

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HOWARD B. SAMUELS, solely as)
Chapter 7 Trustee of the estate of)
CENTRAL GROCERS, INC.)

Plaintiff,)

v.)

AGRI STATS, INC.; CLEMENS FOOD)
GROUP, LLC; CLEMENS FAMILY)
CORPORATION; HORMEL FOODS)
CORPORATION; HORMEL FOODS)
LLC; JBS USA FOOD COMPANY;)
SEABOARD CORPORATION;)
SEABOARD FOODS LLC; SMITHFIELD)
FOODS, INC.; TRIUMPH FOODS, LLC;)
TYSON FOODS, INC.; TYSON)
PREPARED FOODS, INC.; and TYSON)
FRESH MEATS, INC.,)

Defendants.)

Civil Action No.: 21-cv-05883

COMPLAINT

Jury Trial Demanded

TABLE OF CONTENTS

	Page(s)
I. NATURE OF ACTION.....	4
II. JURISDICTION AND VENUE.....	6
III. PARTIES	7
A. Plaintiff	7
B. Defendants	8
a. Agri Stats	8
b. Clemens	8
c. Hormel.....	9
d. JBS	10
e. Seaboard	10
f. Smithfield	11
g. Triumph	11
h. Tyson	12
i. Co-Conspirators.....	13
IV. FACTUAL ALLEGATIONS.....	13
A. Agri Stats’ Detailed Reports Enable the Producer Defendants to Accurately Assess and Monitor their Competitors’ Production Levels	17
B. The Producer Defendants’ Control Over the Production and Supply of Pork in the United States.....	22
C. Vertically-Integrated Companies and the Control of Hog-Raising through Contract Growing	22
D. A Highly-Concentrated Industry.....	26
E. Barriers to Entry.....	27
F. Inelastic Demand and Standardized, Commodity Products Where Competition is Principally on Price	28

G.	Opportunities to Collude at Industry Conferences and Trade Association Meetings.....	29
V.	THE PRODUCER DEFENDANTS’ CURTAILMENT OF PORK PRODUCTION.....	35
a.	Smithfield	37
b.	Tyson	38
c.	JBS	38
d.	Hormel.....	38
e.	Seaboard	39
f.	Triumph	39
g.	Clemens	39
h.	Co-Conspirator Indiana Packers	40
VI.	ABNORMAL PRICING AND THE EFFECT ON PLAINTIFF IN THE FORM OF HIGHER PRICES.....	48
VII.	OVERCHARGES FROM THE CARTEL REFLECTED IN HIGHER PORK PRICES PLAINTIFF PAID	49
VIII.	DOJ’S CRIMINAL ANTITRUST PROSECUTION IN BROILER CHICKENS SUPPORTS AN INFERENCE OF THE EXISTENCE OF A SIMILAR CONSPIRACY IN PORK.....	50
IX.	TOLLING OF THE STATUTE OF LIMITATIONS.....	52
A.	<i>American Pipe</i> Tolling.....	52
B.	Fraudulent Concealment.....	52
X.	ANTITRUST INJURY	56
XI.	VIOLATION OF SECTION 1 OF THE SHERMAN ACT.....	57
XII.	REQUEST FOR RELIEF	58
XIII.	JURY TRIAL DEMANDED	59

Plaintiff Howard B. Samuels, solely as Chapter 7 Trustee of the estate of Central Grocers, Inc., (“Plaintiff”) by and through its undersigned counsel, files this Complaint against the Defendants identified below, for their illegal conspiracy, which increased the prices of pork sold in the United States beginning at least as early as 2009 and continuing through the present. Plaintiff brings this action against Defendants for treble damages and for such other damages to the maximum extent allowed under the antitrust laws of the United States, and demand a trial by jury.

I. NATURE OF ACTION

1. The pork producer defendants are the leading suppliers of pork in an industry with approximately \$20 billion in annual commerce in the United States. The United States pork industry is highly concentrated, with a small number of large companies controlling the supply. Defendants and their Co-Conspirators collectively control over 80 percent of the wholesale pork market.

2. Defendants Agri Stats, Clemens, Hormel, JBS USA, Seaboard, Smithfield, Triumph, and Tyson entered, along with Co-Conspirator Indiana Packers Corporation, into a conspiracy from at least 2009 to the present (the “Conspiracy Period”) to fix, raise, maintain, and stabilize the price of pork.¹ The defendants, other than Agri Stats, are referred to here collectively as the “Producer Defendants.”

¹ For the purposes of this Complaint, “pork” includes, but is not limited to, a variety of meat products from pigs (also referred to in the industry as porcine or swine) purchased fresh, frozen, processed, rendered or non-rendered, including but not limited to any and all processed pork products, (e.g., smoked ham, sausage, bacon, pepperoni, lunch meats), and other processed products and by-products containing pork. “Pork by-products” can include, but is not limited to, offal and individual parts or organs from pigs used in pet foods (e.g., livers, kidneys, lungs, hearts, cheeks) and/or rendered products (e.g., meat meals and bone meals). From time to time in this complaint, “pork” and “swine” are used interchangeably, particularly when referring to the pork or swine industry. See, e.g. DPP Class Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Settlement between Direct Purchaser Plaintiff and Defendant JBS at 2, n.2, *In re: Pork Antitrust Litigation*, Case No. 0:18-cv-01776 (D. Minn.).

3. One method by which Defendants implemented and executed their conspiracy was by coordinating output and limiting production with the intent and expected result of increasing pork prices in the United States.

4. In furtherance of their conspiracy, the Producer Defendants exchanged detailed, competitively sensitive, and closely guarded non-public information, such as prices, capacity, production, sales volume, and demand, including through their co-conspirator, Defendant Agri Stats.

5. Beginning in at least 2009, Defendant Agri Stats began providing highly sensitive “benchmarking” reports to the Producer Defendants. Legitimate benchmarking allows competitors to compare their profits or performance against that of other companies. Yet Agri Stats’ reports are unlike those of lawful industry reports; rather, Agri Stats gathers detailed financial and production data from each of the Producer Defendants and their Co-Conspirator Indiana Packers, standardizes this information, and produces customized reports and graphs for the conspirators. The type of information available in these reports is not the type of information that competitors would provide each other in a normal, competitive market.

6. On at least a monthly basis, and often far more frequently (*e.g.*, weekly or every other week), Agri Stats provides the Producer Defendants with current and forward-looking sensitive information (such as profits, costs, prices and slaughter information), and regularly provides the keys to deciphering which data belong to which participant. The effect of this information exchange was to allow the pork producers to monitor each other’s production, and therefore control supply and price in furtherance of their anticompetitive scheme.

7. The data exchanged through Agri Stats also bears all the hallmarks of the enforcement and implementation mechanism of a price-fixing scheme. First, the data are current and forward-looking—which courts have consistently held has “the greatest potential for generating anticompetitive effects.” Second, information contained in Agri Stats reports is specific to pork

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.