

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE PORK ANTITRUST LITIGATION

Civil Nos. 18-1776, 19-1578, and  
19-2723 (JRT/LIB)

This Document Relates To:

*All Actions.*

**AMENDED MEMORANDUM  
OPINION AND ORDER**

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Alec Blaine Finley, **CUNEO GILBERT & LADUCA, LLP**, 4725 Wisconsin Avenue N.W., Suite 200, Washington, District of Columbia 20016; Shawn M. Raiter, **LARSON KING, LLP**, 2800 Wells Fargo Place, 30 East Seventh Street, Saint Paul, Minnesota 55101; for the Commercial Indirect Plaintiffs.

Christa C. Cottrell and Christina Henk Briesacher, **KIRKLAND & ELLIS LLP**, 300 North LaSalle Drive, Chicago, Illinois 60654, for Defendants Clemens Food Group, LLC and The Clemens Family Corporation.

Richard A. Duncan, **FAEGRE DRINKER BIDDLE & REATH LLP**, 90 South Seventh Street, Suite 2200, Minneapolis, Minnesota 55402, for Defendants Hormel Foods Corporation and Hormel Foods, LLC.

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South Wacker Drive, Chicago, Illinois 60606, for Defendant Indiana Packers Corporation.

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William L. Greene and Peter J. Schwingler, **STINSON LLP**, 50 South Sixth Street, Suite 2600, Minneapolis, Minnesota 55402, for Defendants Seaboard Foods LLC and Seaboard Corporation.

Brian Edward Robison, **GIBSON, DUNN & CRUTCHER, LLP**, 2100 McKinney Avenue, Suite 1100, Dallas, Texas 75201; Richard G. Parker, **GIBSON, DUNN & CRUTCHER, LLP**, 1050 Connecticut Avenue, N.W. Washington, District of Columbia 20036, for Defendant Smithfield Foods, Inc.

Vollis Gene Summerlin Jr., **HUSCH BLACKWELL LLP**, 13330 California Street, Suite 200, Omaha, Nebraska 68154, for Defendant Triumph Foods, LLC.

Tiffany Rider Rohrbaugh, **AXINN, VELTROP & HARKRIDER LLP**, 950 F Street N.W., Washington, District of Columbia 20004, for Defendants Tyson Foods, Inc., Tyson Prepared Foods, Inc., and Tyson Fresh Meats, Inc.

William Leitzsey Monts III and Justin Bernick, **HOGAN LOVELLS US LLP**, 555 Thirteenth Street N.W., Washington, District of Columbia 20004, for Defendant Agri Stats, Inc.

Three putative classes of Plaintiffs allege that Defendants, among America's largest pork producers and integrators, conspired to limit the supply of pork and thereby fix prices in violation of federal and state antitrust laws. Defendants move to dismiss the claims against them. Because Plaintiffs' amended complaints adequately plead parallel conduct, and because Plaintiffs adequately plead a continuing violation such that the claims are not time barred, the Court will deny Defendants' joint Motion to Dismiss.

However, because Plaintiffs fail to adequately plead participation in the parallel conduct by Defendant Indiana Packers, the Court will grant Indiana Packers' individual Motion to Dismiss. In a related case brought by two individual businesses, the Court will deny Defendants' joint Motion to Dismiss and will grant Indiana Packers' individual Motion to Dismiss, for the same reasons.

Additionally, the Court will dismiss the following state-law claims brought by the Indirect Plaintiff class: (1) the state antitrust claims arising before Rhode Island enacted its *Illinois Brick* repealer and the claims from Mississippi; (2) the consumer-protection claims from Massachusetts, Michigan, Minnesota, New Hampshire, New York, South Dakota, Utah and Virginia; and (3) the unjust enrichment claims from Arizona, Florida, North Dakota, and Utah.

Finally, the Court has determined that the Commonwealth of Puerto Rico has a statutory grant of *parens patriae* standing. However, the Court concludes that the Commonwealth has failed to adequately plead a claim for conspiracy to monopolize and will therefore grant Defendants' Motion to Dismiss the Commonwealth's claim under P.R. Laws Ann. tit. 10 § 260.

