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The US District Court for the Eastern District of Pennsylvania finds that a company was not part of a conspiracy to manipulate the supply of eggs and raise prices *(In re Processed Egg Prods)*

ANTICOMPETITIVE PRACTICES, CARTEL, AGRICULTURE / FOOD PRODUCTS , PRICE FIXING, PRIVATE ENFORCEMENT, RULE OF REASON, EFFECT ON COMPETITION, UNITED STATES OF AMERICA, CLASS ACTION

Eastern District of Pennsylvania, In re Processed Egg Prods. Antitrust Litig., E.D. Pa., No. 08-md-2002, 14 June 2018

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The case began 10 years ago when a class of companies that purchase eggs sued the country's leading egg producers, seeking more than $1 billion in damages. The plaintiffs claimed that the egg producers conspired to manipulate the supply and raise prices for eggs. Specifically, the buyers asserted that through their membership in industry group United Egg Producers and their participation in an allegedly sham animal welfare program that required additional cage space per hen, money losing exports through the U.S. Egg Marketing Cooperative, and other flock management practices, the defendants participated in a conspiracy to reduce the domestic egg supply. The plaintiffs alleged that the aim of the supply reduction conspiracy was to increase shell egg prices over a period of several years, causing damages of $1.1 billion to a class of direct purchasers.

Ten of the 13 producers named in the suit settled the cases against them for roughly $150 million. But our team, representing R. W. Sauder, convinced the jury that our client was not part of any conspiracy.

Our client took a considerable risk in going to trial. Under U.S. law, there is a very significant incentive for defendants to settle antitrust class actions such as this. First, if a jury finds that there was a conspiracy and that there was economic harm, any damages that it awarded would be automatically tripled. Second, any defendant found liable is subject to joint and several liability, which means that it could be held economically responsible for any economic damage caused by any member of the conspiracy. This means that a single defendant could be exposed to the damages caused by all of the conspirators' sales, trebled. As a result, jury verdicts in antitrust class action cases are extremely rare, and defense verdicts such as this one are even more unusual. Our client showed incredible trust and fortitude in taking this case to trial to vindicate the name of its family-owned business.

Although it is common for defendants in antitrust cases to rely heavily on economic expert witnesses, we took a

different tack. We felt that our client's story would resonate best with the jury if the jury heard directly from our client's former president, a third-generation egg farmer. Mr. Sauder was well positioned to explain what actions the company took and why and put what could be complex economic concepts into real-world examples. We also felt that he was well situated to explain why the animal welfare program at the heart of the plaintiffs' complaint was not a sham but rather was an appropriate means of improving conditions for egg laying hens, as customers rightly demanded, and boosting productivity. Our team dedicated considerable time preparing this witness for what turned out to be five hours of direct testimony and three hours of cross-examination.

This unique strategy was successful. After more than a week of deliberations, the jury vindicated our client. After the trial, when we discussed the case with jurors, they kept returning to this testimony as presenting the key facts and events that explained a complex industry and led them to hand down their verdict for our client. Rather than the timeworn "battle of experts," we gave the jury a usable narrative that was based on the day-to-day reality of business decisions.

In addition, we chose to use cross-examination of the plaintiffs' witnesses not only to impeach those witnesses but also to further our own narrative. We felt that waiting until the defense case to tell our client's story might be too late because the plaintiffs' story would be entrenched in the jurors' minds.

We also had one advantage going into the trial because we succeeded in an earlier motion before the judge. The judge rejected the plaintiffs' efforts to impose a "per se" illegality test, under which simply proving an antitrust conspiracy alone would have been enough for liability, and instead required the plaintiffs to meet the "rule of reason" test. This required the plaintiffs to show that the defendants' actions had actually had a harmful effect on trade and commerce when balanced against the competitive benefits of the animal welfare program – the centerpiece of their claim.

The jury found that a conspiracy among producers existed, and that Rose Acre Farms, one of the three remaining defendants, was a participant. But since the scheme was found not to unreasonably restrict trade, the producers were found not to be liable for the antitrust violations alleged in the complaint. The jury thus never reached the question of whether the plaintiffs had suffered economic harm. And, our client, R.W. Sauder, was found not to even have participated in the conspiracy.

The authors represented R.W. Sauder before the District Court. The opinions expressed in this article are personal to the authors and do not necessarily represent the opinions of either Dechert or any of its clients.