

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

WANDA DURYEA, MATTHEW HOSKING,  
JOHN MCKEE, LISA MELEGARI,  
MICHAEL REILLY, SANDRA STEFFEN,  
PAUL GLANTZ, EDWIN BLAKEY,  
JENNIFER SULLIVAN, LISA AXELROD,  
ANBESSA TUFA AND CHRISTINA HALL,

Plaintiffs,

v.

AGRI STATS, INC., CLEMENS FOOD  
GROUP, LLC, HORMEL FOODS  
CORPORATION, INDIANA PACKERS  
CORPORATION, JBS USA, SEABOARD  
FOODS, LLC, SMITHFIELD FOODS, INC.,  
TRIUMPH FOODS, LLC, AND TYSON  
FOODS, INC.

Defendants.

No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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Plaintiffs bring this action on behalf of themselves individually and on behalf of a plaintiff class consisting of all persons and entities who purchased pork indirectly from a defendant or co-conspirator for personal use in the United States from at least January 1, 2009 until the present (Class Period). Plaintiffs bring this action for injunctive relief under Section 1 of the Sherman Act, and for treble damages under the antitrust laws, unfair competition laws, consumer protection laws, and unjust enrichment common laws of the several states against defendants, and demand a trial by jury.

### I. NATURE OF ACTION

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

2. These defendants, Agri Stats, Inc. (Agri Stats), Clemens Food Group, LLC (Clemens), Hormel Foods Corporation (Hormel), Indiana Packers Corporation (Indiana Packers), JBS USA, Seaboard Foods LLC (Seaboard), Smithfield Foods, Inc. (Smithfield), Triumph Foods, LLC (Triumph), and Tyson Foods, Inc. (Tyson), entered into a conspiracy from at least 2009 to the present to fix, raise, maintain and stabilize the price of pork.<sup>1</sup> The principal (but not exclusive) method by which defendants implemented and executed their conspiracy was by coordinating their output and limiting production with the intent and expected result of increasing pork prices in the United States. In furtherance of their conspiracy, defendants exchanged detailed, competitively sensitive, and closely guarded non-

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<sup>1</sup> For the purposes of this complaint, pork includes pig meat purchased fresh or frozen, smoked ham, sausage and bacon.

public information about prices, capacity, sales volume and demand through their co-conspirator Agri Stats.

3. Beginning in at least 2009, Agri Stats began providing highly sensitive “benchmarking” reports to the majority of pork integrators. Benchmarking allows competitors to compare their profits or performance against that of other companies. But Agri Stats’ reports are unlike those of other lawful industry reports. Agri Stats gathers detailed financial and production data from each of the pork integrators, standardizes this information, and produces customized reports and graphs for the co-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. Instead, the provision of this detailed information acts as the proverbial smoke-filled room of the cartels of yesteryear. Rather than meeting in a room with pen and paper, Agri Stats collected the pork integrators’ competitively sensitive supply and pricing data and intentionally shared that information through detailed reports it provided to the pork integrators. On a weekly and monthly basis, Agri Stats provides the pork integrators with current and forward-looking sensitive information (such as profits, costs, prices and slaughter information), as well as regularly provides the keys to deciphering which data belongs to which producers. The effect of this information exchange was to allow the pork integrators to monitor each other’s production and hence control supply and price.

4. The data exchanged through Agri Stats bears all the hallmarks of the enforcement mechanism of a price-fixing scheme. First, the data is current and forward-looking – which courts consistently hold has “the greatest potential for generating anticompetitive effects.”<sup>2</sup>

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<sup>2</sup> *Todd v. Exxon Corp.*, 275 F.3d 191, 2011 (2d Cir. 2001) (Sotomayor, J.) (quoting *United States v. Gypsum Co.*, 438 U.S. 422, 441 n.16 (1978)).

Second, information contained in Agri Stats reports is specific to the pork producers, including information on profits, prices, costs and production levels. “Courts prefer that information be aggregated in the form of industry averages, thus avoiding transactional specificity.”<sup>3</sup> Third, none of the Agri Stats information was publicly available. Agri Stats is a subscription service, which required the co-conspirators to pay millions of dollars over the class period – far in excess of any other pricing and production indices. “Public dissemination is a primary way for data exchange to realize its pro-competitive potential.”<sup>4</sup> Agri Stats ensured that its detailed, sensitive business information was available only to the co-conspirators and not to any buyers in the market.

5. In addition to this public information, the swine producers admitted in public calls that they had discussed production cuts at least once, and publicly signaled to each other that no supply increases would happen.

6. In addition, there are numerous “plus factors” in the swine industry during the class period, including but not limited to multiple industry characteristics which facilitate collusion, such as high vertical integration, high barriers to entry, high pork industry consolidation and concentration, inelastic supply and demand, and a lack of significant substitutes for pork. These plus factors add plausibility to plaintiffs’ allegations of a price fixing scheme.

7. Defendants’ restriction of pork supply had the intended purpose and effect of increasing pork prices to plaintiffs and class members. Beginning in 2009, the earnings of the integrators began to increase, as they took an increasing amount of the profits available in the

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<sup>3</sup> *Id.* at 212.

<sup>4</sup> *Id.* at 213.

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