



**PennState Law**

Center for Agricultural  
and Shale Law





# Agricultural Antitrust Litigation\*

## 3<sup>rd</sup> Annual Pennsylvania Farm Show Agricultural Law Symposium

January 12, 2023



**\* Plus a brief  
review of  
selected 2022  
Executive and  
Legislative  
Branch Actions**



## ***Brook Duer***

Staff Attorney

Center for Agricultural and Shale Law

Penn State Law

329 Innovation Boulevard, Suite 118

University Park, PA 16802

(814) 863-3396

[dhd5103@psu.edu](mailto:dhd5103@psu.edu)



- 18 years in private practice in Lancaster County
- 12 years at the Pennsylvania Department of Agriculture (8 years as Chief Counsel)
- Penn State Ag Law Center since 2019.



# Ag Antitrust Litigation – Today's Focus

- Criminal Prosecution - X
- Civil Litigation
  - Class Action Litigation
    - State Court - X
    - Federal Court
      - **Multi-District Litigation (MDL)**
        - **Protein Sector: Poultry, Pork, Beef**







**PennState Law**

CENTER FOR AGRICULTURAL  
AND SHALE LAW

SUBSCRIBE FOR UPDATES

SEARCH...



HOME

ABOUT THE CENTER

EVENTS

PUBLICATIONS

RESEARCH BY TOPIC

WATCH OR LISTEN

MEDIATION

LEGAL CLINIC

Welcome to the Center for Agricultural and Shale Law

[aglaw.psu.edu](http://aglaw.psu.edu)

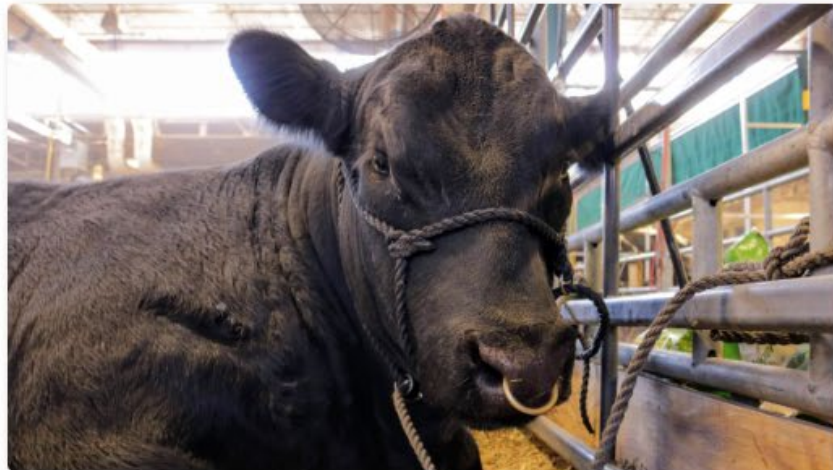




HOME › RESEARCH BY TOPIC

## Research By Topic

In this section, we offer different research tools for both agricultural and shale law. Our Virtual Resource Rooms are a comprehensive library of select topics for stakeholders who are interested in learning more about a specific area of agricultural or shale law. Each Virtual Resource Room contains a compilation of statutes, regulations, case law, and related publications relevant to the chosen topic. Our Issue Trackers aim to simplify historical developments relevant to selected legal topics by documenting relevant federal and state legislative, regulatory and litigation/judicial proceedings in a reverse chronological timeline format. Issue Trackers also supplement legal developments, as appropriate, with relevant actions and statements of stakeholders directly involved.



Agricultural Law Issue Trackers



Shale Law Virtual Resource Rooms



HOME > ISSUE TRACKERS > AGRICULTURAL LAW ISSUE TRACKERS

## Agricultural Law Issue Trackers

Penn State Law's Center for Agricultural and Shale Law is making available a research tool – the Issue Tracker – aimed at simplifying the historical developments relevant to selected agricultural legal topics by documenting relevant federal and state legislative, regulatory and litigation/judicial proceedings in a reverse chronological timeline format. The Issue Tracker also supplements legal developments, as appropriate, with relevant actions and statements of stakeholders directly involved.



**Ag Gag Statutes**



**Agricultural Antitrust Litigation**



**Biden Administration's First 100 Days on Food and Agricultural Policy**







# AGRICULTURAL ANTITRUST LITIGATION



## ALL ISSUE TRACKERS

AG GAG STATUTES

AGRICULTURAL ANTITRUST LITIGATION

Scope

In re Broiler Chicken Antitrust Litigation (38)

In re Pork Antitrust Litigation (22)

In re Cattle and Beef Antitrust Litigation (13)

In re Cattle Antitrust Litigation (11)

In re Peanut Farmers Antitrust Litigation (14)

BIDEN ADMINISTRATION'S FIRST 100 DAYS ON FOOD AND AGRICULTURAL POLICY

BIOENGINEERED FOOD DISCLOSURE

## Scope

This tracker focuses on federal multidistrict litigation (MDL) addressing agricultural antitrust issues. The litigation covered is not exhaustive and concentrates on selected issues receiving national attention.

## In re Broiler Chicken Antitrust Litigation

(USDC N.D. Illinois, No. 1:16-cv-08637)

**Cause of action:** This case [originated](#) in September 2016 following the filing of a class action by Maplevale Farms, Inc. against Koch Foods, Tyson Foods, Inc., Pilgrim's Pride Corporation, and others, alleging that Defendants together conspired and manipulated the price of broiler chicken since the early 2008 in violation of the Sherman Act, Section 1.

