welding at a dairy. Corle took on greater responsibility and more complicated jobs over time, even designing equipment at clients’ request. By the mid-’80s Corle joined forces with Rolland Engineering to add deeper expertise at Relco.

As the industry’s needs changed,
Relco rose to meet them. The company continually added to its capabilities to design and build increasingly complex equipment for making cheese, packaging powders for food or pharmaceuticals, and processing a wide range of foods like milk, juice, yeast, and soy. Its multi-use systems could do concentrating and drying, fermentation, homogenization, and more.

Then, processors figured out how to turn whey—long considered waste from cheese manufacturing—into a usable product. Subsequently, they needed even more sophisticated equipment for evaporating and drying the liquid into either lactose or dairy permeate, which can be used to fortify foods or animal feed. Relco and its engineers developed lines of lactose and dairy permeate processing equipment.

In 1999, Relco acquired Whey Systems, Inc., which helped the company grow into a big player in this small market. Before long Relco was competing on the world stage, selling its equipment in New Zealand, South America, and throughout Europe. The projects Relco tackled were significant, often taking months to develop 30- to 100-page bids, then another to 12-18 months to design and construct the systems.

Lactose and dairy permeate equipment is huge and highly complicated, often standing two to three stories tall, with price tags that can hit $50 million. It’s just not expertise that a start-up can develop overnight, argues LeDoux.

FUNNY BUSINESS
Relco’s troubles began in late 2009, when Ochsner and Gascoigne gave notice. They told Corle they were going to CFR’s new Cheese Systems subsidiary as it developed a waterless mozzarella cooker and other cheese-making equipment. Relco passed on enforcing the pair’s noncompete agreements, LeDoux says, because roughly 10 percent of Relco’s business focuses on cheese, and the equipment isn’t as specialized and high-end as its other lines.

Corle certainly was aware of CFR, because it got started in the sanitary fabrication business about 30 years ago, too, and it’s not a very large industry. CFR, though, wasn’t involved in many of Relco’s main product lines, including its specialized lactose and dairy permeate processing equipment. But Ochsner and Gascoigne knew the business, especially Ochsner, who worked at Relco for 10 years. Gascoigne spent about 14 months at Relco. Both were sales engineers who often served as the liaison between customers and Relco engineers.

With the size of the contracts and how much work goes into trying to sell one of these projects, the sales engineers end up being the primary point of contact with potential and ultimate customers,” says LeDoux. “Because of that they had full access to all of the confidential, valuable engineering information and the files on Relco’s computer system.”

In early 2010 Ochsner started as...
October. LeDoux and his co-counsel, failed, the two sides headed to trial this TIME FOR TRIAL return calls and emails seeking comment represented the defendants. He did not tortuous interference, breach of contract, misappropriation of trade secrets and Minnesota’s 8th District Court claiming in May 2011 Relco filed suit in discovered that the manufacturer was Cheese Systems, where Relco’s former designs, according to LeDoux. “We lost contracts during very difficult times for the industry, and we had to lay people off—good people,” says Corle. “And then we were not able to get our people back, and it affected our ability to ramp back up when business picked up again.” After Relco retained LeDoux, his team investigated this new competitor with similar designs to theirs. When they discovered that the manufacturer was Cheese Systems, where Relco’s former employees went to work, the lawyers sent cease and desist orders. Ultimately in May 2011 Relco filed suit in Minnesota’s 8th District Court claiming misappropriation of trade secrets and confidential business information, tortuous interference, breach of contract, and more.

Michael Feichtinger, an attorney at the Quinnivan & Hughes firm in St. Cloud, represented the defendants. He did not return calls and emails seeking comment about the case.

TIME FOR TRIAL After two court-ordered mediations failed, the two sides headed to trial this October. LeDoux and his co-counsel, Meghann Kantke, built their case with the help of a computer forensics expert, who mined the defendants’ native computer files for their meta data and electronic fingerprints that showed where the files originated.

Then, in 2012, LeDoux and his team discovered the smoking gun—two external hard drives belonging to Ochsner that were loaded with Relco computer files. With a court order from the judge, LeDoux’s team investigated the hard drives, CFR and Cheese Systems’ servers, laptops, and more. “The evidence exploded and went from 100 suspect files in the summer of 2012 to 70,000 files to dig through and analyze,” he says. “We went from going to trial with not enough evidence to having way too much.” To relay the story at trial of the trade secret theft, LeDoux’s forensics expert created side-by-side comparisons of several Relco and Cheese Systems drawings. They visually show the progression from unique Relco designs to Cheese Systems work that the company developed based on Relco’s designs, LeDoux says. Other evidence included spreadsheets listing hundreds of engineering documents that included Relco’s trade secrets. “The opinion across the board was that it came from Relco, and CFR could not have generated what they did without using Relco’s information,” he adds.

The defense strategy involved first arguing that CFR didn’t have any of Relco’s information. Then when the computer files were discovered, the defense claimed that the defendants didn’t take them improperly, and then that the company didn’t use the information. When computer forensics disproved that argument, the defense maintained that Relco’s designs weren’t confidential and were readily available in the public domain. A plaintiff’s expert witness from the dairy industry handily shot down the notion that the lactose and dairy permeate equipment designs were public knowledge, LeDoux says. In closing arguments, LeDoux asked for $26 million in damages. The jury deliberated for four hours and came back with the $22.78 million verdict, including $7.1 million for improperly interfering with Relco’s contractual relationships with customers or potential customers, $9.25 million for misappropriating Relco’s confidential business information, and $2 million for Ochsner’s breach of contract in taking the computer files.

Since the trial, the defendants have said they will not appeal and have worked out a settlement with Relco. It includes a payment plan for the damages as well as a broad, open-ended injunction that will keep CFR and Cheese Systems out of the lactose and dairy permeate processing industry.

Meanwhile, Corle and Relco are working to recover from the entire situation—the lawsuit, the trial, and the collective tolls they’ve taken. But the injuries linger. Hundreds of computer files containing Relco’s trade secrets have been transmitted to various customers, suppliers, and contractors by the defendants, and they can’t be retrieved despite the verdict. One of the more difficult aspects for Corle, personally, is new self-doubt about his ability to judge people and whether they can be trusted. Despite that experience and a desire to collect on the verdict, Corle and Relco have refrained from trying to force CFR into bankruptcy. “Some part of us wanted to do that,” says Corle. “But what we realized is that their customers are our customers, and if we shut them down that will leave a whole lot of unfinished contracts and a lot of our customers in very difficult positions. We also wanted to leave CFR with enough opportunity to stay in business and get us as much money as they can to make us whole.”

What might be the best justice for Corle is Relco’s continued success as it deepens its offerings in the dairy industry, grows market share, and continues to expand globally. Overall, he believes the lawsuit could benefit the macro dairy equipment industry.

“We’re pleased that we were successful in defending our technology in this case,” Corle adds. “It’s good to recognize that we have lots of competitors who are honest and upright and compete evenly with us. This is good for them, too—it helps secure everyone’s technology.”