### **BACKGROUND**

This case represents the consolidation of thirteen separately filed putative class actions. There are three categories of class-action Plaintiffs who purchased, either

directly or indirectly, pork products from one of the Defendants<sup>1</sup>: Direct Purchaser Plaintiffs (“DPPs”), Indirect Purchaser Plaintiffs (“IPPs”), and Commercial and Institutional Indirect Purchaser Plaintiffs (“CIPs”). All three allege that Defendants engaged in a price-fixing conspiracy to artificially constrict the supply of pork products in the domestic market of the United States, a per se violation of § 1 of the Sherman Act, 15 U.S.C. § 1.

DPPs bring a claim for treble damages under § 4 of the Clayton Act, 15 U.S.C. § 15(a); IPPs and CIPs (together, the “Indirect Plaintiffs”) bring a claim for injunctive relief under § 16 of the Clayton Act, 15 U.S.C. § 26.<sup>2</sup> Indirect Plaintiffs also bring claims for

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<sup>1</sup> Agri Stats, Inc. (“Agri Stats”); Clemens Food Group, LLC and The Clemens Family Corporation (together and separately, “Clemens”); Hormel Foods Corporation and Hormel Foods, LLC (together and separately, “Hormel”); Indiana Packers Corporation (“Indiana Packers”); JBS USA Food Company (“JBS”); Seaboard Foods LLC and Seaboard Corporation (together and separately, “Seaboard”); Smithfield Foods, Inc. (“Smithfield”); Triumph Foods, LLC (“Triumph”); and Tyson Foods, Inc., Tyson Fresh Meats, Inc. and Tyson Prepared Foods, Inc. (together and separately, “Tyson”).

<sup>2</sup> Concluding that allowing otherwise “would transform treble-damages actions into massive efforts to apportion the recovery among all potential plaintiffs that could have absorbed part of the overcharge,” the Supreme Court has held that only direct purchasers may sue for damages in Sherman Act price-fixing cases. *Ill. Brick Co. v. Illinois*, 431 U.S. 720, 737 (1977). However, “the [*Illinois Brick*] direct-purchaser doctrine does not foreclose equitable relief.” *U.S. Gypsum Co. v. Ind. Gas Co.*, 350 F.3d 623, 627 (7<sup>th</sup> Cir. 2003).

damages under (1) the antitrust laws of 27 jurisdictions;<sup>3</sup> (2) the consumer-protection laws of 24 jurisdictions;<sup>4</sup> and (3) the unjust-enrichment law of 32 jurisdictions.<sup>5</sup>

The Court first considered a joint Motion to Dismiss brought by Defendants against the three class complaints last year. After concluding that “Plaintiffs ha[d] not adequately pleaded parallel conduct, an essential element in showing that Defendants engaged in an agreement to limit the supply of pork,” the Court granted the joint Motion without prejudice and gave Plaintiffs 90 days to refile their amended complaints. *In re Pork Antitrust Cases*, No. 18-1776, 2019 WL 3752497, at \*9, 10 (D. Minn. Aug. 8, 2019). Plaintiffs timely refiled their amended complaints,<sup>6</sup> and Defendants now bring two joint

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<sup>3</sup> Arizona, California, the District of Columbia, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

<sup>4</sup> Arkansas, California, the District of Columbia, Florida, Hawaii, Illinois, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, West Virginia, and Wisconsin

<sup>5</sup> Arizona, Arkansas, California, the District of Columbia, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

<sup>6</sup> The DPP amended complaint can be found at Docket No. 431 (“DPP Compl.”); the CIP amended complaint can be found at Docket No. 432 (“CIP Compl.”); and the IPP amended complaint (“IPP Compl.”) can be found at Docket No. 392. Due to the nearly identical allegations in the three complaints, the Court will generally discuss them interchangeably unless it is necessary to do otherwise. Because of the length of and significant details

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