*The following litigation tracker is not meant to be comprehensive as some court documents may be unaccounted for.*





# Protein Sector Antitrust Litigation

## *3 Key Cases*

- 1. In re **Broiler Chicken** Antitrust Litigation**  
(USDC N.D. Illinois, No. 1:**16**-cv-08637)
- 2. In re **Pork** Antitrust Litigation**  
(USDC Minnesota, No. 0:**18**-cv-01776)
- 3. In re **Cattle and Beef** Antitrust Litigation**  
(USDC Minnesota, No. 0:**20**-cv-1319)



# However, before discussing those cases . . .

Let's revisit/review some Executive Branch actions:

- (a) in 2021 in the wake of pandemic-related protein processing supply chain disruptions; and
- (b) in 2022 since our last PA Farm Show Ag Law Symposium.

*Interesting side note:*



5 pages of hits = 50 separate docs

## **SEARCH RESULTS**

Search results for: *"Meat Processing"*



# Executive Order on Promoting Competition in the American Economy

7/9/21

JULY 09, 2021 • PRESIDENTIAL ACTIONS

See [Rapid Review: White House Executive Order on Competition Features Agriculture Prominently](#) & the [actual EO](#).

- Directs USDA to consider issuing **new rules under the Packers and Stockyards Act** making it easier for farmers to bring and win claims, stopping chicken processors from exploiting and underpaying chicken farmers, and adopting anti-retaliation protections for farmers who speak out about bad practices.
- Directs USDA to consider issuing **new rules defining when meat can bear “Product of USA” labels**, so that consumers have accurate, transparent labels that enable them to choose products made here.
- Directs USDA to develop a plan to **increase opportunities for farmers to access markets and receive a fair return**, including supporting alternative food distribution systems like farmers markets and developing standards and labels so that consumers can choose to buy products that treat farmers fairly.
- Encourages the FTC to **limit powerful equipment manufacturers from restricting** people’s ability to use independent repair shops or do DIY repairs—such as when tractor companies block farmers from repairing their own tractors.”
- Secretary Vilsack directed to:
  - (1) within 180 days, to **submit a plan** to promote competition in agricultural industries and to support value-added agriculture and alternative food distribution systems, listing specific means to accomplish those objectives;
  - (2) within 300 days, in consultation with the Federal Trade Commission, to **submit a report** on the effect of retail concentration and retailers’ practices on competition in the food industries and means to enhance access to markets; and
  - (3) **submit a report**, in consultation with Department of Commerce and United States Patent and Trademark Office, outlining concerns and strategies for increasing competition in the intellectual property system in seed and other input markets.





BRIEFING ROOM

# The Importance of Competition for the American Economy

JULY 09, 2021 • BLOG

- There is evidence that in the United States, markets have become more concentrated and perhaps less competitive across a wide array of industries: **four beef packers now control over 80 percent of their market**, . . . (2<sup>nd</sup> paragraph)
- This is why today, President Biden will sign an Executive Order on Promoting Competition in the American Economy. It launches a whole-of-government effort to combat growing market power in the U.S. economy by seeking to ensure that markets are competitive. . .
- **Antitrust enforcement has become more lenient** over the last 40 years, and regulators have not had sufficient resources to enforce the laws on the books. . .
- To enforce the law, the DOJ and the FTC publish [merger guidelines](#) that lay out when a merger is likely to be challenged. Since the guidelines were first published in 1968, **enforcement practice has become increasingly lenient.** . . .
- **Federal agencies have been bringing fewer antitrust cases. In fact, the number of criminal antitrust cases brought by the DOJ in the last four years has declined** to an average of 22 a year, down from an average of over 60 cases a year across the previous six years. **On the civil side, from 2010 to 2019 only about 3 percent of mergers that met the filing threshold** have received “second requests,” which are a more thorough review by the agencies. When mergers are challenged, they are at the extreme, where [four or fewer competitors are remaining](#).
- **Government suits enforcing the laws against anticompetitive conduct have also been rare.** The [DOJ’s lawsuit against Google](#) and the [FTC’s lawsuit against Facebook](#), both filed in 2020, are the first major Federal monopolization cases since the [Microsoft case](#) in 1998.<sup>[6]</sup> As the economy evolves with technology and “winner take all” markets become more important, it will be crucial to guard against anticompetitive conduct as well. These shifts have come at the same time that **judicial precedent has moved in the direction of skepticism towards antitrust enforcement.**

9/8/21

THE WHITE HOUSE



BRIEFING ROOM

# Addressing Concentration in the Meat-Processing Industry to Lower Food Prices for American Families

SEPTEMBER 08, 2021 • BLOG

## White House Announces Intent to Address Effects on Consumers, Farmers and Ranchers of Meat Processing Industry Consolidation

On **September 8, 2021**, The White House published a policy outline on its official website titled [“Addressing Concentration in the Meat-Processing Industry to Lower Food Prices for American Families”](#) and conducted a [Press Briefing](#) with Agriculture Secretary Vilsack and National Economic Council Director Brian Deese in support. According to the document and Press Secretary Jen Psaki, the administration will address the following: (a) a **“corporate consolidation problem with meat-processing giants;”** (b) measures to reduce consumer prices and increase farmer and rancher earnings and **“create a more competitive food supply chain;”** (c) **“stepping up antitrust enforcement;”** and (d) legislation **“to make cattle markets more transparent and fair.”**

THE WHITE HOUSE



BRIEFING ROOM

# Recent Data Show Dominant Meat Processing Companies Are Taking Advantage of Market Power to Raise Prices and Grow Profit Margins



BRIEFING ROOM

BLOG

**Here is the bottom line: the meat price increases we are seeing are not just the natural consequences of supply and demand in a free market—they are also the result of corporate decisions to take advantage of their market power in an uncompetitive market, to the detriment of consumers, farmers and ranchers, and our economy.** They underscore why promoting competition is a core part of the Biden-Harris Administration’s economic agenda.

\*\*\*\*\*

In September, we also called for Congress to work together to enact greater transparency in cattle markets. We are encouraged to see that Senators have since announced new, additional efforts [to work together to advance bipartisan legislation.](#) ↗



### Aggregate Quarterly Gross Profits and Margins for Dominant Processors



### Latest Quarterly Net Income and Net Margins (Aggregated)





# FACT SHEET: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain

1/2/22

JANUARY 03, 2022 • STATEMENTS AND RELEASES

## Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain

The plan encompasses four primary focus areas to increase competition in the meat and poultry industries:

- 1) a [joint initiative](#) between the U.S. Department of Agriculture (USDA) and the Department of Justice (DOJ),
- 2) \$1 billion in funding to expand independent processing facilities and support workers,
- 3) new regulations for the “[Packers and Stockyards Act](#)” (PSA) and “[Product of USA](#)” labeling, and
- 4) increased market transparency through new [market reports](#).

Under the new USDA/DOJ [initiative](#), the agencies will develop a streamlined process by February 2, 2022 for concerned producers to submit complaints regarding potential PSA and antitrust violations, in which the agencies state they will “protect the confidentiality of the complainants, if they so request, to the fullest extent possible under the law” and “support[] the strongest possible whistleblower protections.” The agencies also state that they will cooperate to share information and case data and that USDA will refer potential PSA violations to the DOJ for antitrust enforcement.



## **Antitrust: USDA and DOJ Announce Online Portal for Anticompetitive Practice Complaint Submissions**

On February 3, 2022, the U.S. Department of Agriculture (USDA) and the U.S. Department of Justice (DOJ) [announced](#) their new online tool, [farmerfairness.gov](https://farmerfairness.gov), where livestock and poultry producers can anonymously [submit complaints and tips](#) concerning unfair and anticompetitive industry practices. Submissions will be reviewed by USDA Packers and Stockyards Act (PSA) staff and DOJ Antitrust staff for potential PSA and antitrust law violations. Complaints that raise sufficient concern under the PSA or antitrust laws will be further investigated by USDA and DOJ. Submissions need not contain the name or information of the submitting party, but should include the names of the parties involved in the alleged unfair conduct, a description of the conduct, how that conduct created harm, and who was harmed by the conduct. According to the agencies' announcement, USDA and DOJ will sign a memorandum of understanding (MOU) to formalize their partnership and facilitate communication between the agencies. For background, see [ALWR—Jan. 7, 2022](#), “White House Announces Plan to Increase Competition in Meat and Poultry Industries; USDA and DOJ Announce Joint Antitrust Initiative.”





## **Antitrust: 2022 Appropriations Act Provides \$1 Million for Cattle Contract Library Pilot Program**

On March 10, 2022, the U.S. Senate approved (68–31) the Consolidated Appropriations Act of 2022 ([H.R. 2471](#)), previously approved by the U.S. House of Representatives on June 29, 2021. [Section 779](#) of the legislation allots \$1 million until September 30, 2023 for the U.S. Department of Agriculture’s (USDA) Agricultural Marketing Service (AMS) to create a Cattle Contracts Library pilot program to be maintained in AMS’s [Livestock, Poultry, and Grain Market News](#) Division, similar to USDA’s [Swine Contract Library](#) established under the Packers and Stockyards Act ([7 U.S.C. § 198a](#)). In response, the North American Meat Institute issued a [press release](#) on March 11, 2022, criticizing the [law’s provision](#) allowing AMS to promulgate rules for the program without public comment, calling the law “vague,” and stating that it will require producers to “report proprietary and sensitive data to the government for publication.” However, bipartisan legislation to create a cattle contract library passed the House in December 2021 ([H.R.5609](#)), which was [endorsed](#) by the American Farm Bureau Federation as a “common sense” move to increase cattle market transparency.



## USDA Publishes Packers and Stockyards Act Proposed Rule

On October 3, 2022, the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) published a [proposed rule](#) in the Federal Register ([87 FR 60010](#)) titled “Inclusive Competition and Market Integrity Under the Packers and Stockyards Act,” which aims to increase competition and support fair practices in the meat and poultry markets. The proposed rule was announced during President Biden’s [meeting](#) with the [White House Competition Council](#). Features of the rule include “(1) publishing the proposed Inclusive Competition and Market Integrity Rules Under the Packers and Stockyards Act to protect farmers and ranchers from abuse, and (2) a new \$15 million Agricultural Competition Challenge to ramp up collaboration with the State Attorneys General (AG) on enforcement of the competition laws, such as the laws against price-fixing.” The Agricultural Competition Challenge to state AGs will focus on new cooperative agreements and memorandums of understanding aimed at assisting AGs combat anticompetitive practices in agriculture



**PennState Law**

Center for Agricultural  
and Shale Law

**The Executive Branch wasn't alone. Senator Chuck Grassley's was laser-focused on the protein sector.**



[ABOUT](#)

[NEWS](#)

[CONTACT](#)

[SERVICES](#)

**CHUCK GRASSLEY**



THE BEEF WITH  
**BIG CATTLE**





# But . . .

## LATEST NEWS

- 04.26.2022** | [Grassley's Beef with Big Cattle Comes to a Head at Ag Committee Hearing](#)
- 03.28.2022 | [Grassley, Colleagues Unveil Updated Cattle Market Reform Bill](#)
- 02.02.2022 | [Grassley: JBS Settlement Tells You Everything You Need To Know About Packers' Anticompetitive Tactics](#)
- 01.21.2022 | [Grassley: Complete Cattle Price Discovery And Transparency Act Needed To Secure Market Access For Independent Producers](#)
- 11.17.2021 | [Iowa Senators, Colleagues Introduce Legislation to Support Independent Cattle Producers, Improve Market Transparency](#)
- 11.16.2021 | [Grassley Battles Big Cattle Lobbyists](#)
- 11.09.2021 | [Grassley, Fischer, Tester, Wyden Announce Plan to Improve Fairness in Cattle Market](#)
- 10.07.2021 | [Grassley At the House Agriculture Committee Hearing on the State of the Livestock Industry](#)
- 08.05.2021 | [Grassley Commends USDA on New Reports to Bring Transparency to Cattle Industry, More Information for Independent Producers](#)
- 07.28.2021 | [Grassley Questions Witnesses, Calls out Large Meatpackers on Unfair Practices at Judiciary Committee Hearing](#)
- 07.09.2021 | [Grassley Commends USDA on Action to Address Anticompetitive Practices in the Livestock Industry](#)
- 06.23.2021 | [Grassley Questions Witnesses at Senate Ag Hearing on Cattle Market Transparency](#)
- 06.11.2021 | [Grassley, Tester, Rounds Unveil Bill to Combat Anti-Competitive Practices in Meat Processing Industry that Threaten Nation's Food Supply](#)
- 06.11.2021 | [Q&A: Cyberattacks in America](#)
- 05.28.2021 | [Q&A: Beefing Up Cattle Price Transparency and Local Meat Markets](#)
- 05.17.2021 | [Grassley Joins Colleagues in Urging Department of Justice to Continue Investigation into Beef Industry](#)
- 03.24.2021 | [Grassley: Cattle Producers are Counting on us](#)
- 03.24.2021 | [Grassley, Colleagues Introduce Bipartisan Bill to Increase Transparency in Cattle Market](#)
- 08.04.2020 | [Speech on Beef Market Manipulation](#)
- 07.22.2020 | [Grassley Praises USDA Report on Need for Price Transparency in Beef Market](#)
- 06.29.2020 | [Op-Ed: Threat of meat shortages is growing. Senate needs to act now.](#)
- 06.10.2020 | [Grassley Calls on USDA to Release Report on Tyson's Holcomb Facility Investigation, Protect Independent Cattle Producers](#)
- 05.13.2020 | [Speech on Transparency in the Cattle Industry](#)
- 05.12.2020 | [Grassley, Colleagues Introduce Bipartisan Bill to Increase Transparency in Cattle Pricing](#)
- 05.07.2020 | [Grassley Lauds Trump's Call to Probe Possible Antitrust Violations in Beef Industry](#)
- 04.01.2020 | [Grassley Seeks Federal Investigations into Potential Market Manipulation and Other Illegal Activity by Meat Packers](#)





## Cattle Price Discovery and Transparency Act of 2022 (S. 4030)

Introduced in the Senate on 4/7/22. Never brought up for a vote on Senate floor after being voted out of Senate Ag Committee on 7/11/22. Companion bill, H.R. 7639, introduced in House on 5/3/22, never voted out of House Ag Committee.

1. Require the Secretary of Agriculture to establish 5-7 regions encompassing the entire continental U.S. and then **establish minimum levels of fed cattle purchases made through approved pricing mechanisms**. Approved pricing mechanisms are fed cattle purchases made through negotiated cash, negotiated grid, at a stockyard, and through trading systems that multiple buyers and sellers regularly can make and accept bids. These pricing mechanisms will ensure robust price discovery.
2. Establish a maximum penalty for covered packers of \$90,000 for mandatory minimum violations. Covered packers are defined as those packers that during the immediately preceding five years have slaughtered five percent or more of the number of fed cattle nationally.
3. The bill also includes provisions to create a publicly available **library of marketing contracts**, mandating box beef reporting to ensure transparency, expediting the reporting of cattle carcass weights, and requiring a packer to report the number of cattle scheduled to be delivered for slaughter each day for the next 14 days. The contract library would be permanently authorized and specify key details about the contents that must be included in the library like the duration of the contract and provisions in the contract that may impact price such as schedules, premiums and discounts, and transportation arrangements.



## **The Meat and Poultry Special Investigator Act of 2022 (S. 3870)**

Introduced in the Senate on 3/17/22. **Never brought up for a vote on Senate floor** after being voted out of Senate Ag Committee on 7/11/22. Companion bill, [H.R. 7606](#), introduced in House on 4/27/22, voted out of House Ag Committee on 6/7/22, passed by House on 6/16/22, sent to the Senate.

1. This bill establishes within the Department of Agriculture's Packers and Stockyards Division the Office of the Special Investigator for Competition Matters.
2. Specifically, the office must use all available tools (e.g., subpoenas) to investigate and prosecute violations of the Packers and Stockyards Act of 1921 by packers and live poultry dealers. Further, the bill grants the office the authority to bring any civil or administrative action authorized by that act against a packer.
3. Additionally, the office must serve as a liaison to the Department of Justice and the Federal Trade Commission with respect to competition and trade practices in the food and agricultural sector, consult with the Department of Homeland Security on national security and critical infrastructure security in the food and agricultural sector, and maintain a staff of attorneys and other professionals with appropriate expertise.



## Over the course of 2022:

- The **Executive Branch** is moving on some actions and believes there is anti-competitive conduct in the protein processing sector that: (a) needs to be addressed by government; and (b) that it is caused by consolidation and “opportunistic profit maximization.”
- The **Legislative Branch** appears unable to act or not convinced of the need for legislative action.
- Now let’s review what is happening in the **Judicial Branch** through action commenced by private parties and their attorneys using the tools available to them.



# Civil Antitrust Class Action Cases

1. In re **Broiler Chicken** Antitrust Litigation\*  
(USDC N.D. Illinois, No. 1:**16**-cv-08637)
2. In re **Pork** Antitrust Litigation  
(USDC Minnesota, No. 0:**18**-cv-01776)
3. In re **Cattle and Beef** Antitrust Litigation  
(USDC Minnesota, No. 0:**20**-cv-1319)

\* There is an additional, newer, case seeking relief for a contract grower class called “In re Broiler Chicken Grower . . . .”





**(JPML)**

According to [www.jpml.uscourts.gov](http://www.jpml.uscourts.gov):

- The United States Judicial Panel on Multidistrict Litigation, known informally as the MDL Panel, was created by an Act of Congress in 1968 – 28 U.S.C. §1407.
- The job of the Panel is to (1) determine whether civil actions pending in different federal districts involve one or more common questions of fact such that the actions should be transferred to one federal district for coordinated or consolidated pretrial proceedings; and (2) select the judge or judges and court assigned to conduct such proceedings.
- The purposes of this transfer or “centralization” process are to avoid duplication of discovery, to prevent inconsistent pretrial rulings, and to conserve the resources of the parties, their counsel and the judiciary. Transferred actions not terminated in the transferee district are remanded to their originating transferor districts by the Panel at or before the conclusion of centralized pretrial proceedings.

According to a group called [Lawyers for Civil Justice](#), 70% of federal civil cases are in MDLs as of 12/31/2021. This is based upon JPML data. (391,953 cases out of 559,653 federal civil cases)

## MDL Statistics Report - Distribution of Pending MDL Dockets by District

## MDL Filters:

Status: Transferred

Limited to Active Litigations

District	Judge (Title)	Docket No.	Litigation	Actions Now Pending	Total Actions (Historical)
MN	Donovan W. Frank (Sr. District Judge)	MDL -2441	IN RE: Stryker Rejuvenate and ABG II Hip Implant Products Liability Litigation	80	3,627
	John R. Tunheim (U.S. District Judge)	MDL -2642	IN RE: Fluoroquinolone Products Liability Litigation	13	1,270
	Joan N. Ericksen (Sr. District Judge)	MDL -2666	IN RE: Bair Hugger Forced Air Warming Devices Products Liability Litigation	5,219	5,970
	Michael James Davis (Sr. District Judge)	MDL -2795	IN RE: CenturyLink Sales Practices and Securities Litigation	6	29
	John R. Tunheim (U.S. District Judge)	MDL -2998	IN RE: Pork Antitrust Litigation	29	29
	John R. Tunheim (U.S. District Judge)	MDL -3031	IN RE: Cattle and Beef Antitrust Litigation	18	18

## United States Judicial Panel on Multidistrict Litigation

Report Date: 12/15/2022

## MDL Statistics Report - Docket Type Summary

## MDL Filters:

Status: Transferred

Limited to Active Litigations

## Docket Type Summary

DOCKET	Transferee Judge	District	MASTER DOCKET	DATE FILED	Date Transferred	DATE CLOSED
<b>Antitrust</b>						
2977 IN RE: Broiler Chicken Grower Antitrust Litigation (No. II)	Shelby, Robert J.	OKE	6:20-md-2977	10/06/2020	12/15/2020	
2981 IN RE: Google Play Store Antitrust Litigation	Donato, James	CAN	3:21-md-2981	11/05/2020	02/05/2021	
2993 IN RE: Crop Inputs Antitrust Litigation	Pitlyk, Sarah E.	MOE	4:21-md-2993	02/23/2021	06/08/2021	
2998 IN RE: Pork Antitrust Litigation	Tunheim, John R.	MN	0:21-md-2998	03/10/2021	06/09/2021	
3010 IN RE: Google Digital Advertising Antitrust Litigation	Castel, P. Kevin	NYS	1:21-md-3010	04/30/2021	08/10/2021	
3030 IN RE: Deere & Company Repair Services Antitrust Litigation	Johnston, Iain D.	ILN	3:22-cv-50188	02/25/2022	06/01/2022	
3031 IN RE: Cattle and Beef Antitrust Litigation	Tunheim, John R.	MN	0:22-md-3031	03/10/2022	06/03/2022	

Number of Antitrust Litigations Listed: 41



# Protein Sector MDL “Class” terminology

- Direct Purchaser Plaintiffs (DPP)
- Commercial and Institutional Indirect Purchaser Plaintiffs (IPP)
- End-User Consumer Plaintiffs



**PennState Law**

Center for Agricultural  
and Shale Law

# **In re Broiler Chicken Antitrust Litigation**

**(USDC N.D. Illinois, No. 1:16-cv-08637)**





# In re Broiler Chicken – DPP Complaint

- DPP Complaint - 136 pages, 408 paragraphs.
- Class: All persons who purchased Broilers directly from any of the Defendants or any co-conspirator identified in this action, or their respective subsidiaries or affiliates for use or delivery in the United States from at least as early as January 1, 2008 until the Present.
- Example of General Allegations: Plaintiffs are informed and believe, and thereon allege, that in order to maintain price stability and increase profitability, beginning at least as early as January 2008 Defendants and their co-conspirators conspired and combined to fix, raise, maintain, and stabilize the price of Broilers. 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 prices of Broilers in the United States. In furtherance of their conspiracy, Defendants exchanged detailed, competitively sensitive, and closely-guarded non-public information about prices, capacity, sales volume, and demand, including through third party co-conspirator Agri Stats. Plaintiffs are further informed and believe that Defendants fraudulently concealed their anticompetitive conduct from Plaintiffs and the Class in furtherance of the conspiracy, and as a result there may be other methods by which Defendants carried out their conspiracy which presently are not known to Plaintiffs.
- Defendants collectively control approximately 90% of the wholesale Broiler market.
- Historically, the Broiler industry was marked by boom and bust cycles where, in response to rising prices, producers increased production, which caused an oversupply and resulting decrease in pricing. However, that market pattern changed markedly in 2008. By their wrongful conduct as alleged in this complaint, Defendants not only materially reduced or eliminated the historical boom and bust cycle of the Broiler industry, they propped up Broiler prices during periods of rapidly falling input costs by, among other means, coordinating supply restrictions and manipulating one or more Broiler price indices.



# In re Broiler Chicken – DPP Scorecard

Direct Purchaser Plaintiff Class (DPP)

11.23.16 – [Complaint](#) 

Settlements:

- Peco Foods, Inc. (\$5.15M)
  - George’s Defendants (\$4.25M)
  - Amick Farms, LLC (\$3.95M)
  - Pilgrim’s Pride Corporation (\$75M)
  - Tyson (\$221.5M)
- Koch Foods Defendants
  - Tyson Defendants
  - Pilgrim’s Pride Corporation
  - Perdue Defendants
  - Sanderson Farms Defendants
  - Wayne Farms, LLC
  - Mountaire Farms Defendants
  - Peco Foods
  - Foster Farms
  - House of Raeford Farms
  - Simmons Foods
  - Fieldale Farms
  - George’s Defendants
  - O.K. Foods Defendants
- Amick Farms, LLC
  - “Mar-Jac Defendants” (Mar-Jac Poultry, Inc.; Mar-Jac Poultry MS, LLC; Mar-Jac Poultry AL, LLC; Mar-Jac AL/MS, Inc.; Mar-Jac Poultry, LLC and Mar-Jac Holdings, Inc.)
  - Harrison Poultry, Inc.



# In re Broiler Chicken – IPP Scorecard

Commercial and Institutional Indirect Purchaser Plaintiff  
Class (CIIPP)

12.16.16 – [Complaint](#) 

Settlements: <still none>

- Koch Foods Defendants
- Tyson Defendants
- Pilgrim's Pride Corporation
- Perdue Defendants Sanderson Farms Defendants
- Peco Foods
- Foster Farms
- House of Raeford Farms
- Simmons Foods
- Fieldale Farms
- George's Defendants
- O.K. Foods Defendants



# In re Broiler Chicken – Consumer Scorecard

End-User Consumer Plaintiffs

12.16.16 – [Complaint](#) 

Settlements <still none>

- George’s Farms (\$1.9 M)

- “Koch Foods Defendants” (Koch Foods, Inc.; JCG Foods of Alabama, LLC; JCG Foods of Georgia, LLC; Koch Meat Co.)
- “Tyson Defendants” (Tyson Foods, Inc.; Tyson Chicken, Inc.; Tyson Breeders, Inc.; Tyson Poultry, Inc.)
- Pilgrim’s Pride Corporation
- “Perdue Defendants” (Perdue Farms, Inc.; Perdue Foods, LLC)
- “Sanderson Farms Defendants” (Sanderson Farms, Inc.; Sanderson Farms, Inc. (Food Division); Sanderson Farms, Inc. (Production Division); Sanderson Farms, Inc. (Processing Division)
- Wayne Farms, LLC
- “Mountaire Farms Defendants” (Mountaire Farms, Inc.; Mountaire Farms, LLC; Mountaire Farms of Delaware, Inc.)
- Peco Foods
- Foster Farms, LLC
- House of Raeford Farms, Inc.





## **Chick-Fil-A Antitrust Suit Against Tyson Settled (not a class action)**

On November 18, 2022, the U.S. District Court for the Northern District of Illinois, Eastern Division, issued an [order](#) dismissing with prejudice Chick-Fil-A's claims against Defendants Tyson and Keystone Foods (Tyson) in the ongoing consolidated multi-district civil class action case *In re Broiler Chicken Antitrust Litigation*, No. [1:16-cv-08637](#). Because all corresponding documents and the settlement agreement were filed under seal, no information is publicly available regarding a settlement payment amount. The order states that Tyson agrees to continue cooperating in ongoing criminal antitrust investigations regarding criminal claims "including, but not limited to, claims arising from conduct related to Tyson's sales of Broiler Chicken Products to [Chick-Fil-A] from 2012–2019."



## **Antitrust: Koch Poultry Agrees to \$15.5M Settlement in Grower Class Action**

On June 10, 2022, the U.S. District Court for the Eastern District of Oklahoma, entered an [Order](#) preliminarily approving a **\$15.5 million class action settlement proposal made by Koch Poultry Co.** in the multidistrict antitrust civil class action litigation, captioned **In Re: Broiler Chicken Grower Antitrust Litigation (No II)**, [MDL NO. 6:20-md-2977-RJS-CMR](#).

In the case, both **Tyson Foods (\$21 million)** and **Perdue Foods (\$14.75 million)** [previously agreed](#) in late 2021 to fund settlements totaling \$35.75 million.

As with those previous settlements, the class of contract growers eligible to file claims for compensation resulting from an alleged conspiracy to illegally suppress grower payments in violation of federal antitrust laws and the Packers and Stockyards Act are persons or entities paid for **chicken growing services by any named defendant or co-conspirator between January 27, 2013, through December 31, 2019.**

A full list of the Defendants and Co-Conspirators along with information and the administration process for all settlements is available at the website [broilergrowersantitrustsettlement.com](#).



**PennState Law**

Center for Agricultural  
and Shale Law

# **In re Pork Antitrust Litigation**

**(USDC Minnesota, No. 0:18-cv-01776)**



# In Re Pork – DPP Complaint

IV.	FACTUAL ALLEGATIONS.....	13
A.	Defendants’ anticompetitive scheme started from Agri Stats’ central role in collusion in the Broiler industry.....	14
B.	After success in the Broiler industry, Agri Stats began marketing its collusive scheme to the swine integrators. ....	16
C.	Agri Stats provided pork integrators the unparalleled ability to monitor pricing and production, and to discipline co-conspirators for not complying with the collusive agreement.....	18
D.	Defendants controlled the supply and production of pork in the United States, which allowed the scheme to succeed. ....	27
E.	The level of concentration in the pork industry was optimal for Defendants’ collusive scheme.....	32
F.	The inelastic demand for, and homogeneity of, pork products facilitated collusion .....	40
G.	Defendants took advantage of numerous opportunities to collude. ....	41
H.	Defendants implemented capacity and supply restraints during the Class Period.....	50



# In Re Pork – DPP Scorecard

## Direct Purchaser Plaintiffs (DPPs)

### 1.15.20 – Original Complaint

#### Original Plaintiffs:

- Maplevale Farms, Inc.
- John Gross and Company, Inc.
- Ferraro Foods, Inc.
- Ferraro Foods of North Carolina, LLC
- Olean Wholesale Grocery Cooperative
- Joe Christiana Food Distributors, Inc.

#### Settlements:

- JBS (\$24.5M)
- Smithfield Foods, Inc. (\$83M)

- Agri Stats, Inc.
- The Clemens Family Corporation
- “Hormel Defendants” (Hormel Foods Corporation; Hormel Foods, LLC)
- Indian Packers Corporation
- JBS USA Food Company
- “Seaboard Defendants” (Seaboard Foods LLC; Seaboard Corporation)
- Smithfield Foods, Inc.
- Triumph Foods, LLC
- “Tyson Defendants” (Tyson Foods, Inc.; Tyson Prepared Foods, Inc.; Tyson Fresh Meats, Inc.)





# In Re Pork – IPP Scorecard

Commercial and Institutional Indirect Purchaser Plaintiffs  
(CIIPPS)

**11.16.19 – Original Complaint** 

Original Plaintiffs:

- Sandee's Bakery
- Confetti's
- Francis T. Enterprises d/b/a Erbert & Gerbert's (Erbert & Gerbert's, Inc.)
- Joe Lopez, d/b/a Joe's Steak and Leaf
- Longhorn's Steakhouse
- Betty's Eat Shop
- Ziggy's BBQ Smokehouse & Ice Cream Parlor, LLC
- Grady Corporation
- Mcmjoynt LLC d/b/a The Breakfast Joynt

Settlements:

- Smithfield (\$42M)
- JBS (\$12.75M)

- Agri Stats, Inc.
- "Clemens Defendants" (Clemens Food Group, LLC; Clemens Family Corporation)
- "Hormel Defendants" (Hormel Foods Corporation; Hormel Foods, LLC)
- Indiana Packers Corporation
- JBS USA Food Company
- "Seaboard Defendants" (Seaboard Foods LLC; Seaboard Corporation)
- Smithfield Foods, Inc.
- Triumph Foods, LLC
- "Tyson Defendants" (Tyson Foods, Inc.; Tyson Prepared Foods, Inc.; Tyson Fresh Meats, Inc.)



# In Re Pork – Consumer Scorecard

End-User Consumer Plaintiffs (class action)

6.28.18 – [Original Complaint](#) 

Original Plaintiffs:

- Wanda Duryea
- Matthew Hosking
- John McKee
- Lisa Melegari
- Michael Reilly
- Sandra Steffen
- Paul Glantz
- Edwin Blakey
- Jennifer Sullivan
- Anbessa Tufa
- Lisa Axelrod
- Christina Hall
- Catherine Senkle

Settlements:

- JBS (\$20M)
- Smithfield (\$75M)

- Agric Stats, Inc.
- Clemens Food Group, LLC
- Hormel Foods Corporation
- Indiana Packers Corporation
- JBS USA (JBS USA Food Company Holdings)
- Seaboard Foods, LLC
- Smithfield Foods, Inc.
- Triumph Foods, LLC
- Tyson Foods, Inc



**PennState Law**

Center for Agricultural  
and Shale Law

# **In re Cattle and Beef Antitrust Litigation**

**(USDC Minnesota, No. 0:20-cv-1319)** (Formerly “In re DPP Beef Antitrust Litigation”)



# In Red Cattle/Beef – Scorecard

- This MDL includes “on the hoof,” whole carcass and box beef. However, a the Complaints in the cases within it remain in a much less advanced stage of litigation. More to come in the future, hopefully
- **Sealed Dockets & Confidentiality Orders:** Very little of the substantive content of either pleadings or court orders/decision in any of the various included actions are public.

## Plaintiffs

- Howard B. Samuels, on behalf of Central Grocers
- Olean Wholesale Grocery Cooperative, Inc.
- Winn Dixie, Inc. and Bi-Lo Holding, LLC
- Bi-Lo Holdings, Inc.

## Settlements:

- JBS(\$52.5M) - DPP

## Defendants

- Cargil, Inc.
- JBS USA Food Company Holdings
- National Beef Packing Company
- Tyson Foods, Inc.

“Cargill Defendants” (Cargill, Inc., Cargill Meat Solutions Corporation)

“JBS Defendants” (JBS S.A., JBS USA Food Company, Swift Beef Company, JBS Packerland, Inc.)

“Tyson Defendants” (Tyson Foods, Inc., Tyson Fresh Meats, Inc.)



## **Agricultural Antitrust: Cargill, Sanderson, and Wayne Farms Agree to \$85 Million Settlement in Class Action Worker Wage Lawsuit**

- On September 9, 2022, the **poultry worker** class action plaintiffs in a 2019 suit alleging conspiracy and **wage suppression** filed a [motion](#) and accompanying [memorandum](#) in the U.S. District Court for the District of Maryland for preliminary approval of settlements with three of the named defendants: [Cargill Meat Solutions Corp.](#), [Sanderson Farms Inc.](#), and Wayne Farms LLC. *Jien v. Perdue Farms, Inc.*, No. [1:19-cv-02521](#).
- According to the documents, **Cargill has agreed to pay \$15 million, Sanderson \$38.3 million, and Wayne \$31.5 million** to settle the plaintiffs' [claims](#) that the companies shared detailed employee compensation information to fix wages throughout the geographically-clustered poultry processing industry and discourage competition between the defendant processors in violation of the [Sherman Antitrust Act](#).
- The three companies have also agreed to cooperate with the plaintiffs in their further litigation against the remaining defendants.
- In July 2022, the same three companies entered into a [proposed consent decree with the U.S. Department of Justice](#) (DOJ) to settle DOJ's litigation against the companies for their actions under the Sherman Antitrust Act and the [Packers and Stockyards Act](#), also pending in the U.S. District Court for the District of Maryland. *United States v. Cargill Meat Solutions Corp.*, No. [1:22-cv-01821](#).
- The companies' consent decrees with DOJ, as well as their competitive impact statements, were posted in the Federal Register on September 16, 2022 for a [60-day public comment period](#), during which any person may submit written comments on the consent decrees ([87 FR 57028](#)).
- For additional background, see [ALWR—July 22, 2022](#), “Federal Poultry Processing Wage Suppression Suit Alleging National Conspiracy Survives Motions to Dismiss” and [ALWR—July 29, 2022](#), “Justice Department Files Complaint and Proposed Consent Decrees in Poultry Plant Worker and Contract Grower Compensation Conspiracy.”



**Thank You!**



VENERATE THE PLOUGH



### **PENN STATE CENTER FOR AGRICULTURAL AND SHALE LAW**

329 Innovation Blvd., Suite 118  
University Park, PA 16802  
Phone: 814-865-4290  
Website: [AgLaw.psu.edu](http://AgLaw.psu.edu)

#### **PROFESSIONAL STAFF**

##### ***Center Director***

Ross H. Pifer  
[rpifer@psu.edu](mailto:rpifer@psu.edu)

##### ***Staff Attorney***

Brook Duer  
[dhd5103@psu.edu](mailto:dhd5103@psu.edu)

##### ***Staff Attorney***

Audry Thompson  
[aet17@psu.edu](mailto:aet17@psu.edu)

##### ***Staff Attorney***

Jackie Schweichler  
[jks251@psu.edu](mailto:jks251@psu.edu)

##### ***Research Specialist***

Chloe Marie, LL.M.  
[cjm445@psu.edu](mailto:cjm445@psu.edu)

#### **CENTER MISSION AND BACKGROUND**

The Center for Agricultural and Shale Law conducts research and educational programs to serve a wide variety of stakeholders including agricultural producers, landowners, mineral interest and royalty owners, business professionals, judges, attorneys, legislators, government officials, community groups, and the general public. Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information.

This publication is available in alternative media on request. Penn State is an equal opportunity, affirmative action employer, and is committed to providing employment opportunities to all qualified applicants without regard to race, color, religion, age, sex, sexual orientation, gender identity, national origin, disability, or protected veteran status.



**PennState Law**



**National Agricultural Library**

UNITED STATES DEPARTMENT OF AGRICULTURE



**pennsylvania**  
DEPARTMENT OF AGRICULTURE

